Marine Scotland


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## CONTENTS

### Foreword

### PART 1

1. Why has The Scottish Government produced this guide? 1
2. What is this guide for? 2
3. Who is this guide for? 2

### Part 2

1. How can this guide help you? 3

### Chapter 1

**Introduction**
1.1 Marine Plans 4
1.2 What is considered in reaching a licence decision 5
1.3 Streamlining consents 5

### Chapter 2

**Scope**
1. What is licensable? 7
2. When is a Marine Licence required? 7
3. Who is the licensing authority? 7

### Chapter 3

**Marine licensing in detail**
1. Pre-application
   1.1 How the process works 9
   1.2 What to take to a pre-screening meeting 9
2. Screening 10
3. Environmental Impact Assessment
   3.1 Who carries out the EIA? 11
4. Scoping Opinion to develop Environmental Statement 14
5. Appropriate Assessment 15
6. Publication of Notice for Marine Licence 15
7. Inquiries 16
8. Fees and charges 16
9. Fee structure for Marine Licence applications 16
10. Payment 18
11. Refunds 18
Chapter 4  19

Exemptions
4.1 What to do if you think your project may be exempt from marine licensing  19
4.2 Exempt Activities  19
4.4 Defence  20
4.5 Pipelines  20
4.6 Cables  21
4.7 Aggregate dredging  21
4.8 Fishing  22
4.9 Shellfish  22
4.10 Shipping  22
4.11 Navigation  23
4.12 Harbour Maintenance  23
4.13 Maintenance Dredging  24
4.14 Waste Management  24
4.15 Oil dispersants, chemical treatment and tracers  25
4.16 Coast protection, drainage and flood defence  25
4.17 Scientific Equipment  25
4.18 Bored Tunnels  26
4.19 Rights of foreign vessels under international law  26
4.20 Miscellaneous  27

Chapter 5  28

Appeals against licensing decisions  28
5.1 Who can appeal?  28
5.2 Who decides the appeal?  28

Chapter 6  29

Public Register  29

Appendix 1  31

Appendix 2  33

Appendix 3  69

Acronyms  70
Scotland’s seas are Scotland’s fortune. In the past they made us a transatlantic trading giant and the centre of the world’s shipbuilding. In the present they provide a resource for our fishing fleet and the North Sea Oil and Gas sector. And in the future they promise to make us the green powerhouse of Europe, with renewable energy from our offshore wind and waves powering the North European economy through a North Sea grid connector.

Scotland will never be all that it can be unless we harness and exploit those marine resources as effectively and efficiently as possible. That is a complex task. Some resources such as wind and wave power are inexhaustible, others such as oil and gas will gradually be extracted over time, and still others, such as our fisheries, are indefinitely sustainable but only through careful management and conservation. Some resources, such as energy, require enormous infrastructural investment to harvest. Others, such as fisheries, are less demanding in capital investment. Use of the seas for one purpose can conflict with their use for another: space in the marine environment is a resource in high demand.

The Marine (Scotland) Act 2010 and the Marine and Coastal Access Act 2009 provide a legislative framework to achieve just such effective and efficient exploitation of Scotland’s seas. A new licensing and consenting regime came into force on 6 April 2011, supplemented by subordinate legislation. At the administrative level, the Scottish Government has created the Marine Licensing Operation Team as a ‘one-stop shop’ for all Marine Licence applications in Scottish seas (other than for reserved matters that are licensed by the Marine Management Organisation and/or the Department of Energy and Climate Change). While management of our seas is complex, the aim is for a consistent and co-operative approach to working with stakeholders and simplification of the process of approval for a project.

Together these create a new regime for use of Scotland’s seas. This guide – although not a substitute for the Act and subordinate legislation – sets out how that regime will operate. It will help those seeking to legitimately exploit Scotland’s seas to know what to do in order to secure the necessary licensing for their proposals.
PART 1

Why has The Scottish Government produced this guide?
A new licensing system for most developments and activities in the marine environment has been introduced. The Scottish Government has produced this guide to help you understand Part 4 of the Marine (Scotland) Act 2010 (Appendix 1) and Part 4 of the UK Marine and Coastal Access Act 2009 (Appendix 2) which deal with licensable marine activities. This guide provides you with information that you can use to inform local decision-making in light of similar projects being developed and assist developers work their way through the new system.

The licensing regime for some activities that are already established is also changing. These activities will still be allowed to continue as long as you adhere to the conditions of the new licence. You can use the guide to support a continuing activity (as long as you adhere to the conditions of the licence) or provide certainty for undertaking a new activity. You can also use this guide to plan, prioritise and apply for a licence.

Q: I have a licence under FEPA/CPA. What happens to the licence when the new system starts?
A: Your licence will carry on as a deemed marine licence. Any conditions that applied to the FEPA/CPA consent continue to apply. If the FEPA/CPA consent had an end date, that will still be the date at which the licence expires. If you wish to continue the activity after that date you will need to apply for a new licence.

Guidance on seal licensing was delivered separately and can be found at - http://www.scotland.gov.uk/Topics/marine/Licensing/SealLicensing
What is this guide for?
This guide is designed to offer advice in preparing and submitting an application to MSLOT and to signpost sources of further information and practical help.

Who is this guide for?
This guide is designed to help anyone who plans to carry out a licensable activity within the Scottish marine area\(^2\) and can help you to decide whether a Marine Licence is required for your activity under Part 4 of the Marine (Scotland) Act 2010 (MSA hereon) or Part 4 of the Marine and Coastal Access Act 2009 (MCAA hereon). The new licensing system largely replaces Part 2 of the Food and Environment Protection Act 1985 and Part 2 of the Coast Protection Act 19493.

If you require a Marine Licence, further information about how to apply is available from the The Scottish Government Licensing Operations Team (MSLOT) or the Department of Energy and Climate Change (for oil and gas-related activities) and the Department for Transport (for marine pollution from shipping). You can also consult these organisations if you are unsure after reading this document whether a Marine Licence is required.

Contact details:
MSLOT, The Scottish Government,
Marine Laboratory,
375 Victoria Road,
Aberdeen, AB11 9DB.
T: 01224 295579
E: MS.MarineLicensing@scotland.gsi.gov.uk

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\(^2\) 'Scottish marine area' has the meaning given in section 1 of the Marine (Scotland) Act 2010 - http://www.scotland.gov.uk/Topics/marine/seamanagement/marineact

\(^3\) Part 2 of the Coastal Protection Act has been repealed, and Part 2 of the Food and Environment Protection Act now applies only to certain reserved activities carried on in the Scottish marine area.
PART 2

How can this guide help you?

The guide is split into 7 parts:

Chapter 1 Introduction - outlines the background to producing the guide

Chapter 2 covers the scope of a licence and when one is required.

Chapter 3 outlines marine licensing in detail.

Chapter 4 sets out advice on exempted activities.

Chapter 5 explains the appeals process.

Chapter 6 discusses the public register.

Emergency Response Capability

MSLOT also manage a 24 hour emergency response team to deal with situations such as oil spills, sinking vessels, fish farm escapes and stranded whales. During such incidents the Scottish Government duty officer is the first point of contact within the Scottish Government.
CHAPTER 1

Introduction
Under the MSA Scottish Ministers are responsible for:

- The new marine licensing system for activities carried out in the Scottish inshore region from 0-12 NM;

And under the UK Marine and Coastal Access Act 2009 Scottish Ministers have responsibility for:

- licensing and enforcement for Scottish offshore region from 12-200 NM.

The process of marine licensing seeks to promote economic and social benefits while minimising adverse effects on the environment, human health and other users of the sea. Licensing should also simplify the way we reconcile development and nature conservation at sea including:

- deposits to the sea;
- removal of substances and objects from the seabed;
- construction works;
- dredging the seabed;
- deposit or use of explosives; and
- incineration.

For the first time the new system provides an independent and transparent process for applicants to appeal against a licensing decision.

1.1 Marine Plans
A new feature of the marine licensing system is that decisions will be taken in accordance with relevant marine planning documents. The marine planning documents include the UK Marine Policy Statement and in due course the Scottish National Marine Plan and Scottish Regional Marine Plans.

The UK Marine Policy Statement4, which has been created and adopted by the UK and devolved administrations will facilitate an integrated approach to marine planning across the UK. The Scottish National Marine Plan5 will set out Scottish Ministers’ policies for the sustainable development of Scotland’s seas and will guide regional planning once Scottish Marine Regions6 have been established. Marine plans will inform marine licensing and other decision making functions. When considering an application

5  http://www.scotland.gov.uk/Publications/2011/03/16142627/0
6  Regional plans are not yet available but will become so during the development of the National Marine Plan.
for a Marine Licence developers should consult available marine plans in advance of any development for clarity of Government objectives for the marine environment.

More information on Marine Planning for Scotland’s seas is available on the Scottish Government website - [http://www.scotland.gov.uk/Topics/marine/seamanagement](http://www.scotland.gov.uk/Topics/marine/seamanagement)

Q: What will happen to my licence application if a marine plan has not yet been published for the area where my project will take place?

A: In the absence of a Marine Plan for the area, MSLOT takes decisions in accordance with the Marine Policy Statement and considers policy objectives in other Plans where relevant.

1.2 What is considered in reaching a licence decision

In deciding whether to issue a licence MSLOT will consider the environment, human health, legitimate uses of the sea and other matters they consider relevant.

In a change from the Food and Environment Protection Act (FEPA), where an application is to construct, alter or improve works, MSLOT must consider the effects of any intended use of the works.

1.3 Streamlining consents

Where a marine project requires consent under the Electricity Act 1989 (Appendix 3), a Marine Licence will also be required. MSLOT can, where appropriate, process these applications together, since the information required for both is similar. It may also process other consents that are needed for a project (e.g. wildlife licences) at the same time. See Box 1 below.

Box 1: Streamlining consents

As well as a Marine Licence under Part 4 of the Marine (Scotland) Act 2010 or Part 4 of the Marine and Coastal Access Act 2009, a project may need other approvals or consents. MSLOT is also responsible for issuing development consents for marine renewable energy projects under Section 36 of the Electricity Act 1989 as well for modifications to existing developments. MSLOT will also process European Protected Species licences for projects as appropriate.
Conditions attached to a Marine Licence can relate to maintenance, operational matters, specific testing, record keeping, remediation works and anything else MSLOT consider appropriate to mitigate the impact of a project. In relation to licences to construct, alter or improve works, such conditions may bind all owners, and their legal successors, occupiers and anyone who ‘enjoys’ any use of the works licensed.

Marine Licences may be issued for the lifetime of a project, for example the duration of a deposit or the life time of a construction, including its removal. The licence will therefore be valid during the operational and decommissioning stage of a project and the conditions contained will remain enforceable throughout its lifetime.

MSLOT may vary, suspend or revoke a licence if it appears that there has been a breach of any of the licence provisions; or if it appears that the applicant supplied information that was false or misleading or the applicant failed to supply information that might reasonably have been expected to be supplied.

A licence may be revoked for any of the following reasons:
• a change in circumstances relating to the environment or human health,
• increased scientific knowledge relating to either of the above matters,
• in the interests of safety of navigation,
• for any other reason that appears to Scottish Ministers to be relevant.
// CHAPTER 2

**Scope**
This chapter explains when a Marine Licence is required and what activities are licensable under Part 4 of the Marine (Scotland) Act 2010 and Part 4 of the Marine and Coastal Access Act 2009.

2.1 What is licensable?
Section 21 of the MSA and Section 66 of the MCAA set out the activities that need a licence. A licence is usually required if you:

- deposit any substance or object in the sea or on or under the seabed
- construct, alter or improve works on or over the sea or on or under the seabed
- remove substances or objects from the seabed
- carry out dredging
- deposit and/or use explosives
- incinerate substances or objects

The list above is not exhaustive, when submitting an application for a licence you should in the first instance refer to the relevant legislation.

As well as a Marine Licence under the aforementioned, a project may need other approvals or consents; MSLOT is responsible for issuing development consents for renewable energy projects under Section 36 of the Electricity Act 1989 as well as modifications to existing developments.

2.2 When is a Marine Licence required?
Marine licensable activities will require a licence whether they are undertaken in the Scottish Inshore Region (0-12 NM) or the Scottish Offshore Region (12-200 NM). In some cases you will also need a Marine Licence outwith these regions (and UK waters) e.g. if the activity takes place from a British vessel, aircraft or marine structure or if the vessel etc was loaded in the UK or in UK waters.

2.3 Who is the licensing authority?
Scottish Ministers are the licensing authority for most matters in Scottish inshore and offshore waters and MSLOT issue licences on their behalf. However, under the devolution arrangements for Scotland, Northern Ireland and Wales, certain matters remain reserved to the UK Government.

In terms of section 113 of the Marine and Coastal Access Act 2009, the Secretary of State is the licensing authority in Scottish offshore waters for oil and gas-related activities, defence matters, and matters covered by Part 6 (shipping pollution) of the
Merchant Shipping Act 1995. The Secretary of State is the licensing authority for a similar range of matters in Scottish inshore waters, except that the Scottish Ministers have responsibility for oil and gas-related activities within 3 miles of the coastline.

The Secretary of State is the licensing authority in English inshore and offshore waters, as well as in cases where a UK vessel or a vessel loaded in the UK (except Scotland) makes a deposit or loads a vessel with materials for incineration or scuttles a vessel outside UK waters. [The scuttling of vessels and aircraft at sea and the incineration of materials at sea on purpose built vessels are all banned within the OSPAR (The Convention for the Protection of the Marine Environment of the North-East Atlantic) area by Ministerial agreement]

In terms of section 113 of the Marine and Coastal Access Act 2009, the Secretary of State is the licensing authority in Scottish offshore waters for oil and gas-related activities, defence matters, and matters covered by Part 6 (shipping pollution) of the Merchant Shipping Act 1995. The Secretary of State is the licensing authority for a similar range of matters in Scottish inshore waters, except that the Scottish Ministers have responsibility within 3 miles of the coastline for issuing licences for deposits associated with oil and gas-related activities where the DECC licensing process cannot be arranged in a timely manner.
CHAPTER 3

Marine licensing in detail

This chapter explains pre-application, screening and scoping to develop the Environmental Impact Assessment (EIA), which is designed to identify the likely environmental effects of certain types of development, before they are granted consent.

The chapter is written from the perspective of making applications to MSLOT. Similar considerations apply to oil and gas-related activities published by DECC and which can be accessed at: http://www.og.decc.gov.uk/environment/environ_leg_index.htm

3.1 Before the Submission of an Application

All applications need to carefully consider the relevant information required.

3.1.1 How the process works

When a licence is required under Part 4 of the MSA applicants should write to MSLOT with details of the project. MSLOT may request a pre-meeting and will offer expert advice about the process, and may have knowledge of, and access to, some extensive datasets that could be of use to developers. MSLOT seek to provide a reply within 28 business days. Where necessary MSLOT may contact applicants for further information.

3.1.2 Pre-Application Consultation

Pre-application consultation provisions contained in the MSA may be relevant for large marine projects that will allow communities with concerns to become fully engaged in the Marine Licence decision making process. Legislation is expected to be laid in the second half of 2012, defining which activities will be subject to pre-application consultation. Smaller and less complex projects are unlikely to be subject to pre-application consultation.

3.1.3 What to take to a pre-screening meeting

Before attending a pre-screening meeting with MSLOT you should take, or send by email or post, as many details as possible about the proposed development, that relate to:

- Device design and operation;
- Mooring method or options;
- Size of the intended project;
- Area or areas under consideration for the development (offshore and onshore areas);
- Any relevant maps, charts or site drawings;
• An idea of timescale for development and duration of development;

• A summary of all discussions already held with local stakeholders and/or Crown Estate Commissioners

3.2 Screening
Screening is the process by which a project is assessed to determine if an EIA is required and whether a Environmental Statement must be submitted before regulatory approval can be granted. A request for a screening opinion must be accompanied by:

• a chart or map (or both) sufficient to identify the location of the project and of the regulated activity.

• a brief description (including a plan) of the nature and purpose of the project and the regulated activity and their possible effects on the environment.

• a statement of the working methods to be used in the course of the project and in carrying out the regulated activity.

• other information/consent sought from any other regulatory/consenting authority deemed appropriate

3.3 Environmental Impact Assessment
The EU Council Directive 85/337/EEC requires an Environmental Impact Assessment (EIA) to be carried out for certain plans or projects. This requirement has been transposed into Scottish law. An EIA is a means of drawing together, in a systematic way, an assessment of a project’s likely significant environmental effects. Much of the time needed to process applications (and the associated cost) comes from the requirement to comply with the EIA. This process also helps to ensure that the importance of the predicted effects, and the scope for reducing any adverse effects, are properly understood by the public and the relevant competent authority before it makes a decision.

Where an EIA is required, there are three broad stages to be carried out:

a. the developer must compile detailed information about the likely significant environmental effects. To help the developer, public authorities must make available any relevant environmental information in their possession. The developer can also ask MSLOT for their opinion on what information needs to be included. The information finally compiled by the developer is known as an ‘Environmental Statement’ (ES).
b. the ES must be publicised. Public authorities with relevant environmental responsibilities and the public must be given an opportunity to give their views about the project and ES.

c. the ES, together with any other information, comments and representations made on it, will be taken into account by MSLOT in deciding whether or not to give consent for the development. The public must be informed of the decision and the main reasons for it.

Under the above Directive an EIA will be required as follows:

• a project under Annex I must always be subject to EIA; and

• projects under Annex II must be subject to EIA whenever they are likely to have significant effects on the environment.

Where an EIA has been carried out under another consenting regime relating to a project, MSLOT may determine that this assessment is entirely or partly sufficient and will notify you accordingly - see Figure 1 Page 12

3.3.1 Who carries out the EIA?

Where projects require an EIA, applicants should seek pre-application advice from MSLOT at least two years prior to making an application. Applicants may need to carry out environmental surveys for at least a year to inform the ES. Some surveys, such as ornithology reports for offshore wind farms, or cetacean reports for wave and tidal developments require a full two years worth of data.

MSLOT expect to process applications for minor works far more quickly than other projects. For more complex projects, MSLOT will want to satisfy itself that it has all the information and advice from statutory and other consultees to give a balanced assessment – particularly where there are European obligations to fulfil.

In line with European requirements MSLOT will examine the likely significant effects of the whole project even if an application is made for only one part of the project. Applicants are advised to provide as much detail as possible about the whole project (including any part that will take place on land) even if later stages of the project are not yet finalised. Delays can occur when MSLOT are not made aware of the full details at an early stage (see box 2 page 13).
Figure 1
Environmental Impact Assessment Process

- **Application**
  - Application submitted to MSLOT for processing
    - Project listed in Annex I of the EIA Directive*  
    - Project listed in Annex II of the EIA Directive  
    - EIA not required
      - MSLOT consult relevant persons (giving 28 days to respond). Applicant informed of Screening Opinion.
      - Applicant seeks Screening Opinion – regarding information to be provided in Environmental Statement
        - Applicant compiles Environmental Statement and completes Application Form
          - Environmental Statement and Marine Licence application submitted to MSLOT
            - MSLOT may undertake Appropriate Assessment under Habitats Regulations Appraisal
              - Likely significant effects on environment
                - MSLT advise applicant
                  - Licence refused due to relevant legislation
                    - Licence granted subject to relevant conditions
                      - No objections raised
                        - Consultation with general public, those with an interest, and statutory advisers
                          - Not compliant due to consultee objections
                            - Yes
                              - Publish
                                - No
Box 2: EIA and Habitats Regulations

MSLOT will ensure that the procedures for considering marine licence applications comply with EU law, including the EIA and Habitats Directives.

The EIA Directive (85/337/EEC) requires Member States to consider the effects of certain public and private projects on the environment when deciding to give development consent. Projects which require an EIA are listed in Annex 1 of the Directive (this includes larger port developments).

Projects which the Member State must assess to determine whether an EIA is required are listed in Annex 2 of the Directive. The initial assessment consists of screening to assess whether the project is likely, because of its size, nature or location, to have significant effects on the environment. Annex 2 includes projects like extraction of minerals, construction of marinas and installation of wind farms. It also includes proposed changes to any projects listed in Annex 1 or Annex 2.

If a project needs to undergo an EIA, the developer must provide details of the project; its potential impacts; and the management or mitigation of adverse impacts to the competent authority. In the case of projects on the coast or at sea, the competent authority is MSLOT (on behalf of Scottish Ministers). However, there may be other competent authorities under other EIA regulations. For example, the local authority for the land-based part of a project.

The Directive requires consultation to enable authorities or groups likely to have an interest in the plan or project to give their views. The information gathered about the project and the results of consultation are considered within the development consent procedure. This means that the environmental impact of a project is assessed before an application for development consent is determined.

Marine projects which require EIA will usually be assessed under the Marine Works EIA Regulations 2007. The Environmental Impact Assessment and Natural Habitats (Extraction of Minerals by Marine Dredging) (Scotland) Regulations 2007 have been repealed so these will no longer apply to minerals dredging activities. However, there are special cases where the Marine Works EIA Regulations may or may not apply - for example where an ES has been produced under another set of applicable EIA Regulations.

Marine plans or projects may also trigger requirements under the Habitats Regulations (the Conservation (Natural Habitats, &c.) Regulations 1994 and the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007), which cover territorial and offshore marine areas respectively. These Regulations require competent authorities to consider whether they need to carry out an Appropriate Assessment when deciding to give consent to a marine plan or project. This broadly means assessing the implications of a project on a Special Area of Conservation or Special Protection Area and the site’s conservation objectives. Where it cannot be shown that a project will not have an adverse effect on the features for which the site has been designated, the authority must refuse the application unless the tests outlined in article 6(4) of the Habitats Directive are satisfied.
3.4 Scoping Opinion to develop Environmental Statement

A scoping opinion is given by MSLOT regarding the information to be provided in an Environmental Statement (ES), which is one of the pieces of information to accompany an EIA application. Where MSLOT provide a scoping opinion, they will not grant you consent unless you have submitted an ES containing all the information specified in the scoping opinion. The primary purpose of the ES, is to inform the decision maker of the environmental implications of the proposal. It should also inform statutory consultees, other interested bodies and members of the general public and provide a basis for consultation and debate. A request for a scoping opinion must be accompanied by:

- a chart or map (or both) sufficient to identify the location of the project and of the regulated activity.
- a brief description (including a plan) of the nature and purpose of the project and the regulated activity and their possible effects on the environment.
- a statement of the working methods to be used in the course of the project and in carrying out the regulated activity.
- other information/consent sought from any other regulatory/consenting authority deemed appropriate.

An ES should:
- be a “stand-alone” and complete document (though not necessarily a single volume);
- provide enough detail to allow readers to form an independent judgement;
- A description of the aspects of the environment likely to be significantly affected by the proposed project, including, fauna, flora, soil, water, air, climatic factors, material assets, including the architectural and archaeological heritage, landscape and the inter-relationship between the above factors; and
- include a non-technical summary

It is good practice to go through screening and scoping although you are not statutorily required to do so. Once a screening or scoping request has been made, MSLOT is statutorily required to respond. The applicant could go straight to the ES stage, but is advised against this as the scoping stage is the key stage for focusing the assessment process.

MSLOT can advise applicants on the detailed content of the ES; managing and facilitating dialogue with statutory consultees/advisors [see Box 3 below] on issues arising from the ES. Such advice also provides the applicant with information on any Marine Plan and its provisions relating to the application being made.
Once MSLOT has provided a scoping opinion, the applicant will produce and submit an ES along with a Marine Licence application to MSLOT.

3.5 Appropriate Assessment

Under the Habitats Regulations the relevant nature conservation agencies also advise MSLOT if they consider that a Habitats Regulations Appraisal (HRA) is required for a plan or project that is likely to have a significant effect on a Natura site. HRA refers to the whole process and includes an Appropriate Assessment (AA) stage. MSLOT will carry out the AA, focusing exclusively on the qualifying interests of the Natura site affected, and this will be based on information provided by the operator and any other relevant information that MSLOT regards as appropriate. Early engagement with MSLOT and advisors at this stage should help identify any issues and prevent delays at a later stage.

This process should ensure that marine licence applications are as complete as possible when submitted; are in accordance with relevant planning documents; and stand the best chance of being approved swiftly.

3.6 Publication of Notice for Marine Licence

Section 26 of the MSA requires that, in most cases, there must be publication of notice of an application for a Marine Licence. The licensing authority must have regard to any representations which it receives from any person having an interest in the outcome of the application.

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7 A list of Natura sites, their designation and qualifying interests can be found at http://gateway.snh.gov.uk
8 How to consider proposals affecting Natura Sites - http://www.snh.gov.uk/docs/B617797.pdf
MSLOT will require applicants to publicise the application and will advise applicants on the form of publication that they consider appropriate to bring the proposal to the attention of people with an interest e.g. relevant local newspapers or notices close to the proposed site. In addition, The Scottish Government will publicise applications on its website.

In general, MSLOT will not process an application until the applicant has provided evidence that the application has been publicised.

3.7 Inquiries
In the case of large complex or potentially controversial projects Scottish Ministers may cause an inquiry to be held in connection with a Marine Licence application.

Should such an inquiry take place, then the rules in section 210 of the Local Government (Scotland) Act 1973 will apply. These rules cover matters such as attendance at inquiries, production of documents and costs.

Q. When might Scottish Ministers call an inquiry on a marine licence application?
A. Scottish Ministers will decide whether to call an inquiry on a case-by-case basis. Factors that are likely to influence their decision include:-

- Proposals which are not in accordance with relevant marine planning documents
- Projects including novel technologies

3.8 Fees and charges
Section 25 (1)(b) of the MSA and section 67(2) of the MCAA provide for Scottish Ministers to set fees for Marine Licence applications.

Fees are based on full cost recovery and are determined by the scale and complexity of the project and therefore the time MSLOT needs to deal with the application. This ensures that the costs incurred are met by the individuals or organisations benefiting from the licensing of an activity rather than falling to the public sector or other licence applicant.

3.9 Fee structure for Marine Licence applications
Fees for Marine Licences (including dredging activity with no sea disposal aspect) are charged in relation to project costs and divided into 8 bands as shown on the right:
### Licence Fees 1st April 2013 to 31st March 2014

<table>
<thead>
<tr>
<th>Fee Range</th>
<th>1 Year Licence</th>
</tr>
</thead>
<tbody>
<tr>
<td>≤ £2,500</td>
<td>55</td>
</tr>
<tr>
<td>&gt; £2,500 - ≤ £5,000</td>
<td>160</td>
</tr>
<tr>
<td>&gt; £5,000 - ≤ £50,000</td>
<td>640</td>
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<td>&gt; £50,000 - ≤ £2 million</td>
<td>2,130</td>
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<tr>
<td>&gt; £2 million - ≤ £5 million</td>
<td>4,255</td>
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<tr>
<td>&gt; £5 million - ≤ £20 million</td>
<td>12,760</td>
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<tr>
<td>&gt; £20 million - ≤ £50 million</td>
<td>21,260</td>
</tr>
<tr>
<td>&gt; £50 million</td>
<td>31,885</td>
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</tbody>
</table>

### Generating Stations

<table>
<thead>
<tr>
<th>Fee Range</th>
<th>1 Year Licence</th>
</tr>
</thead>
<tbody>
<tr>
<td>≤ £2,500</td>
<td>55</td>
</tr>
<tr>
<td>&gt; £2,500 - ≤ £5,000</td>
<td>160</td>
</tr>
<tr>
<td>&gt; £5,000 - ≤ £50,000</td>
<td>640</td>
</tr>
<tr>
<td>&gt; £50,000 - ≤ £2 million</td>
<td>2,840</td>
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<td>&gt; £2 million - ≤ £5 million</td>
<td>5,680</td>
</tr>
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<td>&gt; £5 million - ≤ £20 million</td>
<td>17,010</td>
</tr>
<tr>
<td>&gt; £20 million - ≤ £50 million</td>
<td>28,345</td>
</tr>
<tr>
<td>&gt; £50 million</td>
<td>42,515</td>
</tr>
</tbody>
</table>

### Sea Disposal of Maintenance Dredging

<table>
<thead>
<tr>
<th>Disposal Weight (tons)</th>
<th>1 Year Licence</th>
<th>2 Year Licence</th>
<th>3 Year Licence</th>
</tr>
</thead>
<tbody>
<tr>
<td>≤ 10,000</td>
<td>1,490</td>
<td>2,605</td>
<td>3,725</td>
</tr>
<tr>
<td>&gt; 10,000 - ≤ 100,000</td>
<td>2,975</td>
<td>5,215</td>
<td>7,445</td>
</tr>
<tr>
<td>&gt; 100,000 - ≤ 300,000</td>
<td>5,955</td>
<td>10,420</td>
<td>14,880</td>
</tr>
<tr>
<td>&gt; 300,000</td>
<td>9,995</td>
<td>17,485</td>
<td>24,980</td>
</tr>
</tbody>
</table>

### Sea Disposal of Capital Dredging

<table>
<thead>
<tr>
<th>Disposal Weight (tons)</th>
<th>1 Year Licence</th>
<th>2 Year Licence</th>
<th>3 Year Licence</th>
</tr>
</thead>
<tbody>
<tr>
<td>≤ 10,000</td>
<td>1,860</td>
<td>3,725</td>
<td>5,585</td>
</tr>
<tr>
<td>&gt; 10,000 - ≤ 100,000</td>
<td>3,725</td>
<td>6,515</td>
<td>9,305</td>
</tr>
<tr>
<td>&gt; 100,000 - ≤ 300,000</td>
<td>7,445</td>
<td>13,025</td>
<td>18,600</td>
</tr>
<tr>
<td>&gt; 300,000</td>
<td>12,150</td>
<td>21,260</td>
<td>30,370</td>
</tr>
<tr>
<td>&gt; 300,000 related to construction of a renewable energy project: 35,440</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Moorings - £55  
Wellboats - £160 per application  
Mineral Dredging - £30,500  
Sediment removal - in harbour: £55  
- outwith a harbour: £160

Offshore oil & gas deposits
Outside controlled waters (i.e. 3nm), these activities must be charged under FEPA’s fee structure and will therefore cost £1,045.

3.10 Payment
MSLOT is considering developing an electronic application system that will provide for bank transfers and web based electronic payments for fees. Cheques will also be accepted for as long as UK banks continue to issue them and should be made payable to The Scottish Government. There will be further details of payment methods in the guide produced by MSLOT.

3.11 Refunds
Fees will be refunded where an application is withdrawn although MSLOT may keep a part of the fee, on a discretionary basis, to cover any administrative costs incurred at the point where the application is withdrawn.
EXEMPTIONS
This chapter explains what activities are exempted from the need to have a Marine Licence.

4.1 What to do if you think your project may be exempt from marine licensing
If you think that your project may be exempt from licensing, you should check that the exemption applies to all the different types of licensable activities that your project involves. Some of the exemptions apply to all licensable activities but some do not.

Q: My project is exempt but do I need to let MSLOT know that I am doing it?
A: In most cases no. But if your project involves the disposal or recovery of waste you may need to do so.

Q: Do I need a marine licence for an effluent discharge to the sea from a pipeline on land (e.g. from a power station or sewage treatment plant)?
A: No. These discharges are regulated under water quality legislation.

4.2 Exempt Activities
Section 32(1) of the MSA and section 74(1) of the MCAA give Scottish Ministers the power to exempt by order activities that normally would require a Marine Licence. Relevant exemptions are set out in the Marine Licensing (Exempted Activities) (Scottish Inshore Region) Order 2019 and the Marine Licensing (Exempted Activities) (Scottish Offshore Region) Order 2011.

4.3 Oil and Gas
Section 34 of the MSA provides that any activity relating to a reserved matter by virtue of section D2 (oil and gas) in Part II of Schedule 5 to the Scotland Act 1998 and which is an activity outside controlled waters (within the meaning of section 30A(1) of the Control of Pollution Act 1974) does not come under the MSA.

The licensing part of the MSA therefore has limited application to certain oil and gas activities. Nor are the Scottish Ministers the licensing authority under the MCAA for those activities. Because the exclusion under the MSA does not apply to controlled waters (essentially those waters out to 3NM from the coastal baseline) the inshore exemptions order provides exemptions similar to those in section 77(1) of the MCAA relating to oil and gas activities. The order also exempts activities for which a licence is

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required under section 18 of the Energy Act 2008 (storage of carbon dioxide). Accordingly there are exemptions for:

- carrying out an activity for which a licence to search and get petroleum is needed under Section 3 of the Petroleum Act 1998 or Section 2 of the Petroleum (Production) Act 1934. This applies whether or not such a licence has been granted;
- building or maintaining an offshore installation (as defined in Part 4 of the Petroleum Act 1998)
- gas loading, unloading and storage (which needs a licence under Section 4 of the Energy Act 2008) or carbon dioxide storage (which needs a licence under Section 18 of the Energy Act 2008). Again the exemption applies whether or not the relevant licence has yet been granted.

As previously explained, the Acts exempts from marine licensing by Scottish Ministers most activities relating to exploring for, or producing, oil and gas. Such activities are regulated under the Petroleum Act 1998 or the Petroleum (Production) Act 1934.

4.4 Defence

Activities carried out by the Ministry of Defence and its contractors would normally fall outside the scope of the licensing by the Scottish Minister. These activities would include (but are not limited to) operational activities by naval ships, Royal Fleet Auxiliary\(^\text{10}\) (RFA); weapons firings from land based equipment and system; activities in direct support of training by the UK armed forces including RFA; tests and trials of defence equipment and systems and the recovery of defence assets.

Where commercial activities are carried out by Ministry of Defence contractors for customers other than the Ministry of Defence normal licensing processes will apply and the contractor will seek approval for such projects from MSLOT.

4.5 Pipelines

A Marine Licence is needed for pipelines apart from those used in relation to:

- exploring for, or exploiting, petroleum;
- unloading or storing offshore oil or related hydrocarbons, natural gas (including such gas as a liquid) or carbon dioxide; or
- exporting from or importing into the United Kingdom oil or related hydrocarbons, natural gas (including such gas as a liquid) or carbon dioxide; or transfer of any of these substances between any of England, Wales, Northern Ireland and Scotland.

\(^{10}\) A civilian manned fleet, owned by the Ministry of Defence, which supplies warships of the Royal Navy at sea with fuel, food, stores and ammunition.
4.6 Cables

International maritime law sanctions the laying of telecommunications cables between countries. In accordance with international law, you will not need a Marine Licence to lay or maintain such cables outside the territorial sea.

Where a cable runs through the Scottish marine area you will need a licence from MSLOT. The licence is only needed for the stretch of cable that runs through the Scottish marine area. MSLOT must grant such a licence but may attach conditions to protect the environment, human health or other uses of the sea.

These rules do not apply if the cable:-

- runs only through territorial waters.

is constructed or used in connection with:

- the exploration of the UK sector of the continental shelf,
- the exploitation of natural resources of that sector,
- the operations of artificial islands, installations and structures under UK jurisdiction, or the prevention, reduction or control of pollution from pipelines.

In these cases, standard marine licensing rules apply.

Q: Do I need a marine licence from both MSLOT and the MMO for a cable that runs through Scottish and English inshore waters?

A: Yes. Similarly you need approval from the devolved administrations in Wales and Northern Ireland for laying cables in their inshore waters. The licensing authorities in Scotland, England, Wales, and Northern Ireland will work together to ensure that the licensing of such projects is as efficient as possible.

4.7 Aggregate dredging

Consents under the Environmental Impact Assessment and Natural Habitats (Extraction of Minerals by Marine Dredging) (Scotland) Regulations 2007 are no longer issued. The Scottish Government have repealed these Regulations because marine licensing now covers removals from the seabed. All marine aggregate dredging will require a Marine Licence.
However, some activities that take place during a dredging activity are exempted. Firstly, a dredger may bring up other objects – as well as aggregates – from the seabed. A vessel does not need a licence to return these objects to the sea. Secondly an aggregate dredger may discharge water either by discharging from its scuppers or by pumping from the hold of a vessel. Dredgers do not need a Marine Licence for such discharges during the dredging operation, on completion of dredging or on the return trip to port.

4.8 Fishing
The new licensing system covers deposits in the sea and on the seabed, removals from the seabed and dredging. Most forms of fishing – such as demersal trawling, potting, scallop or mussel dredging – involves such activities. However, section 21 (2)(c) of the MSA states that nothing in section 21(1) applies to fishing by any method. Deposits and removals and dredging as part of a fishing operation are therefore exempt from the need for a Marine Licence.

The section 21(2)(c) exemption applies only from 0-12 NM. There is not a similar exemption under the MCAA. However, since fishing is already adequately regulated under EU and UK legislation, fishing related activities have been exempted under the 2011 Offshore Exemption Order.

Fishing vessels may accidentally disturb by dredging or trawling large bulky items that affect the stability of vessels, old munitions and litter etc. Fishing vessels will not need a licence to return such items to the sea. However, we would encourage fishing vessels to return litter to the shore for recycling where it is safe for them to do so.

4.9 Shellfish
Deposits and removals directly connected with shellfish propagation and cultivation will not need a Marine Licence. You may not need a Marine Licence to lay trestles or ropes to cultivate oysters or mussels. However, the exemption does not apply to construction activities related to shellfish propagation – e.g. digging a trench or building a jetty to access shellfish beds. This exemption only applies if the deposit does not pose a navigational risk. The exemption does not apply to the use of artificial reefs in shellfish propagation and cultivation. These developments can be significant; MSLOT will consider their effect on the marine environment as part of the licensing process.

4.10 Shipping
The regulation of shipping pollution will not change as a result of marine licensing. Reflecting the global nature of the shipping industry, the International Maritime Organisation (IMO) will continue to regulate pollution from shipping. The measures that IMO adopt are implemented in the UK under Part VI of the Merchant Shipping Act 1995. The Scottish Ministers are not the licensing authority in respect of activities that are regulated under Part VI. This includes:
• Deposit of oil or mixtures containing oil
• Deposit or incineration of garbage originating in or on a vessel
• Deposit of cooling water or ballast water

The Scottish Government has exempted from the need for a Marine Licence action taken in exercise of the UK Government’s powers to give directions to the owner, master and others in control of a ship when an accident has occurred and there is a risk to safety or of pollution. The Secretary of State for Transport has appointed a representative (SOSREP11) who will, in practice, normally issue these directions. In addition any activities carried on during a salvage operation to ensure the safety of a ship or prevent pollution will not need a licence.

4.11 Navigation
You will not need a Marine Licence for deposits of any substance or object in the normal course of navigation. This is to allow routine activities such as the deposit of anchors and hull cleaning to be carried out without the need for a licence.

Some activities by bodies entrusted with ensuring safe navigation are exempt from certain marine licensing. A conservancy authority, harbour authority or navigation authority will not need a Marine Licence to remove anything causing or likely to cause an obstruction or danger to navigation.

Harbour authorities and lighthouse authorities will not need a licence to deposit or remove piled or swing moorings or aids to navigation (such as a marker buoy). People carrying out such activities with the consent of a harbour authority or lighthouse authority will not need a Marine Licence.

This exemption does not apply to the deposit, or construction of pontoons. You will need a licence for such activities.

4.12 Harbour Maintenance
Harbour authorities often need to do small-scale works to maintain their facilities. These works may need a Marine Licence. To avoid harbours repeating the application process each time they carry out minor works, deposits and removals from the seabed are all exempt provided that the activity is carried on within the existing boundaries of the works being maintained. The works may be done by the harbour authority itself, or on its behalf by contractors.

A harbour authority is free to apply for a Marine Licence for individual works if it prefers.

11 Current SOSREP is Hugh Shaw - http://www.dft.gov.uk/mca/mcga-environmental/mcga-dops_cp_sosrep_role.htm
4.13 Maintenance Dredging

In most circumstances, maintenance dredging in connection with a harbour will be exempt from requiring a Marine Licence. However, this exemption is subject to certain conditions. These are:

- that the dredged material is contained and transported to another location for disposal or plough dredging is involved as part of a wider operation that involves the use of techniques that contain and transport the dredged material;

- the dredging is carried out under either section 14 or 16 of the Harbours Act 1964 or under any local Act;

- the activity must be approved by MSLOT before it is carried on.

This exemption only applies to the dredging activity, not to the deposit of the dredged material. You will still require a Marine Licence for the sea disposal of dredged material, even if the dredging is exempted under the 2011 order.

4.14 Waste Management

Certain waste management activities in Scotland, on land and in the territorial sea, require a licence under the Waste Framework Directive (issued by SEPA). However, at sea (below Mean High Water Springs) operators will need a Marine Licence from MSLOT rather than waste management licence for projects (or parts of projects) that involve waste recovery or the disposal of waste at sea. Projects subject to marine licensing which span the inter-tidal zone and involve the disposal of waste above Mean High Water Springs will also require a licence under the Waste Framework Directive. See Box 4 below.

The dismantling of a wrecked ship prior to recovery will require a waste management licence rather than a Marine Licence, even if some of the activity takes place below Mean High Water Springs.

**Box 4: Special rules for exemptions involving waste**

Special rules apply when an activity involves waste; an activity is only exempt if it involves waste recovery or the disposal of non-hazardous waste at the place of production. For example, discarding fish by a fishing vessel at the place of production is considered disposal. However, if a land-based fish processor seeks to dispose of fish waste at sea, this would not be considered as disposal at the place of production and the exemption would not apply.

Under EU waste law, a record of businesses carrying out exempt activities must be kept. MSLOT will keep this register using, as far as possible, existing sources of information such as the fishing vessel licence register.
Other activities associated with ship dismantling will need a marine licence if they take place below Mean High Water Springs. These might include, for example, dredging to allow a redundant ship to access a dry dock.

4.15 Oil dispersants, chemical treatment and tracers
There are some products that are used at sea where it is possible to assess risks in advance and for MSLOT to give prior approval to the use of some of these products.

The groups are products used:
- to disperse oil spills
- to treat chemical pollution
- to tackle fouling of the sea or seabed (e.g. excessive algal growth or problems caused by invasive species such as the sea squirt); and
- tracers used to assess the movement of currents etc.

MSLOT has the powers to agree a list of approved products in each category. It can also apply conditions to the use of the products.

This exemption does not apply
- to the sub-sea use of these chemicals; or
- in depths of less than 20 metres or within one nautical mile of such an area: except with the prior approval of MSLOT.

4.16 Coast protection, drainage and flood defence
The Scottish Government has exempted activities carried on by or on behalf of a local authority to maintain coast protection, drainage or flood defence works provided that the activity is carried on within the existing boundaries of the works.

The Scottish Government has also exempted emergency works in response to any flood or imminent risk of flooding, for the purpose of preventing pollution of the environment or to repair an existing structure providing the activity has first been approved by MSLOT.

4.17 Scientific Equipment
In most cases a Marine Licence will not be needed to deposit scientific equipment at sea (or to remove it). However, this exemption does not apply where the deposit affects a protected area or species in a particular way. There are different thresholds in different conservation legislation. This is reflected in the relevant exemption from marine licensing. The exemption does not apply if the deposit is:-

- A plan or project likely (either alone or in combination with other plans or projects) to have a significant effect on a Special Conservation Area designated under the EU
Habitats Directive or a Special Protection Area notified under the EU Birds Directive

- Is likely to have a significant effect on a Ramsar site (i.e. Wetlands of International Importance)

- Is capable of affecting (other than insignificantly) the protected features of a Marine Protected Area designated under the MSA or under MCAA

It is up to the applicant to satisfy themselves that their activity will not have such an effect. If you are in any doubt whether your activity will affect such a site, you should speak to the relevant nature conservation body (Scottish Natural Heritage for inshore waters within 12 miles of the coast and the Joint Nature Conservation Committee for offshore waters).

The exemption for the deposit of scientific instruments does not apply if the deposit causes or is likely to cause an obstruction or danger to navigation.

4.18 Bored Tunnels
Licensable activities associated with the construction or operation of bored tunnels that are carried out wholly under the seabed will not need a Marine Licence. This exemption does not apply to deposits of material for the purpose of disposal nor does the exemption cover activities that take place in the sea or on the sea bed.

The exemption only applies if the licensing authority is notified in advance of the intention to carry on the activity. The exemption is subject to the condition that the construction of the tunnel does not adversely affect the environment of the UK marine area or the living resources that it supports.

4.19 Rights of foreign vessels under international law
There is a general exemption to ensure that the rights under international maritime law of vessels from EU countries and sovereign vessels from other countries are not infringed. These rights apply to third country vessels (i.e. not EU or UK vessels) and to Government ships and aircraft while they are being used only on government non-commercial service. For example, Article 236 of the United Nations Convention on the Law of the Sea specifies measures to protect the marine environment in the territorial sea.

The balance of rights and responsibilities within international maritime law also applies in relation to cultural heritage, such as wreck sites, remains of settlements lost to the sea, etc. MSLOT will consider the effect of all licence applications on our maritime heritage as part of the decision-making process.

Marine licensing applies to removing items of historic interest from the seabed. A Marine Licence will always be needed to use a vehicle, vessel, aircraft, marine structure or
floating container to remove an object of historic interest within territorial waters. Government ships remain UK property wherever they are in the world, even when they become wrecks. If the wreck is not owned by the UK or other sovereign Government, a Marine Licence may not be needed to remove an object from a wreck outside our territorial waters. However, this only applies to the removal of the object itself. The exemption will not apply if a project involves other activities that need a licence e.g. excavation around a wreck. In case of any doubt you should seek advice from MSLOT. Separate permissions may be required for designated marine heritage assets (scheduled monuments; Historic MPAs; wrecks designated under the Protection of Wrecks Act 1973; Protected Places and Controlled Sites under the Protection of Military Remains Act 1986).

4.20 Miscellaneous
You will not need a Marine Licence for:-

• any deposit in connection with launching a vehicle, vessel, aircraft or marine structure

• any activity to extinguish a fire or prevent its spread

• any deposit of equipment to control, contain or recover oil, mixtures containing oil, chemicals, flotsam or algal blooms

Local authorities will not normally need a licence to use a vehicle to remove litter from a beach. However, the conditions which apply to the deposit of scientific equipment also apply to litter cleaning - the exemption will not apply if the activity could affect Special Conservation Areas designated under the EU Habitats Directive, Special Protection Areas notified under the EU Birds Directive, Ramsar sites or Marine Protected Areas.
Chapter 5

Appeals against licensing decisions

This chapter explains the process for appeals once a licensing decision has been given.

The Scottish Government want to encourage all outstanding issues or differences of opinion on an application to be resolved during the application process or in discussion with the licensing authority after a decision has been made. The existence of marine planning documents, including marine plans, should also reduce the likelihood of appeals.

If an applicant is unhappy with a decision to refuse an application or with the conditions attached to a licence, they can ask the licensing authority to carry out an internal review of their decision. This can save time and expense for all sides. MSLOT will provide advice to applicants on this. However, there is a deadline for lodging a formal appeal (21 days after intimation of the decision in question) and applicants will need to bear this in mind in deciding on the best way forward. Any formal appeal requires to be made in the sheriff court.

5.1 Who can appeal?
Any applicant for a Marine Licence will be able to appeal against a decision not to grant a licence or against any of the conditions attached to a licence.

5.2 Who decides the appeal?
Regulations made under Section 38 of the Marine (Scotland) Act and Section 73 of the Marine and Coastal Access Act provide that appeals against marine licensing decisions for both the Scottish inshore and offshore regions will be heard by a Sheriff. The Sheriff Court provides an independent and impartial forum for these appeals.
Public Register

This chapter explains what information the Public Register will contain on marine licence applications.

MSLOT will keep a Public Register of marine licensing information. The Register must contain information on applications; licences granted, revoked and varied; information supplied in connection with licences, convictions, other enforcement action and remedial action and other information set out in the Marine Licensing (Register of Licensing Information) (Scotland) Regulations 2011. MSLOT will maintain this Register in line with Data Protection Act requirements.

Most of the information will be kept online, accessible through the The Scottish Government website.

The Register will contain certain common information about an application or licence, for example the date an application was made, the name and address of the applicant/licence holder, the marine plan area to which the project relates, details of environmental/human health studies supplied with applications etc.

In addition, the Register will contain information on different types of licensable activities: deposit of substances or objects; constructing, altering or improving works; use of vehicles etc to remove substances or objects from sea bed; dredging; deposit or use of explosives; incineration or loading vehicles, etc with materials for incineration.

On dredging, for example, the Regulations require that the Register holds details of the type of dredging to be carried out; the location (in latitude and longitude or Ordnance Survey coordinates) where the dredging is to be carried out; any information held by the Scottish Ministers as to the contamination of the material to be dredged.

The Register will also need to contain information on variation, suspension, revocation and transfer of Marine Licences and on enforcement, convictions and remedial action.

The Register is available from the The Scottish Government website. However, some documents, for example environmental statements, may be very large files which may not be suitable for making available on the web. In these circumstances the documents would be made available in hard copy on demand. The Acts allow for this and for the licensing body to require payment of a reasonable charge for supplying copies.

In accordance with the requirements of the MCAA, information relating to offshore waters will not appear on the Register if the Secretary of State decides that its release would be contrary to the interests of national security. The Acts also allow licensing authorities to exclude commercially or industrially sensitive information.
from the Register where such confidentiality is provided for by law to protect genuine commercial interests. The licensing authority will review such exclusions every four years. The exclusion of such information and the outcome of any review of the exclusion will be recorded on the Public Register.
The Scottish Government Act 2010

Part 4 Marine licensing

Licensable marine activities

Section 21 Licensable marine activities

(1) For the purposes of this Part, it is a licensable marine activity to do any of the following:

1 To deposit any substance or object within the Scottish marine area, 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 in the sea.

2 To deposit any substance or object anywhere in the sea or on or under the seabed from a vehicle, vessel, aircraft, marine structure or floating container which was loaded with the substance or object either—
   (a) in Scotland, or
   (b) in the Scottish marine area.

3 To scuttle any vessel or floating container in the Scottish marine area.

4 To scuttle any vessel or floating container anywhere at sea, if the vessel or container has been towed or propelled for the purpose of that scuttling either—
   (a) from Scotland, or
   (b) from the Scottish marine area (except where the towing or propelling began outside that area).

5 To construct, alter or improve any works within the Scottish marine area either—
   (a) in or over the sea, or
   (b) on or under the seabed.

6 To use a vehicle, vessel, aircraft, marine structure or floating container to remove any substance or object from the seabed within the Scottish marine area.

7 To carry out any form of dredging within the Scottish marine area (whether or not involving the removal of any material from the sea or seabed).

8 To deposit or use any explosive substance or article within the Scottish marine area either in the sea or on or under the seabed.

9 To incinerate any substance or object on any vehicle, vessel, marine structure or floating
container in the Scottish marine area.

10 To load a vehicle, vessel, marine structure or floating container in Scotland or in the Scottish marine area with any substance or object for incineration anywhere at sea.

(2) In subsection (1)—
(a) in item 7, “dredging” includes using any device to move any material (whether or not suspended in water) from one part of the sea or seabed to another part,
(b) in item 10, “incineration” means the combustion of a substance or object for the purpose of its thermal destruction (and in item 9 “incinerate” is to be read accordingly),
(c) nothing therein is to be taken to apply to fishing by any method.

(3) The Scottish Ministers may by order—
(a) amend subsection (1) so as to add or remove any activity from the list of licensable marine activities,
(b) make such amendment consequential on such amendment of subsection (1) as they consider appropriate to any other provision of this Act.

(4) In deciding whether to make an order under subsection (3), the Scottish Ministers must have regard to—
(a) the need to protect the environment,
(b) the need to protect human health,
(c) the need to prevent interference with legitimate uses of the sea,
(d) such other matters as the Ministers consider relevant.
APPENDIX 2

Marine and Coastal Access Act 2009

Part 4 Marine Licensing – Chapter 1 – Marine Licences

65 Requirement for licence
(1) No person may—
(a) carry on a licensable marine activity, or
(b) cause or permit any other person to carry on such an activity, except in accordance with a marine licence granted by the appropriate licensing authority.

(2) Subsection (1) is subject to any provision made by or under sections 74 to 77 (exemptions).

Section 66 Licensable marine activities
(1) For the purposes of this Part, it is a licensable marine activity to do any of the following—

1. To deposit any substance or object within the UK marine licensing area, either in the sea or on or under the sea bed, from—
(a) any vehicle, vessel, aircraft or marine structure,
(b) any container floating in the sea, or
(c) any structure on land constructed or adapted wholly or mainly for the purpose of depositing solids in the sea.

2. To deposit any substance or object anywhere in the sea or on or under the sea bed from—
(a) a British vessel, British aircraft or British marine structure, or
(b) a container floating in the sea, if the deposit is controlled from a British vessel, British aircraft or British marine structure.

3. To deposit any substance or object anywhere in the sea or on or under the sea bed from a vehicle, vessel, aircraft, marine structure or floating container which was loaded with the substance or object—
(a) in any part of the United Kingdom except Scotland, or
(b) in the UK marine licensing area.

4. To scuttle any vessel or floating container in the UK marine licensing area.

5. To scuttle any vessel or floating container anywhere at sea, if the scuttling is controlled from a British vessel, British aircraft or British marine structure.

6. To scuttle any vessel or floating container anywhere at sea, if the vessel or container has been towed or propelled, for the purpose of that scuttling,—
(a) from any part of the United Kingdom except Scotland, or

(b) from the UK marine licensing area, unless the towing or propelling began outside that area

7. To construct, alter or improve any works within the UK marine licensing area either—
   (a) in or over the sea, or
   (b) on or under the sea bed.

8. 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.

9. To carry out any form of dredging within the UK marine licensing area (whether or not involving the removal of any material from the sea or sea bed).

10. To deposit or use any explosive substance or article within the UK marine licensing area either in the sea or on or under the sea bed.

11. To incinerate any substance or object on any vehicle, vessel, marine structure or floating container in the UK marine licensing area.

12. To incinerate any substance or object anywhere at sea on—
   (a) a British vessel or British marine structure, or
   (b) a container floating in the sea, if the incineration is controlled from a British vessel, British aircraft or British marine structure.

13. To load a vehicle, vessel, aircraft, marine structure or floating container in any part of the United Kingdom except Scotland, or in the UK marine licensing area, with any substance or object for incineration anywhere at sea.

(2) In subsection (1)—
   (a) in item 9, “dredging” includes using any device to move any material (whether or not suspended in water) from one part of the sea or sea bed to another part;
   (b) in items 12 and 13, “incineration” means the combustion of a substance or object for the purpose of its thermal destruction (and in items 11 and 12 “incinerate” is to be read accordingly).

(3) The appropriate licensing authority for any area may by order amend subsection (1) so as to add any activity to, or remove any activity from, the list of licensable marine activities as it has effect in that area.

(4) For the purposes of this Part “the UK marine licensing area” consists of the UK marine area, other than the Scottish inshore region.

67 Applications
(1) The appropriate licensing authority may require an application for a marine licence—
   (a) to be made in such form as the authority may determine;
   (b) to be accompanied by a fee.

(2) The fee that may be charged under subsection (1)(b) is to be determined by, or in accordance with, regulations made by the appropriate licensing authority.
(3) A licensing authority may—
(a) determine different forms for different descriptions of applications;
(b) provide for different fees for different descriptions of applications.

(4) The appropriate licensing authority may require an applicant—
(a) to supply such information,
(b) to produce such articles, and
(c) to permit such investigations, examinations and tests, as in the opinion of the authority may be necessary or expedient to enable it to determine the application.

(5) If the appropriate licensing authority carries out any investigation, examination or test (whether or not by virtue of subsection (4)(c)) which in its opinion is necessary or expedient to enable it to determine an application, the authority may require the applicant to pay a fee towards the reasonable expenses of that investigation, examination or test.

(6) If an applicant fails to comply with a requirement made by the appropriate licensing authority under this section, the authority may—
(a) refuse to proceed with the application, or
(b) refuse to proceed with it until the failure is remedied.

68 Notice of applications
(1) Having received an application for a marine licence, the appropriate licensing authority must—
(a) publish notice of the application, or
(b) require the applicant to publish notice of it.

(2) Publication under subsection (1) must be in such manner as the authority thinks is best calculated to bring the application to the attention of any persons likely to be interested in it.

(3) If the activity in respect of which the application is being made is proposed to be carried on wholly or partly within the area of a local authority in England, Wales or Northern Ireland, the appropriate licensing authority must give notice of the application, or require the applicant to give notice of the application, to that local authority (whether or not notice has been published under subsection (1)).

(4) The appropriate licensing authority must not proceed with an application unless—
(a) notice has been published under subsection (1) (but see subsection (7)); and
(b) notice has been given under subsection (3) to any local authority to which notice of the application is required to be given by virtue of that subsection (but see subsection (8)).

(5) If the appropriate licensing authority—
(a) publishes notice of an application, in pursuance of subsection (1)(a), or
(b) gives notice of an application to a local authority, in pursuance of subsection (3), the licensing authority may require the applicant to pay a fee towards the reasonable expenses of doing so.
(6) If an applicant fails to comply with a requirement made by the authority under subsection (5), the authority may—
   (a) refuse to proceed with the application, or
   
   (b) refuse to proceed with it until the failure is remedied.

(7) Subsection (1) does not apply in the case of any particular application if—
   (a) the authority considers that notice of the application should not be published, or
   
   (b) the Secretary of State certifies that in the opinion of the Secretary of State publication of notice of the application would be contrary to the interests of national security.

(8) Subsection (3) does not apply in the case of any particular application and any particular local authority if—
   (a) the appropriate licensing authority considers that notice of the application should not be given to the local authority, or
   
   (b) the Secretary of State certifies that in the opinion of the Secretary of State it would be contrary to the interests of national security to give notice of the application to the local authority.

(9) In this section “local authority” means—
   (a) in relation to England, a county council, a district council, a London borough council, the Common Council of the City of London or the Council of the Isles of Scilly;
   
   (b) in relation to Wales, a county council or a county borough council;
   
   (c) in relation to Northern Ireland, a district council.

69 Determination of applications
(1) In determining an application for a marine licence (including the terms on which it is to be granted and what conditions, if any, are to be attached to it), the appropriate licensing authority must have regard to—
   (a) the need to protect the environment,
   
   (b) the need to protect human health,
   
   (c) the need to prevent interference with legitimate uses of the sea, and such other matters as the authority thinks relevant.

(2) In the case of an application for a licence to authorise such activities as are mentioned in item 7 in section 66(1), the appropriate licensing authority must have regard (among other things) to the effects of any use intended to be made of the works in question when constructed, altered or improved.

(3) The appropriate licensing authority must have regard to any representations which it receives from any person having an interest in the outcome of the application.

(4) A licensing authority may—
   (a) from time to time consult any person or body it thinks fit as to the general manner in which the licensing authority proposes to exercise its powers in cases involving any matter in which that person or body has particular expertise;
(b) in relation to any particular application, consult any person or body which has particular expertise in any matter arising in relation to that application.

(5) If the appropriate licensing authority consults any person or body under subsection (4)(b), it must give the applicant the opportunity to make representations to the licensing authority about any observations made by the person or body.

(6) A licensing authority may by regulations make further provision as to the procedure to be followed in connection with—
   (a) applications to it for marine licences, and
   (b) the grant by it of such licences.

(7) The provision that may be made by virtue of subsection (6) includes (in particular) provision as to—
   (a) the period within which any function is to be exercised (including when that period is to begin and how it is to be calculated);
   (b) notifying the applicant of any licensing determination.

70 Inquiries

(1) The appropriate licensing authority may cause an inquiry to be held in connection with the determination of an application for a marine licence.

(2) Subsection (1) is subject to the following provisions of this section.

(3) Subsections (2) to (5) of section 250 of the Local Government Act 1972 (c. 70) apply to any inquiry which the Secretary of State or the Welsh Ministers may cause to be held under subsection (1) as they apply to inquiries under that section.

(4) Subsections (2) to (8) of section 210 of the Local Government (Scotland) Act 1973 (c. 65) apply to any inquiry which the Scottish Ministers may cause to be held under subsection (1) as they apply to inquiries under that section.

(5) Schedule A1 to the Interpretation Act (Northern Ireland) 1954 (c. 33) applies to any inquiry which the Department of the Environment in Northern Ireland may cause to be held under subsection (1) as it applies to a local inquiry held under an enactment passed or made as mentioned in section 23 of that Act.

(6) Where—
   (a) an inquiry is caused by a licensing authority to be held under subsection (1), and
   (b) in the case of some other matter required or authorised to be the subject of an inquiry ("the other inquiry"), it appears to the relevant authority or authorities that the matters are so far cognate that they should be considered together, the relevant authority or authorities may direct that the two inquiries be held concurrently or combined as one inquiry.

(7) In subsection (6) "the relevant authority or authorities" means the licensing authority or, where causing the other inquiry to be held is the function of some other person or body, the licensing authority and that other person or body acting jointly.

(8) If, in the case of any particular application, the Secretary of State certifies that it would in the opinion of the Secretary of State be contrary to the interests of national security—
(a) if an inquiry under subsection (1) were to be held, or

(b) if any members of the public, or any specified persons, were to be admitted to the inquiry or some specified part of it, the inquiry is not to be held or, as the case may be, the public is not, or those persons are not, to be admitted to the inquiry or that part of it.

(9) In subsection (8) “specified” means—
(a) specified in the certificate, or
(b) of a description specified in the certificate.

71 Licences
(1) The appropriate licensing authority, having considered an application for a marine licence, must—
(a) grant the licence unconditionally,
(b) grant the licence subject to such conditions as the authority thinks fit, or
(c) refuse the application.

(2) The conditions that may be attached to a licence under subsection (1)(b) may relate to—
(a) the activities authorised by the licence;
(b) precautions to be taken or works to be carried out (whether before, during or after the carrying out of the authorised activities) in connection with or in consequence of those activities.

(3) Those conditions include, in particular, conditions—
(a) that no activity authorised by the licence be carried out until the authority or some other specified person has given such further approval of the activity as may be specified;
(b) as to the provision, maintenance, testing or operation of equipment for measuring or recording specified matters relating to any activity authorised by the licence;
(c) as to the keeping of records or the making of returns or giving of other information to the authority;
(d) for the removal, at the end of a specified period, of any object or works to which the licence relates;
(e) for the carrying out, at the end of a specified period, of such works as may be specified for the remediation of the site or of any object or works to which the licence relates;
(f) that any activity authorised by the licence must take place at a specified site, whether or not in the UK marine licensing area.

(4) A licence may provide—
(a) that it is to expire unless the activity which it authorises is begun or completed within a specified period;
(b) that it is to remain in force indefinitely or for a specified period of time (which may be determined by reference to a specified event).
(5) A licence authorising such activities as are mentioned in item 7 in section 66(1) may provide that the conditions attached to it are to bind any other person who for the time being owns, occupies or enjoys any use of the works in question (whether or not the licence is transferred to that other person).

(6) A licensing authority must not grant a licence to carry on any activity which is contrary to international law.

(7) In this section “specified” means specified in the licence in question.

72 Variation, suspension, revocation and transfer
(1) A licensing authority may by notice vary, suspend or revoke a licence granted by it if it appears to the authority that there has been a breach of any of its provisions.

(2) A licensing authority may by notice vary, suspend or revoke a licence granted by it if it appears to the authority that—
   (a) in the course of the application for the licence, any person either supplied information to the authority that was false or misleading or failed to supply information, and
   (b) if the correct information had been supplied the authority would have, or it is likely that the authority would have, refused the application or granted the licence in different terms.

(3) A licensing authority may by notice vary, suspend or revoke a licence granted by it if it appears to the authority that the licence ought to be varied, suspended or revoked—
   (a) because of a change in circumstances relating to the environment or human health;
   (b) because of increased scientific knowledge relating to either of those matters;
   (c) in the interests of safety of navigation;
   (d) for any other reason that appears to the authority to be relevant.

(4) A suspension under subsection (1), (2) or (3) is for such period as the authority specifies in the notice of suspension.

(5) A licensing authority may by further notice extend the period of a suspension.

(6) But a licence may not by virtue of this section be suspended for a period exceeding 18 months.

(7) On an application made by a licensee, the licensing authority which granted the licence—
   (a) may transfer the licence from the licensee to another person, and
   (b) if it does so, must vary the licence accordingly.

(8) A licence may not be transferred except in accordance with subsection (7).

73 Appeals against licensing decisions
(1) The appropriate licensing authority must by regulations make provision for any person who applies for a marine licence to appeal against a decision under section 71.

(2) The regulations required by subsection (1) must come into force on the day on which this Part comes into force.
(3) Regulations under this section may include—
   (a) provision as to the procedure to be followed with respect to an appeal;
   
   (b) provision for or in connection with suspending or varying any condition subject to which
       the licence was granted, pending determination of the appeal;
   
   (c) provision as to the powers of any person to whom the appeal is made;

CHAPTER 2

EXEMPTIONS AND SPECIAL CASES

Exemptions

74 Exemptions specified by order
(1) The appropriate licensing authority for an area may by order specify, as regards that area,
   activities—
       (a) which are not to need a marine licence;
   
       (b) which are not to need a marine licence if conditions specified in the order are satisfied.

(2) The conditions that may be specified in an order under this section include conditions enabling
   the authority to require a person to obtain the authority’s approval before the person does
   anything for which a licence would be needed but for the order.

(3) Approval under subsection (2) may be—
   (a) without conditions;
   
   (b) subject to such conditions as the authority considers appropriate.

(4) In deciding whether to make an order under this section, the appropriate licensing authority
   must have regard to—
       (a) the need to protect the environment,
   
       (b) the need to protect human health,
   
       (c) the need to prevent interference with legitimate uses of the sea, and such other matters as
           the authority thinks relevant.

(5) A licensing authority must consult such persons as the authority considers appropriate as to any
   order the authority contemplates making under this section.

75 Exemptions for certain dredging etc activities
(1) A marine licence is not needed for a dredging or spoil disposal activity if the conditions in
   subsection (2) are met.

(2) The conditions are—
   (a) that the activity is undertaken by or on behalf of a harbour authority, and
   
   (b) that the activity is authorised by, and carried out in accordance with, any legislation falling
       within subsection (3).
(3) The legislation is—
   (a) any local Act,
   (b) any order under section 14 or 16 of the Harbours Act 1964 (c. 40),
   (c) any order under section 1 of the Harbours Act (Northern Ireland) 1970 (c. 1
   (d) section 10(3) of that Act.

(4) In this section—
   “dredging or spoil disposal activity” means—
   (a) any dredging operation, or
   (b) the deposit of any dredged materials that result from an exempt dredging operation;
   “exempt dredging operation” means a dredging operation for which a marine licence is not
   needed by virtue of this section.

76 Dredging in the Scottish zone
(1) Nothing in this Part applies to anything done, in the exercise of a function falling within
subsection (2), in relation to the extraction of minerals by dredging in the Scottish zone.

(2) The functions are—
   (a) any function under Community law (within the meaning given by
section 126(9) of the Scotland Act 1998 (c. 46));
   (b) any of Her Majesty’s prerogative and other executive functions which is
exercisable on behalf of Her Majesty by the Scottish Ministers.

77 Oil and gas activities and carbon dioxide storage
(1) Nothing in this Part applies to any of the following—
   (a) anything done in the course of carrying on an activity for which a licence under section
3 of the Petroleum Act 1998 (c. 17) or section 2 of the Petroleum Marine and Coastal Access
Act 2009 (c. 23)
   (b) anything done for the purpose of constructing or maintaining a pipeline as respects any
part of which an authorisation (within the meaning of Part 3 of the Petroleum Act 1998) is
in force;
   (c) anything done for the purpose of establishing or maintaining an offshore installation
(within the meaning of Part 4 of the Petroleum Act 1998 (c. 17));
   (d) anything done in the course of carrying on an activity for which a licence under section
4 or 18 of the Energy Act 2008 (c. 32) is required (gas unloading, storage and recovery, and
carbon dioxide storage).

(2) For the purposes of subsection (1)(a) or (d), activities are to be regarded as activities for
which a licence of the description in question is required if, by virtue of such a licence, they are
activities which may be carried on only with the consent of the Secretary of State or another
person.
(3) Subsection (1)(d) does not apply in relation to anything done in the course of carrying on an activity for which a licence under section 4 of the Energy Act 2008 is required in, under or over any area of sea—
  (a) which is within the Welsh inshore region or the Northern Ireland inshore region, or
  (b) which is within both the Scottish offshore region and a Gas Importation and Storage Zone (within the meaning given by section 1 of the Energy Act 2008).

(4) Subsection (1)(d) does not apply in relation to anything done in, under or over any area of sea within the Welsh inshore region or the Northern Ireland inshore region in the course of carrying on an activity for which a licence under section 18 of the Energy Act 2008 (c. 32) is required.

Special provisions in certain cases

78 Special procedure for applications relating to harbour works

(1) This section has effect in cases where—
  (a) a person who proposes to carry on an activity must first make an application for a marine licence to carry on that activity (the “marine licence application”), and
  (b) a related application for a harbour order (the “harbour order application”) is or has been made by the person, or the harbour order authority has reason to believe that it will be so made.

(2) A “related application for a harbour order” is an application for an order under section 14 or 16 of the Harbours Act in relation to—
  (a) the activity for which the marine licence is required, or
  (b) other works to be undertaken in connection with that activity.

(3) In any case where—
  (a) both the marine licence application and the harbour order application have been made,
  (b) the harbour order authority decides (with the agreement of the Welsh Ministers, if they are the marine licence authority and the Secretary of State is the harbour order authority) that the two applications are to be considered together, and 12 Marine and Coastal Access Act 2009 (c. 23)
  (c) the harbour order authority has given notice of that decision to the applicant, the two applications are to be considered together.

(4) Subsection (5) applies in any case where—
  (a) one of the applications has been received but not the other,
  (b) the harbour order authority decides (with the agreement of the Welsh Ministers, if they are the marine licence authority and the Secretary of State is the harbour order authority) that the two applications are to be considered together, and
  (c) the harbour order authority has given notice of that decision to the applicant.

(5) In any such case—
  (a) the application that has been received is not to be considered until the other application has also been received,
  (b) the two applications are to be considered together, and
(c) the condition in subsection (3)(b) is to be regarded as satisfied by virtue of subsection (4)(b), but this is subject to any provision that may be made by virtue of subsection (6)(c) or (d).

(6) The Secretary of State may by order do any of the following—
(a) make provision falling within subsection (7) for cases where subsection (3) applies;
(b) make provision falling within subsection (7) for cases where subsection (5) applies;
(c) make provision falling within subsection (7) or (8) for cases where the harbour order authority (with the agreement of the Welsh Ministers, if they are the marine licence authority and the Secretary of State is the harbour order authority) comes to the conclusion that the marine licence application is not going to be made;
(d) make provision falling within subsection (7) or (8) for cases where the harbour order authority comes to the conclusion that the harbour order application is not going to be made.

(7) The provision that may be made by virtue of this subsection is—
(a) provision that such procedural provisions of this Part as are specified in the order are not to apply to the marine licence application;
(b) provision that such procedural provisions of the Harbours Act as are so specified are to apply to that application instead;
(c) provision modifying the provisions of the Harbours Act in their application by virtue of paragraph (b).

(8) The provision that may be made by virtue of this subsection is provision modifying—
(a) such procedural provisions of this Part as are specified in the order, or
(b) such procedural provisions of the Harbours Act as are specified in the order.

(9) In this section—
“the harbour order authority” means—
(a) the Secretary of State, in any case where the harbour order application falls (or would fall) to be determined by the Secretary of State;
(b) the Welsh Ministers, in any case where the harbour order application falls (or would fall) to be determined by the Welsh Ministers;

“the Harbours Act” means the Harbours Act 1964 (c. 40);

“the marine licence authority” means—
(a) the Secretary of State, in any case where the marine licence application falls (or would fall) to be made to the Secretary of State;
(b) the Welsh Ministers, in any case where the marine licence application falls (or would fall) to be made to the Welsh Ministers;

“procedural provisions” means any provisions for or in connection with the procedure for determining an application.
79 Special procedure for applications relating to certain electricity works

(1) This section has effect in cases where a person who proposes to carry on an activity must first make both—
   (a) an application for a marine licence to carry on that activity (the “marine licence application”), and
   (b) a related application for a generating station consent (the “generating station application”).

(2) A “related application for a generating station consent” is an application for a consent under section 36 of the Electricity Act (consent for construction etc of generating stations) in relation to—
   (a) the activity for which the marine licence is required, or
   (b) other works to be undertaken in connection with that activity.

(3) In any case where—
   (a) both the marine licence application and the generating station application have been made,
   (b) the generating station authority decides (with the agreement of the Welsh Ministers, if they are the marine licence authority and the Secretary of State is the generating station authority) that the two applications are to be considered together, and
   (c) the generating station authority has given notice of that decision to the applicant, the two applications are to be considered together.

(4) Subsection (5) applies in any case where—
   (a) one of the applications has been received but not the other,
   (b) the generating station authority decides (with the agreement of the Welsh Ministers, if they are the marine licence authority and the Secretary of State is the generating station authority) that the two applications are to be considered together, and
   (c) the generating station authority has given notice of that decision to the applicant.

(5) In any such case—
   (a) the application that has been received is not to be considered until the other application has also been received,
   (b) the two applications are to be considered together, and
   (c) the condition in subsection (3)(b) is to be regarded as satisfied by virtue of subsection (4)(b), but this is subject to any provision that may be made by virtue of subsection (6)(c) or (d).

(6) The Secretary of State may by order do any of the following—
   (a) make provision falling within subsection (7) for cases where subsection (3) applies;
   (b) make provision falling within subsection (7) for cases where subsection (5) applies;
   (c) make provision falling within subsection (7) or (8) for cases where the generating station authority (with the agreement of the Welsh Ministers, if they are the marine licence
authority and the Secretary of State is the generating station authority) comes to the conclusion that the marine licence application is not going to be made;

(d) make provision falling within subsection (7) or (8) for cases where the generating station authority comes to the conclusion that the generating station application is not going to be made.

(7) The provision that may be made by virtue of this subsection is—
(a) provision that such procedural provisions of this Part as are specified in the order are not to apply to the marine licence application;

(b) provision that such procedural provisions of the Electricity Act as are so specified are to apply to that application instead;

(c) provision modifying the provisions of the Electricity Act in their application by virtue of paragraph (b).

(8) The provision that may be made by virtue of this subsection is provision modifying—
(a) such procedural provisions of this Part as are specified in the order; or

(b) such procedural provisions of the Electricity Act as are specified in the order.

(9) In this section—
“the Electricity Act” means the Electricity Act 1989 (c. 29); “generating station authority” means—
(a) the Secretary of State, in any case where the generating station application falls (or would fall) to be determined by the Secretary of State;

(b) the Scottish Ministers, in any case where the generating station application falls (or would fall) to be determined by the Scottish Ministers;

“the marine licence authority” means—
(a) the Secretary of State, in any case where the marine licence application falls (or would fall) to be made to the Secretary of State;

(b) the Scottish Ministers, in any case where the marine licence application falls (or would fall) to be made to the Scottish Ministers;

(c) the Welsh Ministers, in any case where the marine licence application falls (or would fall) to be made to the Welsh Ministers;

“procedural provisions” means any provisions for or in connection with the procedure for determining an application.

80 Electronic communications apparatus
(1) A licensing authority must not grant a marine licence to carry on any activity which amounts to or involves the exercise of a right conferred by paragraph 11 of the Electronic Communications Code unless it is satisfied that adequate compensation arrangements have been made.

(2) For the purposes of subsection (1) “adequate compensation arrangements” are adequate arrangements for compensating any persons—
(a) who appear to that authority to be owners of interests in the tidal water or lands on,
under or over which the right is to be exercised,

(b) for any loss or damage sustained by those persons in consequence of the activity being carried on.

(3) In paragraph 11 of the Electronic Communications Code omit—
(a) sub-paragraphs (3) to (10);

(b) in sub-paragraph (11), the definition of “remedial works”.

(4) In this section “the Electronic Communications Code” means the code set out in Schedule 2 to the Telecommunications Act 1984 (c. 12).

81 Submarine cables on the continental shelf
(1) Nothing in this Part applies to anything done in the course of laying or maintaining an offshore stretch of exempt submarine cable.

(2) Where subsection (1) has effect in relation to part (but not the whole) of an exempt submarine cable—
(a) the appropriate licensing authority must grant any application made to it for a marine licence for the carrying on of a licensable marine activity in the course of laying any inshore stretch of the cable, and

(b) nothing in this Part applies to anything done in the course of maintaining any inshore stretch of the cable.

(3) A licensing authority has the same powers to attach conditions to a marine licence required to be granted by virtue of subsection (2) as it has in relation to a marine licence not required to be so granted.

(4) In the application of this section in relation to any cable—
“inshore stretch” means any of the cable which is laid, or proposed to be laid, within the seaward limits of the territorial sea;

(5) For the purposes of this section a submarine cable is “exempt” unless it is a cable constructed or used in connection with any of the following—
(a) the exploration of the UK sector of the continental shelf;

(b) the exploitation of the natural resources of that sector;

(c) the operations of artificial islands, installations and structures under the jurisdiction of the United Kingdom;

(d) the prevention, reduction or control of pollution from pipelines.

(6) In this section—
“natural resources” means—
(a) the mineral and other non-living resources of the sea bed and subsoil, together with

(b) living organisms belonging to sedentary species; “living organisms belonging to sedentary species” means organisms which, at the harvestable stage, are either—
(a) immobile on or under the sea bed, or

(b) unable to move except in constant physical contact with the sea bed or the subsoil.

82 Structures in, over or under a main river
(1) Section 109 of the Water Resources Act 1991 (c. 57) (structures in, over or under a main river) is amended as follows.

(2) After subsection (6) insert—

“(7) Subsections (1) to (3) above shall not apply to any work if—

(a) carrying out the work is a licensable marine activity,

(b) the Agency considers that, in view of the terms and conditions that will be included in the marine licence, the provisions of those subsections may be dispensed with, and

(c) the Agency issues a notice to that effect to the applicant for the marine licence.

(8) In subsection (7) above “licensable marine activity” and “marine licence” have the same meaning as in Part 4 of the

83 Requirements for Admiralty consent under local legislation
(1) If, in the case of any particular work,—

(a) a marine licence is needed for the carrying out of the work,

(b) Admiralty consent for the carrying out of the work would also be required (apart from this subsection) by virtue of any local legislation, and

(c) the Secretary of State considers that, in view of the need for a marine licence, the requirement for Admiralty consent for the carrying out of the work may be dispensed with, and issues a notice to that effect, the requirement for Admiralty consent does not apply in relation to that work.

(2) In subsection (1)—

“Admiralty consent” means the consent of the Admiralty, whether alone or jointly with any other government department;

“local legislation” means—

(a) a local Act, or

(b) any such Act and any notice given and published by the Admiralty under section 9 of the Harbours Transfer Act 1862 (c. 69)

84 Byelaws for flood defence and drainage purposes
(1) Schedule 25 to the Water Resources Act 1991 (c. 57) (byelaw making powers of the Environment Agency) is amended as follows.

(2) In paragraph 5 (byelaws for flood defence and drainage purposes) after subparagraph

(3) insert—

“(3A) If, in any particular case,—

(a) a marine licence is needed for the carrying on of any activity,
(b) before that activity may be carried on, the consent of the Agency would also be required (apart from this sub-paragraph) by virtue of any byelaw under this paragraph, and

(c) the Agency considers that, in view of the terms and conditions that will be included in the marine licence, the requirement for the consent of the Agency may be dispensed with, and issues a notice to that effect, the requirement for the consent of the Agency does not apply in relation to the carrying on of that activity."

(3B) In sub-paragraph (3A) "marine licence” has the same meaning as in Part 4 of the Marine and Coastal Access Act 2009."

Chapter 3 – Enforcement

ENFORCEMENT

Offences

85 Breach of requirement for, or conditions of, a licence

(1) A person who—

(a) contravenes section 65(1), or

(b) fails to comply with any condition of a marine licence, commits an offence.

(2) A person who is bound by a condition of a licence by virtue of section 71(5) is not to be taken as having failed to comply with the condition unless the requirements of subsection (3) are satisfied.

(3) The requirements are that—

(a) the appropriate licensing authority has served the person with a notice under this subsection which specifies the condition together with a period (which must be a reasonable period, in all the circumstances of the case) within which the person must comply with the condition, and

(b) the person has failed to comply with the condition within that period.

(4) A person guilty of an offence under subsection (1) is liable—

(a) on summary conviction, to a fine not exceeding £50,000;

(b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both.

86 Action taken in an emergency

(1) It is a defence for a person charged with an offence under section 85(1) in relation to any activity to prove that—

(a) the activity was carried out for the purpose of securing the safety of a vessel, aircraft or marine structure, or for the purpose of saving life, and (b) the person took steps within a reasonable time to inform the appropriate licensing authority of the matters set out in subsection (2).

(2) The matters are—

(a) the fact that the activity was carried out,
(b) the locality and circumstances in which it was carried out, and

(c) any substances or objects concerned.

(3) A person does not have the defence provided by subsection (1) if the court is satisfied that the activity was neither—
   (a) necessary for any purpose mentioned in subsection (1)(a), nor
   (b) a reasonable step to take in the circumstances.

(4) A person does not have the defence provided by subsection (1) if the court is satisfied that—
   (a) the activity was necessary for one of those purposes, but
   (b) the necessity was due to the fault of the person or of some other person acting under the person’s direction or control.

87 Electronic communications: emergency works
(1) It is a defence for a person charged with an offence under section 85(1) in relation to any activity to prove that—
   (a) for the purposes of paragraph 23 of the Electronic Communications Code (undertaker’s works), the person is the operator or a relevant undertaker, and
   (b) the activity was carried out for the purpose of executing emergency works, within the meaning of that Code.

(2) In this section “the Electronic Communications Code” means the code set out in Schedule 2 to the Telecommunications Act 1984 (c. 12).

88 Activity licensed by another State
(1) It is a defence for a person charged with an offence under section 85(1) in relation to any activity to which subsection (2) applies to prove that subsections (3) and (4) are satisfied in respect of that activity.

(2) This subsection applies to any activity which—
   (a) falls within item 2, 5 or 12 in section 66(1), and
   (b) is carried on outside the UK marine licensing area.

(3) This subsection is satisfied if—
   (a) in the case of an activity falling within item 2 in subsection (1) of section 66, the vessel, aircraft, marine structure or floating container (as the case may be) was loaded in a Convention State, or in the national or territorial waters of a Convention State, with the substances or objects deposited;
   (b) in the case of an activity falling within item 5 in that subsection, the vessel scuttled was towed or propelled from a Convention State, or from the national or territorial waters of a Convention State, to the place where the scuttling was carried out;
   (c) in the case of an activity falling within item 12 in that subsection, the vessel or marine structure on which the incineration took place was loaded in a Convention State or the
national or territorial waters of a Convention State with the substances or objects incinerated.

(4) This subsection is satisfied if the activity was carried on—
(a) in pursuance of a licence issued by the responsible authority in the Convention
(b) in accordance with the provisions of that licence.

(5) For the purposes of this section—
"Convention State" means a state which is a party to the London Convention, the London Protocol or the OSPAR Convention; "the London Convention" means the Convention on the Prevention of Maritime Pollution by Dumping of Wastes and Other Matter concluded at London in December 1972; "the London Protocol" means the Protocol to the London Convention agreed at London in November 1996; "the OSPAR Convention" means the Convention for the Protection of the Marine Environment of the North-East Atlantic concluded at Paris in September 1992.

(6) The references in subsection (5) to the London Convention, the London Protocol and the OSPAR Convention are to them as they have effect from time to time.

(7) The Secretary of State may by order amend subsections (5) and (6) in such manner as the Secretary of State considers appropriate for the purpose of giving effect to any international agreement which has been ratified by the United Kingdom and which alters the provisions of, or replaces, those Conventions or that Protocol.

89 Information
(1) A person who, for any of the purposes set out in subsection (2),—
(a) makes a statement which is false or misleading in a material particular, knowing the statement to be false or misleading,
(b) makes a statement which is false or misleading in a material particular, being reckless as to whether the statement is false or misleading, or
(c) intentionally fails to disclose any material particular, commits an offence.

(2) The purposes are—
(a) the purpose of procuring the issue, variation or transfer of a licence, or
(b) the purpose of complying with, or purporting to comply with, any obligation imposed by the provisions of this Part or the provisions of a licence.

(3) A person guilty of an offence under subsection (1) is liable—
(a) on summary conviction, to a fine not exceeding the statutory maximum;
(b) on conviction on indictment, to a fine.

90 Compliance notice
(1) If it appears to an enforcement authority that subsections (3) and (4) are satisfied in relation to a person carrying on an activity in its area, it may issue a compliance notice to that person.

(2) A compliance notice is a notice requiring a person to take such steps (falling within subsection (5)(b)) as are specified in it.
(3) This subsection is satisfied if a person holding a marine licence—
   (a) has carried on, or is carrying on, a licensable marine activity under that licence, and
   (b) in carrying on that activity has failed, or is failing, to comply with a condition of the
       licence.

(4) This subsection is satisfied if the carrying on of the activity has not caused, and is not likely to
   cause, any of the following—
   (a) serious harm to the environment;
   (b) serious harm to human health;
   (c) serious interference with legitimate uses of the sea.

(5) A compliance notice must—
   (a) state the enforcement authority’s grounds for believing that subsections (3) and (4) are
       satisfied;
   (b) require the person to take such steps as the authority considers appropriate to ensure
       that the condition in question is complied with;
   (c) state the period before the end of which those steps must be taken.

91 Remediation notice
(1) If it appears to an enforcement authority that each of subsections (3) to (5) is satisfied in
   relation to a person carrying on an activity in its area, it may issue a remediation notice to that
   person.

(2) A remediation notice is a notice requiring a person to do either or both of the following—
   (a) to take such steps (falling within subsection (7)(b)) as are specified in it;
   (b) to pay to the enforcement authority such sums (falling within subsection (7)
       (c)) as are specified in it.

(3) This subsection is satisfied if a person has carried on, or is carrying on, a licensable marine
   activity.

(4) This subsection is satisfied if the carrying on of the activity has involved, or involves, the
   commission of an offence under section 85(1).

(5) This subsection is satisfied if the carrying on of the activity has caused, or is causing or is
   likely to cause, any of the following—
   (a) harm to the environment;
   (b) harm to human health;
   (c) interference with legitimate uses of the sea.

(6) Before issuing a remediation notice, the enforcement authority must consult the person to
   whom it is proposed to be issued as to the steps or, as the case may be, the sum to be specified in
   the notice.
(7) A remediation notice—
   (a) must state the enforcement authority's grounds for believing that each of subsections
       (3) to (5) is satisfied;

   (b) may require the person to take such remedial or compensatory steps as the authority
       considers appropriate;

   (c) may require the person to pay a sum representing the reasonable expenses of any
       remedial or compensatory steps taken, or to be taken, by the enforcement authority or the
       appropriate licensing authority (whether or not under section 106);

   (d) must state the period before the end of which those steps must be taken or, as the case
       may be, that sum must be paid.

(8) In subsection (7)(b) and (c) "remedial or compensatory steps" means steps taken (or to be
    taken) for any one or more of the purposes mentioned in subsection (9) (whether or not the steps
    are to be taken at or near the place where the harm or interference mentioned in subsection (5)
    has been, is being, or is likely to be, caused or the activity in respect of which the notice is issued
    is or has been carried on).

(9) The purposes are—
   (a) protecting the environment;

   (b) protecting human health;

   (c) preventing interference with legitimate uses of the sea;

   (d) preventing or minimising, or remedying or mitigating the effects of, the harm or
       interference mentioned in subsection (5);

   (e) restoring (whether in whole or in part) the condition of any place affected by that harm
       or interference to the condition, or a condition reasonably similar to the condition, in which
       the place would have been had the harm or interference not occurred;

   (f) such purposes not falling within the preceding paragraphs as the enforcement authority
       considers appropriate in all the circumstances of the case.

92 Further provision as to enforcement notices
(1) A compliance notice or remediation notice—
   (a) must be served on any person carrying on, or in control of, the activity to which the
       notice relates, and
   (b) if a marine licence has been granted in relation to that activity, may also be served on
       the licensee.

(2) An enforcement authority may by a further notice—
   (a) revoke a compliance notice or remediation notice;

   (b) vary a compliance notice or remediation notice so as to extend the period specified in
       accordance with section 90(5)(c) or, as the case may be, section 91(7)(d).

(3) A person who fails to comply with—
(a) a compliance notice, or

(b) a remediation notice, commits an offence.

(4) A person guilty of an offence under subsection (3) is liable—

(a) on summary conviction, to a fine not exceeding £50,000;

(b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both.

(5) A sum specified in a remediation notice by virtue of section 91(7)(c) is recoverable as a civil debt.

**Civil sanctions**

93 **Fixed monetary penalties**

(1) The appropriate licensing authority for any area may by order make provision to confer on the appropriate enforcement authority for that area the power by notice to impose on a person in relation to an offence under this Part a fixed monetary penalty.

(2) Provision under this section may only confer such a power in relation to a case where the enforcement authority is satisfied beyond reasonable doubt that the person has committed the offence.

(3) For the purposes of this Part a “fixed monetary penalty” is a requirement to pay to the enforcement authority a penalty of a prescribed amount.

(4) The amount of the fixed monetary penalty that may be imposed in relation to an offence may not exceed the maximum amount of the fine that may be imposed on summary conviction for that offence.

(5) In this section “prescribed” means prescribed in an order made under this section.

94 **Fixed monetary penalties: procedure**

(1) Provision under section 93 must secure the results in subsection (2).

(2) Those results are that—

(a) where the enforcement authority proposes to impose a fixed monetary penalty on a person, the authority must serve on that person a notice of what is proposed (a “notice of intent”) which complies with subsection (3),

(b) the notice of intent also offers the person the opportunity to discharge the person’s liability for the fixed monetary penalty by payment of a prescribed sum (which must be less than or equal to the amount of the penalty),

(c) if the person does not so discharge liability—

(i) the person may make written representations and objections to the enforcement authority in relation to the proposed imposition of the fixed monetary penalty, and

(ii) the enforcement authority must at the end of the period for making representations and objections decide whether to impose the fixed monetary penalty,
(d) where the enforcement authority decides to impose the fixed monetary penalty, the notice imposing it (“the final notice”) complies with subsection (5), and

(e) the person on whom a fixed monetary penalty is imposed may appeal against the decision to impose it.

(3) To comply with this subsection the notice of intent must include information as to—
(a) the grounds for the proposal to impose the fixed monetary penalty,

(b) the effect of payment of the sum referred to in subsection (2)(b),

(c) the right to make representations and objections,

(d) the circumstances in which the enforcement authority may not impose the fixed monetary penalty,

(e) the period within which liability to the fixed monetary penalty may be discharged, which must not exceed the period of 28 days beginning with the day on which the notice of intent is received, and

(f) the period within which representations and objections may be made, which must not exceed the period of 28 days beginning with the day on which the notice of intent is received.

4) Provision pursuant to subsection (2)(c)(ii)—
(a) must secure that the enforcement authority may not decide to impose a fixed monetary penalty on a person where the authority is satisfied that the person would not, by reason of any defence, be liable to be convicted of the offence in relation to which the penalty is proposed to be imposed, and

(b) may include provision for other circumstances in which the enforcement authority may not decide to impose a fixed monetary penalty.

(5) To comply with this subsection the final notice referred to in subsection (2)(d) must include information as to—
(a) the grounds for imposing the penalty,

(b) how payment may be made,

(c) the period within which payment must be made,

(d) any early payment discounts or late payment penalties,

(e) rights of appeal, and

(f) the consequences of non-payment.

(6) Provision pursuant to subsection (2)(e) must secure that the grounds on which a person may appeal against a decision of the enforcement authority include the following—
(a) that the decision was based on an error of fact;

(b) that the decision was wrong in law;
(c) that the decision was unreasonable.

(7) In this section “prescribed” means prescribed in an order made under section 93.

95 Variable monetary penalties
(1) The appropriate licensing authority for any area may by order make provision to confer on the appropriate enforcement authority for that area the power by notice to impose on a person in relation to an offence under this Part a variable monetary penalty.

(2) Provision under this section may only confer such a power in relation to a case where the enforcement authority is satisfied beyond reasonable doubt that the person has committed the offence.

(3) For the purposes of this Part a “variable monetary penalty” is a penalty of such amount as the enforcement authority may in each case determine.

96 Variable monetary penalties: procedure
(1) Provision under section 95 must secure the results in subsection (2).

(2) Those results are that—
   (a) where the enforcement authority proposes to impose a variable monetary penalty on a person, the enforcement authority must serve on that person a notice (a “notice of intent”) which complies with subsection (3),
   (b) that person may make written representations and objections to the enforcement authority in relation to the proposed imposition of the penalty,
   (c) after the end of the period for making such representations and objections, the enforcement authority must decide whether to impose a penalty and, if so, the amount of the penalty,
   (d) where the enforcement authority decides to impose a penalty, the notice imposing it (the “final notice”) complies with subsection (6), and
   (e) the person on whom a penalty is imposed may appeal against the decision as to the imposition or amount of the penalty.

(3) To comply with this subsection the notice of intent must include information as to—
   (a) the grounds for the proposal to impose the penalty,
   (b) the right to make representations and objections,
   (c) the circumstances in which the enforcement authority may not impose the penalty, and
   (d) the period within which representations and objections may be made, which may not be less than the period of 28 days beginning with the day on which the notice of intent is received.

(4) Provision pursuant to subsection (2)(c)—
   (a) must secure that the enforcement authority may not decide to impose a penalty on a person where the enforcement authority is satisfied that the person would not, by reason
of any defence raised by that person, be liable to be convicted of the offence in relation to
which the penalty is proposed to be imposed, and

(b) may include provision for other circumstances in which the enforcement authority may
not decide to impose a penalty.

(5) Provision under subsection (2)(c) must also include provision for—
(a) the person on whom the notice of intent is served to be able to offer an undertaking as
to action to be taken by that person (including the payment of a sum of money) to benefit
any person affected by the offence,

(b) the enforcement authority to be able to accept or reject such an undertaking, and

(c) the enforcement authority to take any undertaking so accepted into account in its
decision.

(6) To comply with this subsection the final notice referred to in subsection (2)(d) must include
information as to—
(a) the grounds for imposing the penalty,

(b) how payment may be made,

(c) the period within which payment must be made,

(d) any early payment discounts or late payment penalties,

(e) rights of appeal, and

(f) the consequences of non-payment.

(7) Provision pursuant to subsection (2)(e) must secure that the grounds on which a person may
appeal against a decision of the enforcement authority include the following—
(a) that the decision was based on an error of fact;

(b) that the decision was wrong in law;

(c) that the amount of the penalty is unreasonable;

(d) that the decision was unreasonable for any other reason.

97 Further provision about civil sanctions

Schedule 7 (which makes further provision about civil sanctions) has effect.

Chapter 4

Delegation

98 Delegation of functions relating to marine licensing
(1) The appropriate licensing authority for an area may make an order which—
(a) designates any of the delegable marine licensing functions which would (apart from
any order under this section) be exercisable by or in relation to that authority or an enforcement authority for that area, and

(b) provides that those functions, instead of being so exercisable, are to be exercisable by or in relation to such person, acting on behalf of the licensing authority or (as the case may be) the enforcement authority, as is designated in the order.

(2) The power to make an order under this section includes power to make provision in the order conferring on the person designated ("the delegate"), so far as acting on behalf of an enforcement authority, any power which the appropriate licensing authority may confer on an enforcement authority by an order under section 93 or 95 (fixed or variable monetary penalties).

(3) An authority which makes an order under this section may do so only with the consent of the delegate.

(4) The delegate—
(a) must comply with the order, and
(b) is to be taken to have all the powers necessary to do so.

(5) In this section "delegable marine licensing functions" means—
(a) functions of a licensing authority under this Part, other than excepted functions;
(b) functions of an enforcement authority under this Part.

(6) The excepted functions are functions under—
(a) section 66(3) (altering the list of licensable marine activities);
(b) section 67(2) (making regulations regarding the fee for an application);
(c) section 69(6) (making regulations as to the procedure for applications);
(d) section 73 (making regulations regarding appeals against licensing decisions under section 71);
(e) section 74(1) and (5) (making orders specifying activities which do not require a marine licence and consulting in relation to such orders);
(f) sections 93 and 95 (making orders conferring powers to impose civil sanctions);
(g) this section and section 100;
(h) section 101(3) (making regulations regarding the register);
(i) section 108 (making regulations regarding appeals against certain notices).

99 Orders under section 98: supplementary provisions
(1) For so long as an order made under section 98 remains in force, the designated functions are exercisable by or in relation to the delegate acting on behalf of the licensing authority or, as the case may be, the enforcement authority (and are not exercisable by or in relation to the authority).
(2) Subsection (1) is subject to any provision to the contrary which is included in the order.

(3) An order under section 98 may include—
   (a) such terms or conditions,
   (b) such obligations or requirements,
   (c) such financial provisions, as the authority making the order may determine.

(4) The provision that may be made under subsection (3) includes, in particular, provision (where appropriate) as to—
   (a) the manner in which the delegate is to exercise any of the functions;
   (b) the form and manner in which licence applications must be made to the delegate;
   (c) the persons to whom notice of an application should be published under section 68, and the circumstances in which such notice should not be published;
   (d) matters (in addition to those set out in section 69) to which the delegate must have regard in determining licence applications;
   (e) the circumstances in which the delegate must exercise the power to consult under section 69(4), and the persons who must or may be consulted;
   (f) the form and content of any licence granted;
   (g) appeals from any decision of the delegate (whether to the licensing authority or any other person);
   (h) any other provision that may be made by virtue of section 69(6).

(5) An order under section 98 may make different provision for different cases, different areas or different persons.

(6) Where an order has been made under section 98 that a person other than the appropriate licensing authority is to grant licences—
   (a) that other person may (in accordance with subsections (1) to (3) and (7) of section 72) vary, suspend, revoke or transfer a licence granted before the making of the order, and
   (b) any reference in those subsections to a licence granted by a licensing authority includes a reference to a licence granted by that other person.

100 Directions to persons as regards performance of delegated functions
(1) This section applies where any functions are exercisable by or in relation to a person by virtue of an order made under section 98 by a licensing authority.

(2) The authority may from time to time give directions to the person with respect to the performance of the functions.
(3) A person to whom directions are given under this section must comply with the directions.

(4) An authority which gives a direction under this section must publish the direction in a manner likely to bring the direction to the attention of persons likely to be affected by it.

CHAPTER 5

SUPPLEMENTARY

Register

101 Register
(1) Each licensing authority must maintain, as respects activities in relation to which it is the appropriate licensing authority and licences for those activities, a register of licensing information.

(2) The register must contain prescribed particulars of or relating to—
   (a) applications for licences;
   (b) licences granted;
   (c) variations of licences;
   (d) revocations of licences;
   (e) information supplied in connection with any licence in pursuance of any provision of this Part;
   (f) convictions for any offence under this Part;
   (g) any other action taken to enforce any provision of this Part;
   (h) occasions on which any remedial action has been taken;
   (i) such other matters relating to licences or the licensable marine activities as may be prescribed.

(3) The register must be maintained in accordance with regulations made by the appropriate licensing authority.

(4) Each licensing authority must make arrangements—
   (a) for its register to be available for inspection at all reasonable times by members of the public free of charge;
   (b) for copies of entries in its register to be supplied, on request, to members of the public on payment of a reasonable charge.

(5) Information must not appear in the register if—
   (a) the Secretary of State determines that its disclosure in the register would be contrary to the interests of national security, or
(b) the appropriate licensing authority determines that its disclosure in the register would adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate commercial interest.

(6) The appropriate licensing authority must review a determination to exclude information under subsection (5)(b) every four years.

(7) On a review under subsection (6) the authority must include the information in the register unless, on the application of any person to whom the information relates, the authority determines that it should continue to be excluded.

(8) Where information of any description is excluded from a register by virtue of subsection (5)(b), a statement must be entered in the register indicating the existence of information of that description.

(9) In this section “prescribed” means prescribed in regulations made under this section.

Stop notices and emergency safety notices

102 Notice to stop activity causing serious harm etc

(1) If it appears to an enforcement authority that subsections (3) and (4) are satisfied in relation to a person carrying on an activity in its area, it may issue a stop notice to that person.

(2) A stop notice is a notice prohibiting a person from carrying on an activity specified in the notice.

(3) This subsection is satisfied if a person is carrying on, or is likely to carry on, a licensable marine activity (whether or not in accordance with a marine licence).

(4) This subsection is satisfied if the carrying on of the activity to be specified in the notice—

(a) is causing, or is likely to cause, any of the effects in subsection (5), or

(b) is creating, or is likely to create, an imminent risk of any of those effects.

(5) The effects are—

(a) serious harm to the environment;

(b) serious harm to human health;

(c) serious interference with legitimate uses of the sea.

(6) A stop notice (in addition to specifying the activity to which it relates)—

(a) must state the enforcement authority’s grounds for believing that subsections (3) and (4) are satisfied;

(b) must state the date and time from which the prohibition is to take effect (which may be a time on the date of the notice but must allow a period for compliance which is reasonable in all the circumstances of the case);

(c) may require the person to take such steps as the authority considers appropriate to ensure that the cessation of the activity takes place safely.

(7) Except in a case falling within subsection (9), a stop notice—
(a) ceases to have effect at the end of the period of 7 days (or such shorter period as may be specified in the notice) beginning with the date on which the prohibition takes effect, but
(b) may be renewed for a period specified in a further notice.

(8) A stop notice may be renewed more than once under subsection (7)(b), but not so that it has effect for an aggregate period exceeding 35 days.

(9) If a stop notice relating to a licensable marine activity is issued to a person who does not hold a marine licence authorising that activity, the stop notice may remain in force until such time (if any) as such a licence is granted to that person.

103 Further provision as to stop notices
(1) Any stop notice issued by an enforcement authority—
(a) must be served on any person carrying on, or in control of, the activity to which the notice relates, and
(b) if a marine licence has been granted in relation to that activity, may also be served on the licensee.
(2) An enforcement authority may by a further notice—
(a) revoke a stop notice;
(b) vary a stop notice so as to substitute a later date for the date specified in accordance with section 102(6)(b).
(3) A person who fails to comply with a stop notice commits an offence.
(4) A person guilty of an offence under subsection (3) is liable—
(a) on summary conviction, to a fine not exceeding £50,000;
(b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both.

104 Emergency safety notices
(1) This section applies if it appears to an enforcement authority that serious interference with legitimate uses of the sea is occurring, or is likely to occur, in its area as a result of—
(a) any works for the carrying out of which a marine licence is or was needed, or
(b) any substantial and unforeseen change in the state or position of any such works.
(2) The enforcement authority may issue a notice (an "emergency safety notice") to any person who is in control of the works to which the notice relates.
(3) By issuing an emergency safety notice to a person, the enforcement authority imposes on that person such requirements as are prescribed in the notice with respect to any of the matters specified in subsection (4).
(4) Those matters are—
(a) the provision of lights, signals or other aids to navigation;
(b) the stationing of guard ships.
(5) An emergency safety notice (in addition to specifying the requirements which it imposes)—
(a) must state the enforcement authority's grounds for believing that serious interference with legitimate uses of the sea is occurring or is likely to occur,
(b) must state the date and time from which the requirements are to take effect (which may be a time on the date of the notice but must allow a period for compliance which is reasonable in all the circumstances of the case), and

(c) may require the person to take such steps as the authority considers appropriate to ensure that compliance with the requirements takes place safely.

105 Further provision as to emergency safety notices
(1) An emergency safety notice issued by an enforcement authority must be served on each of the following—
(a) if a marine licence has been granted authorising the carrying out of the works, the licensee,
(b) if there is in effect a stop notice which relates to the works, any person on whom the stop notice was served.

(2) An enforcement authority may by a further notice—
(a) revoke an emergency safety notice;
(b) vary an emergency safety notice so as to substitute a later date for the date specified in accordance with section 104(5)(b).

(3) A person who fails to comply with an emergency safety notice commits an offence.

(4) A person guilty of an offence under subsection (3) is liable—
(a) on summary conviction, to a fine not exceeding £50,000;
(b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both.

Other powers

106 Power to take remedial action
(1) This section applies if it appears to the appropriate licensing authority for an area that a licensable marine activity has been carried on in its area otherwise than under a licence and in accordance with its conditions.

(2) The authority may carry out any works that appear to it to be necessary or expedient for any one or more of the following purposes—
(a) protecting the environment;
(b) protecting human health;
(c) preventing interference with legitimate uses of the sea;
(d) preventing or minimising, or remedying or mitigating the effects of, any harm or interference falling within subsection (3);
(e) restoring (whether in whole or in part) the condition of any place affected by any such harm or interference to the condition, or a condition reasonably similar to the condition, in
which the place would have been had the harm or interference not occurred.

(3) The harm or interference mentioned in subsection (2)(d) and (e) is any of the following which has been, is being, or is likely to be, caused by the carrying on of the licensable marine activity—

(a) harm to the environment;

(b) harm to human health;

(c) interference with legitimate uses of the sea.

107 Power to test, and charge for testing, certain substances

(1) A licensing authority may, at the request of any person, conduct tests for the purpose of ascertaining the probable effect on the marine environment of using any of the following substances—

(a) any marine chemical treatment substance;

(b) any marine oil treatment substance;

(c) any marine surface fouling cleaner.

(2) In this section—

“marine chemical treatment substance” means any substance used or intended to be used for treating chemicals—

(a) on the surface of the sea or of the sea bed;

(b) in the case of a wash-off substance, on any surface of a marine structure;

“marine oil treatment substance” means any substance used or intended to be used for treating oil on the surface of the sea; “marine surface fouling cleaner” means any substance used or intended to be used for removing surface fouling matter—

(a) from the surface of the sea or of the sea bed;

(b) in the case of a wash-off substance, from any surface of a marine structure or vessel at times when the structure or vessel is in the sea or on the sea bed;

“surface fouling matter” means any fouling, and includes, in particular,—

(a) any algae;

(b) any surface oil or chemical residue;

“surface oil or chemical residue” means any residual matter on a surface after the removal, or substantial removal, of any oil or chemical (whether by natural processes, or by treatment, or in any other way);

“wash-off substance”, in relation to a marine structure or vessel, means any substance which, if used on a surface of the marine structure or vessel, will or might (whether in whole or to a significant extent)—

(a) be removed from that surface, and
(b) be deposited in the sea, whether by natural processes, or by treatment, or in any other way.

(3) A licensing authority may recover any expenses reasonably incurred in conducting any tests under subsection (1) from any person at whose request those tests were conducted.

**Appeals against notices under this Part**

108 Appeals against notices

(1) The appropriate licensing authority must by regulations make provision for any person to whom a notice is issued under section 72, 90, 91, 102 or 104 to appeal against that notice.

(2) The regulations required by subsection (1) must come into force on the day on which this Part comes into force.

(3) Regulations under this section may include—

(a) provision as to the procedure to be followed with respect to an appeal;

(b) provision suspending the notice pending determination of the appeal;

(c) provision as to the powers of any person to whom the appeal is made;

(d) provision as to how any sum payable in pursuance of a decision of that person is to be recoverable.

**Offences: supplementary provision**

109 General defence of due diligence

(1) In any proceedings for an offence under this Part, it is a defence for the person charged (“the defendant”) to prove that the defendant took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(2) The defence provided by subsection (1) is to be taken to be established if the defendant—

(a) acted under an employer’s instructions,

(b) did not know and had no reason to suppose that the acts done constituted a contravention of the provision in question, and

(c) took all such steps as reasonably could be taken to ensure that no offence would be committed.

(3) The defence provided by subsection (1) is to be taken to be established if the defendant—

(a) acted in reliance on information supplied by another person,

(b) did not know and had no reason to suppose that the information was false or misleading, and

(c) took all such steps as reasonably could be taken to ensure that no offence would be committed.

(4) Subsections (2) and (3) do not affect the generality of subsection (1).

(5) If in any case the defence provided by subsection (1) involves the allegation that the commission of the offence was due to—

(a) an act or default of another person (other than the giving of instructions to the defendant by an employer), or
(b) reliance on information supplied by another person, the defendant is not, without leave of the court, entitled to rely on that defence unless the requirement in subsection (6) is satisfied.

(6) The requirement is that—

(a) at least seven clear days before the hearing, and

(b) if the defendant has previously appeared before a court in connection with the alleged offence, within one month of the first such appearance, the defendant has served on the prosecutor a notice giving such information identifying or assisting in the identification of that other person as was then in the defendant’s possession.

110 Offences: jurisdiction

Proceedings for an offence under this Part may be taken, and the offence may for all incidental purposes be treated as having been committed, in any part of the United Kingdom.

Application to the Crown

111 Application to the Crown

(1) The provisions of this Part bind the Crown.

This is subject to the following provisions of this section.

(2) No contravention by the Crown of any provision of this Part is to make the Crown criminally liable; but the High Court or, in Scotland, the Court of Session may, on the application of the appropriate licensing authority or any other authority charged with enforcing that provision, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) Despite subsection (2), the provisions of this Part apply to persons in the public service of the Crown as they apply to other persons.

(4) The Secretary of State may certify that it appears to the Secretary of State that, as respects—

(a) any Crown land specified in the certificate, and

(b) any powers of entry so specified which are exercisable in relation to that land, it is necessary or expedient that, in the interests of national security, the powers should not be exercisable in relation to the land.

(5) If the Secretary of State issues a certificate under subsection (4), the powers specified in the certificate are not exercisable in relation to the land so specified.

(6) For the purposes of subsection (4) “Crown land” means land held or used by or on behalf of the Crown.

(7) Nothing in this section is to be taken as in any way affecting Her Majesty in her private capacity or in right of Her Duchy of Lancaster, or the Duke of Cornwall.

112 Amendments and transitional provision

(1) Schedule 8 (which makes minor and consequential amendments) has effect.

(2) Schedule 9 (which makes transitional provision) has effect.

Interpretation

113 The appropriate licensing authority

(1) This section has effect for determining who is the appropriate licensing authority for any area (and any licensable marine activity carried on in that area).
(2) In relation to the Scottish offshore region, the appropriate licensing authority is—
(a) the Secretary of State, as respects anything done in the course of carrying on an activity
falling within subsection (3);
(b) except as provided by paragraph (a), the Scottish Ministers.

(3) The activities are—
(a) any activity relating to a matter which is a reserved matter by virtue of Section D2 (oil and
gas) of Schedule 5 to the Scotland Act 1998 (c. 46) (but see also section 77 above (this Part not to
apply to certain oil and gas etc activities));
(b) any activity relating to a matter which is a reserved matter by virtue of
paragraph 9 in Part 1 of that Schedule (defence);
(c) any activity falling within the subject matter of Part 6 of the Merchant Shipping Act 1995 (c.
21) (pollution etc).

(4) In relation to Wales and the Welsh inshore region, the appropriate licensing authority is—
(a) the Secretary of State, as respects anything done in the course of carrying on an activity
falling within subsection (5);
(b) except as provided by paragraph (a), the Welsh Ministers.

(5) The activities are—
(a) any activity concerning or arising from the exploration for, or production of, petroleum
(but see also section 77 (this Part not to apply to certain oil and gas etc activities));
(b) any defence activity other than an excepted activity. Subsection (9) supplements this
subsection.

(6) In relation to Northern Ireland and the Northern Ireland inshore region, the appropriate
licensing authority is—
(a) the Secretary of State, as respects anything done in the course of carrying on an activity
falling within subsection (7);
(b) except as provided by paragraph (a), the Department of the Environment in Northern
Ireland.

(7) The activities are any activities which relate to a matter which is an excepted matter by virtue
of paragraph 4 of Schedule 2 to the Northern Ireland Act 1998 (c. 47) (defence of the realm etc).

(8) In relation to any area not mentioned in subsection (2), (4) or (6), the appropriate licensing
authority is the Secretary of State.

(9) In subsection (5)—
"defence activity" means any activity relating to—
(a) the defence of the realm;
(b) the naval, military or air forces of the Crown, including reserve forces;
(c) visiting forces;
(d) international headquarters and defence organisations;

(e) trading with the enemy and enemy property;

“excepted activity” means the exercise of civil defence functions by any person otherwise than as a member of—

(a) any force or organisation referred to in paragraphs (b) to (d) of the definition of “defence activity”, or

(b) any other force or organisation established or maintained for the purposes of, or for purposes connected with, the defence of the realm;

“petroleum” has the same meaning as in Part 3 of the Petroleum Act 1998

114 Meaning of “enforcement authority”
(1) This section has effect for determining who is an enforcement authority for any area.

(2) For the purposes of sections 90 to 97 and 102 to 105 (and any other provisions of this Part so far as relating to those sections) the appropriate licensing authority for any area is an enforcement authority for that area.

(3) For the purposes of sections 90, 92 (so far as relating to section 90) and 102 to 105 (and any other provisions of this Part (except sections 91 and 93 to 97) so far as relating to those sections) each of the following persons is also an enforcement authority—

(a) in relation to the relevant enforcement area (within the meaning of section 236), any marine enforcement officer (as defined in section 235);

(b) in relation to the relevant enforcement area (within the meaning of section 240), any person appointed under section 240;

(c) in relation to the relevant enforcement area (within the meaning of section 241), any person appointed under section 241;

(d) in relation to the Scottish offshore region, any person appointed under section 242.

(4) A person is an enforcement authority by virtue of subsection (3) (so far as relating to the sections specified in that subsection) only to the extent that the person may exercise powers for the purposes of enforcing this Part.

115 Interpretation of this Part
(1) In this Part—

“appropriate enforcement authority”, in the case of any area and any provision of this Part, means any authority which is an enforcement authority for that area for the purposes of that provision; “the appropriate licensing authority” has the meaning given by section 113;

“British marine structure” means a marine structure owned by or leased to an individual residing in, or a body corporate incorporated under the law of, any part of the United Kingdom;

“British vessel” means a vessel—

(a) which is registered in the United Kingdom,
(b) which falls within section 1(1)(d) of the Merchant Shipping Act 1995 (c. 21) (small ships), or (c) which is exempt from registration under section 294 of that Act;

“compliance notice” means a notice issued under section 90;

“emergency safety notice” means a notice issued under section 104;

“enforcement authority” has the meaning given by section 114;

“fixed monetary penalty” has the meaning given by section 93(3);

“licensable marine activity” is to be read in accordance with section 66;

“licensing authority” means—
(a) the Secretary of State;
(b) the Welsh Ministers;
(c) the Scottish Ministers;
(d) the Department of the Environment in Northern Ireland;

“marine licence” means a licence granted under this Part;

“marine structure” means a platform or other artificial structure at sea, other than a pipeline;

“remediation notice” means a notice issued under section 91;

“stop notice” means a notice issued under section 102;

“the UK marine licensing area” has the meaning given by section 66(4);

“variable monetary penalty” has the meaning given by section 95(3);

“vessel” includes—
(a) hovercraft, and
(b) any other craft capable of travelling on, in or under water, whether or not self-propelled.

(2) In this Part any reference to the environment includes a reference to any site (including any site comprising, or comprising the remains of, any vessel, aircraft or marine structure) which is of historic or archaeological interest.
APPENDIX 3

Electricity Act 1989

Part I ELECTRICITY SUPPLY

Protection of public interest

Section 36 Consent required for construction etc. of generating stations. E+W+S

(1) Subject to subsections (2) and (4) below, a generating station shall not be constructed, extended or operated except in accordance with a consent granted by the Secretary of State.

(2) Subsection (1) above shall not apply to a generating station whose capacity—
   (a) does not exceed the permitted capacity, that is to say, 50 megawatts; and
   (b) in the case of a generating station which is to be constructed or extended, will not exceed the permitted capacity when it is constructed or extended; and an order under this subsection may make different provision for generating stations of different classes or descriptions.

(3) The Secretary of State may by order provide that subsection (2) above shall have effect as if for the permitted capacity mentioned in paragraph (a) there were substituted such other capacity as may be specified in the order.

(4) The Secretary of State may by order direct that subsection (1) above shall not apply to generating stations of a particular class or description, either generally or for such purposes as may be specified in the order.

(5) A consent under this section—
   (a) may include such conditions (including conditions as to the ownership or operation of the station) as appear to the Secretary of State to be appropriate; and
   (b) shall continue in force for such period as may be specified in or determined by or under the consent.

(6) Any person who without reasonable excuse contravenes the provisions of this section shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(7) No proceedings shall be instituted in England and Wales in respect of an offence under this section except by or on behalf of the Secretary of State.

(8) The provisions of Schedule 8 to this Act (which relate to consents under this section and section 37 below) shall have effect.

(9) In this Part “extension”, in relation to a generating station, includes the use by the person operating the station of any land (wherever situated) for a purpose directly related to the generation of electricity by that station and “extend” shall be construed accordingly.

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
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<tbody>
<tr>
<td>CPA</td>
<td>Coast Protection Act 1949</td>
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<tr>
<td>DECC</td>
<td>Department of Energy and Climate Change</td>
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<tr>
<td>EIA</td>
<td>Environmental Impact Assessment</td>
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<tr>
<td>Environmental Statement</td>
<td>Document produced on the environmental impact of a project when required under the EIA Directive.</td>
</tr>
<tr>
<td>MCAA</td>
<td>Marine and Coastal Access Act 2009</td>
</tr>
<tr>
<td>MLWS</td>
<td>Mean Low Water Springs (MLWS) This is the lowest level that a spring tide will drop to on average over a period of time. It will change over time, similar to MHWS.</td>
</tr>
<tr>
<td>MHWS</td>
<td>Mean High Water Springs (MHWS) This is the highest level that spring tides reach on average over a period of time. It changes over time as land is lost to, or reclaimed from, the sea. The marine licensing system applies below MHWS.</td>
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<tr>
<td>MMO</td>
<td>Marine Management Organisation</td>
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<tr>
<td>MSLOT</td>
<td>The Scottish Government Licensing Operations Team</td>
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<tr>
<td>MSA</td>
<td>Marine (Scotland) Act 2010</td>
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