

Marine Scotland

Guidance on Marine Licensable Activities subject to
Pre-Application Consultation



marinescotland

GUIDANCE ON MARINE LICENSABLE ACTIVITIES SUBJECT TO PRE-APPLICATION CONSULTATION

Introduction

From 6 April 2014, prospective applicants for marine licences for certain activities will be required to carry out a public pre-application consultation. Applications affected will include those activities with the potential to have significant impacts upon the environment, local communities and other legitimate uses of the sea. The purpose of these new requirements is to allow local communities, environmental groups and other interested parties to comment upon proposed marine developments at an early stage - before an application is submitted to the Marine Scotland Licensing Operations Team (MS-LOT).

Background

Deposit and construction activity in Scotland's seas is regulated by the Marine (Scotland) Act 2010, which applies in the Scottish Inshore Region (0 – 12 nm), and the Marine and Coastal Access Act 2009, which applies in the Scottish Offshore Region (12 – 200 nm).

Sections 22, 23 and 24 of the Marine (Scotland) Act 2010 provide that Scottish Ministers may prescribe, by regulations, that certain classes or descriptions of licensable marine activity are subject to the pre-application consultation procedure and, together with the Marine Licensing (Pre-application Consultation) (Scotland) Regulations 2013, set out what that process entails.

The Marine Licensing (Pre-application Consultation) (Scotland) Regulations 2013 ('the Regulations') were laid before the Scottish Parliament on 10 October 2013. They prescribe the marine licensable activities that are subject to pre-application consultation and, in combination with the Marine (Scotland) Act 2010, set out the nature of the pre-application process. The legislation comes into force on 1st January 2014 and **applies to all relevant marine licence applications submitted to MS-LOT on or after 6 April 2014.**

Please note that there is no similar provision for pre-application consultation in the Marine and Coastal Access Act 2009, so **these requirements only apply in respect of relevant applications in the Scottish Inshore Region, from Mean High Water Springs to 12 nautical miles.**

Marine licensable activities subject to pre-application consultation

Prospective applicants for marine licences for the following marine licensable activities will be subject to the public pre-application consultation procedure:

- The deposit of a submarine cable into the sea or on or under the seabed from a vehicle, vessel, aircraft, marine structure or floating container, where that

cable is over 1853 metres (approx. 1 nautical mile) in length and where it crosses the inter-tidal boundary.

- The deposit of any substance or object into the sea or on or under the seabed from a vehicle, vessel, aircraft, marine structure, floating container or a structure on land constructed or adapted wholly or mainly for depositing solids into the sea for the purposes of reclaiming land, where the area being reclaimed from the sea exceeds 10,000 square metres.
- The construction in or over the sea or on or under the seabed of a bridge, causeway or walkway over 50 metres in length.
- Construction works (other than for a renewable energy structure) in or over the sea or on or under the seabed where the area of the works exceeds 1000 square metres.
- Alteration or improvement of works (other than for a renewable energy structure) in or over the sea or on or under the seabed where the area of those works, as extended, exceeds 1000 square metres.
- The construction of a renewable energy structure in or over the sea or on or under the seabed, where the total area in which the structure is to be located exceeds 10,000 square metres.
- The alteration or improvement of a renewable energy structure in or over the sea or on or under the seabed which extends the structure, where the total area in which that structure is to be located to over 10,000 square metres.

Requesting a pre-application consultation statement

A prospective applicant for a marine licence may request a 'pre-application consultation statement' from MS-LOT. This statement confirms the opinion of MS-LOT as to whether the marine licensable activity in question is subject to the public pre-application consultation procedure.

When requesting a pre-application consultation statement, the prospective applicant must supply MS-LOT with the following:

- A plan sufficient to identify the area in which the activity is proposed to take place.
- A description of the nature and purpose of the marine licensable activity and of its possible effects on the environment.
- Any other information or representations that the applicant considers to be relevant.

If they consider that they have not been provided with sufficient information to give a pre-application consultation statement, then MS-LOT may request further information to be provided relating to the activity.

MS-LOT must provide a pre-application consultation statement to the prospective applicant, stating the reasons for their opinion—

- within 3 weeks of the date the statement was requested by the prospective applicant;

- where further information has been requested of the prospective applicant by MS-LOT, within 3 weeks of the date that information was received by MS-LOT; or
- within such longer period as may be agreed between MS-LOT and the prospective applicant.

The public pre-application consultation procedure

Public pre-application consultation consists of at least one public event where local communities, environmental groups, NGOs, regulators and other interested parties are given the opportunity to consider and comment upon a prospective application for those marine licensable activities that are prescribed in the Regulations.

The prospective applicant must notify the following statutory consultees that an application for a marine licence for a prescribed activity is to be submitted to MS-LOT:

- The Commissioners of Northern Lighthouses
- The Maritime and Coastguard Agency
- The Scottish Environment Protection Agency
- Scottish Natural Heritage
- Any delegate for the relevant marine region or regions, when such delegates have been established under Section 12(1) of the Marine (Scotland) Act 2010

The notification should include basic information relating to the application and include the time and location of the consultation event. The notification must be made at least 6 weeks in advance of the event.

No less than 6 weeks in advance of the public pre-application consultation event, the prospective applicant must also publish in a local newspaper a notice containing:

- A description, including location, of the marine licensable activity.
- Details as to where further details concerning the activity may be obtained.
- The date and place of the pre-application consultation event.
- A statement explaining how persons wishing to provide comments may do so and the date by which this must be done.
- A statement clarifying that comments are made to the prospective applicant and not to MS-LOT and that there will be an opportunity for representations to be made to MS-LOT on the application.

The consultation event must be held in a suitably accessible venue.

The venue must be suitably accessible both in terms of allowing physical access by persons of impaired mobility, and being local to the proposed marine licensable activity. This is to allow the provision of information to, and attendance by, persons who are most likely to have an active interest in the proposed activity. The venues in which these events are held is likely to vary in size and nature, dependent largely upon the availability of public buildings in those parts of Scotland close to where the

proposed marine licensable activities are to take place. It is expected by MS-LOT that the typical venue which will be used will be a local town hall or hotel.

In those cases where a previous consultation event has been held in relation to the activity in question within one year of MS-LOT receiving the latter marine licence application, where that previous consultation event was held in a suitably accessible venue and where that previous consultation event had been advertised at least 6 weeks prior to that previous consultation event then no further public consultation event is needed under the terms of the Regulations. This provision allows for a single public pre-application consultation event to be held which satisfies the requirements of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008 and the Marine Licensing (Pre-application Consultation) (Scotland) Regulations 2013.

Pre-application consultation report

A pre-application publication report, in the form prescribed in the Regulations, must be prepared and submitted with the marine licence application.

The pre-application consultation report must include:

- A description of the consultation event.
- A description of the information provided by the prospective applicant at the event.
- Comments received by the prospective applicant at the pre-application event.
- A description of amendments to be made to the marine licence application, where applicable, in response to those comments.
- An explanation for the approach taken where, despite the prospective applicant receiving relevant comments and objections no relevant alterations are proposed to be made to the marine licence application.

Where, in the opinion of MS-LOT, a pre-application consultation report is not deemed to be satisfactory, they may require further information to be supplied, a new report to be submitted or for the pre-application consultation process to be repeated in full by the prospective applicant.

Further information

Further information on pre-application consultation can be obtained by contacting MS-LOT at:

Marine Scotland
Licensing Operations Team
PO Box 101
375 Victoria Road
Aberdeen
AB11 9DB

Tel: +44 (0)1224 295579

e-mail: ms.marinelicensing@scotland.gsi.gov.uk