

# Marine Scotland



CONSULTATION ON REGISTERABLE MARINE ACTIVITIES AND ON  
MARINE LICENCE APPLICATIONS REQUIRING PRE-APPLICATION  
CONSULTATION

marinescotland

# Marine Scotland

CONSULTATION ON REGISTERABLE MARINE ACTIVITIES  
AND ON MARINE LICENCE APPLICATIONS REQUIRING  
PRE-APPLICATION CONSULTATION

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## 1. FOREWORD



The 6<sup>th</sup> of April 2011 saw the introduction of a new marine licensing regime for Scotland's seas. The new system, ushered in under the Marine (Scotland) Act 2010 and the Marine and Coastal Access Act 2009, provides a more equitable, efficient and streamlined licensing process for both applicant and regulator while balancing the risks and minimising the adverse impacts of activity on the environment, human health and legitimate uses of the sea.

The Marine (Scotland) Act 2010 allows the Scottish Ministers to prescribe that certain activities that fall below a specified threshold of environmental impact that would, under the existing scheme, ordinarily require a marine licence need not be licensed, but may be registered instead. This would allow low environmental impact activity to go ahead without unnecessary time and cost penalties associated with going through the licence application process.

At the other end of the scale, the 2010 Act also allows the Scottish Ministers to classify that licence applications for certain classes or descriptions of licensable marine activity are subject to pre-application consultation. This would apply to large scale projects with the potential for significant effects to the environment and local communities. Pre-application consultation would allow communities and stakeholders with concerns about such projects to become fully engaged in the marine licensing decision making process.

However, before these new processes can be introduced to augment the current licensing system, secondary legislation will need to be laid before the Scottish Parliament. This consultation seeks the views of stakeholders in industry, government, voluntary organisations, special interest groups and individuals in order to inform that legislation.

I hope that you are able to contribute your views on these proposals and invite you to let us know what you think.

A handwritten signature in black ink that reads "Richard Lochhead".

**Richard Lochhead MSP**  
**Cabinet Secretary for Rural Affairs and the Environment**

## **2. PURPOSE OF DOCUMENT**

This consultation is directed at anyone interested in the way activities that take place in the sea are regulated. It will be of particular interest to those who are concerned with the following activities.

Low environmental impact activities such as:

- Recreational diving
- Yacht racing

Larger developments such as:

- Bridge, causeway or walkway construction
- Construction/refurbishment projects
- Renewable energy projects
- Reclamation projects
- Cable installations
- Marina construction

We expect this consultation to be of most interest to businesses and individuals that carry out these activities and to other industries, public communities, conservation bodies and environmental groups that are concerned about their effect on the environment, navigational matters and human health. Many other groups, however, are also concerned with activity in our marine environment and may have an interest in these proposals.

The Marine (Scotland) Act 2010 provides Scottish Ministers with the powers to specify certain marine licensable activities in the Scottish Inshore Region (from 0 - 12 nm) which are to be registered. This supplements the scheme under the 2010 Act which allows the Scottish Ministers to exempt activities from the requirement for a marine licence. This means that, rather than having to go through the application process for a marine licence, certain low environmental impact activities can go ahead, as long as the activity is first registered with Marine Scotland Licensing Operations Team (MS LOT).

The Act also provides for marine licence applications for certain activities to be subject to pre-application consultation. These activities will usually be larger developments with greater potential for adverse effects on the local community and marine environment. Pre-application consultation will allow other industries, local communities and conservation groups to become fully engaged in the Marine Licence decision making process.

This document seeks your views on which activities should be considered for registration and which should be subject to pre-application consultation. It also seeks your views on the nature of registration and the process of pre-application consultation.

This consultation is accompanied by an impact assessment of the costs and benefits of each proposal.

### 3. INTRODUCTION

The Marine (Scotland) Act 2010 received Royal Assent on 10 March 2010 and the Marine and Coastal Access Act 2009 on 12 November 2009. Secondary legislation to the Acts, introduced at the start of 2011, enabled the commencement of a new licensing regime on the 6<sup>th</sup> of April 2011.

The new regime streamlines previous consents issued under the Food and Environment Protection Act 1985\*, the Coast Protection Act 1949 and various other legislation which previously regulated marine activity in Scotland's seas, into a single 'marine licence'. The marine licence is issued by the Marine Scotland Licensing Operations Team (MS LOT) who perform the role of a 'one stop shop' for all marine licences in Scotland's seas. These licences are either issued under the Marine (Scotland) Act 2010, which covers the zone from 0 – 12 nm, or the Marine and Coastal Access Act 2009, which covers the zone from 12 – 200 nm.

This consultation deals only with activity in the Scottish inshore zone from 0 – 12 nm, covered by the Marine (Scotland) Act 2010. The Marine and Coastal Access Act 2009 does not contain similar provision for the designation of registerable and pre-application consultation activities.

Section 21 of the Marine (Scotland) Act 2010 lists 'licensable marine activities' for which it is necessary to obtain a licence before carrying them out. These are activities that are considered to have the potential for adverse effects on the environment, human health or other legitimate uses of the sea. Licensable activities include (but are not limited to) the deposit of substances or objects from a vessel or marine structure, the construction, alteration or improvement of works, dredging and the deposit or use of explosives.

However, there are certain activities which are covered by this list but which nevertheless are exempt from the scheme where licensing is not appropriate or where the risk to the environment, human health or legitimate uses of the sea is so small as to be negligible. In such circumstances, the requirement for a marine licence is deemed unnecessary and these activities have been exempted from marine licensing under the Marine Licensing (Exempted Activities) (Scottish Inshore Region) Order 2011 (as amended). Such activities include most harbour maintenance dredging, fire fighting and the deposit of scientific instruments.

#### **Registerable activities – their place in the licensing regime**

There are a number of activities in Scotland's seas which are of low impact, but which currently require a licence to carry on. However, while the impact of these activities is low, it may not be appropriate to simply exempt them from the licensing regime.

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\* FEPA has been repealed for the Scottish marine area, except with regard to reserved matters (including defence, oil and gas and telecommunications). FEPA is retained for these matters in the Scottish inshore zone (0 – 12 nm). The licensing authority in these circumstances is DECC.

It is proposed that a form of registration is introduced that would enable applicants to go ahead with their activity without having to go through the application process for a marine licence, yet enables Marine Scotland to maintain a record of the type, frequency and location of these activities.

Registration would apply to named activities which fall below a specified threshold of environmental impact. Once the activity had been reported to MS LOT, it could then go ahead without the need for a marine licence.

The introduction of registration would provide an extra tier in the regulation of marine activity and would allow a more flexible approach to licensing. It would allow MS LOT to reduce the regulatory burden on small scale developments and provide a more efficient, streamlined service.

### **Activities that will be subject to pre-application consultation**

Section 22 of the Marine (Scotland) Act 2010 allows Scottish Ministers to prescribe certain applications for marine licensable activities as being subject to pre-application consultation. This approach will be particularly relevant for large marine developments such as wave and tidal projects or off-shore wind farms. Effective pre-application consultation will allow communities with concerns about such projects to become fully engaged in the decision making process at an early stage in the application process.

Consultation with communities and stakeholders will add to the quality of applications by allowing applicants the opportunity to amend their emerging proposals to accommodate community opinion. Discussions with MS LOT should then lead to a more refined application which can be processed in the most efficient manner.

The fishing industry has expressed particular interest in these proposals and it is hoped that the requirement for pre-application consultation will help tackle concerns over the displacement of fishing activity by large scale developments, especially renewable energy developments.

### **Secondary legislation**

Regulations will be required to prescribe the classes or descriptions of licensable marine activities that should be registerable instead of licensable and for those activities that will be subject to pre-application consultation. This secondary legislation will be empowered by the Marine (Scotland) Act 2010.

The secondary legislation will be informed by this consultation and drafted once an analysis of responses has been made.

### **Guidance**

Current guidance on marine licensing, available from MS LOT (or on the Scottish Government website at <http://www.scotland.gov.uk/Topics/marine/Licensing/marine>)

will be updated to reflect any changes brought about by the introduction of these proposals.

### **Impact Assessment**

The Scottish Government is committed to consulting with all parties potentially affected by proposals for new legislation. Given the potential for these proposals to impact upon business or the third sector, Partial Business Regulatory Impact Assessments (BRIA) have been prepared and are attached.

We would welcome comments on whether there are any costs and benefits that are not captured in the analysis; please provide supporting evidence.

**Q1. What are your views on the overall costs and savings identified in the impact assessments?**

#### **4. REGISTRATION OF ACTIVITIES BELOW A SPECIFIED THRESHOLD OF ENVIRONMENTAL IMPACT**

Section 33 of the Marine (Scotland) Act 2010 states that Scottish Ministers may by regulations provide that licensable marine activities that fall below a specified threshold of environmental impact are not to need a licence but can be registered instead.

Scottish Ministers would define the meaning of “registered” and “specified threshold of environmental impact” as:

- “registered” – where the activity has been registered with Marine Scotland Licensing Operations Team.
- “specified threshold of environmental impact” – the scale or level of environmental impact as described for a specific activity in the Marine Licensing (Registered Activities) (Scottish Inshore Region) Regulations 2012.

#### **The registration process**

Those wishing to carry out registerable activities in the Scottish Inshore Region (0 - 12nm) will be required to first register that activity with Marine Scotland Licensing Operations Team (MS LOT). Registration forms will be made available for download on the Marine Scotland website or, upon request, in hard copy from MS LOT.

Application forms will require information including:

- Name and contact details of applicant
- Type of activity
- Location and brief description of project
- Timing of project
- Deposits/removals to be made
- Supporting documentation (charts, technical drawings etc.)
- Location of any nearby Natura sites

Once MS LOT has confirmed receipt of the application form and approved the activity for registration, the applicant may then carry on the activity. There will be no fee payable for this registration process.

Approval for registration will be dependent on the activity meeting the specifications set out in the Marine Licensing (Registered Activities) (Scottish Inshore Regions) Regulations 2012.

#### **Q2. Do you agree with the registration process as described?**

**Yes**

**No**

#### **Q3. If not, what changes would you propose to the process?**

## **Classes of Registerable Activity**

There are 5 classes of activity being considered for registration under the new legislation. These activities, by necessity, carry a low risk of environmental impact and comprise the following:

1. The placement of temporary marker buoys for yacht racing.
2. The removal of deceased marine mammals and 'royal fish' from the foreshore.
3. The removal of human remains from the foreshore.
4. Deposit and removal activity carried on for the purpose of placing, securing or removing signage or other identifying markers relating to a marine historic asset.
5. The use of air filled flotation bags capable of lifting less than 100 kg from the sea bed.

**Q4. Do you agree that the listed activities should be registerable, rather than licensable?**

**Yes**

**No**

**Q5. Do you have further comments regarding the activities listed above?**

**Q6. Are there any other classes of activity that should be registerable?**

## **5. APPLICATIONS FOR MARINE LICENCES SUBJECT TO PRE-APPLICATION CONSULTATION**

Pre-application consultation provisions were introduced into the Marine (Scotland) Act 2010 during Stage 2 of its Parliamentary scrutiny and are covered in sections 22 to 24 of the Act. These provide powers for the Scottish Ministers to require that certain applications for licensable marine activities are subject to pre-application consultation. Regulations will prescribe the classes or description of licensable activities subject to this procedure.

Pre-application consultation will allow local communities, conservation groups and other interested parties to contribute to proposals that may affect them. Early consultation will allow these groups to comment on and help shape proposals prior to the submission of an application to MS LOT.

It is intended that pre-application consultation legislation, implementing sections 22 – 24 of the Act, will be laid in the summer of 2012. A transitional period of six months, however, is proposed to allow developers to adapt to the new legislation.

### **Pre-application consultation procedure**

Relevant applicants will be required to produce a pre-application notice and report and to hold a public consultation event.

Notices will be required to be published in a local newspaper and to be available for viewing at an appropriate location (such as local authority offices or a public library), twelve weeks prior to an application being submitted to MS LOT. The notice will include a description of the proposed activity, the timing of the activity, a plan or chart of the location and contact details for the applicant. It will also advertise the date of the public pre-application consultation event.

The applicant will be required to hold the public consultation event at an appropriate venue, such as a town hall, early in the twelve week consultation period and no later than six weeks prior to the submission of an application. This will allow the public to express any concerns they may have and for resulting changes to be made prior to the submission of the application.

Section 23 (4) of the Marine (Scotland) Act 2010 provides that Scottish Ministers may specify persons who are to be consulted with respect to a pre-application consultation. However, at this stage there is no intention to specify statutory consultees for the pre-application consultation process.

The applicant will be required to submit to MS LOT a pre-application consultation report, which will detail what has been done to satisfy the pre-application consultation requirements. The report will be submitted alongside the application.

### **Classes of activity subject to pre-application consultation**

It is proposed that 7 classes of activity will be subject to pre-application consultation. These are:

1. Bridge, causeway or walkway construction over 50 metres in length.
2. Construction/refurbishment projects over 1000 sq. metres in extent below MHWS.
3. Cables crossing the inter-tidal boundary.
4. Renewable energy projects over 30 MW or developments that increase the output of an existing project to over 30 MW.
5. Marinas where the enclosed water surface area exceeds 1000 sq metres and extensions to existing marinas that take the enclosed water surface area over that threshold.
6. Reclamation projects over 1 hectare in extent.
7. Other developments which, in the Scottish Ministers assessment, may have impacts on the environment, human health or legitimate uses of the sea that would make pre-application consultation appropriate.

**Q7. Do you agree that statutory consultees should not be specified in legislation for the pre-application consultation process?**

**Yes**

**No**

**Q8. If not, which persons or bodies do you believe should be specified as statutory consultees for the pre-application consultation process?**

**Q9. Do you agree with the classes of activity that will be subject to pre-application consultation?**

**Yes**

**No**

**Q10. If not, what activities would you add or remove from the list?**

## **6. EQUALITY ASSESSMENT**

The Scottish Government must ensure that any policies that it implements do not unduly discriminate against persons defined by age, gender, disability, sexual orientation, race and religion and belief. We would welcome your views on whether the proposals will unduly impact on any of these groups mentioned.

**Q11. Do you believe that the above proposals discriminate disproportionately between persons defined by age, disability, sexual orientation, gender, race and religion and belief.**

**Yes**

**No**

**Q12. If you answered yes to Question 7, in what way do you believe the proposals to be discriminatory?**

## 7. NEXT STAGES

After the responses to the consultation have been analysed, any necessary changes to the draft Statutory Instruments will be made. The Statutory Instruments will then be made or, where required, laid in draft before the Scottish Parliament. Implementation of the regulations is expected in the summer of 2012.

## 8. HOW TO RESPOND

You are invited to respond to this consultation by 20 June 2012. Please note that no extensions to this date can be permitted.

Responses can be sent by email or by post:

### Email:

MS.Licence.Consult@scotland.gsi.gov.uk

### Post:

Matt Cartney  
Marine Scotland  
1 – A South  
Victoria Quay  
Edinburgh  
EH6 6QQ

General enquiries may also be made to the email and address above. You can also contact Matt Cartney by telephone on 0131 244 6231.

If responding by email or post, please clearly indicate in your response which questions or parts of the consultation you are responding to. You do not have to respond to all questions in this consultation. Feel free to answer just a few questions relating only to your interests or expertise.

### Handling your response

We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. Please complete and return the **Respondent Information Form** enclosed in this consultation paper as this will ensure that we treat your response appropriately. If you ask for your response not to be published we will regard it as confidential and treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

### **Consultation availability**

For those unable to view this consultation online, hard copies can be requested from:

Matt Cartney  
Marine Scotland  
Area 1-A South  
Victoria Quay  
Edinburgh  
EH6 6QQ

MS.Licence.Consult@scotland.gsi.gov.uk

Tel: 0131 244 6231

This consultation can be viewed online at <http://www.scotland.gov.uk/Consultations>

The Scottish Government now has an email alert system for consultations (SEconsult: <http://Scotland.gov.uk/consultations/seconsult.aspx>). This system allows stakeholder individuals and organisations to register and receive a weekly email containing details of all new consultations (including a web link). SEconsult complements, but in no way replaces Scottish Government distribution lists and is designed to allow stakeholders to keep up to date with all Scottish Government consultation activity, and therefore be alerted at the earliest opportunity to those of most interest. We would encourage you to register.

### **Next steps in the process**

Where respondents have given permission for their response to be made public (see the enclosed Respondent Information Form), these will be made available to the public in the Scottish Government Library and on the Scottish Government consultation web pages. We will check all responses where agreement to publish has been given for any potentially defamatory material before lodging them in the library or placing them on the website. You can make arrangements to view responses by contacting the Scottish Government Library on 0131 244 4565. Responses can be copied and sent to you, but a charge may be made for this service.

### **Comments and complaints**

If you have any comments about how this consultation exercise has been conducted, please send them to Matt Cartney at the above address.

# Partial Business and Regulatory Impact Assessment

## **Title of Proposal**

Marine Licensing – Introduction of Registerable Activities

Ref: Consultation on Registerable Marine Activities and on Marine Licence Applications Requiring Pre-Application Consultation

Ref: Marine (Scotland) Act 2010

## **Purpose and intended effect**

- **Background**

The 6<sup>th</sup> of April of this year saw the beginning of a new marine licensing regime for Scotland's seas. The new system, provided for by the Marine (Scotland) Act 2010 and the Marine and Coastal Access Act 2009, provides an equitable, efficient and streamlined licensing process for Scotland's seas. The Marine (Scotland) Act covers the region from 0 - 12 Nautical miles (Nm) and the Marine and Coastal Access Act covers the region from 12 - 200 Nm.

Currently, licensable activity in the 0 – 12 Nm region is either fully licensable or, in certain circumstances, exempt from needing a marine licence. Exempt activities include those covered by other legislation, of negligible impact or where the licence application process would be inappropriate (such as fire-fighting).

The Marine (Scotland) Act also provides for Scottish Ministers to prescribe that certain activities that fall below a specified threshold of environmental impact need not be licensed, but may be registered instead. This would allow low impact activity to go ahead without the relatively more time consuming and costly necessity of going through the licence application process.

- **Objective**

To introduce categories of 'Registerable Activity' into the licensing regime in order to reduce the regulatory burden on those wishing to carry out activities that fall below a specified level of environmental impact.

- **Rationale for Government intervention**

Before this process can be introduced to augment the current licensing system, secondary legislation will need to be laid before parliament. We intend to go out to consultation with internal and external stakeholders in order to inform the detail of this legislation. It is hoped that the new 'Registerable Activity' legislation will be implemented in the summer of 2012.

As the competent authority responsible for all licensing (except for reserved matters) in Scotland's seas, Scottish Ministers have a duty to ensure that the regulatory framework that supports responsible development in Scotland's seas is as efficient, streamlined and equitable as possible. The introduction of

'Registerable Activities' into the marine licensing regime will help to achieve this goal.

As part of the streamlined licensing process, the introduction of 'Registerable Activities' fits into the National Performance Framework by reducing the regulatory burden upon businesses wishing to carry out low impact activities. This conforms to the National Outcome of making Scotland an attractive place to do business.

### **Consultation**

- **Within Government**

Colleagues within the Scottish Government have been consulted. No inter-departmental consultation is required, although other administrations (e.g. DEFRA) will be copied in for information.

Marine Scotland LOT were consulted regarding the categories of activity included and the practical application of procedure. SGLD was consulted regarding the legal parameters within which the registerable activities must take place. Final approval of the proposals was approved at Branch Head level.

- **Public Consultation**

This Partial Business and Regulatory Impact Assessment is produced as part of the 'Consultation on Registerable Marine Activities and on Marine Licence Applications Requiring Pre-Application Consultation', a public consultation covering both registerable activities and those subject to pre-application consultation (covered by a separate BRIA). This consultation will be launched in the spring for the standard consultation period of 12 weeks.

- **Business**

Throughout the consultation period, the Scottish Government will meet directly with a range of bodies affected by these proposals. There will be two consultation events held at different locations in Scotland where we will have face-to-face discussions with a number of businesses.

### **Options**

- **Option 1.**

No introduction of 'Registerable Activities' to the Scottish marine licensing regime. This would result in the specified low impact activities requiring to be licensed.

- **Option 2.**

Introduce 'Registerable Activities' into the Scottish marine licensing regime. This new tier will allow for minimalist regulation of low-impact activities, streamlining the process for both applicants and regulators.

- **Sectors and groups affected**

Those carrying out low impact activities such as recreational diving, underwater archaeology, yacht racing and those responsible for removing marine mammal carcasses from the foreshore (usually the local authority).

- **Benefits**

- **Option 1.**  
A small saving to the Scottish Government due to there being no need to go to the expense of laying the associated legislation.
  
- **Option 2.**  
The reduced regulatory burden for applicants under this category would include savings associated with the application process. The policy is not to charge applicants to register activities with MS LOT. In turn, for MS LOT, the process of approving an activity for registration would be less labour-intensive and demand fewer resources than that of applying for a marine licence.
  
- **Costs**
  
- **Option 1.**  
If 'Registerable Activities' are not introduced into the Scottish marine licensing regime, then those activities will remain licensable. In those circumstances, industry and individuals wishing to carry out those activities will incur the cost associated with applying for a licence. These activities are likely to fall into the lower bandings, attracting fees between £50 and £600. There will also be costs associated with preparing the application and providing supporting information.
  
- **Option 2.**  
Some costs will be borne by the Scottish Government. Because the policy is not to charge applicants for registering an activity, the Scottish Government would lose this income. However, registration will require less administrative resource than processing licence applications and so savings would be made in this regard.

### **Scottish Firms Impact Test**

Throughout the consultation period, Marine Scotland will meet directly with a range of bodies and businesses affected by the proposals to introduce registerable activities, so we can better assess the costs and/or benefits. We will update this section with the results of these discussions post consultation

- **Competition Assessment**

We have assumed there will not be any competition impacts as a result of the changes we are proposing and the answers to the Office of Fair Trading's Competition Filter questions below confirm this. We would welcome views on this assumption.

Does the policy:

**1. Directly limit the number or range of suppliers?**

No.

**2. Indirectly limit the number or range of suppliers?**

No.

### 3. Limit the ability of suppliers to compete?

No.

### 4. Reduce suppliers' incentives to compete vigorously?

No.

- **Test run of business forms**

The registration process may involve the use of a simple form. This form will be a 'living' document which will develop as the process is refined. Forms will be 'test run' at consultation events carried out as part of the consultation process.

#### **Legal Aid Impact Test**

There should be no impact on legal aid issues under these proposals. We have passed this to the Access to Justice Team who are following up with the Legal Aid Board and this section will be updated post-consultation.

#### **Enforcement, sanctions and monitoring**

It is not thought likely that the proposals will result in non-compliance. Registering an activity will not attract a fee, so there is little disincentive to apply. If the activity exceeds the specified level of environmental impact, then it no longer qualifies as 'registerable' and becomes a licensable activity.

The requirement for a licence is monitored and enforced by Marine Scotland Compliance. A person found guilty of carrying out a licensable activity under the Marine (Scotland) Act 2010, without an appropriate licence, is liable to a fine not exceeding £50,000 or to imprisonment for a period not exceeding 2 years, or both.

#### **Implementation and delivery plan**

Section 33 of the Marine (Scotland) Act 2010, regarding 'Registerable Activities', is expected to be implemented in the summer of 2012.

- **Post-implementation review**

The performance of the system implemented under the SSI will be assessed one year after its implementation, to ensure that it is fit for purpose.

#### **Summary and recommendation**

Option 2 is being recommended due to the clear streamlining and regulatory benefits it will provide.

	<b>Costs</b>	<b>Benefits</b>
<b>Option 1:</b>	Licensing costs and delays to industry	Reduced cost to the Scottish Government
<b>Option 2:</b>	Minor administrative costs to the Scottish Government	Reduced regulatory burden and costs to industry

**Declaration and publication**

I have read the impact assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options. I am satisfied that business impact will be assessed with the support of businesses in Scotland.

**Signed:****Date:****Richard Lochhead, Cabinet Secretary for Rural Affairs and the Environment****Scottish Government Contact point: Matt Cartney 46231**

# Partial Business and Regulatory Impact Assessment

## **Title of Proposal**

Marine Licensing – Introduction of Pre-Application Consultation

Ref: Consultation on Registerable Marine Activities and on Marine Licence Applications Requiring Pre-Application Consultation'

Ref: Marine (Scotland) Act 2010

## **Purpose and intended effect**

- **Background**

The 6<sup>th</sup> of April of this year saw the beginning of a new marine licensing regime for Scotland's seas. The new system, provided for by the Marine (Scotland) Act 2010 and the Marine and Coastal Access Act 2009, provides an equitable, efficient and streamlined licensing process for Scotland's seas. The Marine (Scotland) Act covers the region from 0 - 12 Nautical miles (Nm) and the Marine and Coastal Access Act covers the region from 12 - 200 Nm.

The Marine (Scotland) Act provides for Scottish Ministers to prescribe that certain activities or developments should be subject to a pre-application consultation procedure, to be defined in secondary legislation. This would apply to activities or developments at the large scale, with potential for significant effects to the environment, local communities and other legitimate uses of the sea.

It is intended that secondary legislation is laid to specify those activities and to set out the nature of the pre-application consultation. The pre-application consultation will allow conservation groups, members of the public and other interested parties to influence an application for a marine licence at an early stage. It is hoped this will smooth the passage of an application through the licensing procedure, making for a more streamlined, efficient and equitable process.

- **Objective**

To specify categories of activity or development which will be subject to a pre-application consultation procedure. To ensure beneficial dialogue between developers and other interested parties. To reduce the probability of conflict further on into the licensing process.

- **Rationale for Government intervention**

Before these measures can be introduced to augment the current licensing system, secondary legislation will need to be laid before parliament. We intend to go out to consultation with internal and external stakeholders in order to inform the detail of this legislation. It is hoped that legislation covering pre-application consultation will be implemented in the summer of 2012.

As the competent authority responsible for all licensing (except for reserved matters) in Scotland's seas, Scottish Ministers have a duty to ensure that the regulatory framework that supports responsible development in Scotland's seas is as efficient, streamlined and equitable as possible. The introduction of pre-application consultation into the marine licensing regime will help to achieve this goal.

As part of the streamlined licensing process, the introduction of pre-application consultation fits into the National Performance Framework by increasing communication between developers and other interested parties at an early stage in the process. This conforms to the National Outcome of making Scotland an attractive place to do business.

### **Consultation**

- **Within Government**

Colleagues within the Scottish Government have been consulted. No inter-departmental consultation is required, although other administrations (e.g. DEFRA) will be copied in for information.

Marine Scotland Licensing Operations Team (MS LOT) were consulted regarding the categories of activity to be included and the nature of the consultation procedure. Final approval of the proposals was approved at Branch Head level.

- **Public Consultation**

This Partial Business and Regulatory Impact Assessment is produced as part of the 'Consultation on Registerable Marine Activities and on Marine Licence Applications Requiring Pre-Application Consultation', a public consultation covering both activities subject to pre-application consultation and registerable activities (covered in a separate BRIA). This consultation will be launched in the spring for the standard consultation period of 12 weeks.

- **Business**

Throughout the consultation period, the Scottish Government will meet directly with a range of bodies affected by these proposals. There will be two consultation events held at different locations in Scotland where we will have face-to-face discussions with a number of businesses.

### **Options**

- **Option 1.**

No introduction of 'Pre-Application Consultation' to the Scottish marine licensing regime. This would result in applications for marine licences, relating to large scale developments, being submitted to MS LOT without the benefit of pre-application consultation.

- **Option 2.**

Introduce 'Pre-Application Consultation' into the Scottish marine licensing regime. The introduction of pre-application consultation as a statutory requirement for certain classes of activity.

### **Sectors and groups affected**

Developers carrying out the classes of activity subject to pre-application consultation. Local communities where such large scale developments are planned, other commercial activities in the area, environmental and conservation groups.

### **Benefits**

- **Option 1.**  
Retention of the status quo. Applicants would not be required to adapt to the new system. A small reduction in the overall cost of the application process.
- **Option 2.**  
The introduction of 'Pre-Application Consultation' as a statutory requirement for certain large scale activities is expected to have benefits for both developers and other stakeholders, such as local communities and other commercial interests. Developers will benefit from early consultation as it will help them to create a high quality application for submission to MS LOT. It allows developers to address concerns held by stakeholders and plan for suitable mitigation for impacts that cause particular anxiety. This approach will make for more efficient determination of licence applications and reduce the risk of objections delaying the process. Other stakeholders will benefit from pre-application consultation as it will allow them to air concerns early in the process and press for mitigation measures they feel to be necessary. It can also allay concerns that may be based on misconceptions relating to the development concerned.

### **Costs**

- **Option 1.**  
Retention of the status quo. Pre-application consultation is proposed as a method of making the determination of licence applications a more efficient process. An absence of pre-application consultation is likely to lead to complications and delays later in the process, with the associated costs of redeveloping project plans and mitigation measures.
- **Option 2.**  
Some costs will be borne initially by the developer. However, these costs are expected to be relatively insignificant due to the proposed nature of the pre-application consultation process which simply involves local advertising and a single public consultation event in a local venue, such as a village hall. Compared to the overall cost of the developments that will be captured by these regulations, this is very small. It is expected that the benefits in terms of expediting the determination process will more than compensate for the costs. Absolute costs are difficult to establish, because of the variable costs of different venues, etc. A survey of costs has shown that the rental of a venue suitable for a consultation event for a single evening might range between £50 and £1500. The cost of advertising in a local paper is likely to be between £200 and £300. However, even at the upper end of the scale, these costs are small compared to the total cost of a large scale project, such as a wind farm or bridge.

### **Scottish Firms Impact Test**

Throughout the consultation period, Marine Scotland will meet directly with a range of

bodies and businesses affected by the proposals to introduce pre-application consultation, so we can better assess the costs and/or benefits. We will update this section with the results of these discussions post consultation.

- **Competition Assessment**

We have assumed there will not be any competition impacts as a result of the changes we are proposing and the answers to the Office of Fair Trading's Competition Filter questions below confirm this. We would welcome views on this assumption.

Does the policy:

**1. Directly limit the number or range of suppliers?**

No.

**2. Indirectly limit the number or range of suppliers?**

No.

**3. Limit the ability of suppliers to compete?**

No.

**4. Reduce suppliers' incentives to compete vigorously?**

No.

- **Test run of business forms**

No new forms will be introduced as a result of these proposals.

**Legal Aid Impact Test**

There should be no impact on legal aid issues under these proposals. We have passed this to the Access to Justice Team who are following up with the Legal Aid Board and this section will be updated post-consultation.

**Enforcement, sanctions and monitoring**

It is not thought likely that the proposals will result in non-compliance. Pre-application consultation is expected to benefit all parties, and any lack of such consultation will become immediately apparent on the submission of an application. An application submitted under such circumstances would be rejected.

The effectiveness of pre-application consultation will be monitored by MS LOT and MS licensing policy officials post implementation and assessed after one year.

**Implementation and delivery plan**

Sections 23 to 24 of the Marine (Scotland) Act 2010, regarding 'Pre-application Consultation', are expected to be implemented in the summer of 2012.

- **Post-implementation review**

The performance of the system implemented under the SSI will be assessed one year after its implementation, to ensure that it is fit for purpose.

**Summary and recommendation**

Option 2 is being recommended due to the clear streamlining and regulatory benefits it will provide.

	<b>Costs</b>	<b>Benefits</b>
<b>Option 1:</b>	Likelihood of lengthier, more problematic process	No new system, no consultation costs
<b>Option 2:</b>	Rental of consultation venue and advertising	Early identification of potential issues, more efficient determination.

**Declaration and publication**

I have read the impact assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options. I am satisfied that business impact will be assessed with the support of businesses in Scotland

**Signed:**

**Date:**

**Richard Lochhead, Cabinet Secretary for Rural Affairs and the Environment**

**Scottish Government Contact point: Matt Cartney 46231**

# Consultation on Registerable Marine Activities and on Marine Licence Applications Requiring Pre-Application Consultation



## RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

### 1. Name/Organisation

Organisation Name

Title Mr  Ms  Mrs  Miss  Dr  *Please tick as appropriate*

Surname

Forename

### 2. Postal Address

<input type="text"/>		
Postcode	Phone	Email

### 3. Permissions - I am responding as...

Individual

/

Group/Organisation

*Please tick as appropriate*

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

*Please tick as appropriate*  Yes  No

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

*Please tick ONE of the following boxes*

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

*Please tick as appropriate*  Yes  No

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

*Please tick as appropriate*  Yes  No

## CONSULTATION QUESTIONS

**Q1. What are your views on the overall costs and savings identified in the Business and Regulatory Impact Assessments?**

Comments

**Q2. Do you agree with the registration process as described?**

Comments

**Q3. If not, what changes would you propose to the process?**

Comments

**Q4. Do you agree that the listed activities should be registerable, rather than licensable?**

Yes  No

**Q5. Do you have further comments regarding the activities listed above?**

Comments

**Q6. Are there any other classes of activity that should be registerable?**

Comments

**Q7. Do agree that statutory consultees should not be specified in legislation for the pre-application consultation process?**

Yes  No

**Q8. If not, which persons or bodies do you believe should be specified as statutory consultees for the pre-application consultation process?**

Comments

**Q9. Do you agree with the classes of activity that will be subject to pre-application consultation?**

Yes  No

**Q10. If not, what activities would you add or remove from the list?**

Comments

**Q11. Do you believe that the above proposals discriminate disproportionately between persons defined by age, disability, sexual orientation, gender, race and religion and belief?**

Yes  No

**Q12. If you answered yes to Question 11, in what way do you believe the proposals to be discriminatory?**

Comments



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