



# Marine (Scotland) Act 2010

## 2010 asp 5

### PART 4

#### MARINE LICENSING

VALID FROM 06/04/2011

#### *Requirement for licence*

#### **20 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 Scottish Ministers.
- (2) Subsection (1) is subject to any exemptions and special cases provided for by virtue of sections 32 to 37.

VALID FROM 06/04/2011

#### *Licensable marine activities*

#### **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

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- (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,

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- (c) the need to prevent interference with legitimate uses of the sea,
- (d) such other matters as the Ministers consider relevant.

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### *Pre-application consultation*

#### **22 Pre-application consultation: preliminary**

- (1) The Scottish Ministers may by regulations prescribe classes or descriptions of licensable marine activity.
- (2) Where a licensable marine activity is of such a class or description, section 23 applies to a prospective applicant for a marine licence in respect of that activity.
- (3) The Scottish Ministers, if satisfied that a prospective applicant is applying for a marine licence in respect of a licensable marine activity—
  - (a) which—
    - (i) is an activity which has previously been carried on at the site to which the application relates (or at a similar site), or
    - (ii) is similar to such an activity, and
  - (b) for which a licence has previously been granted,may determine that section 23 does not apply to the application.
- (4) Regulations under subsection (1) may also make provision—
  - (a) as to the right of a prospective applicant for a marine licence to notify the Scottish Ministers requiring a statement from them as to whether or not, in their opinion, the activity in respect of which the licence is being sought is of such a class or description,
  - (b) as to the manner in which—
    - (i) notification under paragraph (a) is to be exercised, including provision as to the information that the prospective applicant is to provide,
    - (ii) a statement under paragraph (a) is to be provided, including provision as to when a statement must be provided following receipt of sufficient information to determine the matter,
  - (c) as to the power of the Scottish Ministers to require further information in order to determine the application,
  - (d) as to the effect of a statement under paragraph (a),
  - (e) as to any other matter the Scottish Ministers consider necessary or expedient for the purposes of this section.

#### **23 Pre-application consultation: compliance**

- (1) A person to whom this section applies (“the prospective applicant”) must give notice that an application for a marine licence is to be submitted.
- (2) A period of at least 12 weeks must elapse between giving the notice and the prospective applicant submitting the application.

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- (3) Notice under subsection (1) must contain—
- (a) a description in general terms of the activity to be carried out,
  - (b) a plan or chart showing the outline of the location at which the activity is to be carried out (including, as appropriate, the route to be taken in order to carry out the activity), which is sufficient to identify the location,
  - (c) details as to how the prospective applicant is to be contacted,
  - (d) such other information as may be prescribed by regulations made by the Scottish Ministers.
- (4) Regulations may—
- (a) require that the notification be given to persons specified in the regulations,
  - (b) specify persons who are to be consulted as respects a proposed application and what form that consultation is to take.
- (5) Different provision may be made under subsection (4) for different parts of the Scottish marine area (see also section 165(1)).
- (6) The Scottish Ministers may, provided that they do so within 21 days of having received the notification, notify the prospective applicant that they require (either or both)—
- (a) that the notification under subsection (1) be given to persons additional to those specified under subsection (4) (specifying in the notification who those persons are),
  - (b) that consultation additional to that required by virtue of subsection (4)(b) be undertaken as regards the proposed activity (specifying in the notification what form that consultation is to take).
- (7) In considering whether to give notification under subsection (6), the Scottish Ministers are to have regard to the nature, extent and location of the proposed activity, and to the likely effects at and in the vicinity of that location, of its being carried out.

#### **24 Pre-application consultation report**

- (1) A person who, before submitting an application for a marine licence, was required to comply with section 23 and who proceeds to submit that application must prepare a report as to what has been done to effect such compliance.
- (2) A report under subsection (1) is to be in such form as the Scottish Ministers may by regulations prescribe.

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### *Licences*

#### **25 Application for licence**

- (1) The Scottish Ministers may require an application for a marine licence to be—
  - (a) made in such form as they may determine,
  - (b) accompanied by such fee as may be determined by, or in accordance with, regulations made by them.

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- (2) The Scottish Ministers may determine different forms, and provide for different fees, for different descriptions of applications.
- (3) The Scottish Ministers may require an applicant to—
  - (a) supply such information,
  - (b) produce such articles,as in their opinion may be necessary to enable them to determine the application.
- (4) Where the Scottish Ministers consider that, despite any information supplied or articles produced by the applicant under subsection (3), they are unable to determine the application, the Scottish Ministers may require the applicant to permit such investigations, examinations and tests as they may reasonably require to enable them to determine the application.
- (5) If the Scottish Ministers carry out any investigation, examination or test (whether or not by virtue of subsection (4)) which in their opinion is necessary to enable them to determine an application, they may require the applicant to pay a fee towards the reasonable expenses of the investigation, examination or test.
- (6) If an applicant fails to comply with a requirement made by the Scottish Ministers under this section, the Ministers may—
  - (a) refuse to proceed with the application,
  - (b) refuse to proceed with it until the failure is remedied.

## **26 Notice of applications**

- (1) Having received an application for a marine licence, the Scottish Ministers must either—
  - (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 Scottish Ministers consider is most likely to bring the application to the attention of any persons likely to be interested in it.
- (3) The Scottish Ministers must not proceed with an application unless notice has been published under subsection (1).
- (4) If the Scottish Ministers in pursuance of subsection (1)(a) publish notice of an application, they may require the applicant to pay a fee towards the reasonable expenses of the publication.
- (5) If an applicant fails to pay a fee required by the Scottish Ministers under subsection (4), the Ministers may—
  - (a) refuse to proceed with the application,
  - (b) refuse to proceed with it until the failure is remedied.
- (6) This section does not apply in relation to an application where the Scottish Ministers consider that notice of the application should not be published.

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## **27 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 Scottish Ministers must have regard to—
  - (a) the need to—
    - (i) protect the environment,
    - (ii) protect human health,
    - (iii) prevent interference with legitimate uses of the sea,
  - (b) such other matters as the Scottish Ministers consider relevant.
- (2) In considering an application for a licence to authorise an activity mentioned in item 1 or 2 in section 21(1) (deposit of substance or object), the Scottish Ministers must have regard (among other things) to the practical availability of any alternative method of dealing with the substance or object.
- (3) In considering an application for a licence to authorise an activity mentioned in item 5 in section 21(1) (constructing, altering or improving works), the Scottish Ministers must have regard (among other things) to the effects of any use intended to be made of the works when constructed, altered or improved.
- (4) The Scottish Ministers—
  - (a) must, in relation to each application, consult such persons or bodies as may be specified by them by order,
  - (b) may, in relation to any particular application, consult any other person or body they consider appropriate.
- (5) The Scottish Ministers must give the applicant the opportunity to make representations to them about any observations made to them by a person or body consulted by them under subsection (4).
- (6) The Scottish Ministers must have regard to any representations which they receive from any person having an interest in the outcome of the application.
- (7) The Scottish Ministers may by regulations make further provision as to the procedure to be followed in connection with—
  - (a) applications to them for marine licences,
  - (b) the grant by them of such licences.
- (8) Regulations under subsection (7) may include, 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.

## **28 Inquiries**

- (1) The Scottish Ministers may cause an inquiry to be held in connection with their determination of an application for a marine licence.
- (2) Subsections (2) to (8) of section 210 of the Local Government (Scotland) Act 1973 (c.65) apply to any inquiry the Scottish Ministers may cause to be held under subsection (1) as they apply to inquiries under that section.
- (3) Where—

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- (a) an inquiry is caused by the Scottish Ministers 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.

- (4) In subsection (3), “the relevant authority or authorities” means the Scottish Ministers or, where causing the other inquiry to be held is the function of some other person or body, the Scottish Ministers and that other person or body acting jointly.

## 29 Grant or refusal of licence

- (1) The Scottish Ministers, having considered an application for a marine licence, must—
  - (a) grant the licence unconditionally,
  - (b) grant the licence subject to such conditions as they consider appropriate, or
  - (c) refuse the application.
- (2) The conditions that may be attached to a licence under subsection (1)(b) may relate to any of the following—
  - (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,
  - (c) monitoring of the activities authorised by the licence.
- (3) The conditions include in particular conditions—
  - (a) that no activity authorised by the licence be carried out until the Scottish Ministers have (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 Scottish marine area.
- (4) A licence may provide that—
  - (a) it is to expire unless the activity it authorises is begun or completed within a specified period,
  - (b) it is to remain in force indefinitely or for a specified period of time (which may be determined by reference to a specified event).



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- (5) A licence authorising any activity mentioned in item 5 in section 21(1) (constructing, altering or improving works) 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) The Scottish Ministers must not grant a licence to carry on any activity which is contrary to international law.
- (7) In subsection (4), “specified” means specified in the licence concerned.

### **30 Variation, suspension, revocation and transfer**

- (1) The Scottish Ministers may by notice vary, suspend or revoke a licence granted by them if it appears to them that there has been a breach of any of its provisions.
- (2) The Scottish Ministers may by notice vary, suspend or revoke a licence granted by them if it appears to them that—
  - (a) in the course of the application for the licence the applicant either—
    - (i) supplied information to them that was false or misleading, or
    - (ii) failed to supply information that the applicant might reasonably have been expected to supply, and
  - (b) if the correct information had been supplied—
    - (i) they would have, or
    - (ii) it is likely that they would have,
 refused the application or granted the licence in different terms.
- (3) The Scottish Ministers may by notice vary, suspend or revoke a licence granted by them if it appears to them that the licence ought to be varied, suspended or revoked for any of the following reasons—
  - (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 Ministers to be relevant.
- (4) Any suspension under subsection (1), (2) or (3) is for such period as the Scottish Ministers may specify in the notice of suspension.
- (5) The Scottish Ministers may by further notice extend the period of the suspension.
- (6) But a licence may not by virtue of this section be suspended in total for a period exceeding 18 months.
- (7) On an application made by a licensee, the Scottish Ministers may vary a licence if satisfied that the variation being applied for is not material.
- (8) On an application made by a licensee, the Scottish Ministers—
  - (a) may transfer the licence from the licensee to another person, and
  - (b) if they do so, must vary the licence accordingly.
- (9) A licence may not be transferred except in accordance with subsection (8).



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### **31 Pre-variation, suspension or revocation procedure**

- (1) This section applies where the Scottish Ministers propose to vary, suspend or revoke a licence under section 30.
- (2) The Scottish Ministers must notify—
  - (a) the licensee,
  - (b) any other person whom they consider would be adversely affected by the variation, suspension or revocation.
- (3) Such notification must—
  - (a) state that the Scottish Ministers propose to vary, suspend or, as the case may be, revoke the licence,
  - (b) state the ground on which they propose to do so,
  - (c) specify a period of not less than 28 days within which the person notified may request the opportunity to make representations about the proposal before a person appointed by the Scottish Ministers.
- (4) The Scottish Ministers must appoint a person (the “appointed person”) for the purpose of—
  - (a) hearing any such representations, and
  - (b) reporting to them on the merits of such representations.
- (5) Where a request referred to in subsection (3)(c) is made timeously, the Scottish Ministers must—
  - (a) provide a reasonable opportunity for the person notified to make representations to the appointed person,
  - (b) (where that opportunity has been taken) have regard to the appointed person's report on the representations.
- (6) Where the Scottish Ministers consider that there is an urgent need to vary or suspend a licence, they may do so—
  - (a) for a period not exceeding 3 months,
  - (b) until there is no longer such a need, whichever is the shortest, without doing the things mentioned in subsections (2) and (5).
- (7) The Scottish Ministers may, by regulations, make provision as to—
  - (a) the categories of person who may be an appointed person or the qualifications of such persons,
  - (b) the procedure to be followed at a hearing under subsection (4)(a),
  - (c) the manner in which reports under subsection (4)(b) are to be communicated to them,
  - (d) the publication of such reports.

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### *Exemptions from licensing requirements*

#### **32 Exemptions specified by order**

- (1) The Scottish Ministers may by order specify activities which—
  - (a) are not to need a marine licence,
  - (b) 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 subsection (1) include conditions enabling the Scottish Ministers to require a person to obtain their approval before the person does anything for which a licence would be needed but for the order.
- (3) Approval under subsection (2) may be either—
  - (a) without conditions, or
  - (b) subject to such conditions as the Scottish Ministers consider appropriate.
- (4) In deciding whether to make an order under subsection (1), 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.
- (5) The Scottish Ministers must consult such persons as they consider appropriate as to any order the Ministers propose to make under subsection (1).

#### **33 Activities below specified threshold of environmental impact**

- (1) The Scottish Ministers may by regulations provide that licensable marine activities which fall below a specified threshold of environmental impact—
  - (a) are not to need a marine licence, but
  - (b) are instead to be registered.
- (2) Regulations under subsection (1) may—
  - (a) define or elaborate the meaning of—
    - (i) “fall below”,
    - (ii) “registered”,
    - (iii) “specified threshold of environmental impact”,
  - (b) make further provision in relation to registration of the activities, including in particular the procedure in relation to registration.
- (3) The regulations may also—
  - (a) create offences,
  - (b) provide that any offence created is triable summarily or on indictment,
  - (c) provide for any offence created to be punishable—
    - (i) on summary conviction, by a fine not exceeding £50,000,

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(ii) on conviction on indictment, by a fine, imprisonment for a period not exceeding 2 years, or both.

(4) The Scottish Ministers must consult such persons as they consider appropriate as to any regulations the Ministers propose to make under subsection (1).

### **34 Oil and gas, defence or pollution**

Nothing in this Part applies to—

- (a) any activity relating to a matter which is a reserved matter by virtue of Section D2 (oil and gas) in Part II of Schedule 5 to the Scotland Act 1998 (c.46) and which is an activity outside controlled waters (within the meaning of section 30A(1) of the Control of Pollution Act 1974 (c.40)),
- (b) any activity relating to a matter which is a reserved matter by virtue of paragraph 9 (defence) in Part I of that Schedule,
- (c) any activity falling within the subject matter of Part 6 (pollution) of the Merchant Shipping Act 1995 (c.21).

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### *Special provision for certain cases*

### **35 Special procedure for applications relating to certain electricity works**

(1) This section applies where—

- (a) a person who proposes to carry out an activity must first make both—
  - (i) an application for a marine licence, and
  - (ii) an application for consent under section 36 of the Electricity Act (consent for construction etc. of generating stations) (a “generating station application”) in relation to the activity or other works to be undertaken in connection with the activity,
- (b) the person makes both applications, or one of them, and
- (c) the Scottish Ministers—
  - (i) decide that both applications are to be considered together and, as the case may be, if only one of the applications has been made that it is not to be considered without the other, and
  - (ii) give the person notice of their decision.

(2) Both of the applications are to be considered together; but this is subject to any provision that may be made in an order under subsection (3).

(3) The Scottish Ministers may by order do any of the following—

- (a) provide that such procedural provisions of this Part as are specified in the order are not to apply to the person's application for the marine licence,
- (b) provide that such procedural provisions of the Electricity Act as are so specified are to apply to the application instead,
- (c) modify the procedural provisions of the Electricity Act in their application to the marine licence by virtue of paragraph (b),

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- (d) in relation to cases where the Scottish Ministers come to the conclusion that either the application for the marine licence or the generating station application is not going to be made, make additional provision modifying either—
- (i) such procedural provisions of this Part as are specified in the order, or
  - (ii) such procedural provisions of the Electricity Act as are specified in the order.

(4) In this section—

“the Electricity Act” means the Electricity Act 1989 (c.29),

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

### **36 Electronic communications apparatus**

- (1) The Scottish Ministers must not issue a licence to carry out any activity which amounts to or involves the exercise of a right conferred by paragraph 11 of the electronic communications code set out in Schedule 2 to the Telecommunications Act 1984 (c.12) (works in connection with electronic communications apparatus) unless they are 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 who appear to the Scottish Ministers to be owners of interests in the tidal water or lands on, under or over which the right is to be exercised, for any loss or damage sustained by those persons in consequence of the activity being carried out.

### **37 Submarine cables**

- (1) This section applies where a stretch of exempt submarine cable—
- (a) is proposed to be laid,
  - (b) is in the course of being laid,
  - (c) has been laid,
- beyond the seaward limits of the territorial sea.
- (2) The Scottish Ministers must grant any application made to them for a marine licence for the carrying on of a licensable marine activity in the course of laying any stretch of the cable in the Scottish marine area.
- (3) The Scottish Ministers have the same powers to attach conditions to a marine licence granted by virtue of subsection (2) as they have in relation to any other marine licence (see section 29(1) to (3)).
- (4) Nothing in this Part applies to anything done in the course of maintaining any stretch of the cable in the Scottish marine area.
- (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,

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- (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,
  - “UK sector of the continental shelf” means the areas for the time being designated by an Order in Council under section 1(7) of the Continental Shelf Act 1964 (c.29).

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### *Appeals against licensing decisions*

#### **38 Appeals against licensing decisions**

- (1) The Scottish Ministers must by regulations make provision for any person who applies for a marine licence to appeal to the sheriff against a decision under section 29.
- (2) The regulations required by subsection (1) must come into force on the day on which this Part comes into force.
- (3) The regulations may include provision—
  - (a) as to the procedure to be followed as respects an appeal,
  - (b) for or in connection with suspending or varying any conditions subject to which the licence was granted, pending determination of the appeal,
  - (c) as to the powers of the sheriff to whom the appeal is made.

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### *Offences*

#### **39 Breach of requirement for, or conditions of, licence**

- (1) A person who—
  - (a) contravenes section 20(1), or
  - (b) fails to comply with any condition of a marine licence,commits an offence.

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- (2) A person who is bound by a condition of a licence by virtue of section 29(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 Scottish Ministers have 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,
  - (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 period not exceeding 2 years, or to both.

#### **40 Defences: action taken in an emergency**

- (1) It is a defence for a person charged with an offence under section 39(1) in relation to any activity to prove that—
- (a) the activity was carried out for the purpose of saving life, or for the purpose of securing the safety of a vessel, aircraft or marine structure, and
  - (b) the person took steps within a reasonable time to inform the Scottish Ministers 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) The defence provided by subsection (1) is not available to a person where—
- (a) the court is not satisfied that the activity either—
    - (i) was necessary for any of the purposes mentioned in subsection (1) (a), or
    - (ii) was a reasonable step to take in the circumstances, or
  - (b) the necessity for the activity was due to the fault of the accused or a person acting under the accused's direction or control.

#### **41 Defences: electronic communications: emergency works**

- (1) It is a defence for a person charged with an offence under section 39(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).

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## **42 Offences relating to 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 way, knowing the statement to be false or misleading,
  - (b) makes a statement which is false or misleading in a material way, being reckless as to whether the statement is false or misleading, or
  - (c) intentionally fails to disclose any material information,commits an offence.
- (2) The purposes are—
  - (a) the purpose of procuring the issue, variation or transfer of a marine licence,
  - (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 marine 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.

VALID FROM 06/04/2011

### *Enforcement notices*

## **43 Compliance notice**

- (1) If it appears to the Scottish Ministers that subsection (3) is satisfied in relation to a person carrying on an activity, they 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 (4)(b)) as are specified in it.
- (3) This subsection is satisfied if—
  - (a) a person holding a marine licence—
    - (i) has carried on, or is carrying on, a licensable marine activity under the licence,
    - (ii) in carrying on that activity has failed, or is failing, to comply with a condition of the licence, and
  - (b) the carrying on of the activity has not caused, and is not likely to cause, any of the following—
    - (i) serious harm to the environment,
    - (ii) serious harm to human health,
    - (iii) serious interference with legitimate uses of the sea.
- (4) A compliance notice must—
  - (a) state the Scottish Ministers' grounds for believing that subsection (3) is satisfied,
  - (b) require the person to take such steps as the Scottish Ministers consider 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.



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#### **44 Remediation notice**

- (1) If it appears to the Scottish Ministers that subsection (3) is satisfied in relation to a person carrying on an activity, they may issue a remediation notice to the 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 (5)(b)) as are specified in it,
  - (b) to pay to the Scottish Ministers any sum (falling within subsection (5)(c)) as is specified in it.
- (3) This subsection is satisfied if—
  - (a) a person has carried on, or is carrying on, a licensable marine activity,
  - (b) the carrying on of the activity has involved, or involves, the commission of an offence under section 39(1), and
  - (c) the carrying on of the activity has caused, or is causing or is likely to cause, any of the following—
    - (i) harm to the environment,
    - (ii) harm to human health,
    - (iii) interference with legitimate uses of the sea.
- (4) Before issuing a remediation notice, the Scottish Ministers 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.
- (5) A remediation notice—
  - (a) must state the Scottish Ministers' grounds for believing that subsection (3) is satisfied,
  - (b) may require the person to take such remedial or compensatory steps as the Scottish Ministers consider 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 Scottish Ministers whether under section 59 (power to take remedial action) or otherwise,
  - (d) must state the period before the end of which the steps must be taken or (as the case may be) that sum must be paid.
- (6) In subsection (5)(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 (7) (whether or not the steps are taken at or near the place where the harm or interference mentioned in subsection (3)(c) 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).
- (7) 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 (3)(c),
  - (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

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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 Scottish Ministers consider appropriate in all the circumstances of the case.

#### **45 Further provision as to compliance and remediation 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,
  - (b) if a marine licence has been granted in relation to that activity, may also be served on the licensee.
- (2) The Scottish Ministers 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 43(4)(c) or (as the case may be) section 44(5)(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 period not exceeding 2 years, or to both.

VALID FROM 06/04/2011

### *Civil sanctions*

#### **46 Fixed monetary penalties**

- (1) The Scottish Ministers may by order make provision about the imposition of fixed monetary penalties on persons in relation to offences under this Part.
- (2) Provision under subsection (1) must provide that—
- (a) fixed monetary penalties may only be imposed where the Scottish Ministers are satisfied beyond reasonable doubt that a person has committed an offence under this Part,
  - (b) fixed monetary penalties are to be imposed by notice,
  - (c) the amount of the penalty which can 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.
- (3) For the purpose of this Part, a “fixed monetary penalty” is a requirement to pay to the Scottish Ministers a penalty of a specified amount.

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- (4) For the purposes of this section “specified” means specified in an order made under this section.

#### **47 Fixed monetary penalties: procedure**

- (1) Provision under section 46(1) must secure the results in subsection (2).
- (2) The results are that—
- (a) where the Scottish Ministers propose to impose a fixed monetary penalty on a person, they must serve on the 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 specified 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 Scottish Ministers in relation to the proposed imposition of the fixed monetary penalty, and
    - (ii) the Scottish Ministers must at the end of the period for making representations and objections decide whether to impose the fixed monetary penalty,
  - (d) where the Scottish Ministers decide 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 to the sheriff 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) how payment to discharge the liability for a fixed monetary payment may be made,
  - (c) the effect of payment of the sum referred to in subsection (2)(b),
  - (d) the right to make representations and objections,
  - (e) the circumstances in which the Scottish Ministers may not impose the fixed monetary penalty,
  - (f) 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 was received, and
  - (g) 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 was received.
- (4) Provision to secure the result in subsection (2)(c)(ii)—
- (a) must secure that the Scottish Ministers may not decide to impose a fixed monetary penalty on a person where they are 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 Scottish Ministers may not decide to impose a fixed monetary penalty.
- (5) To comply with this subsection the final notice must include information as to—

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- (a) the grounds for imposing the penalty,
  - (b) how payment may be made,
  - (c) the period within which payment must be made,
  - (d) the early payment discounts or late payment penalties,
  - (e) rights of appeal, and
  - (f) the consequences of non-payment.
- (6) Provision to secure the result in subsection (2)(e) must secure that the grounds on which a person may appeal against a decision of the Scottish Ministers include that—
- (a) the decision was based on an error of fact,
  - (b) the decision was wrong in law,
  - (c) the decision was unreasonable.
- (7) In this section “specified” means specified in an order made under section 46.

#### **48 Variable monetary penalties**

- (1) The Scottish Ministers may by order make provision about the imposition of variable monetary penalties on persons in relation to offences under this Part.
- (2) Provision under subsection (1) must provide that—
- (a) variable monetary penalties may only be imposed where the Scottish Ministers are satisfied beyond reasonable doubt that a person has committed an offence under this Part,
  - (b) variable monetary penalties are to be imposed by notice.
- (3) For the purposes of this Part a “variable monetary penalty” is a penalty of such amount as the Scottish Ministers may in each case determine.

#### **49 Variable monetary penalties: procedure**

- (1) Provision under section 48 must secure the results in subsection (2).
- (2) The results are that—
- (a) where the Scottish Ministers propose to impose a variable monetary penalty on a person, they must serve on the person a notice (a “notice of intent”) which complies with subsection (3),
  - (b) the person may make written representations and objections to the Scottish Ministers in relation to the proposed imposition of the penalty,
  - (c) after the end of the period for making such representations and objections the Scottish Ministers must decide whether to impose a penalty and, if so, the amount of the penalty,
  - (d) where the Scottish Ministers decide 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 to the sheriff 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,

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- (c) the circumstances in which the Scottish Ministers 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 to secure the result in subsection (2)(c)—
- (a) must secure that the Scottish Ministers may not decide to impose a penalty on a person where they are satisfied that the person would not, by reason of any defence raised by that person, be liable to be convicted of the offence in question, and
  - (b) may include provision for other circumstances in which the Scottish Ministers may not decide to impose a penalty.
- (5) Provision to secure the result in 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 Scottish Ministers to be able to accept or reject such an undertaking, and
  - (c) the Scottish Ministers to take any undertaking so accepted into account in their decision.
- (6) To comply with this subsection the final notice must include information as to—
- (a) the grounds for imposing the penalty,
  - (b) how payment may be made,
  - (c) the period within which the 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 to secure the result in subsection (2)(e) must secure that the grounds on which a person may appeal against a decision of the Scottish Ministers include that—
- (a) the decision was based on an error of fact,
  - (b) the decision was wrong in law,
  - (c) the amount of the penalty is unreasonable,
  - (d) the decision was unreasonable for any other reason.

## **50 Further provision about civil sanctions**

Schedule 2 makes further provision about civil sanctions under this Part.

VALID FROM 06/04/2011

### *Delegation*

## **51 Delegation of functions relating to marine licensing**

- (1) The Scottish Ministers may make an order which—

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- (a) designates any of the delegable marine licensing functions which would (apart from any order under this section) be exercisable by the Scottish Ministers, and
  - (b) provides that the functions so designated (the “designated functions”), instead of being so exercisable, are to be exercisable by such delegate, acting on behalf of the Scottish Ministers as is designated in the order.
- (2) The delegate so designated may be either—
- (a) a public authority, or
  - (b) a group of persons comprising (either or both)—
    - (i) persons nominated by such public authorities with an interest in the Scottish marine area as the Scottish Ministers consider appropriate,
    - (ii) persons nominated by the Scottish Ministers.
- (3) The Scottish Ministers may make an order under this section—
- (a) where the proposed delegate is a public authority, only with the consent of the authority,
  - (b) where the proposed delegate is a group of persons referred to in paragraph (b) of subsection (2), only with the consent of any public authority responsible for nominating under sub-paragraph (i) of that paragraph.
- (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 functions of the Scottish Ministers under this Part other than excepted functions.
- (6) The excepted functions are functions under—
- (a) section 21(3) (altering the list of licensable marine activities),
  - (b) section 25(1)(b) (making regulations regarding the fee for an application),
  - (c) section 27(4)(a) (making order specifying consultees for licence applications),
  - (d) section 27(7) (making regulations as to the procedure for applications),
  - (e) section 32(1) and (5) (making orders specifying activities which do not require a marine licence and consulting in relation to such orders),
  - (f) section 33(1) (making regulations regarding activities falling below specified levels of environmental impact),
  - (g) section 35(3) (making orders providing for special procedures for certain applications),
  - (h) section 38(1) (making regulations regarding appeals against licensing decisions),
  - (i) sections 46(1) and 48(1) (making orders conferring powers to impose civil sanctions),
  - (j) this section and section 53,
  - (k) section 54(3) (making regulations regarding a register of licensing information),
  - (l) section 61 (making regulations regarding appeals against notices issued under sections 30, 43, 44, 55 or 57).

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## **52 Orders under section 51: supplementary provisions**

- (1) For so long as an order made under section 51 remains in force, the designated functions are exercisable by the delegate acting on behalf of the Scottish Ministers (and are not exercisable by the Scottish Ministers).
- (2) Subsection (1) is subject to any provision to the contrary which is included in the order.
- (3) An order under section 51 may include—
  - (a) such terms or conditions,
  - (b) such obligations or requirements,
  - (c) such financial provisions,as the Scottish Ministers 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 26, and the circumstances in which such notice should not be published,
  - (d) matters (in addition to those set out in section 27) to which the delegate must have regard in determining applications for licences,
  - (e) the circumstances in which the delegate must exercise the power to consult under section 27(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 Scottish Ministers, a court, tribunal or (as the case may be) person to which, or whom, the appeal is made),
  - (h) any other provision that may be made by virtue of section 27(7).
- (5) An order under section 51 may make different provision for different cases or different delegates.
- (6) Where an order has been made under section 51 that a delegate is to grant licences—
  - (a) the delegate may (in accordance with subsections (1) to (3) and (8) of section 30) vary, suspend, revoke or transfer a licence granted before making the order, and
  - (b) any reference in those subsections to a licence granted by the Scottish Ministers includes a reference to a licence granted by the delegate.
- (7) The Scottish Ministers may make grants to a delegate for the exercise of the designated functions.

## **53 Directions to delegates as regards the performance of the marine licensing designated functions**

- (1) This section applies where any functions are exercisable by a delegate by virtue of an order made under section 51 by the Scottish Ministers.



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- (2) The Scottish Ministers may from time to time give directions to the delegate with respect to the performance of the functions.
- (3) Before giving any direction under this section, the Scottish Ministers must consult the delegate.
- (4) A delegate to whom directions are given under this section must comply with the directions.
- (5) The Scottish Ministers must publish any direction given under this section in such manner as they consider is most likely to bring the direction to the attention of persons likely to be affected by it.

VALID FROM 06/04/2011

### *Register of licensing information*

#### **54 Register of licensing information**

- (1) The Scottish Ministers must maintain a register of marine 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 Scottish Ministers.
- (4) The Scottish Ministers must make arrangements—
  - (a) for the register to be available for inspection at all reasonable times by members of the public free of charge,
  - (b) for copies of entries in the 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 the Scottish Ministers determine 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 Scottish Ministers must review a determination to exclude information under subsection (5) every 4 years.

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- (7) On a review under subsection (6), the Scottish Ministers must include information in the register unless, on the application of any person to whom the information relates, the Scottish Ministers determine that it should continue to be excluded.
- (8) Where information of any description is excluded from a register by virtue of subsection (5), 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.

VALID FROM 06/04/2011

*Stop notices and emergency safety notices*

**55 Notice to stop activity causing serious harm etc.**

- (1) If it appears to the Scottish Ministers that subsection (3) is satisfied in relation to a person carrying on an activity, they may issue a stop notice to the 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) a person is carrying on, or is likely to carry on, a licensable marine activity (whether or not in accordance with a marine licence),
  - (b) the carrying on of the activity to be specified in the notice—
    - (i) is causing or is likely to cause any of the effects in subsection (4), or
    - (ii) is creating or is likely to create an imminent risk of any of those effects.
- (4) The effects are—
  - (a) serious harm to the environment,
  - (b) serious harm to human health,
  - (c) serious interference with legitimate uses of the sea.
- (5) A stop notice (in addition to specifying the activity to which it relates)—
  - (a) must state the Scottish Ministers' grounds for believing that subsection (3) is 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 Scottish Ministers consider appropriate to ensure that the cessation of the activity takes place safely.
- (6) Except in a case falling within subsection (8), 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.

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- (7) A stop notice may be renewed more than once under subsection (6)(b), but not so that it has effect for a total period exceeding 35 days.
- (8) If a stop notice relating to a licensable marine activity is issued to a person who does not hold a marine licence authorising the activity, the notice may remain in force until such time (if any) as such a licence is granted to the person.

## **56 Further provision as to stop notices**

- (1) A stop notice issued by the Scottish Ministers—
  - (a) must be served on any person carrying on or in control of the activity to which the notice relates,
  - (b) if a marine licence has been granted in relation to that activity, may also be served on the licensee.
- (2) The Scottish Ministers 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 55(5)(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 period not exceeding 2 years, or both.

## **57 Emergency safety notices**

- (1) This section applies if it appears to the Scottish Ministers that serious interference with legitimate uses of the sea is occurring, or is likely to occur, 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 Scottish Ministers 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 Scottish Ministers impose on that person such requirements as are specified in the notice with respect to any of the matters specified in subsection (4).
- (4) The 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 Scottish Ministers' grounds for believing that serious interference with legitimate uses of the sea is occurring, or is likely to occur,

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- (b) must state the date and time from which the requirements are to take effect (which may be at 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 Scottish Ministers consider appropriate to ensure that compliance with the requirements takes place safely.

## **58 Further provision as to emergency safety notices**

- (1) An emergency safety notice issued by the Scottish Ministers 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) The Scottish Ministers 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 57(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 period not exceeding 2 years, or to both.

VALID FROM 06/04/2011

### *Other powers*

## **59 Power to take remedial action**

- (1) If it appears to the Scottish Ministers that a licensable marine activity has been carried on otherwise than under a marine licence and in accordance with its conditions, they may carry out any works that appear to them 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 (2),
  - (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.

*Status: Point in time view as at 01/07/2010. This version of this part contains provisions that are not valid for this point in time.*

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- (2) The harm or interference mentioned in subsection (1)(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.

#### **60 Power to test and charge for testing certain substances**

- (1) The Scottish Ministers may, at the request of any person, conduct tests for the purpose of ascertaining the probable effect on the marine environment of using any substance for treating fouling matter—
- (a) on or under the surface of the sea or of the seabed, or
  - (b) on any surface of a vessel, vehicle, aircraft or marine structure in, on or over the sea or on the seabed.
- (2) In this section “fouling matter” means—
- (a) oil or chemicals, or
  - (b) algae or other living or dead organisms.
- (3) The Scottish Ministers may recover any expenses reasonably incurred in conducting any tests under subsection (1) from any person at whose request the tests were conducted.

VALID FROM 06/04/2011

### *Appeals against notices under this Part*

#### **61 Appeals against notices**

- (1) The Scottish Ministers must by regulations make provision for any person to whom a notice listed in subsection (2) is issued, to appeal to the sheriff against that notice.
- (2) The notices are those issued under—
- (a) section 30 (notice varying, suspending or revoking marine licence for breach of conditions),
  - (b) section 43 (compliance notice),
  - (c) section 44 (remediation notice),
  - (d) section 55 (stop notice), or
  - (e) section 57 (emergency safety notice).
- (3) The regulations must come into force on the day on which this Part comes into force.
- (4) The regulations may include provision—
- (a) as to the procedure to be followed with respect to an appeal,
  - (b) suspending the notice pending determination of the appeal,
  - (c) as to the powers of the sheriff to whom the appeal is made.

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VALID FROM 06/04/2011

*Offences: supplementary provision*

**62 General defence of due diligence**

- (1) In any proceedings for an offence under this Part, it is a defence for the person charged (“the accused”) to prove that the accused 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—
  - (a) if the accused—
    - (i) acted under an employer's instructions,
    - (ii) did not know and had no reason to suppose that the acts done constituted a contravention of the provision in question, and
    - (iii) took all such steps as reasonably could be taken to ensure that no offence would be committed, or
  - (b) if the accused—
    - (i) acted in reliance on information supplied by another person,
    - (ii) did not know and had no reason to suppose that the information was false or misleading, and
    - (iii) took all such steps as reasonably could be taken to ensure that no offence would be committed.
- (3) Subsection (2) does not affect the generality of subsection (1).
- (4) If in any proceedings 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 accused by an employer), or
  - (b) reliance on information supplied by another person,the accused is not, without leave of the court, entitled to rely on the defence unless the requirement in subsection (5) is satisfied.
- (5) The requirement is that—
  - (a) at least 7 clear days before the hearing, and
  - (b) if the accused has previously appeared before a court in connection with the alleged offence, within one month of the first such appearance,the accused has served on the prosecutor a notice giving such information identifying or assisting in the identification of the other person as was then in the accused's possession.

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VALID FROM 06/04/2011

*Power by order to provide marine fish farming is not “development”*

### **63 Power by order to provide marine fish farming is not “development”**

- (1) The Town and Country Planning (Scotland) Act 1997 (c.8) is amended as follows.
- (2) In section 26(1) (meaning of “development”), after “section” where it first occurs insert “ and to section 26AB ”.
- (3) After section 26AA, insert—

#### **“26AB Power by order to provide marine fish farming is not “development”**

- (1) The Scottish Ministers may by order provide that—
  - (a) section 26(6) does not apply as respects the placing or assembly of equipment for the purpose of fish farming in waters identified in the order (the “relevant waters”),
  - (b) section 26(6AA) does not apply as respects any material change in the use of equipment so placed or assembled for that purpose, and
  - (c) the operation of a marine fish farm in the relevant waters in the circumstances specified in section 26AA is not “development” for the purposes of this Act.
- (2) An order under subsection (1) may be made only with the agreement of the planning authority (or planning authorities) for the relevant waters; and in this subsection the “planning authority” means the planning authority specified in an order under section 26(6D).”.
- (4) In section 275 (regulations and orders)—
  - (a) in subsection (4), after “26(2)(f), (6A) and (6C),” insert “ 26AB(1), ”,
  - (b) in subsection (5A), after “26(6A) or (6C)” insert “ or 26AB(1) ”.

### *Interpretation of Part 4*

### **64 Interpretation of Part 4**

- (1) In this Part—

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

“vessel” includes—

  - (a) hovercraft,
  - (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 historical or archaeological interest.



**Status:**

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**Changes to legislation:**

There are currently no known outstanding effects for the Marine (Scotland) Act 2010, Part 4.