

2013 No. 286

ENVIRONMENTAL PROTECTION

LICENSING (MARINE)

**The Marine Licensing (Pre-application Consultation) (Scotland)
Regulations 2013**

<i>Made</i>	- - - -	<i>8th October 2013</i>
<i>Laid before the Scottish Parliament</i>		<i>10th October 2013</i>
<i>Coming into force</i>	- -	<i>1st January 2014</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 22(1) and (4), 23(3)(d), (4) and (5), 24(2) and 165(1) of the Marine (Scotland) Act 2010(a) and all other powers enabling them to do so.

Citation and commencement

1. These Regulations may be cited as the Marine Licensing (Pre-application Consultation) (Scotland) Regulations 2013 and come into force on 1st January 2014.

Application

2. Regulations 5 to 7 apply in relation to any application for a marine licence received by the Scottish Ministers on or after 6th April 2014.

Interpretation

3. In these Regulations—

“the Act” means the Marine (Scotland) Act 2010;

“delegate” means a person who is designated in a direction given under section 12(1) of the Act;

“inter-tidal boundary” means the area of sea and foreshore bounded by the mean low water spring tide and the mean high water spring tide of Scotland;

“local newspaper” means a newspaper which is likely to come to the attention of those persons who are likely to be affected by the licensable marine activity for which a marine licence is to be sought;

“pre-application consultation report” means a report which must be prepared by virtue of section 24(1) of the Act;

“pre-application consultation statement” means a statement from the Scottish Ministers as to whether or not, in their opinion, an activity in respect of which a marine licence is being sought is of a class or description prescribed by regulation 4; and

“renewable energy structure” means a structure in the Scottish marine area constructed for the purposes of generating electricity and includes all ancillary works.

Prescribed classes or descriptions of licensable marine activity

4. The following classes or descriptions of licensable marine activity are prescribed—
- (a) the deposit of a submarine cable within the Scottish marine area either in the sea or on or under the seabed from a vehicle, vessel, aircraft, marine structure or floating container, but only where such cable—
 - (i) exceeds 1853 metres in length; and
 - (ii) crosses the inter-tidal boundary;
 - (b) the deposit of any substance or object within the Scottish marine area either in the sea or on or under the seabed from—
 - (i) a vehicle, vessel, aircraft, or marine structure;
 - (ii) a container floating in the sea; or
 - (iii) a structure on land constructed or adapted wholly or mainly for the purpose of depositing solids in the sea,
for the purposes of reclaiming land, but only where the total area of land being reclaimed from the sea exceeds 10,000 square metres in extent;
 - (c) the construction of a bridge, causeway or walkway within the Scottish marine area either in or over the sea or on or under the seabed, but only where such bridge, causeway or walkway exceeds 50 metres in length;
 - (d) the construction of any works (with the exception of a renewable energy structure) within the Scottish marine area either in or over the sea or on or under the seabed, but only where the total area in which such works are to be located exceeds 1000 square metres in extent;
 - (e) the alteration or improvement of any works (with the exception of a renewable energy structure) within the Scottish marine area either in or over the sea or on or under the seabed by extending such works, but only where the total area in which such works, as extended, are to be located exceeds 1000 square metres in extent;
 - (f) the construction of a renewable energy structure within the Scottish marine area either in or over the sea or on or under the seabed, but only where the total area in which such structure is to be located exceeds 10,000 square metres in extent; and
 - (g) the alteration or improvement of a renewable energy structure within the Scottish marine area either in or over the sea or on or under the seabed by extending the structure, but only where the total area in which such structure, as extended, is to be located exceeds 10,000 square metres in extent.

Procedure in relation to a pre-application consultation statement

5.—(1) A prospective applicant for a marine licence who considers that the activity in respect of which a licence may, or is to, be sought which may, or is to, be of a class or description prescribed in regulation 4 may notify the Scottish Ministers requiring a pre-application consultation statement from them.

- (2) A notification requiring a pre-application consultation statement must be accompanied by—
- (a) a plan sufficient to identify the area of the Scottish marine area which is the subject of a prospective application for a marine licence;
 - (b) a description of the nature and the purpose of the licensable marine activity and of its possible effects on the environment; and

- (c) such further information or representations that the prospective applicant considers relevant.

(3) On receiving a notification under paragraph (1), the Scottish Ministers must, if they consider that they have not been provided with sufficient information to give a pre-application consultation statement, within three weeks of their receipt of the notification give notice to the prospective applicant of the particular points on which they require further information.

(4) When the Scottish Ministers consider that they have been provided with sufficient information in respect of the marine activity referred to in the notification under paragraph (1) they must provide a pre-application consultation statement to the prospective applicant under paragraph (5) or (6) within three weeks of whichever is the later of—

- (a) the date of receipt by them of the notification requiring a pre-application consultation statement; and
- (b) the date by which they have received all the further information required by them under paragraph (3),

or within such longer period as may be agreed by the Scottish Ministers and the prospective applicant.

(5) Where the Scottish Ministers are of the opinion that the marine activity referred to in the notification under paragraph (1) is of a class or description prescribed in regulation 4, then they must provide the prospective applicant with a pre-application consultation statement to that effect giving reasons for their opinion.

(6) Where the Scottish Ministers are of the opinion that the marine activity referred to in the notification under paragraph (1) is not of a class or description prescribed in regulation 4, then they must provide the prospective applicant with a pre-application consultation statement to that effect giving reasons for their opinion.

Pre-application consultation

6.—(1) This regulation and regulation 7 apply to a prospective applicant for a marine licence to whom the Scottish Ministers have provided a pre-application consultation statement under regulation 5(5).

(2) The prospective applicant for a marine licence must give notification that an application for a marine licence is to be submitted to—

- (a) the Commissioners of Northern Lighthouses;
- (b) the Maritime and Coastguard Agency;
- (c) the Scottish Environment Protection Agency;
- (d) Scottish Natural Heritage; and
- (e) any delegate for a marine region where the application for a marine licence is for an activity which is to be carried out wholly or partly in that region.

Pre-application consultation event

7.—(1) The prospective applicant for a marine licence must—

- (a) hold at least one pre-application consultation event at which those persons mentioned in regulation 6(2), and members of the public, may provide comments to the prospective applicant as regards the licensable marine activity to which the application for a marine licence is to relate; and
- (b) publish in a local newspaper a notice containing—
 - (i) a description, including the location of, the licensable marine activity for which the marine licence is to be sought;
 - (ii) details as to where further information may be obtained concerning the proposed licensable marine activity;

- (iii) the date and place of the pre-application consultation event;
 - (iv) a statement explaining how persons wishing to provide comments to the prospective applicant relating to the proposed licensable marine activity may do so, and the date by which this must be done; and
 - (v) a statement that comments made to the prospective applicant are not representations to the Scottish Ministers and that if the prospective applicant makes an application for a marine licence that there will be an opportunity for representations to be made to the Scottish Ministers on the application.
- (2) A pre-application consultation event must be held no earlier than six weeks after the later of—
- (a) the date on which notification of such event is given in accordance with paragraph (1)(b); and
 - (b) the date of notification that an application for a marine licence is to be submitted is given in accordance with regulation 6(2).
- (3) Paragraph (1) does not apply where—
- (a) a pre-application consultation event in respect of the licensable marine activity for which a marine licence is sought has been held in relation to that activity within one year of the date on which the application for a marine licence is received by the Scottish Ministers;
 - (b) that pre-application consultation event has been held in a suitably accessible venue; and
 - (c) that pre-application consultation event has been advertised at least six weeks prior to the event in a manner likely to bring the application to the attention of persons likely to be interested in it.

Pre-application consultation report

8. A pre-application consultation report which must be prepared by virtue of section 24(1) of the Act must be in the form prescribed in the Schedule.

Written and electronic communication

9.—(1) All applications, notices, notifications, reports and statements to which these Regulations apply must be made in writing.

(2) “Writing” in paragraph (1) includes an electronic communication as defined in section 15(1) of the Electronic Communications Act 2000^(a), which has been recorded and is consequently capable of being reproduced, provided that—

- (a) any document of the type referred to in paragraph (1) must only be sent to the Scottish Ministers by an electronic communication if the Scottish Ministers have represented that electronic communication is a means by which persons can send such a document to them; and

(a) 2000 c.7; section 15 was amended by the Communications Act 2003 (c.21), Schedule 17, paragraph 158. Section 15 provides that “electronic communication” means a communication transmitted (whether from one person to another, from one device to another or from a person to a device or vice versa)- (a) by means of an electronic communications network; or (b) by other means but while in an electronic form.

- (b) notifications required to be sent by the Scottish Ministers to any person must only be made by an electronic communication if the intended recipient has used the same form of electronic communication in communicating with the Scottish Ministers for the purpose of these Regulations or has otherwise represented that that form of electronic communication is a means by which the Scottish Ministers can communicate with them.

RICHARD LOCHHEAD
A member of the Scottish Government

St Andrew's House,
Edinburgh
8th October 2013

Form

PRE-APPLICATION CONSULTATION REPORT

Marine (Scotland) Act 2010: Section 24

1. Proposed Licensable Marine Activity

Please describe below or, where there is insufficient space, in a document attached to this form the proposed licensable marine activity, including its location

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2. Applicant Details

Title	Initials	Surname

Trading Title
(if appropriate)

--

Address

Name of contact
(if different)

--

Position within Company
(if appropriate)

--

Telephone No. (inc. dialing code)	Fax No. (inc. dialing code)

Company Registration No.

Email

Is this prospective applicant the proposed licensee?

YES NO

If NO, please complete Section 3 below.

3. Proposed Licensee Details

Title Initials Surname

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Trading Title
(if appropriate)

Address

Name of contact
(if different)

Position within Company
(if appropriate)

Telephone No.
(inc. dialing code)

Fax No.
(inc. dialing code)

Company Registration No.

Email

4. Pre-application Consultation Event

Please describe below or, where there is insufficient space, in a document attached to this form the pre-application consultation event

5. Information provided by the Prospective Applicant at the Pre-application Consultation Event

Please provide below or, where there is insufficient space, in a document attached to this form details of any information provided by the prospective applicant for a marine licence at the pre-application consultation event

6. Information received by the Prospective Applicant at the Pre-application Consultation Event

Please provide below or, where there is insufficient space, in a document attached to this form details of any comments and objections received by the prospective applicant for a marine licence at the pre-application consultation event

7. Amendments made, or to be made, to the Application for a Marine Licence by the Prospective Applicant following their Consideration of Comments and/or Objections received at the Pre-application Consultation Event

Where any amendments are made, or are to be made, by the prospective applicant for a marine licence to the marine licence application as a direct result of their consideration of comments and/or objections received at the pre-application consultation event, please provide below or, where there is insufficient space, in a document attached to this form details of such amendments

8. Explanation of Approach taken by the Prospective Applicant where, following Relevant Comments and/or Objections being received by the Prospective Applicant at the Pre-application Consultation Event, no Relevant Amendment is made to the Application for a Marine Licence

Where, following comments and/or objections having been received by the prospective applicant for a marine licence at the pre-application consultation event, no relevant amendment is made to the application for a marine licence by the prospective applicant, then please provide below or, where there is insufficient space, in a document attached to this form an explanation for the approach taken

--

CERTIFICATION	
Insert name	
Insert Address	
Town	
County	
Postcode	
I certify that I have complied with the legislative requirements relating to pre-application consultation and that the pre-application consultation has been undertaken in accordance with the statutory requirements.	
Signature _____	Date _____

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for certain classes or descriptions of licensable marine activity to be subject to a requirement for pre-application consultation to be undertaken in terms of sections 22 to 24 of the Marine (Scotland) Act 2010 (“the 2010 Act”).

The Scottish Ministers are responsible for marine licensing in inshore waters under the 2010 Act and in offshore waters under the Marine and Coastal Access Act 2009. These Regulations which are made under the 2010 Act apply only in respect of licensable marine activities in inshore waters.

Regulation 1 provides that these Regulations come into force on 1st January 2014.

Regulation 2 provides that the requirement for pre-application consultation only applies to applications received by the Scottish Ministers on or after 6th April 2014.

Regulation 3 is an interpretation provision.

Regulation 4 prescribes the classes or descriptions of licensable marine activity for which pre-application consultation is required.

Regulation 5 sets down a procedure whereby a prospective applicant for a marine licence may 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 sought is a licensable activity prescribed under regulation 4.

Regulation 6 specifies those persons to whom notices under section 23(1) of the 2010 Act must be given.

Regulation 7 sets out the prescribed manner of consultation which a prospective applicant must undertake with regards to an application for a marine licence where the licensable activity to which the application relates is an activity prescribed by regulation 4. This requires the holding of a public event and the publication of a notice, which must include certain specified information, in a local newspaper. It specifies circumstances in which a public event which would otherwise be required to be undertaken by a prospective applicant under the regulation is not required.

Regulation 8 and the Schedule to these Regulations prescribe the form and content of a pre-application consultation report.

Regulation 9 provides that all applications, approvals, authorisations, notices, notifications, reports and statements must be in writing and permits electronic communications to be used in certain circumstances.

A Business and Regulatory Impact Assessment (“BRIA”) has been prepared in relation to these Regulations and placed in the Scottish Parliament Information Centre. Copies of the BRIA are available from Marine Scotland, Victoria Quay, Leith, Edinburgh, EH6 6QQ and on-line at www.legislation.gov.uk.

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£5.75

S201310091 10/2013 19585

<http://www.legislation.gov.uk/id/ssi/2013/286>

ISBN 978-0-11-102165-1



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