

POLICY NOTE

THE MARINE LICENSING (PRE-APPLICATION CONSULTATION) (SCOTLAND) REGULATIONS 2013

SSI 2013/286

The above instrument is made by the Scottish Ministers 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 (“the Act”) and all other powers enabling them to do so. The instrument is subject to negative resolution procedure.

The instrument implements sections 22 to 24 of the Act which provide that in certain circumstances consultation must be undertaken concerning the proposed licensable activity before an application for a marine licence may be made.

Policy objectives

The purpose of the instrument is to prescribe certain classes or descriptions of licensable marine activities as being subject to public consultation by the prospective applicant before they may make their marine licence application to the Scottish Ministers. The instrument sets down the procedure which must be followed by the prospective applicant to satisfy the pre-application consultation requirement, which includes consulting specified persons and the holding of a public event. The instrument also prescribes the form of a report which sets out what has been done to comply with the legislative requirements.

The consultation ensures that local communities, conservation groups and other interested parties may comment on a proposed development, and to allow their views to be taken into account by the prospective applicant, at an early stage.

The instrument comes into force on 1st January 2014 and applies to applications for marine licences received by the Scottish Ministers on or after 6th April 2014. The time lapse between the making and laying of the instrument and its implementation in full allows prospective applicants for marine licences to become fully acquainted with the new regime in good time before they may be subject to it.

Consultation

A consultation on the proposals for secondary legislation required to implement the new pre-application requirement provided for by the Act took place between 28 March and 20 June 2012. The consultation received 28 responses. In addition the consultation document was considered at 2 public events which took place during the consultation period.

Responses to the consultation were published in the Scottish Government’s Consultation Report which contains a full list of those who responded and is available at the following <http://www.scotland.gov.uk/Publications/2012/12/2079/1>

A number of policy changes have been made to the instrument in response to comments received during the consultation exercise. These are as follows–

- The deposit of submarine cables is a prescribed activity only where the cable exceeds 1853 metres (which is approximately 1 nautical mile) in length and only if it crosses the inter-tidal boundary. This is to avoid capturing short cables between headlands or from shore to fish-farm, for example.
- The ‘renewable energy developments’ category of prescribed activity has been amended to include a minimum threshold based upon the physical extent of the development (10,000 square metres in extent) rather than its power output. This more appropriately addresses the physical impact of the development.
- The proposal to include a flexible category of prescribed activities capturing all activities for which Scottish Ministers might consider it appropriate to require pre-application consultation is not being taken forward in the instrument. It was felt this might introduce uncertainty into the regulatory regime.
- The proposal to include a twelve week time limit for the production of the consultation report by the prospective applicant for a marine licence is not being taken forward in the instrument. It was felt this was an unnecessary measure.

Business and regulatory impact assessment

A Business and Regulatory Impact Assessment has been completed on the policy of public pre-application consultation and was submitted for comment as part of the consultation.

There are no equality impact issues.

Financial effects

There will be some costs borne by developers. However, these will be minimal in comparison to total project costs and it is considered that the benefits to the determination of these applications for marine licences will far outweigh the costs.

Marine Scotland
8 October 2013