



# Islands (Scotland) Act 2018

## 2018 asp 12

### PART 6

#### DEVELOPMENT IN THE SCOTTISH ISLAND MARINE AREA

##### *Key definitions*

#### **22 Meaning of “development activity”**

- (1) In this Part, “development activity” means—
- (a) construction, alteration or improvement works of any description (either in or over the sea, or on or under the seabed),
  - (b) any form of dredging, including—
    - (i) the removal of any material from the sea or seabed, or
    - (ii) using any device to move any material (whether or not suspended in water) from one part of the sea or seabed to another part.
- (2) But the following are not development activities—
- (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 of the Scotland Act 1998,
  - (b) any activity relating to a matter which is a reserved matter by virtue of paragraph 9 (defence) in Part 1 of that schedule,
  - (c) any activity falling within the subject matter of Part 6 (pollution) of the Merchant Shipping Act 1995,
  - (d) any activity involving the placing, assembly or operation of any equipment within the Scottish island marine area for the purpose of fish farming (within the meaning given by section 26(6) of the Town and Country Planning (Scotland) Act 1997),
  - (e) fishing by any other method.

#### **23 Meaning of “Scottish island marine area”**

In this Part, “Scottish island marine area” means such part of the Scottish marine area (within the meaning of Part 1 of the Marine (Scotland) Act 2010) which is—

- (a) adjacent to an island, and

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- (b) up to 12 nautical miles from that island, measured from the low water mark of the ordinary spring tide.

*Licensing of development activities*

**24 Scottish island marine area licence**

- (1) The Scottish Ministers may by regulations establish a scheme by virtue of which a person must not, except in accordance with a licence granted by a local authority, carry on a development activity within such part of the Scottish island marine area as is designated in the regulations as a part in which such a licence is required to carry on a development activity (in this Part an “island licensing area”).
- (2) Regulations under subsection (1) may designate an area as an island licensing area only if—
  - (a) a local authority has applied to the Scottish Ministers for such a designation to be made, and
  - (b) the Scottish Ministers are satisfied that the area is adjacent to an inhabited island.
- (3) Regulations under subsection (1) may make provision about (in particular)—
  - (a) the types of development activity covered by, and exempted from, the scheme,
  - (b) the area and boundaries of the Scottish island marine area—
    - (i) which are covered by, or exempted from, the scheme,
    - (ii) which are allocated to a particular local authority for the purposes of the scheme,
    - (iii) which are designated as an island licensing area,
  - (c) the procedure to be followed in relation to an application to a local authority for a licence, including about—
    - (i) the steps to be taken before a person may apply for a licence (for example consultation and notification of affected persons),
    - (ii) the issue, renewal, variation, transfer, suspension and revocation of a licence,
    - (iii) an appeal of a decision relating to a licence,
    - (iv) the fees chargeable by a local authority,
    - (v) the holding of an inquiry in connection with the determination of an application,
  - (d) the effect of an application and of a grant of a licence to carry on a development activity on—
    - (i) an application for, or a grant of, a marine licence under Part 4 of the Marine (Scotland) Act 2010,
    - (ii) an application for, or a grant of, consent under section 36 of the Electricity Act 1989 (consent for construction etc. of generating stations) in relation to the activity or other works to be undertaken in connection with the activity,
  - (e) the enforcement of the regulations, including about the issuing of the following kinds of notice in relation to works not carried out in accordance with a licence—
    - (i) a compliance notice, requiring a person to take such steps as are specified in the notice in relation to such works,

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- (ii) a remediation notice, requiring a person to take such steps as are specified in the notice in relation to such works, or to compensate a local authority or other person for remedial steps taken, or to be taken, in relation to such works (or both),
  - (f) a power to carry out remedial works where a development activity has been carried on otherwise than in accordance with a licence,
  - (g) offences and penalties in relation to a contravention of—
    - (i) a prohibition on a development activity within the Scottish island marine area,
    - (ii) a restriction contained in a licence,
  - (h) exceptions and defences to such offences,
  - (i) the imposition of fixed monetary penalties in relation to a contravention that is criminalised by virtue of paragraph (g) and (h),
  - (j) the publication of information in a public register maintained by a local authority, including about—
    - (i) what information is to be published in the register (and in what manner and form),
    - (ii) the circumstances in which information must not be published (for example if its publication would adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate commercial interest),
    - (iii) the circumstances in which a local authority must provide copies of entries in the register to members of the public (whether on payment of a fee or otherwise).
- (4) A fee provided for in regulations under subsection (1) in relation to an application to a local authority for a licence must represent the reasonable costs of an authority in deciding an application.
- (5) The maximum penalties that may be provided for in regulations under subsection (1) for offences under the regulations are—
  - (a) on summary conviction, imprisonment for a term not exceeding 12 months or a fine not exceeding £50,000 (or both),
  - (b) on conviction on indictment, imprisonment for a term not exceeding 2 years or a fine (or both).
- (6) Regulations under subsection (1) for the imposition of fixed monetary penalties may make provision similar to that which is enabled by sections 46 and 47 of the Marine (Scotland) Act 2010, but must provide that such penalties—
  - (a) may only be imposed where a local authority is satisfied beyond reasonable doubt that a person has committed an offence under the regulations,
  - (b) are to be imposed by notice, and
  - (c) cannot exceed £50,000 in relation to a particular contravention.
- (7) Before laying a draft of the regulations under subsection (1) before the Scottish Parliament, the Scottish Ministers must consult—
  - (a) such persons as they consider represent the interests of island communities, and
  - (b) such persons as they consider likely to be affected by the regulations.

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## **25 Exception from requirement for licence**

- (1) A scheme established under section 24(1) does not apply to a person if—
  - (a) the person is carrying on a development activity in an island licensing area,  
and
  - (b) any of the conditions in subsection (2) applies.
- (2) The conditions are—
  - (a) the development activity commenced before the area was designated as an island licensing area,
  - (b) the development activity is in a part of the island licensing area for which a person has a lease, or an agreement to lease, entered into before the area was designated as an island licensing area,
  - (c) the person, before the area was designated as an island licensing area—
    - (i) commenced the pre-application consultation as required under sections 22 to 24 of the Marine (Scotland) Act 2010 for the development activity,
    - (ii) made an application for, or was granted, a marine licence under Part 4 of that Act for the development activity, or
  - (d) the person, before the area was designated as an island licensing area, applied for, or was granted, a works licence under the Orkney County Council Act 1974 or the Zetland County Council Act 1974 for the development activity.

## **26 Crown application**

- (1) Nothing in this Part makes the Crown criminally liable.
- (2) The Court of Session may, on an application by the Lord Advocate, declare unlawful any act or omission for which the Crown would be criminally liable if it were not for subsection (1).
- (3) Subsection (1) does not affect the criminal liability of persons in the service of the Crown.