

*Draft Regulations laid before the Scottish Parliament under section 316(6) of the Marine and Coastal Access Act 2009 and section 165(5) of the Marine (Scotland) Act 2010, for approval by resolution of the Scottish Parliament.*

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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2011 No.**

**ENVIRONMENTAL PROTECTION  
LICENSING (MARINE)**

**The Marine Licensing Appeals (Scotland) Regulations 2011**

*Made* - - - - *2011*  
*Coming into force* - - *6th April 2011*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 73, 108 and 316(1) of the Marine and Coastal Access Act 2009<sup>(1)</sup> and sections 38, 61 and 165(1) of the Marine (Scotland) Act 2010<sup>(2)</sup> and all other powers enabling them to do so.

In accordance with section 316(6) of the Marine and Coastal Access Act 2009 and section 165(5) of the Marine (Scotland) Act 2010, a draft of these Regulations has been laid before, and approved by a resolution of, the Scottish Parliament.

**Citation and commencement**

1. These Regulations may be cited as the Marine Licensing Appeals (Scotland) Regulations 2011 and come into force on 6th April 2011.

**Interpretation**

2. In these Regulations—

“the 2009 Act” means the Marine and Coastal Access Act 2009;

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

**Appeals against marine licensing decisions**

3.—(1) A person who has applied for a marine licence may by summary application appeal to the sheriff of any sheriffdom against a decision taken by the Scottish Ministers under section 71(1) of the 2009 Act or section 29(1) of the 2010 Act.

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(1) 2009 c.23; section 113(2) makes provision as to the activities as respects which the Scottish Ministers are the “appropriate licensing authority”.

(2) 2010 asp 5.

- (2) On determining an appeal under paragraph (1), the sheriff may—
  - (a) dismiss the appeal; or
  - (b) allow the appeal and quash the decision in whole or in part.
- (3) Where a decision is quashed, the sheriff may direct the Scottish Ministers—
  - (a) to grant a marine licence; or
  - (b) to grant a marine licence on such terms or subject to such conditions as the sheriff may direct.

### **Appeals against notices**

4.—(1) A person to whom any of the notices referred to in paragraph (2) has been issued by the Scottish Ministers may by summary application appeal to the sheriff of any sheriffdom against the notice.

- (2) The notices are—
  - (a) a notice under section 72 of the 2009 Act or section 30 of the 2010 Act, being a notice varying, suspending or revoking a marine licence or extending a period of suspension;
  - (b) a compliance notice under section 90 of the 2009 Act or section 43 of the 2010 Act;
  - (c) a remediation notice under section 91 of the 2009 Act or section 44 of the 2010 Act;
  - (d) a stop notice under section 102 of the 2009 Act or section 55 of the 2010 Act;
  - (e) an emergency safety notice under section 104 of the 2009 Act or section 57 of the 2010 Act.

### **Suspension of notices**

5.—(1) A notice referred to in regulation 4(2)(a) varying a marine licence is suspended in relation to that variation pending determination of the appeal.

(2) The sheriff may suspend any other notice referred to in regulation 4(2)(a), wholly or in part, pending determination of the appeal.

(3) A notice referred to in regulation 4(2)(b) or (c), and any requirement in any such notice, is suspended pending determination of an appeal against the notice.

(4) The sheriff may suspend a notice referred to in regulation 4(2)(d) or (e).

### **Powers of sheriff**

6. On determining an appeal under regulation 4(1), the sheriff may—
  - (a) withdraw the notice or any requirement contained in it;
  - (b) confirm the notice or any requirement contained in it;
  - (c) vary the notice or any requirement contained in it;
  - (d) remit the decision whether to confirm the notice, or any matter relating to that decision, to the Scottish Ministers.

St Andrew's House,  
Edinburgh

A member of the Scottish Executive

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations provide for appeals to be made to the sheriff against certain decisions made, or notices issued, under the marine licensing provisions of the Marine and Coastal Access Act 2009 and the Marine (Scotland) Act 2010. The Scottish Ministers are responsible for marine licensing in inshore waters under the 2010 Act and in offshore waters under the 2009 Act.

Regulation 3 deals with appeals against decisions taken by the Scottish Ministers on marine licence applications. A refusal can be appealed, as can a decision to grant a licence with conditions.

Regulations 4 deals with appeals against the following types of notice—

- (a) a notice varying, suspending or revoking a marine licence or extending a period of suspension;
- (b) a compliance notice;
- (c) a remediation notice;
- (d) a stop notice; and
- (e) an emergency safety notice.

Regulation 5 concerns the suspension of notices when an appeal is lodged and regulation 6 deals with the powers of the sheriff when determining an appeal under regulation 4.