

EXECUTIVE NOTE

THE SEA FISHING (LICENCES AND NOTICES) (SCOTLAND) REGULATIONS 2011

SSI 2011/70

1. The above instrument was made in exercise of the powers conferred by section 4B of the Sea Fish (Conservation) Act 1967 and is subject to negative resolution procedure. The instrument comes into force on 1 April 2011.

Policy Objectives

2. The purpose of the Sea Fishing (Licences and Notices)(Scotland) Regulations 2011 (“the 2011 Regulations”) is to make provision to enable the Scottish Ministers to publish notices of variation, suspension or revocation of a sea fishing licence on the Marine Scotland website. Introducing changes to the notices publication process will ensure more effective procedures.

3. The 2011 Regulations will be underpinned by a licence condition which will require licence holders to check the Marine Scotland website regularly and on a specified day/s each week for the publication of notices relating to their licences.

Background

4. The provisions to grant licences and to issue licence variations and notices are currently set out in the Sea Fishing (Licences and Notices) Regulations 1994 (SI 1994/2813) (“the 1994 Regulations”), which is a pre-devolution instrument. Marine Scotland and the other UK Fisheries Administrations have reviewed the 1994 Regulations. The 2011 Regulations take account of current industry custom and practice while allowing for the publication of notices electronically via the Marine Scotland website, a means of publication not envisaged when the 1994 Regulations were made.

5. The 1994 Regulations enable licences and notices relating to licences to be communicated personally, by post, transmitted by electronic communication (eg, by fax) or published in a newspaper. The 1994 Regulations also provide for the times at which such methods of communication are considered to be delivered and when notices have effect.

6. The 2011 Regulations revoke the 1994 Regulations and restate, with amendments, their provisions so as to change the licence variation notification process to ensure a more effective procedure, including the communication of information (the opening and closing of fisheries). This will contribute towards ensuring a well-managed fishery, maximising the fishing opportunities for the Scottish fishing fleet and ensuring stock sustainability for the longer term benefit of future generations.

7. The 2011 Regulations will reduce the administrative paper burden on the fishing industry and Marine Scotland and also save on operational costs for Marine Scotland. Licences are subject to multiple notices throughout the quota year and the estimated cost of this process for the fishery offices to administer is £112,500 per year.

Consultation

8. Officials have participated in discussions with the other UK Fisheries Administrations (Defra, DARDNI and WAG), regarding the electronic publication of notices for sea fishing licences and are taking a coordinated approach as far as possible. The 2011 Regulations do not affect the current administrative arrangements between UK Ministers and the Scottish Government.

9. The other UK administrations are also planning to publish notices of variation, suspension etc electronically by late 2011. Until then Marine Scotland will continue to issue notices in paper form on behalf of other UK Fisheries Administrations to vessels whose port of administration is in Scotland.

10. Marine Scotland has engaged with representatives from the Scottish Licensing Review Working Group (SLRWG), who broadly support the introduction of this new process.

Financial Effects

11. There are no financial implications for the industry, as notices relating to sea fishing licences will be published via the Marine Scotland website and the fishing industry will be able to access the information by using everyday and existing business tools. Copies of the variations will also be made available by the fishery offices if required.

12. A copy of the Business and Regulatory Impact Assessment is attached.

Marine Scotland
Scottish Government
February 2010

FINAL BUSINESS AND REGULATORY IMPACT ASSESSMENT

1. Title of Proposal

1.1. Introduction of new Scottish Regulations (the Sea Fish (Licences and Notices)(Scotland) Regulations 2011 (“the 2011 Regulations”)) to replace the Sea Fishing (Licences and Notices) Regulations 1994 (SI 1994/2813), to enable the Scottish Ministers to publish notices of variation, suspension, etc of fishing licences on the Marine Scotland website.

2. Purpose and Intended Effect

Objectives

2.1 Introducing changes to the notices process will ensure a more effective procedure including:

- the communication of information (the opening and closing of fisheries);
- reducing the current administrative paper burden for the fishing fleet and Marine Scotland; and
- saving in operational costs for Marine Scotland.

The new process will come into force on 1st April 2011

Background

2.2 The provisions to grant licences and to issue notices of licence variations, etc are set out in the Sea Fishing (Licences and Notices) Regulations 1994 (the 1994 Regulations). Scotland and the other UK Fisheries Administrations have reviewed the 1994 Regulations, which are made under the Sea Fish (Conservation) Act 1967. The introduction of new Scottish Regulations will take account of current industry custom and practice and will allow for the electronic publication of notices relating to licences, a means not envisaged when the 1994 Regulations came into force.

2.3 The proposal to change the licence notification process has been discussed for some time and is a recommendation of the Scottish Licence Review Working Group (SLRWG). The SLRWG is a joint industry/Scottish Government group which was established in 2009. The membership was set up to represent each catching sector rather than geographical locations. The remit of the group was to carry out a full review of the licensing arrangements in Scotland with a view to informing future policy and, if appropriate, recommending changes to the current licensing system in operation.

2.4 The intention is that the new licence notices process will be communicated through a notice published on the Marine Scotland website. The website will be updated on specified day/s each week. This will ensure that the vessel master/owner/charterer or nominee becomes familiar with the new process of publishing and in the longer term embeds a pattern of behaviour that can support

enforcement action. A new condition will be imposed upon licences requiring licence holders to check Marine Scotland's website for notices.

2.5 Marine Scotland's longer term aim is to move to an e-licensing system in 2012. This will further improve the services offered to the fishing industry and increase efficiency by giving easy access to guidance and the ability to apply online for licences. There are precedents for the introduction of electronic communication with sales notes and logbooks. HM Revenue and Customs are also aiming for the universal and mandatory electronic delivery of business tax returns by 2012, which would require all those involved in the fishing industry having to have access to online systems.

Rationale for government intervention

2.7 The 1994 Regulations do not provide for the use of modern communication channels. To enable new opportunities for electronic communication via the Marine Scotland website to be utilised and given a statutory basis, it is necessary to replace the 1994 Regulations with more up to date arrangements.

2.8 The purpose of introducing changes to the notices process will be to ensure a more effective procedure, including the communication of information (the opening and closing of fisheries). Marine Scotland's role is to ensure a well managed fishery, maximising the fishing opportunities for the Scottish fishing fleet and ensuring stock sustainability for the longer term benefit of future generations. A well managed fishery contributes to the Scottish Government's National purpose of sustainable economic growth.

2.9 The 2011 Regulation will reduce the administrative paper burden on the fishing industry and also save money in operational costs for Marine Scotland. Licences are subject to multiple variations throughout the quota year and the estimated cost of this process for the fishery offices to administer is £112,500 per year. Marine Scotland would expect to save up to £90,000 per year.

3. Consultation

Within government

3.1 Marine Scotland has participated in discussions with Defra, DARDNI and WAG, regarding the introduction of electronic notification of licence variations and the introduction of an e-licensing system and will be taking a coordinated approach, so far as possible. The introduction of new Scottish Regulations has no effect on application of the 1994 Regulations as regards the rest of the UK.

Public Consultation

3.2 As well as engaging directly with fishing industry stakeholders in the SLRWG, Marine Scotland has also consulted with representatives from the Inshore Fisheries Groups with overall positive feedback on the introduction of electronic notification of licence variations and the longer term proposal for an e-licensing system. In particular, the idea of notices being communicated electronically was welcomed as

was reducing the paper burden for the fishing industry. As with any change to existing practices, there were some general concerns, including about how data would be displayed. The issue of limited internet access was also discussed, but all felt that the practice of using a nominee to access information on behalf of the vessel master, owner or charterer would overcome any perceived difficulties.

Business

3.3 The SLRWG fully support and recommend the introduction of electronic variations and the longer term aim to have an e-licensing system. This group represents the various catching sectors in Scotland.

Industry Membership includes:

- Ross Dougal, Scottish Fish Salesmen Association
- John Hermse, Mallaig and North West Fishermen's Association
- Duncan MacInnes, Western Isles Fishermens Association
- Iain MacSween, Scottish Fishermen's Organisation
- Bertie Armstrong, Scottish Fishermen's Federation
- Archie McFarlane, Scottish Fishermen's Federation
- Ritchie Simpson, Scottish Fishermen's Federation
- Roddy McColl, Fishermen's Association
- Ian Gatt, Scottish Pelagic Fishermen's Association
- Michael Park, Scottish Whitefish Producers Association

4. Options

4.1 Two options were considered before deciding to make the 2011 Regulations:

Option 1: Do nothing.

If nothing is done, then we will continue to apply existing arrangements, including the practice of issuing paper variations. It would not provide any benefits in terms of improving compliance. This option would also leave Marine Scotland behind the other UK administrations in developing e-licensing systems.

Option 2: The Sea Fishing (Licences and Notices)(Scotland) Regulations 2011

This option will allow Marine Scotland to publish notices of licence variations, etc on the Marine Scotland website, resulting in a more effective management process for the opening and closing of fisheries. This process will also reduce the administrative paper burden for the fishing industry and for Marine Scotland.

Sectors and groups affected

4.2 The 2011 Regulations affect all recipients of Scottish fishing licences and notices. Also Marine Scotland Sea Fisheries policy and Compliance teams.

Costs

4.3 Option 1 There are no additional costs associated with option 1 as it does not require any change.

Option 2 It is not envisaged that there will be any material costs to industry as a result of the introduction of the 2011 Regulations. This new process will require minimal infrastructure to effect the change. The notices will be published on Marine Scotland's web pages and will not require additional electronic systems to be commissioned. By using existing and everyday business tools, we can implement a more effective information service at minimal cost.

Benefits

4.4 Option 1 There are no benefits to option 1. If the 2011 Regulations are not made then the current regulatory regime will continue with no resolution of the issues outlined in previous sections. The current arrangements are functional but not efficient.

Option 2 Implementing this proposal would deliver the following benefits;

- The 2011 Regulations will reduce delays in the receipt of variations as compared with current arrangements. Reducing the turnaround time for the sharing of information on the opening and closing of fisheries will result in more efficient fish stock management and conservation.
- Potential cost savings for Marine Scotland of up to £90,000 per year. In 2009 the estimated cost per year to Marine Scotland to carry out the variation process was £112,500 (£9,000 on non staff costs such as postage and £103,500 on staff resource). Simplification of the process will also result in reduction of inaccuracies and will allow time to be freed up in fishery offices to perform other fisheries duties.
- The 2011 Regulations will significantly reduce the administrative paper burden on the fishing industry and will offer a simple and convenient (24/7 access) system. It is not possible to quantify the benefits in financial terms due to the varying sizes and structures of each fishing business.

5. Scottish firms Impact test

As a result of the ongoing and direct nature of our discussions with our working group, which included business, we felt it was not proportionate to have further face to face discussions. Businesses representing the various catching sectors assisted in the development of the proposals through representation on the SLRWG.

Competition Assessment

5.1 The 2011 Regulations will affect all businesses comprising a Scottish fishing boat with a licence granted by the Scottish Ministers and those administering and enforcing them (Marine Scotland Compliance).

5.2 The proposal will affect all businesses in the same way and is unlikely directly to affect the market structure or change the number or the size of firms. It will not lead to higher set-up costs for new or potential firms that existing firms do not have to meet.

5.3 There are no additional costs to industry as a result of this legislative change. It is unlikely that there will be an impact on competition and therefore no requirement to undertake a detailed competition assessment

Test run of business forms

5.4 As a result of the introduction of the 2011 Regulations, all notices will be communicated electronically on a set day each week, via the Marine Scotland web site from 1st April 2011. The information will be displayed on the web site in a simple table format as below.

Example

| GroupPO Non sector 10m & under non PO | Reason Opening Closing Change of limit | Species | Area of Sea | Limit | Effective Date |
|--|---|------------------|---------------------------------|--------------------------|----------------------------------|
| Example AFPO | Closed | North Sea Cod | North sea (IIa (EC Zone), IV | | 0001 on 1 December 2010 |
| Non sector | Change of limit | Haddock | VIIb-K | Now 200 kgs per month | 0001 on 1 December 2010 |

Link to web site page <http://www.scotland.gov.uk/Topics/marine/Sea-Fisheries/17681/licencevariations>

5.5 Currently notices are often issued on a weekly basis, the documentation is often lengthy and is required to be kept on board the vessel as part of the licence. The 2011 Regulations will remove the administrative paper burden from the fishing industry.

5.6 To ensure a smooth transition to the new electronic process it is our intention, in the first two months after the coming into force of the 2011 Regulations, to continue to issue paper notices in parallel. As with any change, there will be a

period of education to allow users to get to grips with the new system. Marine Scotland will also issue guidance to support the industry.

5.7 The administration of this new process will be managed on a day-to-day basis by Marine Scotland and implementation will be closely monitored to identify issues and review as necessary.

6 Legal Aid Impact test

6.1 The proposals will not have any impact upon legally compliant fishing vessels. Persistent failure to comply with the licence condition requiring licence holders to check the SG's website for notices will undermine the credibility of the Scottish fishing fleet and stock sustainability. It will then be the responsibility of Marine Scotland to investigate whether any failure to comply with the conditions of licence or any variation, etc has occurred. In the event that non-compliance is determined, Marine Scotland will still be able to refer cases to the Crown Office and Procurator Fiscal for prosecution, but this does not alter or undermine an individual's access to the justice system. It does, in the majority of cases, allow them to accept and pay an administrative penalty without venturing into the court system should they elect to do so. Given that the proposed changes are unlikely to result in any increase in the number of cases currently proceeding to court, the impact on legal aid, if any, will be minimal. Colleagues in the Legal Aid Team agree that there is no reason to believe that these changes to policy will have any impact on legal aid.

7 Enforcement, sanctions and monitoring

7.1 Marine Scotland has responsibility for enforcement of the 2011 Regulations, and is responsible for monitoring compliance and taking enforcement action, where necessary, to deter and detect illegitimate activities in the marine environment. Fisheries Offices will carry out the necessary monitoring to ensure that vessels adhere to the conditions of their licence. The consequences of non-compliance include advisory or written warnings, and a range of sanctions, including the issue of a Fixed Penalty Notice as an alternative disposal to prosecution. Where appropriate, non-compliance may result in the submission of a report to the Procurator Fiscal with a view to prosecution. The maximum fine which may be imposed on summary conviction is a fine of up to £50,000 and the penalty for conviction on indictment is an unlimited fine.

7.2 From an enforcement policy perspective, the licence will impose an obligation on the vessel master/owner/charterer or nominee to review the current status of their fishing licence on the website on a specified day/s each week. This is different from the current regime under the 1994 Regulations, which requires Marine Scotland to prove delivery of licences and the giving of notices before enforcement action may be taken. Effective monitoring and enforcement of marine and fishing laws is vital if we are to protect Scotland's valuable marine areas and fisheries.

8 Implementation and delivery plan

Post-implementation review

Option 1

8.1 There is no implementation and delivery plan for Option 1

Option 2

8.2 The 2011 Regulations have been drafted under instruction from Marine Scotland. The 2011 Regulations come into force on 1 April 2011.

Marine Scotland will undertake a review of the 2011 Regulations 12 months after they come into force to check that requirements are being met effectively and that the legislation is fit for purpose

9 Summary and recommendation

9.1 Option 2 is recommended. Proceeding in this way will ensure a more effective licence notification process, an effective communication process for the opening and closure of fisheries, reduce the paper burden on the fishing industry and reduce the administrative costs incurred by Marine Scotland.

10 Summary costs and benefits table

| Option | Total benefit per annum:economic, environmental, social | Total benefit per annum:economic, environmental, social, policy and administrative |
|--------|---|--|
| 1 | There are no benefits identified with this option | There are no benefits identified with this option |
| 2 | The introduction of the notification of variations electronically will significantly reduce the paper burden on the fishing industry. It will also result in a more efficient process for the opening and closing of fisheries, resulting in more efficient fish stock management | The introduction of electronic notification of variations will generate cost savings to Marine Scotland of up to £90,000 (staff resource and costs such as postage, photocopying) |

11 Declaration and publication

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and

impact of the policy, and (b) that the benefits justify the costs I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed by the responsible Minister

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Date