

# **FINAL BUSINESS AND REGULATORY IMPACT ASSESSMENT**

## **1. Title of proposal**

The Marine Licensing (Fees) (Scotland) Amendment Regulations 2012

## **2. Purpose and intended effect**

### **Background**

The primary legislation under the Marine (Scotland) Act 2010 ('the 2010 Act') regulates the Scottish inshore area – 0 to 12 nautical miles – and the Marine and Coastal Access Act 2009 ('the 2009 Act') regulates the Scottish offshore area – 12 to 200 nautical miles. The 2009 and 2010 Acts are similarly drafted and provide that, subject to certain exemptions specified in subordinate legislation, any person engaging in certain listed activities at sea must have a marine licence.

Developers are required to pay fees for a licence application. The fees payable for renewable energy projects are dependent upon the cost to the developer of carrying out the activity as per Regulation 3 of the Marine Licensing (Fees) (Scotland) Regulations 2011.

### **Objective**

The key cost to the marine licence authority is the cost of authorising licenses. The proposed fee structure in the amending regulations will allow for offshore renewable energy projects to be charged a licence fee appropriate to the time needed to process applications (and the associated cost) which comes from the requirement to comply with the Habitat Regulation Assessment and Environmental Impact Assessment.

The current licensing regime in Scotland comprises a variety of licences, seeking either to protect features of the marine and coastal area from the impact of marine development, or to mitigate the impact of developments.

The key aim of the new Marine Licensing (Fees) (Scotland) Amendment Regulations 2012 is to increase the level of fees charged for applications for marine licences for offshore renewable energy projects.

### **Rationale for government intervention**

The First Minister wants renewable sources to generate the equivalent of 100 per cent of Scotland's gross annual electricity consumption by 2020. Similarly, a target has been set for renewables sources to provide the equivalent of 11 per cent of Scotland's heat demand by 2020. Marine Licensing contributes to the Scottish Government's National Outcome of sustainability by allowing the harnessing of new technologies by, for example, issuing licences for wind and tidal power stations. The impact of granting a licence application also promotes economic growth (especially in rural areas) as jobs are created to build the economy (strategic objective -

Wealthier and Fairer). Marine Licensing also contributes to reducing environmental impact by ensuring all licence applications go through a fair and accurate process of checks to reduce any adverse impact on climate change, thus also contributing to (strategic objective - Greener) reducing Scotland emissions.

Scottish Government accounting principles require that the fees and charges for all statutory and commercial services should be set at a level that achieves cost recovery. This ensures that services which would benefit from business (e.g. by enabling them to carry out activities in the marine environment that would otherwise be prohibited) are paid for by the business.

In addition, given the current constraints on running costs, it is necessary to make good this shortfall, and that accords with the underlying fees policy of covering costs. That means amending secondary legislation – the Marine Licensing (Fees) (Scotland) Regulations 2011.

### **3. Consultation**

#### **Within Government**

The consultation was made available on-line and a wide range of organisations informed about its publication. Engagement with local government and organisations such as the Department of Energy Climate and Climate Change is continual, with frequent communication on decisions affecting offshore wind farms.

#### **Public Consultation**

A 12 week public consultation ran from 30 January until 16 April 2012 and an email sent to contacts in the Renewables industry. Responses from the consultation were considered as part of the final Regulations. The consultation received 5 responses - 4 formal responses were received from EDF Energy, Scottish Power Renewables, Scottish Renewables, Royal Town Planning Institute Scotland. Whilst there was broad support for these Regulations, it was clear that respondents want to ensure that the extra income would benefit Marine Licensing: in other words, the increased income should be used, as is intended, to protect the service offered by the Marine Scotland Licensing Operations Team in terms of efficiency, effectiveness etc.

The increase in revenue will allow recruitment of specialist staff to work on areas such as environmental data, cumulative impact and pre-application which were raised by developers where more help is required. In parallel, a one stop shop approach will reduce the number of statutory/advisory bodies to contact, provide better support during the licence process, and facilitate information sharing.

#### **Business**

With regards to business we had early discussions with the Chair of the Forum for Renewable Energy Development in Scotland to consider the impact on Scottish renewable industry. Our initial discussions with business and stakeholders helped to shape our thinking on the Regulations that developers require licensing staff

proactively working on projects with them to mitigate for risk – which in turn will reduce the cost of the application and lead to better quality consents.

The consultation included 3 options for consideration:-

#### **4. Options**

Option 1 – Do nothing, ie continue with existing service without achieving cost recovery

Option 2 – Increase fees, and continue to provide a comprehensive licensing service through a well resourced team

Option 3 – Levy fees in stages, to relate to the process of application

The consultation received 5 responses. 4 favoured options 2 and 3 with a majority requesting that any 'extra income' is invested in the marine licensing.

#### **Sector and groups affected**

The changes will affect large renewable development companies alone, the fees for dredging licences where they do not relate to renewable projects are not subject to any changes.

#### **Benefits**

##### **Option 1**

Doing nothing would not meet the objective of achieving cost recovery, with the risk of pressure to reduce the level of service offered to applicants to bring costs closer to fees received and would result in increasing deficits year on year.

##### **Option 2**

Increasing fees would provide a comprehensive licensing service through a well resourced team. It would reduce the time taken to process a licence application, simplifying the licensing application and processing system for developers thus creating jobs in Scotland in the renewable energy sector and contributing to the Scottish Government's National Outcome of sustainability and promote economic growth.

##### **Option 3**

This option, together with option 2 above, would deliver the greatest benefits and efficiencies over time - It would also deliver non-financial benefits and presents the lowest risk of delivery by administratively introducing a charging system to be implemented locally.

## 5. Costs

### Costs to Scottish Government

The Scottish Government consulted on the proposals for fees to be set at a level that achieves cost recovery. The costs were based on proposed developments – some of which have withdrawn since consultation began. Figures given were based on approximately 10-15% dropout. The aim is to set fees at a level that, over time, broadly cover costs incurred by MSLOT (but not other bodies) in administering the licensing process. The consultation paper can be found on the Scottish Government website at:

<http://www.scotland.gov.uk/Resource/0038/00386383.pdf>

### Options 1, 2 and 3

Option 1 - would maintain the current situation. The advantages of this option are that no new legislation would be required; all stakeholders are familiar with the current situation and there would be no costs increase. The main disadvantage is that the objectives of the 'one stop shop' for a Marine License could not be met. The licensing regime is resource intensive and as such licenses would not be issued within the 9 month turnaround because the licensing team would be under-resourced under the current staff compliment.

Option 2 - would provide a comprehensive licensing service through a well resourced team. And would reduce the time taken to process a licence application - thus simplifying the licensing application and processing system and create jobs in Scotland. Following a review of the renewable licence team we expect a period of growth for the renewables team over the financial years 2011/12, 2012/13, 2013/14, and then stabilising at the 2013/14 level. Over those 3 years, we project a total cost of £2,275,343

Option 3 - Charging a fee at the point at which the application is submitted would be in keeping with legislation. Ensuring that fee income is received in a more timely manner would help to ensure that applicants experienced a licensing service that is fit for purpose.

### Option 1

This would result in increasing deficits year on year, even if costs only increase in line with inflation. With the current fees structure, this amounts to a deficit of £530,343 per year, before taking inflationary increases into account as per figures below.

Total cost for Marine Scotland Renewable team 2011/12, 2012/13, 2013/14 – includes Marine Scotland Science and Compliance

MS Licensing Operations team	£1,715,607
MS Science	£488,567
MS Compliance	£71,169
	£2,275,343

- For the same years we project fee income of £1,745,000, although this is harder to estimate as we do not know fee levels until projects are completed, at which point we levy the fee.
- That would imply a shortfall over the same years of £530,343: in other words, fees would need to rise by approximately one third to match costs.

## **Option 2**

Increase fee income by amending the Regulations in a way that would charge higher fees for the greater value renewable energy projects (where any fee will be negligible against overall costs) while not unduly penalising applications for other, more marginal activities.

The proposed increases to fees for marine licensing would meet the requirement for statutory and commercial services provided by the Scottish Government to achieve cost recovery. It would also ensure that the Scottish Government continues to have the resources to provide an effective service to marine industries.

## **Option 3**

The current practice of levying a fee is entirety at the point at which an application is granted. It is, therefore, considered that changing this practice to move to levying fees in stages, one that requires no amendment to the Regulations, but will simply be introduced administratively.

## **Costs to Business**

Option 1	Status Quo
Option 2	Fees would increase by one third – where any fee will be negligible against overall costs while not unduly penalising applications for non-renewable project and other, more marginal activities
Option 3	The costs to business are marginal against overall costs of the project

## **6. Scottish firms impact test**

The impact on small firms will be limited, as it is generally larger companies which undertake significant developments requiring more than one licence. In setting out to understand the impact on Scottish renewable industry there have been discussions with the Chair of the Forum for Renewable Energy Development in Scotland to consider the impacts.

Business consulted, on the draft BRIA indicate that the impact will be positive; a better resourced team to deal with complex renewable energy licence applications.

The consultation received 5 responses - 4 formal responses were received from EDF Energy, Scottish Power Renewables, Scottish Renewables, Royal Town Planning

Institute Scotland. Whilst there was broad support for the amendment regulations it was clear that respondents want to ensure the extra income benefit Marine Licensing.

The increase in revenue will allow recruitment of specialist staff to work on areas such as environmental data, cumulative impact and pre-application which were the areas raised by developers where more help is required. In parallel, a one stop shop approach will reduce the number of statutory/advisory bodies to contact, provide better support during the licence application process, and facilitate information sharing.

- **Competition assessment**

Using the Office of Fair Trading (OFT) competition filter, it has been established that there are no significant areas where competition, restriction or imbalance should arise from our proposals.

The benefits of a streamlined and modernised licensing system are:

- improved efficiency and cost-effectiveness;
- equal treatment of all marine activities; and
- reduced complexity of marine management.

All of these benefits are likely to have a positive impact on competition, by producing a more equitable situation both across and within different industry sectors by keeping staff in post to process applications and ensure the costs incurred are met by individuals or organisations benefiting from the licensing of an activity rather than falling on the tax payer.

- **Test run of business forms**

No new business forms will be required as there is an existing licensing procedure.

## **7. Legal aid impact test**

It is not expected that the Marine Licensing (Fees) (Scotland) Amendment Regulations 2012 will have any impact on the current level of use that an individual makes to access justice through legal aid or on the possible expenditure from the legal aid fund.

Confirmation received from the access to justice team states that they do not see there being any impact to the legal aid fund as a result of these Regulations.

## **8. Enforcement, sanctions and monitoring**

Responsibility for compliance, monitoring and enforcement of the revised fees arrangements would be carried out by Marine Scotland's licensing operation team. However, given the fees are small in comparison with the cost of the project a situation of non-compliance with payment is unlikely to arise and has not arisen to date.

## 9. Implementation and delivery plan

Our work to support implementation is already underway - Marine Scotland has launched a one stop shop to deal with licence applications through the Licence Operations Team (MSLOT) simplifying the regulatory/statutory advisory processes. We have also produced a marine renewables licensing manual to set out the licensing process and provide advice to developers on assessment requirements. This is currently being updated and will also cover offshore wind energy development

It is anticipated that the amendment will be progressed as a single amendment to the fees legislation by the end of June 2012.

- **Post Implementation Review**

Marine Scotland will keep the amendment and its implications under review over the preceding years of its use. If marked disparities arise the option of reviewing the Regulations again at some point is not ruled out.

## 10. Summary and recommendation

Option 2 – is recommended - Increase fees, and continue to provide a comprehensive licensing service through a well resourced team; and

Option 3 – is recommended - Levy fees in stages, to relate to the process of application.

It is expected that the amendment will overall have a neutral impact on business.

## 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:**

**Date:**

Richard Lochhead, Cabinet Secretary for Rural Affairs and Environment.

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