Marine (Scotland) Act 2010

2010 asp 5

PART 4

MARINE LICENSING

Licences

25 Application for licence

(1) The Scottish Ministers may require an application for a marine licence to be—
  (a) made in such form as they may determine,
  (b) accompanied by such fee as may be determined by, or in accordance with, regulations made by them.

(2) The Scottish Ministers may determine different forms, and provide for different fees, for different descriptions of applications.

(3) The Scottish Ministers may require an applicant to—
  (a) supply such information,
  (b) produce such articles,

as in their opinion may be necessary to enable them to determine the application.

(4) Where the Scottish Ministers consider that, despite any information supplied or articles produced by the applicant under subsection (3), they are unable to determine the application, the Scottish Ministers may require the applicant to permit such investigations, examinations and tests as they may reasonably require to enable them to determine the application.

(5) If the Scottish Ministers carry out any investigation, examination or test (whether or not by virtue of subsection (4)) which in their opinion is necessary to enable them to determine an application, they may require the applicant to pay a fee towards the reasonable expenses of the investigation, examination or test.

(6) If an applicant fails to comply with a requirement made by the Scottish Ministers under this section, the Ministers may—
  (a) refuse to proceed with the application,
  (b) refuse to proceed with it until the failure is remedied.

Commencement Information

I1 S. 25 in force at 6.4.2011 by S.S.I. 2011/58, **art. 3(a)**

26 Notice of applications

(1) Having received an application for a marine licence, the Scottish Ministers must either—

(a) publish notice of the application, or

(b) require the applicant to publish notice of it.

(2) Publication under subsection (1) must be in such manner as the Scottish Ministers consider is most likely to bring the application to the attention of any persons likely to be interested in it.

(3) The Scottish Ministers must not proceed with an application unless notice has been published under subsection (1).

(4) If the Scottish Ministers in pursuance of subsection (1)(a) publish notice of an application, they may require the applicant to pay a fee towards the reasonable expenses of the publication.

(5) If an applicant fails to pay a fee required by the Scottish Ministers under subsection (4), the Ministers may—

(a) refuse to proceed with the application,

(b) refuse to proceed with it until the failure is remedied.

(6) This section does not apply in relation to an application where the Scottish Ministers consider that notice of the application should not be published.

Commencement Information

I2 S. 26 in force at 6.4.2011 by S.S.I. 2011/58, **art. 3(a)**

27 Determination of applications

(1) In determining an application for a marine licence (including the terms on which it is to be granted and what conditions, if any, are to be attached to it), the Scottish Ministers must have regard to—

(a) the need to—

(i) protect the environment,

(ii) protect human health,

(iii) prevent interference with legitimate uses of the sea,

(b) such other matters as the Scottish Ministers consider relevant.

(2) In considering an application for a licence to authorise an activity mentioned in item 1 or 2 in section 21(1) (deposit of substance or object), the Scottish Ministers must have regard (among other things) to the practical availability of any alternative method of dealing with the substance or object.

(3) In considering an application for a licence to authorise an activity mentioned in item 5 in section 21(1) (constructing, altering or improving works), the Scottish Ministers must have regard (among other things) to the effects of any use intended to be made of the works when constructed, altered or improved.

(4) The Scottish Ministers—

(a) must, in relation to each application, consult such persons or bodies as may be specified by them by order,

(b) may, in relation to any particular application, consult any other person or body they consider appropriate.

(5) The Scottish Ministers must give the applicant the opportunity to make representations to them about any observations made to them by a person or body consulted by them under subsection (4).

(6) The Scottish Ministers must have regard to any representations which they receive from any person having an interest in the outcome of the application.

[[F1](6A) Regulation 3 of the Electronic Communications and Wireless Telegraphy Regulations 2011 makes provision about the time within which certain applications under this section for the granting of rights to install facilities must be determined.**]**

(7) The Scottish Ministers may by regulations make further provision as to the procedure to be followed in connection with—

(a) applications to them for marine licences,

(b) the grant by them of such licences.

(8) Regulations under subsection (7) may include, in particular, provision as to—

(a) the period within which any function is to be exercised (including when that period is to begin and how it is to be calculated),

(b) notifying the applicant of any licensing determination.

Textual Amendments

F1 S. 27(6A) inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 102** (with Sch. 3 paras. 1, 2)

Commencement Information

I3 S. 27 in force at 6.4.2011 by S.S.I. 2011/58, **art. 3(a)**

28 Inquiries

(1) The Scottish Ministers may cause an inquiry to be held in connection with their determination of an application for a marine licence.

(2) Subsections (2) to (8) of section 210 of the Local Government (Scotland) Act 1973 (c.65) apply to any inquiry the Scottish Ministers may cause to be held under subsection (1) as they apply to inquiries under that section.

(3) Where—

(a) an inquiry is caused by the Scottish Ministers to be held under subsection (1), and

(b) in the case of some other matter required or authorised to be the subject of an inquiry ("the other inquiry"), it appears to the relevant authority or authorities that the matters are so far cognate that they should be considered together,

the relevant authority or authorities may direct that the two inquiries be held concurrently or combined as one inquiry.

(4) In subsection (3), "the relevant authority or authorities" means the Scottish Ministers or, where causing the other inquiry to be held is the function of some other person or body, the Scottish Ministers and that other person or body acting jointly.

Modifications etc. (not altering text)

C1 S. 28 applied (9.11.2020) by The Marine Licensing (Exempted Activities) (Scottish Inshore Region) Amendment Order 2020 (S.S.I. 2020/316), arts. 1, **11**

Commencement Information

I4 S. 28 in force at 6.4.2011 by S.S.I. 2011/58, **art. 3(a)**

29 Grant or refusal of licence

(1) The Scottish Ministers, having considered an application for a marine licence, must—

(a) grant the licence unconditionally,

(b) grant the licence subject to such conditions as they consider appropriate, or

(c) refuse the application.

(2) The conditions that may be attached to a licence under subsection (1)(b) may relate to any of the following—

(a) the activities authorised by the licence,

(b) precautions to be taken or works to be carried out (whether before, during or after the carrying out of the authorised activities) in connection with or in consequence of those activities,

(c) monitoring of the activities authorised by the licence.

(3) The conditions include in particular conditions—

(a) that no activity authorised by the licence be carried out until the Scottish Ministers have (or some other specified person has) given such further approval of the activity as may be specified,

(b) as to the provision, maintenance, testing or operation of equipment for measuring or recording specified matters relating to any activity authorised by the licence,

(c) as to the keeping of records or the making of returns or giving of other information to the authority,

(d) for the removal at the end of a specified period of any object or works to which the licence relates,

(e) for the carrying out at the end of a specified period of such works as may be specified for the remediation of the site or of any object or works to which the licence relates,

(f) that any activity authorised by the licence must take place at a specified site, whether or not in the Scottish marine area.

(4) A licence may provide that—

(a) it is to expire unless the activity it authorises is begun or completed within a specified period,

(b) it is to remain in force indefinitely or for a specified period of time (which may be determined by reference to a specified event).

(5) A licence authorising any activity mentioned in item 5 in section 21(1) (constructing, altering or improving works) may provide that the conditions attached to it are to bind any other person who for the time being owns, occupies or enjoys any use of the works in question (whether or not the licence is transferred to that other person).

(6) The Scottish Ministers must not grant a licence to carry on any activity which is contrary to international law.

(7) In subsection (4), "specified" means specified in the licence concerned.

Commencement Information

I5 S. 29 in force at 6.4.2011 by S.S.I. 2011/58, **art. 3(a)**

30 Variation, suspension, revocation and transfer

(1) The Scottish Ministers may by notice vary, suspend or revoke a licence granted by them if it appears to them that there has been a breach of any of its provisions.

(2) The Scottish Ministers may by notice vary, suspend or revoke a licence granted by them if it appears to them that—

(a) in the course of the application for the licence the applicant either—

(i) supplied information to them that was false or misleading, or

(ii) failed to supply information that the applicant might reasonably have been expected to supply, and

(b) if the correct information had been supplied—

(i) they would have, or

(ii) it is likely that they would have,

refused the application or granted the licence in different terms.

(3) The Scottish Ministers may by notice vary, suspend or revoke a licence granted by them if it appears to them that the licence ought to be varied, suspended or revoked for any of the following reasons—

(a) because of a change in circumstances relating to the environment or human health,

(b) because of increased scientific knowledge relating to either of those matters,

(c) in the interests of safety of navigation,

(d) for any other reason that appears to the Ministers to be relevant.

(4) Any suspension under subsection (1), (2) or (3) is for such period as the Scottish Ministers may specify in the notice of suspension.

(5) The Scottish Ministers may by further notice extend the period of the suspension.

(6) But a licence may not by virtue of this section be suspended in total for a period exceeding 18 months.

(7) On an application made by a licensee, the Scottish Ministers may vary a licence if satisfied that the variation being applied for is not material.

(8) On an application made by a licensee, the Scottish Ministers—

(a) may transfer the licence from the licensee to another person, and

(b) if they do so, must vary the licence accordingly.

(9) A licence may not be transferred except in accordance with subsection (8).

Commencement Information

I6 S. 30 in force at 6.4.2011 by S.S.I. 2011/58, **art. 3(a)**

31 Pre-variation, suspension or revocation procedure

(1) This section applies where the Scottish Ministers propose to vary, suspend or revoke a licence under section 30.

(2) The Scottish Ministers must notify—

(a) the licensee,

(b) any other person whom they consider would be adversely affected by the variation, suspension or revocation.

(3) Such notification must—

(a) state that the Scottish Ministers propose to vary, suspend or, as the case may be, revoke the licence,

(b) state the ground on which they propose to do so,

(c) specify a period of not less than 28 days within which the person notified may request the opportunity to make representations about the proposal before a person appointed by the Scottish Ministers.

(4) The Scottish Ministers must appoint a person (the "appointed person") for the purpose of—

(a) hearing any such representations, and

(b) reporting to them on the merits of such representations.

(5) Where a request referred to in subsection (3)(c) is made timeously, the Scottish Ministers must—

(a) provide a reasonable opportunity for the person notified to make representations to the appointed person,

(b) (where that opportunity has been taken) have regard to the appointed person's report on the representations.

(6) Where the Scottish Ministers consider that there is an urgent need to vary or suspend a licence, they may do so—

(a) for a period not exceeding 3 months,

(b) until there is no longer such a need, whichever is the shortest, without doing the things mentioned in subsections (2) and (5).

(7) The Scottish Ministers may, by regulations, make provision as to—

(a) the categories of person who may be an appointed person or the qualifications of such persons,

(b) the procedure to be followed at a hearing under subsection (4)(a),

(c) the manner in which reports under subsection (4)(b) are to be communicated to them,

(d) the publication of such reports.

Commencement Information

I7 S. 31 in force at 6.4.2011 by S.S.I. 2011/58, **art. 3(a)**

Status:
Point in time view as at 09/11/2020.

Changes to legislation:
There are currently no known outstanding effects for the Marine (Scotland) Act 2010, Cross Heading: Licences.