

POLICY NOTE

THE MARINE WORKS AND MARINE LICENSING (MISCELLANEOUS TEMPORARY MODIFICATIONS) (CORONAVIRUS) (SCOTLAND) REGULATIONS 2020

SSI 2020/157

The Scottish Ministers make the above Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 and sections 23(3)(d), (4) and (5), 24(2) and 165(1) of the Marine (Scotland) Act 2010, and all other powers enabling them to do so. The instrument is subject to negative procedure.

Purpose of the instrument

In light of the current public health advice relating to the COVID-19 outbreak, the purpose of this instrument is to temporarily modify various regulations to remove a number of requirements that would be contrary to the current public health policy as regards COVID-19. It removes the requirements for:

- applicants for a marine licence under the Marine (Scotland) Act 2010 to make application documents and Environmental Impact Assessment reports physically available for inspection by the public at a named place;
- applicants for a marine licence to provide hard copies of application documents and EIA reports to the Scottish Ministers; and
- applicants for a marine licence to hold a pre-application consultation event at a suitably accessible venue.

These requirements are replaced by requirements to make all such documents available electronically. The requirement to hold a pre-application consultation event at a suitably accessible venue is replaced by the requirement to hold an online event. The modifications are limited in duration to a 'relevant period', which will expire on the same day as the Coronavirus (Scotland) Act 2020 expires.

Policy Objectives

The Coronavirus (Scotland) Act 2020 deals with any statutory requirements for the Scottish Ministers or a Scottish public authority to make documents physically available for inspection, allowing them instead to make the information available online during the relevant period. However, the provisions do not extend to applicants being required to make the information available. It is necessary therefore to temporarily amend the regulations which set out the process for applications made under the Marine (Scotland) Act 2010 to ensure that the impacts arising from the coronavirus emergency are minimised.

Procedures applying to applications for a marine licence under the Marine (Scotland) Act 2010

Procedures applying where a Pre-application Consultation event is required

Regulation 7 of the Marine Licensing (Pre-application Consultation) (Scotland) Regulations 2013 places the requirement on an applicant to hold a pre-application consultation event at a suitably accessible venue.

Regulation 2 temporarily replaces these requirements with requirements for the pre-application consultation event to be held online.

Regulation 8 of the Marine Licensing (Pre-application Consultation) (Scotland) Regulations 2013 places the requirement on an applicant to submit a pre-application consultation report in the form prescribed in the schedule.

Regulation 2 temporarily replaces the form to be completed for the pre-application consultation report.

Procedures applying where an Environmental Impact Assessment is required

Regulations 16 and 22 of The Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 require that an applicant for a marine licence under the Marine (Scotland) Act 2010 must publish a notice stating the times and places at which either an EIA report or additional information to be included in an EIA report may be inspected by members of the public.

Regulation 3 amends these requirements such that it is not necessary for any applicant to name a place where such information may be inspected during the relevant period. The notice must state that the EIA report or additional information is available on the application website.

Regulation 19 of the Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 requires the applicant to submit hard copies of an EIA report to the Scottish Ministers.

Regulation 3 provides that this requirement is suspended during the relevant period, and that a hard copy shall be made available to the Scottish Ministers following the relevant period if requested by the Scottish Ministers.

Regulation 20 of the Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 places a requirement upon an applicant to make available an EIA report, on submission of an EIA application, for physical inspection at a named place.

Regulation 3 suspends this requirement during the relevant period.

Regulation 25 of these regulations requires the applicant to place a public notice stating the times and places where the decision notice is available for public inspection.

Regulation 3 temporarily replaces these requirements with requirements for the public notice to state that such documents are available on a website.

Consultation

As this is an emergency measure requiring immediate implementation, and intended to be temporary, no formal public consultation was undertaken.

Financial Effects

There will be no financial costs imposed on business as a result of these changes. Applicants submitting application documents and EIA reports will be spared any costs that might be associated with making hard copies available. Applicants holding pre-application consultation events will be spared costs associated with this.

Assessments

A Business and Regulatory Impact Assessment (BRIA) and an Equalities Impact Assessment (EQIA) have been carried out although due to the emergency nature of this instrument, it has not been possible to carry out the usual consultation. A Children's Rights and Welfare Impact Assessment (CRWIA) and a Fairer Scotland Duty Assessment were considered and screened out, as the changes are technical and temporary in nature.

The EQIA acknowledges that some may be disadvantaged due to potentially limited access to the internet. However, the alternatives of suspending public participation in decision making or the processing of applications are not considered tenable options in the circumstances.

These regulations fall out with the scope of Strategic Environmental Assessment as per Section 4(3)(a) as their sole purpose is to serve a civil emergency. A Data Protection Impact Assessment is not considered relevant to the changes. In the extreme circumstances, we have not done an Islands Communities Impact Assessment, though it is acknowledged that more remote areas with more limited internet infrastructure may be at something of a disadvantage for this temporary period.

Marine Scotland
Scottish Government
May 2020