
SCOTTISH STATUTORY INSTRUMENTS

2020 No. 316

**The Marine Licensing (Exempted Activities)
(Scottish Inshore Region) Amendment Order 2020**

PART 3

Transitional and saving provisions

Deemed licence

4.—(1) A marine licence has effect on and after the relevant date (“a deemed CAR licence”) as if it were a water use licence granted in relation to the activities it authorises and regulates and is subject to the provisions of the Controlled Activities Regulations from that date.

(2) For the purposes of paragraph (1)—

- (a) a marine licence granted for a specified period has effect as a deemed CAR licence for so much of that period as falls on and after the relevant date or until 30 April 2021, whichever is later,
- (b) any condition subject to which a marine licence has been granted under section 29(1)(b) of the Marine (Scotland) Act 2010 has effect as if it were a condition attached to the deemed CAR licence, subject to the modifications in paragraph (3),
- (c) the licensing authority for a deemed CAR licence is the Scottish Environment Protection Agency,
- (d) the person who is named on the marine licence as the licensee is to be treated as the person who is responsible for securing compliance with the deemed CAR licence and the conditions specified in it (“the responsible person”), and
- (e) it is an additional condition of the deemed CAR licence that the responsible person secures such compliance.

(3) The modifications referred to in paragraph (2)(b) are—

- (a) any reference to “Marine Scotland – Licensing Operations Team” or “MS-LOT” is to be read as if it were a reference to “the Scottish Environment Protection Agency”, and
- (b) in the “Notes” section of the licence, paragraphs 2 to 5 are to be treated as omitted.

(4) For the purposes of this article, the relevant date is determined in accordance with articles 5 to 10.

(5) Article 3 does not have effect in relation to—

- (a) a marine licence until immediately before the relevant date,
- (b) an application for a marine licence, where article 6 applies,
- (c) an appeal in relation to a marine licence under regulation 3 or 4 of the 2011 Regulations, where article 7 or article 9 applies.

Marine licences existing when this Order comes into force

5.—(1) This article applies to a marine licence—

- (a) which is in effect immediately before 9 November 2020, and
- (b) to which none of articles 7 to 10 apply.

(2) The relevant date for a marine licence which is due to expire after 29 November 2020 is 30 November 2020.

(3) Where a marine licence is due to expire in the period beginning on 9 November 2020 and ending on 29 November 2020, it is deemed to have been granted to 30 November 2020 and that is also the relevant date for that licence.

Applications

6.—(1) Any application for a marine licence which—

- (a) is made before 9 November 2020, and
- (b) has not been determined in accordance with section 29 of the Act before that date,

is to be processed and determined in accordance with the provisions of the Act.

(2) The relevant date for a marine licence granted by the Scottish Ministers following an application of the type referred to in paragraph (1) is 22 days after the date of grant.

Applications – appeals

7.—(1) This article applies where—

- (a) a person who has applied for a marine licence appeals in accordance with regulation 3 of the 2011 Regulations against a decision taken by the Scottish Ministers under section 29(1) of the Act, and
- (b) either—
 - (i) the appeal is not made or the appeal has not been determined under regulation 3(2) of the 2011 Regulations before 9 November 2020, or
 - (ii) the sheriff has made a direction under regulation 3(3) of the 2011 Regulations which has not been implemented by the Scottish Ministers before that date.

(2) Where this article applies and the appeal proceedings culminate in—

- (a) the Scottish Ministers granting a marine licence or granting a marine licence on such terms or subject to such conditions as directed by the sheriff following a direction under regulation 3(3) of the 2011 Regulations, the relevant date for that marine licence is the later of 30 November 2020 and the date of grant,
- (b) an appeal concerning conditions applicable to a marine licence being dismissed, the relevant date for that marine licence is the later of 30 November 2020 and the date of dismissal of the appeal.

Marine licences subject to variation, suspension or revocation procedure

8.—(1) This article applies where—

- (a) the Scottish Ministers give notice under section 30(1), (2) or (3) of the Act to vary, suspend or revoke a marine licence, and
- (b) the notice procedure is either—
 - (i) commenced on or after 9 November 2020, or

(ii) commenced, but not concluded, before 9 November 2020 .

(2) Where this article applies, the relevant date for a marine licence is the later of 30 November 2020 and the date on which the notice procedure is concluded, except where—

- (a) the marine licence is revoked (in which case there is no relevant date required),
- (b) a person to whom the Scottish Ministers have issued a notice under section 30(1), (2) or (3) of the Act appeals against the notice in accordance with regulation 4 of the 2011 Regulations.

(3) Where paragraph (2)(b) applies, the relevant date is to be determined in accordance with article 9.

(4) For the purposes of this article—

- (a) the notice procedure is commenced on the date on which the Scottish Ministers notify the licensee in accordance with section 31(2) of the Act,
- (b) the notice procedure is concluded on the date on which the marine licence to which the notice relates has been varied, suspended or revoked pursuant to that notice, in accordance with sections 30(1) to (6) and 31(1) to (5) of the Act, or the date on which the notice is withdrawn.

Marine licences subject to variation, suspension or revocation procedure – appeals

9.—(1) This paragraph applies where—

- (a) a person to whom the Scottish Ministers have issued a notice under section 30(1), (2) or (3) of the Act appeals against the notice in accordance with regulation 4 of the 2011 Regulations, and
- (b) the appeal is—
 - (i) made on or after 9 November 2020, or
 - (ii) made before 9 November but the appeal procedure is not concluded before that date.

(2) Where paragraph (1) applies and—

- (a) the sheriff—
 - (i) determines that the notice is withdrawn,
 - (ii) determines that a requirement contained in the notice is withdrawn,
 - (iii) confirms the notice or any requirement contained in it,
 - (iv) varies the notice or any requirement contained in it,

the relevant date for the marine licence to which the notice relates is the later of 30 November 2020 and the date on which the appeal procedure is concluded,

- (b) the sheriff remits the decision on whether to confirm the notice, or any matter relating to that decision, to the Scottish Ministers and—
 - (i) the Scottish Ministers decide to confirm the notice or to withdraw a requirement in the notice, the relevant date for the marine licence to which the notice relates is the later of 30 November 2020 and the date on which the appeal procedure is concluded,
 - (ii) the Scottish Ministers decide to withdraw the notice, the relevant date for the marine licence to which the notice relates is the later of 30 November 2020 and the date of withdrawal.

(3) For the purposes of this article, the appeal procedure is concluded on the date on which—

- (a) the marine licence to which the notice relates has been varied, suspended or revoked pursuant to that notice, in accordance with sections 30(1) to (6) and 31(1) to (5) of the Act, or
- (b) the notice is withdrawn,

following determination of the appeal under regulation 6 of the 2011 Regulations.

Applications for variation or transfer

10.—(1) This article applies where—

- (a) an application has been made by a licensee under section 30(7) or (8) of the Act to vary or transfer a marine licence, and
 - (b) the Scottish Ministers have not determined the application before 9 November 2020.
- (2) Subject to paragraph (3), where this article applies the relevant date is the latest of—
- (a) 30 November 2020,
 - (b) the date on which the Scottish Ministers determine the application, and
 - (c) where applicable, the date on which the marine licence is transferred or varied.
- (3) Where this article applies and article 8 or 9 also applies, the relevant date is the later of—
- (a) the date that would apply under paragraph (2) if disregarding articles 8 and 9,
 - (b) the date determined under article 8 or 9 as applicable.

Inquiries

11. Section 28 of the Act continues to apply as regards any determination of an application for a marine licence.

Offences

12. Sections 39 to 42 of the Act continue to apply in relation to anything done otherwise than under and in accordance with a marine licence before the relevant date for that licence.

Enforcement notices

13. Sections 43 to 45 of the Act continue to apply in relation to anything done otherwise than under and in accordance with a marine licence before the relevant date for that licence.

Civil sanctions

14. Sections 46 to 50 and schedule 2 of the Act continue to apply in relation to anything done otherwise than under and in accordance with a marine licence before the relevant date for that licence.