EXECUTIVE NOTE

DRAFT : THE MARINE LICENSING APPEALS (SCOTLAND) REGULATIONS 2011

The above instrument will, if approved, be made by the Scottish Ministers in exercise of the powers conferred by sections 73, 108 and 316(1) of the Marine and Coastal Access Act 2009 ("the 2009 Act") and sections 38, 61 and 165(1) of the Marine (Scotland) Act 2010 ("the 2010 Act"). This instrument is subject to affirmative resolution procedure.

Policy objectives

This instrument forms part of an implementation package in connection with the introduction of marine licensing under the 2009 and 2010 Acts.

The Regulations make provision concerning appeals to the sheriff by applicants for a marine licence. Applicants may by summary application appeal against a decision taken by the Scottish Ministers. The Regulations detail the powers of the sheriff in dealing with an appeal.

The Acts also provide a range of statutory notices which Scottish Ministers can use to regulate licensable activities and to enforce that regulation. These new notices fill various gaps in the existing legislation so that action can be taken where an operator is in breach of their licence and/or where there is a risk that their activity or development is causing harm to the environment or human health or interferes with legitimate uses of the sea. To ensure that the new enforcement tools are used proportionately and fairly the Acts require the Scottish Ministers to make provision for any person to whom a statutory notice is issued to be able to appeal against that notice. These Regulations provide for sheriffs to deal with such appeals; detail the sheriff's powers; and provide that only requirements within a compliance notice, remediation notice or a notice varying a licence will be automatically suspended pending determination of an appeal.

Consultation

A consultation on proposals for secondary legislation required to implement the new marine licensing regime provided for by the 2010 Act took place between 8 September and 1 December 2010. The consultation received 46 responses. In addition the consultation document was considered at 4 events which took place during the consultation period.

The consultation did not result in any changes being made to the Regulations. Responses to the consultation were published in the Scottish Government's Consultation Report which contains a full list of those who responded and is available at the following address – http://www.scotland.gov.uk/Consultations/Current

Business and regulatory impact assessment

A Business and Regulatory Impact Assessment has been completed on the policy of marine licensing, exemptions and appeals against licensing decisions and was subject to consultation along with the draft Order. The final assessment was published in January 2011 and is

available at the following address - http://www.scotland.gov.uk/Topics/Business-Industry/support/better-regulation/partial-assessments/full/2011/MarineActAppeals

There are no equality impact issues.

Marine Scotland
February 2011