POLICY NOTE

THE MARINE LICENSING (EXEMPTED ACTIVITIES) (SCOTTISH INSHORE REGION) AMENDMENT ORDER 2020

SSI 2020/XXX

The Marine Licensing (Exempted Activities) (Scottish Inshore Region) Amendment Order 2020 is being made by the Scottish Ministers in exercise of the powers conferred by section 32(1) of the Marine (Scotland) Act 2010 ("the 2010 Act"). The instrument is subject to the affirmative procedure.

Purpose of the instrument
The purpose of this SSI is to transfer regulation of the discharge of treatment waters from wellboats from the marine licensing system under the 2010 Act to the CAR licensing system operated by SEPA.

Policy Objectives
Wellboats are vessels used for the transportation or temporary containment of live or dead farmed fish. They contain a tank (the well) of seawater within which the fish are held. One of their main uses is the treatment of farmed fish for diseases and parasites. This is done by diluting medicinal chemicals in the tank of seawater and then introducing the fish into the tank for a short period of time. The seawater and any residual medicines ("treatment waters") are subsequently discharged into the sea next to the fish farm.

There are other methods for applying the same medicinal treatments to farmed fish without using a wellboat. Where a boat is not used, the release of treatment waters is regulated by SEPA under regulation 3(1)(a) of the Water Environment (Controlled Activities) (Scotland) Regulations 2011, known as "CAR". A licence under CAR (a "CAR licence") is required for the discharge of treatment waters. However, where the release of treatment waters is from a wellboat, the activity is regulated by Marine Scotland under the 2010 Act and a marine licence is required for the discharge of the treatment waters. Relevant conditions in a CAR licence and in a marine licence ensure the same level of protection of the water environment.

In practice, a fish farm operator could require two licences – a CAR licence and a marine licence – for what is essentially the same activity: the release of treatment waters. This dual regulation is considered unnecessarily complex.

The policy aim of this SSI is to transfer regulation of the discharge of treatment waters from wellboats from the marine licensing system under the 2010 Act to CAR. This is achieved by exempting the activity from the marine licensing regime under the 2010 Act. By doing so, the activity will automatically fall within the scope of regulation 3(1)(a) of CAR.

These amendments transfer regulatory responsibility from one regulator to another. They do not change the level of environmental protection required of wellboat operators, nor current policy regarding the functions of wellboat activities and operations.

Implications of this Order
Once this Order comes into force, wellboat operators will require to hold a CAR licence for the discharge of treatment waters from wellboats.

Existing marine licences for this activity will become deemed CAR licences on the "relevant date". For the majority of marine licences the "relevant date" will be 30 November 2020, unless transitional provisions apply.

New applications for a licence for the discharge of treatment waters from wellboats will be made to SEPA, and any necessary conditions of those operations will be incorporated into the operator's CAR licence.

The Order contains a number of transitional and saving provisions that ensure that any administrative or judicial processes that are on-going when the Order comes into force are concluded under existing law. For example, an application for a marine licence made prior to the Order coming into force will be processed by Marine Scotland for the Scottish Ministers, and will become a deemed CAR licence when granted. Any variation, suspension or revocation procedures that have been commenced in relation to a marine licence will be completed by Marine Scotland. Any ongoing appeal proceedings will continue to be subject to the provisions of the 2010 Act and the Marine Licensing Appeals (Scotland) Regulations 2011. Marine licences subject to transitional provisions will become deemed CAR licences once those procedures are complete.

Any inquiries, enforcement proceedings, civil sanctions or criminal proceedings arising from events taking place prior to a marine licence becoming a deemed CAR licence will be governed by the 2010 Act.

Consultation
There is a statutory consultation requirement to consult such persons as the Scottish Ministers consider appropriate on the proposed Order. We consulted the Aquaculture (finfish) sector on the proposals, including the proposed transitional arrangements, and they welcomed the proposed approach. We also consulted at some length with SEPA, as the future regulator, both on the underlying policy and on a draft of the proposed Order. SEPA provided feedback at both stages, which was taken on board and influenced the final draft of the Order.

Impact Assessments
A number of pre-screening assessments were undertaken, including Strategic Environmental Assessment, Equality Impact Assessment (EQIA), Island Communities Impact Assessment, Fairer Scotland, Data Protection, Future Proofing and a Child Rights and Wellbeing Impact Assessment (CRWIA). The administrative changes introduced by this SSI were considered to have no effects on any of the matters assessed.

Financial Effects
The Cabinet Secretary for Environment, Climate Change and Land Reform confirms that no Business and Regulatory Impact Assessment (BRIA) is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Marine Scotland
August 2020