EXECUTIVE NOTE

DRAFT : THE MARINE LICENSING (EXEMPTED ACTIVITIES) (SCOTTISH INSHORE REGION) ORDER 2011

The above instrument will, if approved, be made by the Scottish Ministers in exercise of the powers conferred by section 32 (1), (2) and (3) and 165(1) of the Marine (Scotland) Act 2010 ("the 2010 Act"). This instrument is subject to affirmative resolution procedure. The content is similar to that of the Marine Licensing (Exempted Activities)(Scottish Offshore Region) Order 2011 which is made under sections 74(1), (2) and (3) and 316 (1) of the Marine and Coastal Access Act 2009 ("the 2009 Act"). That instrument is subject to negative procedure.

This instrument covers exemptions from licensing requirements in the Scottish inshore region from 0 to12 nm. That made under the 2009 Act cover the Scottish offshore region from 12 to 200 nm.

Policy objectives

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

The new marine licensing system has a broad scope. This will allow a consistent approach across a range of activities, simplifying the process of getting approval for a project. However this broad scope means that some activities that are already well regulated and others that pose little environmental risk potentially require a licence. The purpose of the instrument is to exempt day to day activities, ensure compatibility with international and domestic law, avoid regulating the same activity twice and enable emergency action to be carried out without damaging delay.

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.

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 http://www.scotland.gov.uk/Consultations/Current

A number of exemptions were added to the Order in response to comments made during the consultation exercise. These were as follows

- The exemption in respect of scientific instruments at article 17 will not apply to a deposit that causes or is likely to cause obstruction or danger to navigation.

- Article 21 has been amended so that it will exempt an activity carried on for the purpose of executing emergency works in response to flood or the imminent risk of flood; for the purpose of preventing pollution of the environment; or to repair an existing structure.

- Reference to the removal of biological growth from a vehicle, vessel, aircraft or marine structure has been dropped from article 23.

- A provision is added to the exemption regarding harbour maintenance at article 24 to the effect that there is a condition that the activity is carried on within the existing boundaries of the works being maintained. The previous reference to an approved programme of harbour maintenance works is removed.

- 'A lighthouse authority' is added to the list in article 25(1) of bodies responsible for the removal of anything causing or likely to cause obstruction or danger to navigation and paragraph (1) is reworded so that it also applies to someone carrying out a relevant activity on behalf of a listed authority.

- The exemption for dredging activities carried out in connection with a harbour (in article 26) is made subject to conditions that the activity must involve the dredged material being contained within a secure structure and transported for deposit other than at the place of dredging or must involve the use of plough dredging as part of a dredging operation. There is also provision that Scottish Ministers must approve in advance how the dredging is to be carried out before the exemption will apply.

- The words "the approval or consent" are now included in article 27(1)(c).

- An exemption has been added at article 32 for the authorised emergency inspection and repair of cables and pipelines.

- Exemptions have been added for air accident investigation activities (article 9) and explosive substances used for safety purposes (article 31).

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/MarineActExemptions#top

There are no equality impact issues.

Financial effects

Establishing exemptions from the need to apply for a marine licence does not in itself have financial effects.

Marine Scotland
February 2011