Draft Order laid before the Scottish Parliament under section 165(5) of the Marine (Scotland) Act 2010, for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2011 No.

ENVIRONMENTAL PROTECTION

LICENSING (MARINE)

The Marine (Scotland) Act 2010 (Transitional and Consequential Provisions) Order 2011

Made - - - -	*2011*
Coming into force - -	*6th April 2011*

The Scottish Ministers make the following Order in exercise of the powers conferred by section 164 of the Marine (Scotland) Act 2010(**a**) and all other powers enabling them to do so.

In accordance with section 165(5) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation and commencement

1. This Order may be cited as the Marine (Scotland) Act 2010 (Transitional and Consequential Provisions) Order 2011 and comes into force on 6th April 2011.

Interpretation

2. In this Order—

"the Act" means the Marine (Scotland) Act 2010;

"CPA" means the Coast Protection Act 1949(**b**);

"FEPA" means the Food and Environment Protection Act 1985(**c**).

CPA consents previously given and outstanding applications

3.—(1) Any consent given under subsection (1) of section 34 of CPA which—

(a) is in effect immediately before 6th April 2011, and

(b) relates to an operation which—

(i) falls within that subsection, and

(**a**) 2010 asp 5.
(**b**) 1949 c.74.
(**c**) 1985 c.48.

(ii) is a licensable marine activity,

has effect on and after that date as if it were a marine licence granted by the Scottish Ministers in relation to that activity ("a deemed licence").

(2) In accordance with paragraph (1)—

(a) a consent given for a specified period remains in force (subject to the provisions of Part 4 of the Act) for so much of that period as falls after 5th April 2011;

(b) any condition subject to which a consent under subsection (1) of section 34 of CPA has been given has effect as if it were a condition attached to the deemed licence;

(c) any provision made under subsection (4) of that section in respect of a consent has effect as if it were provision made under section 29(4)(a) of the Act in respect of the deemed licence;

(d) any condition having effect under section 34(4A)(b) of CPA(**a**) has effect as if it were such a condition as is mentioned in section 29(5) of the Act.

(3) Any application for consent under subsection (1) of section 34 of CPA which —

(a) was made before 6th April 2011, and

(b) relates to an operation which—

(i) falls within that subsection, and

(ii) is a licensable marine activity,

has effect on and after that date as if it were an application for a marine licence made to the Scottish Ministers in relation to that activity.

CPA – safety requirements

4. The repeal of section 36A of CPA(**b**) does not affect the operation of that provision in relation to anything occurring before the date on which that repeal takes effect.

FEPA licences previously issued and outstanding applications

5.—(1) Any licence having effect under Part 2 of FEPA (a "FEPA licence") which—

(a) is in effect immediately before 6th April 2011, and

(b) relates to the doing of anything which—

(i) falls with section 5 or 6 of that Act(**c**), and

(ii) is an activity which, on or after that date, must not be carried on except in accordance with a marine licence,

has effect on and after that date as if it were a marine licence granted by the Scottish Ministers in relation to that activity (a "deemed licence").

(2) In accordance with paragraph (1)—

(a) a licence issued for a specified period remains in force (subject to the provisions of Part 4 of the Act) for so much of that period as falls after 5th April 2011;

(b) any provision included in a FEPA licence by virtue of section 8(3) or (4) of that Act(**d**) has effect as if it were a condition attached to the deemed licence.

(3) Any application for a FEPA licence which—

(a) was made before 6th April 2011, and

(**a**) Subsection (4A) was inserted in section 34 by the Merchant Shipping Act 1988 (c.12), section 36(4).

(**b**) Section 36A was inserted by the Merchant Shipping Act 1988, section 36(6). The whole of Part II of CPA is repealed by paragraph 1 of schedule 4 to the Act.

(**c**) Sections 5 and 6 are relevantly amended by the Marine and Coastal Access Act 2009 (c.23), Schedule 8, paragraph 2(2) and (3).

(**d**) Section 8(4) is amended by the Marine and Coastal Access Act 2009, Schedule 8, paragraph 2(5)(a).

(b) relates to an activity which—

(i) falls within section 5 or 6 of FEPA, and

(ii) on or after that date, must not be carried on except in accordance with a marine licence,

has effect on and after that date as if it were an application for a marine licence made to the Scottish Ministers in relation to that activity.

(4) An applicant who has paid a fee under section 8(7) or (8) of FEPA must not be charged a fee under section 25(1)(b) of the Act in respect of the deemed licence.

FEPA licences and applications – representations

6.—(1) Paragraphs 5 to 17 of Schedule 3 to FEPA continue to apply in any case where a person—

(a) makes written representations (in accordance with paragraph 5 of that Schedule) before 6th April 2011, or

(b) within the period of 28 days ending with that date, is issued with a FEPA licence or receives notice under paragraph 1, 3 or 4 of that Schedule.

(2) Paragraph (1) has effect in place of any provision made under section 38 of the Act for appeals against any decision on an application for a licence.

FEPA – remedial action

7. Section 10 of FEPA continues to apply in relation to anything carried out otherwise than under and in accordance with a FEPA licence before 6th April 2011.

Dredging

8.—(1) During the relevant transitional period, section 20 of the Act does not apply in respect of the carrying on by a person of a dredging operation—

(a) which falls within item 7 in section 21(1) of the Act, but

(b) which meets the conditions in paragraph (2).

(2) The conditions are that the dredging operation—

(a) does not fall within section 34 of CPA, and

(b) is not an activity for which a licence is required under Part 2 of FEPA.

(3) The references in paragraph (2) to section 34 of CPA and Part 2 of FEPA are references to those provisions as they would apply but for the Act and article 10 of this Order.

(4) The "relevant transitional period", in the case of any person and any dredging operation—

(a) is the period ending on 6th April 2012, but

(b) if a marine licence which authorises the carrying on of the dredging operation by the person comes into force at any time before that date, the transitional period ends with the coming into force of that licence.

Electronic Communications Code

9.—(1) In this article—

(a) "the Code" means the Electronic Communications Code set out in Schedule 2 to the Telecommunications Act 1984(**a**);

(b) "communications approval" means an approval under paragraph 11 of the Code(**b**).

(**a**) 1984 c.12.

(**b**) Parts of paragraph 11 are repealed by the Marine and Coastal Access Act 2009, Schedule 22, Part 2.

(2) Paragraphs (3) to (5) apply to any communications approval ("a qualifying approval")—

(a) which is in effect immediately before 6th April 2011, and

(b) which relates to any works, falling within sub-paragraph (3) or (4) of paragraph 11 of the Code, the execution of which on or after that date is a licensable marine activity.

(3) A qualifying approval has effect on and after 6th April 2011 as if it were a marine licence granted by the Scottish Ministers in relation to the licensable marine activity ("a deemed marine licence").

(4) If the qualifying approval was given for a specified period, the deemed marine licence is to remain in force (subject to the provisions of Part 4 of the Act) for so much of that period as falls after the transitional date.

(5) If, by virtue of paragraph 11(5) of the Code, the qualifying approval was given subject to a condition, the deemed marine licence has effect as if the condition were a condition attached to the deemed marine licence.

(6) Any application for a communications approval—

(a) which was submitted before 6th April 2011, and

(b) which relates to an activity which, on or after that date, is a licensable marine activity,

has effect on and after that date as if it were an application for a marine licence made to the Scottish Ministers in relation to that activity.

Amendment of FEPA

10. After section 6 of FEPA, insert—

"**6A.** A licence under this Part of this Act is needed for an operation only if it is an operation to which, by virtue of section 34 of the Marine (Scotland) Act 2010, Part 4 of that Act does not apply.".

Amendment of the Conservation (Natural Habitats, &c.) Regulations 1994

11. In regulation 33(1) of the Conservation (Natural Habitats, &c.) Regulations 1994(**a**)—

(a) for "install" substitute "deposit or remove"; and

(b) for the words from "consent" to the end, substitute "marine licence under Part 4 of the Marine (Scotland) Act 2010".

Amendment of the Urban Waste Water Treatment (Scotland) Regulations 1994

12. In the Urban Waste Water Treatment (Scotland) Regulations 1994(**b**)—

(a) omit regulations 9 and 11(2); and

(b) in regulation 11(3), omit—

(i) "and the licensing authority"; and

(ii) "or (2)".

Revocations

13. The following instruments are revoked—

(a) the Environmental Impact Assessment and Natural Habitats (Extraction of Minerals by Marine Dredging) (Scotland) Regulations 2007(**c**); and

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(**a**) S.I. 1994/2716.
(**b**) S.I. 1994/2842.
(**c**) S.S.I. 2007/485.

(b) the Environmental Impact Assessment and Natural Habitats (Extraction of Minerals by Marine Dredging) (Scotland) Amendment Regulations 2009(**a**).

A member of the Scottish Executive

St Andrew's House,
Edinburgh

(**a**) S.S.I. 2009/333.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes transitional and consequential provision in connection with the marine licensing provisions in Part 4 of the Marine (Scotland) Act 2010 ("the Act").

Articles 3 to 7 make transitional provision in connection with the commencement of the marine licensing regime under the Act on 6th April 2011. Marine licensing will replace the separate consent and licensing procedures applicable under the Coast Protection Act 1949 ("CPA") and the Food and Environment Protection Act 1985 ("FEPA"). Articles 3 to 7 provide for CPA consents and FEPA licences in force immediately before 6th April to be treated as deemed marine licences as from that date. Similarly, CPA and FEPA applications ongoing as at that date fall to be treated as marine licence applications.

Article 8 provides for certain dredging activity not to require a marine licence for a transitional period after 6th April.

Article 9 makes provision for treating certain approvals under the Telecommunications Act 1984 as marine licences.

Articles 10 to 13 make amendments to and revoke other enactments. In particular, article 10 amends FEPA so that, as from 6th April, a FEPA licence will only be required in respect of certain reserved activities which are outwith the coverage of Part 4 of the Act.

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