



Marine (Scotland) Act 2010

2010 asp 5

PART 4

MARINE LICENSING

Delegation

51 Delegation of functions relating to marine licensing

- (1) The Scottish Ministers may make an order which—
 - (a) designates any of the delegable marine licensing functions which would (apart from any order under this section) be exercisable by the Scottish Ministers, and
 - (b) provides that the functions so designated (the “designated functions”), instead of being so exercisable, are to be exercisable by such delegate, acting on behalf of the Scottish Ministers as is designated in the order.
- (2) The delegate so designated may be either—
 - (a) a public authority, or
 - (b) a group of persons comprising (either or both)—
 - (i) persons nominated by such public authorities with an interest in the Scottish marine area as the Scottish Ministers consider appropriate,
 - (ii) persons nominated by the Scottish Ministers.
- (3) The Scottish Ministers may make an order under this section—
 - (a) where the proposed delegate is a public authority, only with the consent of the authority,
 - (b) where the proposed delegate is a group of persons referred to in paragraph (b) of subsection (2), only with the consent of any public authority responsible for nominating under sub-paragraph (i) of that paragraph.
- (4) The delegate—
 - (a) must comply with the order, and
 - (b) is to be taken to have all the powers necessary to do so.

Status: This is the original version (as it was originally enacted).

- (5) In this section “delegable marine licensing functions” means functions of the Scottish Ministers under this Part other than excepted functions.
- (6) The excepted functions are functions under—
- (a) section 21(3) (altering the list of licensable marine activities),
 - (b) section 25(1)(b) (making regulations regarding the fee for an application),
 - (c) section 27(4)(a) (making order specifying consultees for licence applications),
 - (d) section 27(7) (making regulations as to the procedure for applications),
 - (e) section 32(1) and (5) (making orders specifying activities which do not require a marine licence and consulting in relation to such orders),
 - (f) section 33(1) (making regulations regarding activities falling below specified levels of environmental impact),
 - (g) section 35(3) (making orders providing for special procedures for certain applications),
 - (h) section 38(1) (making regulations regarding appeals against licensing decisions),
 - (i) sections 46(1) and 48(1) (making orders conferring powers to impose civil sanctions),
 - (j) this section and section 53,
 - (k) section 54(3) (making regulations regarding a register of licensing information),
 - (l) section 61 (making regulations regarding appeals against notices issued under sections 30, 43, 44, 55 or 57).

52 Orders under section 51: supplementary provisions

- (1) For so long as an order made under section 51 remains in force, the designated functions are exercisable by the delegate acting on behalf of the Scottish Ministers (and are not exercisable by the Scottish Ministers).
- (2) Subsection (1) is subject to any provision to the contrary which is included in the order.
- (3) An order under section 51 may include—
- (a) such terms or conditions,
 - (b) such obligations or requirements,
 - (c) such financial provisions,
- as the Scottish Ministers may determine.
- (4) The provision that may be made under subsection (3) includes, in particular, provision (where appropriate) as to—
- (a) the manner in which the delegate is to exercise any of the functions,
 - (b) the form and manner in which licence applications must be made to the delegate,
 - (c) the persons to whom notice of an application should be published under section 26, and the circumstances in which such notice should not be published,
 - (d) matters (in addition to those set out in section 27) to which the delegate must have regard in determining applications for licences,
 - (e) the circumstances in which the delegate must exercise the power to consult under section 27(4), and the persons who must or may be consulted,

- (f) the form and content of any licence granted,
 - (g) appeals from any decision of the delegate (whether to the Scottish Ministers, a court, tribunal or (as the case may be) person to which, or whom, the appeal is made),
 - (h) any other provision that may be made by virtue of section 27(7).
- (5) An order under section 51 may make different provision for different cases or different delegates.
- (6) Where an order has been made under section 51 that a delegate is to grant licences—
- (a) the delegate may (in accordance with subsections (1) to (3) and (8) of section 30) vary, suspend, revoke or transfer a licence granted before making the order, and
 - (b) any reference in those subsections to a licence granted by the Scottish Ministers includes a reference to a licence granted by the delegate.
- (7) The Scottish Ministers may make grants to a delegate for the exercise of the designated functions.

53 Directions to delegates as regards the performance of the marine licensing designated functions

- (1) This section applies where any functions are exercisable by a delegate by virtue of an order made under section 51 by the Scottish Ministers.
- (2) The Scottish Ministers may from time to time give directions to the delegate with respect to the performance of the functions.
- (3) Before giving any direction under this section, the Scottish Ministers must consult the delegate.
- (4) A delegate to whom directions are given under this section must comply with the directions.
- (5) The Scottish Ministers must publish any direction given under this section in such manner as they consider is most likely to bring the direction to the attention of persons likely to be affected by it.