

# **MARINE (SCOTLAND) BILL**

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## **DELEGATED POWERS MEMORANDUM**

### **PURPOSE**

1. This memorandum has been prepared by the Scottish Government in accordance with Rule 9.4A of the Parliament's Standing Orders, in relation to the Marine (Scotland) Bill. It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers. This memorandum should be read in conjunction with the Explanatory Notes and Policy Memorandum for the Bill.

### **OUTLINE OF BILL PROVISIONS**

2. The Bill provisions create a framework to manage growing and competing demands for the use of marine resources in the seas around Scotland, integrating environmental and socio-economic considerations to maximise economic growth within sustainable environmental limits.

3. The 5 main Parts of the Bill provide for:

- Creation of a statutory marine planning framework with distinct national and regional structures. The Bill provides powers for Ministers to create Scottish Marine Regions and to delegate planning functions in respect of them.
- Facilitation of streamlining of marine licensing and marine consents and therefore a reduction in regulatory burden. Provisions identify licensable marine activities, and the licensing process, including specific factors to be taken into account during the determination of licence applications. This Part also provides for enforcement of licences and licence conditions and appeals.
- Establishment of marine protected areas and the introduction of marine conservation orders as appropriate to the management of the areas. The Part also provides for the Scottish Natural Heritage marine wildlife licensing functions under the Wildlife and Countryside Act (1981) to be transferred to Scottish Ministers.
- Repeal of the Conservation of Seals Act 1970 and introduction of a licence regime appropriate for the management of seals in Scottish waters.
- A range of common enforcement powers applicable to both the enforcement of both licensing and nature conservation powers.
- Scottish Ministers to make orders or regulations under the Act.

4. Further information about the Bill's provisions is contained in the Explanatory Notes and Financial Memorandum published separately as [SP Bill 25–EN] and in the Policy Memorandum published separately as [SP Bill 25–PM].

## **RATIONALE FOR SUBORDINATE LEGISLATION**

5. The Bill contains a number of delegated powers provisions which are explained in more detail below. The Government has had regard when deciding where and how provision should be set out in subordinate legislation rather than on the face of the Bill to—

- the need to strike the right balance between the importance of the issue and providing flexibility to respond to changing circumstances;
- the need to make proper use of valuable Parliamentary time;
- the need to ensure that other areas of regulation can be developed in a coherent and consistent way by other authorities;
- the likely frequency of amendment;
- the possible need to change provisions in a co-ordinated way, for example to react to changes in approach when considering roll-out;
- the need to anticipate the unexpected, which might otherwise frustrate the purpose of any provision in primary legislation approved by Parliament.

6. Where subordinate legislation is required to implement Government policy some form of parliamentary procedure may be appropriate. A balance must be struck between the different levels of scrutiny involved in the procedures. In the Bill the balance reflects the view of the Government on the importance of the matter delegated by Parliament.

## **DELEGATED POWERS**

7. This Memorandum describes the provisions of the Bill which confer power to make subordinate legislation. It sets out—

- the persons upon whom the power to make subordinate legislation is conferred and the form in which the power is to be exercised;
- why it is considered appropriate to delegate the power to subordinate legislation and the purpose of each such provision;
- the Parliamentary procedure, if any, to which the exercise of the power to make subordinate legislation is to be subject.

8. Section 145 contains the general subordinate legislation provisions. Subsections (2) and (3) require all powers to make orders or regulations (except designation orders under section 58(1)) to be exercised by statutory instrument. Subsection (1) allows different provisions to be made for different purposes and permits the powers to be used to make incidental, consequential, supplemental, transitional, transitory or saving provisions. The general position is that the powers exercisable by statutory instrument are subject to negative resolution (subsection (4)). The exceptions are (a) commencement orders under section 148(1), which are not subject to any

procedure and (b) orders and regulations listed in subsection (5), which are subject to affirmative procedure.

**Section 3(4) – Power to designate any part of the Scottish marine area as a Scottish marine region**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** order made by statutory instrument  
**Parliamentary procedure:** Affirmative resolution of the Scottish Parliament

*Provision*

9. Section 3(4) makes provision for Scottish Ministers by order to designate any part of the Scottish marine area as a Scottish marine region, and for any such order to identify the boundaries of the Scottish marine region.

*Reason for taking power*

10. The policy is that marine planning at the regional level will be carried out by Marine Planning Partnerships of each Scottish marine region. The boundaries of these regions are of great importance to stakeholders and the Scottish Ministers will consult widely on the criteria for their definition. Once the boundaries have been agreed these will be set out in secondary legislation. Secondary legislation would allow boundaries to be revised through amendments if necessary in response to changing circumstances.

*Choice of procedure*

11. As the boundaries of Scottish Marine Regions are of great interest to stakeholders, affirmative resolution procedure is considered appropriate.

**Section 17(3) - Powers to amend section 17(1) so as to add or remove any activity from the list of licensable marine activities**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** order made by statutory instrument  
**Parliamentary procedure:** Affirmative resolution of the Scottish Parliament

*Provision*

12. This provision allows the Scottish Ministers to respond to changing developmental needs within the marine environment by either adding to the list of licensable marine activities or removing activities which are considered no longer to need a licence or are no longer carried out.

*Reason for taking power*

13. The developmental needs within the marine environment are likely to change over time and it is important to have the flexibility to be able to add or remove activities to or from the list. It is therefore appropriate to delegate the power to subordinate legislation.

*Choice of procedure*

14. The addition or removal of licensable marine activities is likely to be of great interest to stakeholders. Many developments in the marine environment require considerable investment and the process of achieving a licence can also be costly. It is therefore appropriate that any order should be subject to an affirmative resolution of the Parliament.

**Section 18(1)(b) - Power to determine fees to accompany licence applications**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** regulations made by statutory instrument  
**Parliamentary procedure:** Negative resolution of the Scottish Parliament

*Provision*

15. This provision allows the Scottish Ministers to determine fees which must be paid when a marine licence application is made.

*Reason for taking power*

16. The fees set will be appropriate for the cost recovery of the Scottish Ministers for the administering and enforcing the licensing regime. Costs will vary over time and it is appropriate to have the flexibility to increase fees when necessary.

*Choice of procedure*

17. As the fees set will be appropriate for cost recovery, it is considered appropriate that the regulations should be subject to negative resolution procedure.

**Section 20(4)(a) - Power to specify the persons or bodies to be consulted with regards to each licensing application**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** order made by statutory instrument  
**Parliamentary procedure:** Negative resolution of the Scottish Parliament

*Provision*

18. This provision allows the Scottish Ministers to detail by order the persons or bodies that must be consulted by them with regards to an application for a licence.

*Reason for taking power*

19. It is considered appropriate to delegate the power to subordinate legislation because the persons or bodies that must be consulted will vary over time. Detailing the consultees by order will ensure that applicants will be fully aware of the organisations who will be consulted on their applications and that Scottish Ministers must consult those on the list at all times with regards to applications. The persons or bodies to be consulted will be a diverse range of stakeholders with an interest and expertise in the marine environment.

*Choice of procedure*

20. The list of consultees is unlikely to be a contentious issue and so a negative resolution procedure is considered appropriate.

**Section 20(7) - Powers to specify standard daily amount in respect of any hearing held in connection with an application for a marine licence**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** regulations made by statutory instrument  
**Parliamentary procedure:** No procedure

*Provision*

21. Section 21(1) enables the Scottish Ministers to hold an inquiry in connection with their determination of an application for a marine licence. Section 21(2) applies subsections (2) to (8) of section 210 of the Local Government (Scotland) Act 1973 to any such inquiry. Section 210(7B) of that Act gives the Scottish Ministers the power to prescribe by regulations a standard daily amount to be used in calculating expenses which may be recovered from parties to the inquiry. Different standard amounts may be prescribed for different categories of inquiry and accordingly the effect of section 21(2) of the Bill is to widen the regulation making powers of Ministers.

*Reason for taking power*

22. As section 21(2) applies certain general procedural provisions of the 1973 Act to inquiries under that section, it was considered appropriate to give the Scottish Ministers the extended power to set by regulations a standard daily amount in respect of any hearing on a marine licence application.

*Choice of procedure*

23. There is no Parliamentary procedure on regulations under section 210(7B) generally and no reason was seen to alter that in the case of exercise of powers under that section as extended by the Bill.

**Section 21(2) - Powers to recover costs in relation to carrying out an inquiry under subsection 7b of section 210 of the Local Government (Scotland) Act 1973 (c.65) in relation to marine licences**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** regulations made by statutory instrument  
**Parliamentary procedure:** Negative resolution of the Scottish Parliament

*Provision*

24. This provision allows the Scottish Ministers by regulation to set out the costs and expenses to be recovered for carrying out an inquiry in relation to the determination of an application for a marine licence.

*Reason for taking power*

25. As costs vary over time it is appropriate to have the flexibility to amend the costs when necessary.

*Choice of procedure*

26. As the regulations will be for the recovery of costs in relation to the holding of an inquiry it is appropriate for this to be subject to negative resolution.

**Section 24(1) - Power to specify activities which will not need a marine licence**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** order made by statutory instrument  
**Parliamentary procedure:** Affirmative resolution of the Scottish Parliament

*Provision*

27. This provision allows the Scottish Ministers by order to exempt certain activities from the need to obtain a marine licence. Any exemption may be unconditional or dependent on conditions specified in the order being satisfied.

*Reason for taking power*

28. Activities and the methods of carrying out activities within the marine environment will change over time. It is therefore appropriate to have the flexibility to exempt activities which are considered not to require a licence. Certain activities may not be harmful if carried out in a certain manner and so it is also appropriate that activities can be exempted if carried out in a manner prescribed by order.

*Choice of procedure*

29. It is possible that some of the activities to be exempted will be of major importance to the marine environment and stakeholders will have considerable interest in the outcome. It is therefore considered appropriate to require an affirmative resolution of the Parliament.

**Section 25(1) - Power to allow licensable marine activities which fall below a specified threshold of environmental impact to be registered rather than licensed**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** regulations made by statutory instrument  
**Parliamentary procedure:** Affirmative resolution of the Scottish Parliament

*Provision*

30. The Scottish Ministers may by regulations allow licensable marine activities which fall below a specified threshold of environmental impact to be registered rather than licensed.

*Reason for taking power*

31. There are some uncontroversial marine activities which may have minimal impact on the marine environment but which would fall within being licensable activities. In many respects the administrative time spent licensing these projects is not justified by the associated risk or degree of protection given. However, defining a level of project that is deemed too small either in scale or environmental impact will take some time to do. The level may also vary with time and flexibility is required to change this where necessary.

*Choice of procedure*

32. The threshold of environmental impact which will determine whether an activity is to be licensed or not is likely to generate a lot of stakeholder interest. It is therefore considered appropriate to require an affirmative resolution of the Parliament.

**Section 27(1) - Provision for applications under section 36 of the Electricity Act 1989 and application for a marine licence to be considered together**

**Power conferred on: Scottish Ministers**  
**Power exercisable by: order made by statutory instrument**  
**Parliamentary procedure: Negative resolution of the Scottish Parliament**

*Provision*

33. This provision allows the Scottish Ministers by order to provide a single process where an application made under section 36 of the Electricity Act 1989 and an application for a marine licence made in respect of the same activity.

*Reason for taking power*

34. The procedural arrangements set out within (or determined under) Part 3 of the Bill for applying for a marine licence can be disapplied when the application in question is to be considered alongside an application (in respect of the same activity) for a consent under section 36 of the Electricity Act 1989. This is in order to simplify and streamline the licensing process. Secondary legislation is appropriate for setting out the details of the single process.

*Choice of procedure*

35. As this is mainly a procedural measure to simplify and streamline the licensing process it is considered appropriate to apply negative resolution procedure.

**Section 29(1) - Power to make provision for any person who applies for a marine licence to appeal against a decision made under section 22**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** regulations made by statutory instrument  
**Parliamentary procedure:** Affirmative resolution of the Scottish Parliament

*Provision*

36. This provision requires the Scottish Ministers to make regulations providing applicants with a right of appeal against a decision made under section 22.

*Reason for taking power*

37. An appeals process involves the sort of detail more suited to secondary than primary legislation.

*Choice of procedure*

38. There is likely to be a lot of stakeholder interest in the appeals process and so it was considered appropriate to require an affirmative resolution of the Parliament.

**Section 37(1) - Power to make provision about the imposition of fixed monetary penalties in relation to offences under Part 3**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** order made by statutory instrument  
**Parliamentary procedure:** Affirmative resolution of the Scottish Parliament

*Provision*

39. This provision allows the Scottish Ministers by order to set out how fixed monetary penalties can be used in relation to offences under Part 3.

*Reason for taking power*

40. To ease pressure in the courts, Ministers propose to create a fixed penalty scheme. This order-making power provides the ability to create such a scheme. There needs to be the flexibility to amend the exact processes for imposing a fixed penalty and to amend the level of fixed monetary penalties over time as monetary values change. The penalty is required to reflect the severity of the offence involved.

*Choice of procedure*

41. As fixed monetary penalties are to be imposed on persons who are believed to have committed an offence, it is considered appropriate to require an affirmative resolution of the Parliament.



**Section 39(1) - Power to make provision about the imposition of variable monetary penalties in relation to offences under Part 3**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** order made by statutory instrument  
**Parliamentary procedure:** Affirmative resolution of the Scottish Parliament

*Provision*

42. This provision allows the Scottish Ministers by order to set out how variable penalties can be used in persons in relation to offences under Part 3.

*Reason for taking power*

43. To ease pressure in the courts, Ministers propose to create also a variable monetary penalty scheme. This order-making power provides the ability to create such a scheme. There needs to be the flexibility to change from time to time the exact procedures for imposing variable monetary penalties.

*Choice of procedure*

44. As variable monetary penalties are to be imposed on persons who are believed to have committed an offence, it is considered appropriate to require an affirmative resolution of the Parliament.

**Section 42(1) - Power to provide for any delegable marine licensing functions to be exercised by a delegate**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** order made by statutory instrument  
**Parliamentary procedure:** Affirmative resolution of the Scottish Parliament

*Provision*

45. This provision allows the Scottish Ministers by order to delegate the exercise of marine licensing functions to a public authority or unincorporated group of persons.

*Reason for taking power*

46. Administering the regime in respect of most licensable activities is likely to require a high level of input and assessment from Scottish Ministers. Nonetheless it is conceivable that Scottish Ministers might seek in the future to have activities of a more local nature licensed by the body to whom marine planning functions for a marine region have been delegated. This power allows for that possibility.

*Choice of procedure*

47. Decisions on licensing can impact on individuals' livelihoods and therefore it is appropriate that any instrument changing who the licensing authority is to be in any particular case be made subject to affirmative resolution procedure.

**Section 45(2) - Powers to prescribe particulars to be contained within a register**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** regulations made by statutory instrument  
**Parliamentary procedure:** Negative resolution of the Scottish Parliament

*Provision*

48. This provision allows the Scottish Ministers to set out by regulations the particulars that must be contained within the register of licensing information.

*Reason for taking power*

49. The particulars to be contained within the register may vary over time and so it seems appropriate to have the flexibility to amend these when necessary. The particulars within the register will be transparent and applicants will be aware of the information that will be available to the public.

*Choice of procedure*

50. As this is an administrative procedure relating to the contents of the register, it was felt appropriate that negative resolution procedure be applied.

**Section 45(3) - Power to set out further provisions regarding maintenance of the register of licensing information**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** regulations made by statutory instrument  
**Parliamentary procedure:** Negative resolution of the Scottish Parliament

*Provision*

51. This provision allows the Scottish Ministers to set out by regulation how the register of license information should be kept.

*Reason for taking power*

52. The power allows Ministers to set out matters such as how information on the register should be stored. The level of detail required is more appropriate for subordinate, rather than primary, legislation.

*Choice of procedure*

53. These are administrative arrangements and it is therefore thought appropriate for negative resolution procedure to be applied.

**Section 52(1) - Power to make provision for any person to whom a notice listed in subsection (2) is issued to appeal against that notice**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** regulations made by statutory instrument  
**Parliamentary procedure:** Affirmative resolution of the Scottish Parliament

*Provision*

54. The provision places a duty on Scottish Ministers to create by regulations an appeals system where any person is issued with any of the following notices - a notice varying, suspending or revoking a marine license for breach of condition, a compliance notice, a remediation notice, a stop notice or an emergency safety notice

*Reason for taking power*

55. Issuing any of the notices set out above could have an impact on an individual's business and livelihood and it is appropriate that the individual in receipt of a notice has the ability to challenge it. The details of any appeals procedure are appropriate for inclusion within secondary legislation.

*Choice of procedure*

56. An appeals procedure is an important safeguard within the system and it is therefore thought appropriate that affirmative resolution procedure be applied.

**Section 54(3)(1) - Power to provide for marine fish farming not to constitute 'development'**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** order made by statutory instrument  
**Parliamentary procedure:** Affirmative resolution of the Scottish Parliament

*Provision*

57. The provision allows Scottish Ministers (with the agreement of the appropriate planning authority) to make an order removing aquaculture developments in specified waters from the development consenting process set out in the Town and Country Planning (Scotland) Act 1997. The provision proceeds by inserting a new section 26AB into that 1997 Act and it is subsection (1) of that section which contains the order-making power.

*Reason for taking power*

58. The power will allow the Government to take aquaculture developments out of the 1997 Act system in cases where the planning authority for the waters in question wish this to happen. In such cases, any aquaculture developments will then fall to be regulated under the marine licensing system provided for in Part 3 of the Bill (an exemption order under section 24 will otherwise keep aquaculture developments out of the licensing system).

*Choice of procedure*

59. As an order will have the result of moving aquaculture developments in a particular area out of the planning regime under Town and Country Planning (Scotland) Act 1997 for good, it is considered that affirmative resolution procedure is appropriate.

**Section 68(2) - Power to provide for procedures to be followed at hearings**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** regulations made by statutory instrument  
**Parliamentary procedure:** Negative resolution of the Scottish Parliament

*Provision*

60. Section 68 deals with representations and hearings in relation to a proposed marine protected area designation order (or proposals to amend or revoke such an order) under section 58. Section 68(1) provides that Scottish Ministers may, before deciding whether to make, amend or revoke such an order, give any person the opportunity to make oral or written representations to them or to any person appointed by them for the purpose of a hearing. Section 68(2), allows Scottish Ministers to make provisions for the procedure to be followed (including decisions as to expenses) at any hearing held under subsection (1).

*Reason for taking power*

61. Provisions concerning procedure at hearings are considered to be appropriate for secondary legislation.

*Choice of procedure*

62. As the provisions contained in regulations would be purely procedural in nature, it is considered appropriate that negative resolution procedure be applied.

**Section 74(1) - Powers to make marine conservation orders**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** Order made by statutory instrument  
**Parliamentary procedure:** Negative resolution of the Scottish Parliament

*Provision*

63. Section 74(1) provides Scottish Ministers with a power to make one or more marine conservation orders (MPOs) for the purposes of furthering the stated conservation objectives for a nature Conservation MPA, a stated purpose of a Demonstration and Research MPA, or the stated preservation objectives of an Historic MPA.

*Reason for taking power*

64. The purpose of an MCO is to provide Scottish Ministers with a tool to regulate activities with a view to protecting the key features of an MPA, whether natural or historic, or in the case of a Demonstration and Research MPA to safeguard and allow the furtherance of the

demonstration or research objectives of the site. An MCO will not be required in respect of every MPA nor will the same measures be needed in every MCO. It is therefore thought appropriate to provide for MCOs to be made as subordinate legislation.

*Choice of procedure*

65. There are not thought to be any special factors justifying affirmative resolution procedure and accordingly negative resolution procedure has been applied.

**Section 77(6) - Power to make an urgent continuation order**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** order made by statutory instrument  
**Parliamentary procedure:** Negative resolution of the Scottish Parliament

*Provision*

66. Section 77(1) provides that, where Scottish Ministers consider that there is an urgent need to protect an MPA, an MCO may be made without the need to apply the terms of section 76 (which provides for publicity prior to the making of such an order). Section 77(6) allows Scottish Ministers to make an “urgent continuation order” to provide that an order made under section 77(1) (an urgent order) is to remain in force for a further period not exceeding 12 months. An urgent continuation order can only be made where Scottish Ministers intend to make a permanent MCO under section 76 and they have published their proposals to make such an order.

*Reason for taking power*

67. The urgent MCO power under section 77(1) allows Scottish Ministers to make an urgent order lasting for a period of not more than 12 months. This should give Scottish Ministers time to consider whether a permanent MCO (made under section 74 after following the procedures in section 76) is necessary. However, once that decision is made time will be required for Scottish Ministers to prepare and publish details of the permanent MCO and to take account of any representations regarding the MCO. This is the reason why the urgent continuation power is considered necessary.

*Choice of procedure*

68. It is considered that any urgent continuation order should be subject to the same procedure as a marine conservation order and accordingly negative resolution procedure has been applied.

**Section 79(2) - Power to provide for procedures to be followed in relation to any hearing on a proposed marine conservation order**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** regulations made by statutory instrument  
**Parliamentary procedure:** Negative resolution of the Scottish Parliament

*Provision*

69. Section 79(1) makes provision for Scottish Ministers to give any person the opportunity to make written or oral representations before an MCO is put in place (or amended or revoked). Subsection (2) of section 79 states that Scottish Ministers may make regulations providing for the procedure to be followed at any hearing under subsection (1).

*Reason for taking power*

70. To allow Scottish Ministers to set up formal procedures to be followed for hearings held under section 79(1). Provisions concerning procedure at hearings are considered to be appropriate for secondary legislation.

*Choice of procedure*

71. As the provisions contained in regulations would be purely procedural in nature, it is considered appropriate that negative resolution procedure be applied.

**Section 93 - Penalties in regulations implementing the Habitats Directive for the Scottish marine area**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** regulations made by statutory instrument  
**Parliamentary procedure:** affirmative or negative resolution of the Scottish Parliament

*Provision*

72. This section provides that regulations made under section 2(2) of the European Communities Act 1972 (c.68) for the purpose of implementing the Habitats Directive in relation to the Scottish marine area may, despite paragraph 1(1)(d) of Schedule 2 to that Act (which limits the penalties which may be imposed for criminal offences) create offences punishable on summary conviction with a fine not exceeding £50,000 and on conviction on indictment with an unlimited fine.

*Reason for taking power*

73. The Scottish Government wishes to see consistency between the levels of penalty available for criminal offences in relation to areas designated under this Bill and in relation to marine Natura sites designated in implementation of the Habitats Directive. So as to allow this to be achieved, the usual restrictions in the European Communities Act 1972 as to the level of criminal penalties which can competently be imposed in regulations under section 2(2) of that Act are disapplied.

*Choice of procedure*

74. Section 93 does not affect in any way the Parliamentary procedure on regulations under section 2(2) of the 1972 Act. Such regulations can be made subject to either affirmative or negative resolution procedure.

**Section 102(1) - Powers to introduce fees for seal licences**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** regulations made by statutory instrument  
**Parliamentary procedure:** Negative resolution of the Scottish Parliament

*Provision*

75. Section 102(1) provides that Scottish Ministers may require an application for a seal licence (or for a variation of a seal licence) to be accompanied by a fee that may be determined by, or in accordance with, regulations made by them.

*Reason for taking power*

76. This is to allow Scottish Ministers to be able to establish a proportionate fee hierarchy for seal licences and vary this over time according to circumstances.

*Choice of procedure*

77. It was felt appropriate that since this power deals simply with the setting of fees, a negative resolution procedure should be applied.

**Section 144(1) - Ancillary provision**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** order made by statutory instrument  
**Parliamentary procedure:** Affirmative or negative resolution of the Scottish Parliament

*Provision*

78. The provision empowers Scottish Ministers to make provisions concerning any incidental, supplemental, consequential, transitional, transitory or savings matters where this is thought to necessary or expedient.

*Reason for taking power*

79. This is a general provision in fairly standard terms which allows Scottish Ministers to make provision by order to support the full implementation of the Bill.

*Choice of procedure*

80. Orders under section 144(1) are in general made subject to negative resolution procedure but an exception is made where the order adds to, replaces or omits any part of the text of an Act (see section 145(5)(e)). In that case, affirmative resolution procedure applies. This approach on

procedure is in line with the approach taken in most Bills and there are not considered to be any special factors justifying a different approach in this case

**Section 148(1) - Powers to appoint the day on which the provisions of the Act come into force**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** order made by statutory instrument  
**Parliamentary procedure:** No procedure

*Provision*

81. This provision allows the Scottish Ministers to make provision by order as to commencement of the majority of the provisions in the Bill. Sections 1, 2, 15, 55, 56, 57, 94, 118, 141, 145, 146 and 148 are exempted from the coverage of this power and will therefore come into force on any Act resulting from the Bill receiving Royal Assent.

*Reason for taking power*

82. Exact commencement dates for substantive provisions in the Bill are not yet definitely fixed and accordingly the flexibility provided by the ability to make commencement orders is required.

*Choice of procedure*

83. In line with general practice, commencement orders under section 148(1) will not be subject to any Parliamentary procedure





*This document relates to the Marine (Scotland) Bill (SP Bill 25) as introduced in the Scottish Parliament on 29 April 2009*

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