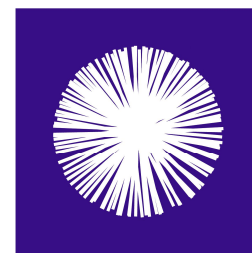


Consultation on Amending the Environmental Liability (Scotland) Regulations 2009 in Scotland to Transpose Article 38 of the Offshore Safety Directive 2013

by the Scottish Environment LINK Marine Taskforce

April 2015



Scottish
Environment

LINK

Introduction

Scottish Environment LINK is the forum for Scotland's voluntary environment community, with over 35 member bodies representing a broad spectrum of environmental interests with the common goal of contributing to a more environmentally sustainable society.

Its member bodies represent a wide community of environmental interest, sharing the common goal of contributing to a more sustainable society. LINK provides a forum for these organizations, enabling informed debate, assisting co-operation within the voluntary sector, and acting as a strong voice for this community in communications with decision-makers in Government and its agencies, Parliaments, the civic sector, the media and with the public.

Acting at local, national and international levels, LINK aims to ensure that the environmental community participates in the development of policy and legislation affecting Scotland.

LINK works mainly through Taskforces – groups of members working together on topics of mutual interest, exploring the issues and developing advocacy to promote sustainable development, respecting environmental limits.

LINK members welcome the opportunity to comment on this consultation.

Consultation Questions

Question 1: do you have any comments on the way in which we propose to transpose Article 38 of the OSD as set out above?

The proposals seem practical and the extension of the ELD into marine waters will ideally prompt marine users to re-assess their safety measures and ensure fail-safe measures are in place so that their activities limit the potential for environmental damage.

Question 2: do you have any views on the likelihood of potential damage in marine waters affecting their environmental status as defined under the MSFD?

SE LINK have welcomed the measures that Marine Scotland (the Scottish Government) have put in place to help Scotland achieve GES by 2020. As the proposed amendments to the Regulations are preventative in nature, it is difficult to assess how they will actively contribute to the GES objectives under the MSFD. It could be argued that the amendments will help to stop Scotland from not achieving GES.

LINK Consultation Response

Question 3: what do you consider to be the potential costs to industry should damage to marine waters occur that triggers action under the proposed amended Regulations?

Experience from the terrestrial environment gives opportunities to improve what has come before. The issue of restoration bonds for open cast coal mines became highly politicised and controversial since the collapse of the industry in 2010. The concept of restoration or insurance bonds paid into by companies and used in the event of significant environmental damage is something to be explored if the proposed Regulations are to be adopted. There are lessons to be learned from the failures of restoration bonds but the principles can work in the marine environment.

A further test might be how much it would cost if the companies operating were legally obliged to insure against the costs of environmental damage and a calculation by insurance company brokers of the risk.

Marine industries have an obligation to inflict as little environmental damage as is possible whilst carrying out their day-to-day operations; this is reflected in the Scottish Government's policy that marine industries must operate within environmental limits, as required by s.3 of the Marine (Scotland) Act 2010. In an event which triggers actions under the proposed Regulations, in the first instance, the costs of any immediate action required to limit the damage (for example, in the case of an oil spill) should be met by the individual, company or organisation responsible for the environmental damage.

Depending on the scale and impact of the environmental damage, and the effect the damage has on ecosystem function, habitats and species, an investigation into the causes of the damage and an indication of responsibility should take place. Pending this investigation, a suitable course of action should be taken in which an agreed outcome of how to repair the damage caused is agreed by marine stakeholders (including environmental NGOs) and reparations from those responsible to the Scottish Government should be agreed, along with a timeframe indicating when compensation should be paid and how long the restorative work is expected to take.

For this to work, it is imperative that data on the health of the marine environment is regularly collected and collated - especially in areas where marine industries operate.

A collated record of assessments of marine industry operations and their potential to harm the environment should be published - this information should already be available through Appropriate Assessments and Environmental Impact Assessments.

Question 4: do you have any other comments on the proposed transposition of Article 38 of the OSD?

No

Question 5: what do you consider to be the potential benefits for marine waters under the 2009 Regulations, following the proposed amendments?

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Registered HQ office: 2 Grosvenor House, Shore Road, Perth PH2 8BD tel 01738 630804 email enquiries@scotlink.org
Parliamentary office: 3rd Floor, Gladstone's Land, 483 Lawnmarket, Edinburgh EH1 2NT tel 0131 225 4345 email parliamentary@scotlink.org

LINK Consultation Response

The proposed amendments should act as a prompt to marine industries and users to re-evaluate their safety procedures and ensure that all necessary environmental checks are in place. SE LINK welcome these amendments as they act as preventative measures which can help to stop significant environmental damage occurring.

This response was compiled on behalf of LINK Marine Taskforce and is supported by: Hebridean Whale and Dolphin Trust; Marine Conservation Society; The National Trust for Scotland; RSPB Scotland; Royal Zoological Society Scotland; Scottish Ornithologists Club; Scottish Wildlife Trust; Whale and Dolphin Conservation; WWF Scotland



For more information contact:

Calum Duncan

(Scotland Programme Manager, Marine Conservation Society;
Convener of the LINK Marine Task Force).

E-mail: Calum.Duncan@mcsuk.org

Phone: 0131 226 6360

or Esther Brooker

(LINK Marine Policy Officer)

Email: esther@scotlink.org

Phone: 0131 659 9047

www.scotlink.org

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