

MARINE (SCOTLAND) ACT 2010, PART 4 MARINE LICENSING

LICENCE TO REMOVE ANY SUBSTANCE OR OBJECT FROM THE SCOTTISH MARINE AREA

Licence Number: **MS-00010000**

The Scottish Ministers (hereinafter referred to as "the Licensing Authority") hereby grant a marine licence authorising:

**Fortum Energy Limited UK
St James House
Kensington Square
London
W8 5HD**

to remove any substance or object as described in Part 2. The licence is subject to the conditions set out, or referred to, in Part 3.

The licence is valid from **13 December, 2022** until **31 December, 2023**

Signed:

For and on behalf of the Licensing Authority

Date of issue: 12 December, 2022

1. PART 1 - GENERAL

1.1 Interpretation

In the licence, terms are as defined in Section 1, 64 and 157 of the Marine Scotland Act 2010, and

- a) "**the 2010 Act**" means the Marine (Scotland) Act 2010;
- b) "**Licensed Activity**" means any activity or activities listed in section 21 of the 2010 Act which is, or are authorised under the licence;
- c) "**Licensee**" means Fortum Energy Limited UK
- d) "**Mean high water springs**" means any area submerged at mean high water spring tide;
- e) "**Commencement of the Licensed Activity**" means the date on which the first vehicle or vessel arrives on the site to begin carrying on any activities in connection with the Licensed Activity;
- f) "**Completion of the Licensed Activity**" means the date on which the Licensed Activity has been installed in full, or the Licensed Activity has been deemed complete by the Licensing Authority, whichever occurs first;

All geographical co-ordinates contained within the licence are in WGS84 format (latitude and longitude degrees and minutes to three decimal places) unless otherwise stated.

1.2 Contacts

All correspondence or communications relating to the licence should be addressed to:

Marine Scotland
Licensing Operations Team
Marine Laboratory
375 Victoria Road
Aberdeen
AB11 9DB
Email: MS.Marinelicensing@gov.scot

1.3 Other authorisations and consents

The Licensee is deemed to have satisfied itself that there are no barriers or restrictions, legal or otherwise, to the carrying on of the Licensed Activities in connection with the licensed activity. The issuing of the licence does not absolve the Licensee from obtaining such other authorisations and consents, which may be required under statute.

1.4 Variation, suspension, revocation and transfer

Under section 30 (1) of the 2010 Act the Licensing Authority may by notice vary, suspend or revoke the licence granted by them if it appears to the Licensing Authority that there has been a breach of any of its provisions. For any such other reason that appears to be relevant to the Licensing Authority under section 30(2) or (3) of the 2010 Act. Under the 2010 Act variations, suspensions, revocations and transfers of licences are subject to the procedures set out in section 31 of the Act.

Under section 30 (7) of the 2010 Act, on an application made by a licensee, the Licensing Authority may vary a licence if satisfied that the variation being applied for is not material.

Under section 30 (8) of the 2010 Act, on an application made by the licensee, the Licensing Authority may transfer the licence from the Licensee to another person.

1.5 Breach of requirement for, or conditions of, licence

Under section 39 of the 2010 Act it is an offence to carry on a Licensable Marine Activity without a marine licence and it is also an offence to fail to comply with any condition of a marine licence.

1.6 Defences: actions taken in an emergency

Under section 40 of the 2010 Act it is a defence for a person charged with an offence under section 39(1) of the 2010 Act in relation to any activity to prove that –
the activity was carried out for the purpose of saving life, or for the purpose of securing the safety of a vessel, aircraft or marine structure ('force majeure'), and
that the person took steps within a reasonable time to inform the Licensing Authority as set out in section 40(2) of the 2010 Act.

1.7 Offences relating to information

Under section 42 of the 2010 Act it is an offence for a person to make a statement which is false or misleading in a material way, knowing the statement to be false or misleading or being reckless as to whether the statement is false or misleading, or to intentionally fail to disclose any material information for the purpose of procuring the issue, variation or transfer of a marine licence or for the purpose of complying with, or purporting to comply with, any obligation imposed by either Part 4 of the 2010 Act or the provisions of this licence.

1.8 Appeals

Under Regulation 3(1) of the Marine Licensing Appeals (Scotland) Regulations 2011 a person who has applied for a marine licence may by summary application appeal to against a decision taken by the Licensing Authority under section 71(1)(b) or (c) or (5) of the Act.

2. PART 2 – PARTICULARS

2.1 Agent

Orcades Marine Management Consultants Ltd
Innovation Centre - Orkney
Haston Pier Road
Kirkwall
KW15 1ZL

2.2 Location of the Licensed Activity

Billia Croo, European Marine Energy Centre (EMEC), within the area bounded by joining the points

Billia Croo Test Site Boundary

58° 59.460' N 03° 25.320' W

59° 00.000' N 03° 24.360' W

58° 59.460' N 03° 23.700' W

58° 59.160' N 03° 24.240' W

58° 59.100' N 03° 24.600' W

58° 59.100' N 03° 25.080' W

58° 59.460' N 03° 25.320' W

2.3 Description of the Licensed Activity

Removal of the Wave Energy Converter (WEC), mooring components and all ancillary equipment, known as Penguin 1, from the seabed at Berth 5, Billia Croo Wave Test Site, Orkney.

As described in the application dated 11 August, 2022 and correspondence submitted in support of the application.

2.4 Descriptions of the substances or objects to be removed

The licence authorises the removal of the undernoted substances and objects required in connection with the licensed activity, subject to the maximum amounts as specified below:

Substances to be removed:

WEC (Penguin 1) device comprised of:

- 410 tonne steel hull
- 6 x Concrete clump weight anchors (188m3)
- 6 x Steel subsurface buoys (6 x 10 tonne)
- 1 x 201 tonne (1800 metres) steel chain
- 5.2 tonne of steel abandonment wire
- 1 x Rotator (20 tonne of steel and 40 tonne concrete (17m3))
- 1 x Concrete ballast (631m3)

- 1 x Generator (60 tonne steel frame, 2 tonne copper windings)
- 1 x Plastic cooling water piping (200kg)
- Transformers (5 tonne iron, 500kg aluminium/steel combined)
- 1 x Frequency converter (steel, copper, aluminium and plastic 570kg)
- UPS (steel and lead 200kg)
- Switch gears LV/HV (steel, copper and plastic 510kg)
- Steel tubing (300kg)
- Steel electrical converter (200kg)
- Plastic cable buoyancy (1.5m³)
- Copper and PVC plastic electric cables (2 tonne – approximately 180 metres)
- Polyester/rubber bending restrictor (20kg)

3 x unused steel roll plates (2x77 tonne and 1 x 105 tonne)

6 x 14 tonne (60m³ total) unused concrete clump weights

Including any other infrastructure as identified within the Method Statement and Project Information Summary submitted at application.

2.5 Contractor and Vessel Details

3. PART 3 – CONDITIONS

3.1 General Conditions

3.1.1 All conditions attached to this licence bind any person who for the time being owns, occupies or enjoys any use of the works, whether or not this licence has been transferred to that person.

3.1.2 In the event of any breach of health and safety or environmental obligations relating to the licensed activity during the period of this licence, the Licensee must provide written notification of the nature and timing of the incident to the Licensing Authority within 24 hours of the incident occurring. Confirmation of remedial measures taken and/or to be taken to rectify the breach must be provided, in writing, to the Licensing Authority within a period of time to be agreed by the Licensing Authority.

3.1.3 The Licensee must notify Source Data Receipt, The Hydrographic Office, Admiralty Way, Taunton, Somerset, TA1 2DN (e-mail: sdr@ukho.gov.uk; tel.: 01823 484444) of completion of the the licensed activity in order that all necessary amendments to nautical publications are made.

3.1.4 The Licensee must ensure that a copy of this licence is given to each contractor appointed to carry out part or all of the licensed activities in order that they are clear about the extent of the activities for which the licence has been given and the conditions that are attached to the licence.

3.1.5 The Licensee must notify the UK Hydrographic Office to permit the promulgation of maritime safety information and updating of nautical charts and publications through the national Notice to Mariners system. The Licensee must issue Notice(s) to Mariners clearly stating the nature, duration and location of these activities prior to commencement and on completion of the activities and must ensure that HM Coastguard, in this case OELO@mcga.gov.uk, is made aware of the activities prior to commencement.

3.1.6 The Licensee must complete a statutory sanction application for the discontinuation of the Aids to Navigation fitted to the device and submit it to the Northern Lighthouse Board via navigation@nlb.org.uk.

3.1.7 Any person authorised by the licensing authority will be permitted to inspect the licensed activity at any reasonable time.

3.1.8 The Licensee must ensure that copies of the licence are available for inspection by any authorised Enforcement Officer at:

- a) the premises of the licensee;
- b) the premises of any agent acting on behalf of the licensee; and
- c) the site of these activities.

3.1.9 The Licensee must notify the Licensing Authority of the date of commencement and the date of completion of the licensed activities. Separate written notifications are required at the times of commencement and completion. Notification of commencement must be submitted no later than seven days prior to commencement of the licensed activities and notification of completion must be submitted no later than seven days following completion of the licensed activities.

3.1.10 The Licensee shall consult with the responsible local navigation authority and the

Harbour Authority/Commissioners, who may wish to issue local warnings to alert those navigating in the vicinity to the carrying on of the licensed activities.

3.1.11 Should the Licensee proceed to undertake the Licensed Activity under the authority of this licence, the Licensed Activity authorised under the previous marine licence in favour of Fortum Energy UK Limited, dated 09 December 2021 (MS-00009607) is not permitted.

3.2 Prior to the commencement of the Licensed Activity

3.2.1 The Licensee must ensure that HM Coastguard, in this case nmoccontroller@hmcg.gov.uk, The National Maritime Operations Centre is made aware of the works prior to commencement.

3.2.2 The Licensee must issue a Notice to Mariners in advance of the Commencement of the works, clearly stating the nature and duration of the works.

3.2.3 The Licensee must issue local notification to marine users – including fisherman’s organisations, neighbouring port authorities and other local stakeholders to ensure that they are made fully aware of the licensed activity.

3.2.4 The Licensee must ensure that no deviation from the schedule specified in the licence is made without the further written permission of the Licensing Authority. In the event of the Licensee becoming aware that any of the information on which the issue of the licence was based has changed, the licensee must immediately notify the licensing authority of the details.

3.2.5 The Licensee shall ensure suitable bunding and storage facilities are employed to prevent where possible the release of fuel oils, lubricating fluids associated with the activities into the marine environment.

3.2.6 The Licensee must finalise a detailed Removal Method Statement for the licensed activities with Orkney Islands Council Marine Services which includes a full schedule of the activities detailing all movements and locations of the substances and objects no later than 14 days prior to the commencement of the licensed activities. The Removal Method Statement must be sent to the Licensing Authority no later than seven days prior to commencement of the activities.

3.3 During the Licensed Activity

3.3.1 The Licensee must at all times construct and maintain the licensed activity in accordance with this Licence, the Application and the plans and programmes approved by the Licensing Authority.

3.3.2 All conditions attached to this licence bind any person who for the time being owns, occupies or enjoys any use of the works, whether or not this licence has been transferred to that person.

3.3.3 The Licensee must ensure that the licensed activity is maintained at all times in good repair.

3.3.4 If in the opinion of the Licensing Authority the assistance of a Government Department, including the broadcast of navigational warnings, is required to deal with any emergency arising from:

- a) The failure to mark and light the activities as required by licence.
- b) The maintenance of the substances or objects.
- c) The drifting or wreck of the substances or objects.

The owner of the substances or objects shall be liable for any expenses incurred in securing such assistance.

3.3.5 Removal of the substances and objects must be in accordance with the Method Statement and all other supporting documents submitted with the application.

3.3.6 The Licensee must take appropriate steps to minimise damage to the seabed.

3.3.7 The Licensee must at all times comply with the Navigation Risk Assessment Addendum (Ref:OP286 submitted with application), submitted as an addendum to and to be read in conjunction with the document 'Billia Croo Wave Site Navigational Risk Assessment (NRA) – REP522'.

3.4 Upon Completion of the Licensed Activity

3.4.1 The Licensee must ensure that any debris or waste materials arising during the course of the Licensed Activity are removed from the site of the works for disposal at an approved location above the tidal level of Mean High Water Springs.

3.4.2 The Licensee must notify the UK Hydrographic Office to permit the promulgation of maritime safety information and updating of nautical charts and publications through the national Notice to Mariners system.

3.4.3 The Licensee must ensure that all substances and objects are removed from the site.

3.4.4 The Licensee must undertake a survey of the site following the removal of all substance and objects and submit the results of the survey, together with a written report, detailing the substances and objects removed during the activities, to the Licensing Authority. The written report must be submitted to the Licensing Authority no later than one month after completion of the activities.

3.4.5 The Licensee must take all reasonable, appropriate and practicable steps to fully clear and restore the site to its original condition to the satisfaction of the Licensing Authority by 31 December 2023.

NOTES

1. You are deemed to have satisfied yourself that there are no barriers, legal or otherwise, to the carrying out of the licensed activity. The issue of the licence does not absolve the licensee from obtaining such authorisations, consents etc which may be required under any other legislation.
2. In the event that the licensee wishes any of the particulars set down in the Schedule to be altered, the licensing authority must be immediately notified of the alterations. It should be noted that changes can invalidate a licence, and that an application for a new licence may be necessary.