

EXPLANATORY MEMORANDUM TO
THE MARINE LICENSING (LICENCE APPLICATION APPEALS) REGULATIONS 2011

2011 No. [XXXX]

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1. From 6th April 2011, any person who applies for a marine licence will have the right to appeal against a decision made by the Secretary of State (or another body that has been delegated licensing functions by the Secretary of State) in relation to their marine licence application, including a decision to refuse to grant a marine licence or any conditions placed on a granted licence. This instrument sets out the process for appeals against licence application decisions.

3. Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1. None.

4. Legislative Context

- 4.1. Part 4 of the Marine and Coastal Access Act 2009 ('the Act') makes provision for a new marine licensing system for specific activities taking place at sea. A marine licence will be required for activities such as dredging, depositing and construction. Part 4 will replace the existing marine licensing legislation under Part 2 of the Food and Environment Protection Act 1985 (except in the Scottish inshore region) and Part 2 of the Coast Protection Act 1949. It will also regulate minerals extraction which is currently regulated under a number of sets of regulations around the United Kingdom.
- 4.2. Section 73 of the Act requires that regulations must be made making provision for any person who applies for a marine licence to appeal against a licensing decision made by a relevant licensing authority under section 71 of the Act (i.e. the granting of a licence subject to conditions, or its refusal).
- 4.3. This instrument is being made by the Secretary of State as a licensing authority for activities carried out in the areas of sea as set out in section 113 of the Act, and provides for appeals to be determined by a person appointed by the Secretary of State for that purpose.

5. Territorial Extent and Application

- 5.1. This instrument extends to the United Kingdom but applies only where the Secretary of State is the appropriate licensing authority as defined in section 113 of the Act.

- 5.2. Section 66 of the Act makes certain activities ‘licensable marine activities’ if they are undertaken within the UK Marine licensing area. This area comprises all United Kingdom marine waters out to the continental shelf with the exception of Scottish inshore waters. In addition, certain activities are licensable wherever carried out if they are carried out by British vessels, vehicles, aircraft, marine structures or floating containers or if the vessels etc have been loaded in the United Kingdom.
- 5.3. The appropriate licensing authority is defined in section 113 of the Act. The Secretary of State intends to delegate most of the Secretary of State’s licensing and enforcement functions to the Marine Management Organisation (MMO) (apart from activities relating to the oil and gas sector which will continue to be administered by the Department of Energy and Climate Change (DECC)).
- 5.4. Marine licences in Welsh inshore waters, Northern Ireland inshore waters and Scottish offshore waters will be issued by the Welsh Ministers, the Department of the Environment in Northern Ireland and Scottish Ministers respectively, except for the reserved matters specified in section 113 which will be issued by DECC or the MMO.

6. European Convention on Human Rights

- 6.1. The Minister for Natural Environment and Fisheries, Richard Benyon, has made the following statement regarding Human Rights:

In my view the provisions of the Marine Licensing (Licence Application Appeals) Regulations 2011 are compatible with the Convention rights.

7. Policy background

What is being done and why?

- 7.1. Two key objectives of the new marine licensing system are to provide applicants with the assurance that licence decisions are made transparently and that the decision-making body is accountable for the decisions it makes.
- 7.2. Under the new marine licensing system, when determining a marine licence application the licensing authority will make its decision with regard to the need to protect the environment, protect human health and prevent interference with sea users. It will also make its decisions in accordance with relevant marine policy documents – the Marine Policy Statement (to be introduced in 2011) and Marine Plans (to be phased in over the next ten years), except where relevant considerations indicate otherwise.
- 7.3. With increasing pressures on the marine environment, the broader scope of the new marine licensing system, and a new marine planning system being introduced over the next ten years, there is greater scope in future for marine licence applications to be refused, or for more stringent conditions to be placed on a licence. Therefore, a mechanism to appeal a decision to an independent body is essential to ensure a fair and transparent system.

7.4. The Planning Inspectorate (a joint Executive Agency of the Department for Communities and Local Government and the Welsh Assembly Government) will administer appeals against licensing decisions and the Secretary of State will appoint persons (inspectors) to determine those appeals. The Planning Inspectorate deals with appeals against terrestrial planning decisions and other Defra environmental regulations (for example, Environmental Permitting, Sites of Special Scientific Interest). The requirements in this instrument in general follow procedures for those regulatory regimes.

Consolidation

N/A

8. Consultation outcome

8.1. The Government consulted on a draft of this instrument from 21st July to 13th October 2010 as part of a consultation on the secondary legislation needed to commence Part 4 of the Marine and Coastal Access Act 2009.

8.2. The consultation asked for views on the length of time to lodge an appeal, the grounds of appeal and the time limits within the appeals process. Out of the total 69 responses, 41 responded to the questions on appeals. Respondents were generally in favour of the proposals, although changes were made in light of specific comments. For example, there was some concern that the proposed eight weeks to lodge an appeal is insufficient time in which to collate a case, particularly where a project is technically complex in nature. In light of this, the window for appeal was extended to six months to reflect both terrestrial planning and Environmental Permitting appeals, both administered by the Planning Inspectorate.

8.3. There was overwhelming support for the approach to grounds of appeal, and broad support for the proposed time limits within the appeals process but some respondents felt different timescales should be applied for different appeals procedures and that there should be a deadline for the determination of an appeal. For consistency with existing appeals processes, the time limits set out in this instrument have been aligned to those for terrestrial planning and other Defra environmental appeals; the instrument also gives the appointed person the power to extend deadlines in exceptional circumstances. The instrument does not include time limits for the determination of an appeal as a flexible approach is needed to deal with cases of varying complexity.

9. Guidance

9.1. The Department for Environment, Food and Rural Affairs has published combined guidance on this instrument and the other legislation needed to bring Part 4 of the Marine and Coastal Access Act into effect. DECC will produce guidance for appeals against decisions on oil and gas-related licence applications.

10. Impact

10.1. An Impact Assessment has been prepared on the impact of the new marine licensing system introduced under Part 4 of the Marine and Coastal Access Act 2009,

of which this instrument forms a part. This is published alongside the Explanatory Memorandum at www.legislation.gov.uk.

- 10.2. The instrument does not pose any adverse impact on business, charities, voluntary bodies or the public sector. The introduction of an appeals process will be beneficial to those applying for a licence in allowing them to challenge a licensing decision with which they disagree.

11. Regulating small business

- 11.1. The legislation applies to small business. Small businesses – as any other organisation – may need to apply for a marine licence to undertake specific marine activities and consequently may choose to challenge a licensing decision made possible by the provisions in this instrument.

12. Monitoring and review

- 12.1. The Department for Environment, Food and Rural Affairs has established a Service Level Agreement with the Planning Inspectorate. This will set out performance measures and the process for monitoring and reviewing the extent to which the organisation has fulfilled its role as the body administering appeals.

13. Contact

- 13.1. Anju Sharda at the Department for Environment, Food and Rural Affairs, Tel: 0207 238 4341 or email: anju.sharda@defra.gsi.gov.uk can answer any queries regarding the instrument.