
Marine Licensing (Delegation of functions) (Amendment) Order 2015

Department for Environment, Food and Rural Affairs

RPC rating: validated

Description of proposal

Under the Marine and Coastal Access Act 2009 (MCAA), the Secretary of State is the “appropriate licensing authority” for marine licensing in English waters (and areas offshore from Wales and Northern Ireland). However, most licensing decisions in England have been delegated to the Marine Management Organisation (MMO).

In a situation, where a licensing decision by the MMO is proving to be controversial, the Department is proposing to allow objecting third parties (such as local planning authorities or Inshore Fisheries Conservation Authorities) to lobby for the case to be referred to the Secretary of State for determination. The aim of the proposal is to strengthen democratic accountability of the most controversial marine licensing decisions.

Impacts of proposal

The proposal will affect around 100 businesses and operators that apply annually for a licence to carry out activities in the marine environment. These include port developers, dredgers, renewable energy and utility companies. The Department envisages that very few cases will be referred to ministers for determination; its best estimate is two in any year. This estimate is based on only two cases being referred to inquiry in the last five years. As such, likely additional costs to business will be:

- (a) One-off costs arising from the need for businesses to familiarise themselves with the changes associated with this proposal. The IA assumes that it would take managers earning £25 an hour to familiarise themselves with the proposal, at a total estimated cost of £12,800.
- (b) Additional costs from the extra time and length of the application process for cases referred to the Secretary of State. The Department has been unable to quantify these costs due to uncertainties such as whether:
 - in the absence of a referral, a case would otherwise have been approved or rejected by the MMO;

- the need for further discussions between the MMO, the applicant, and interested parties; and
- the extent to which the process reduces the likelihood of judicial review.

Nevertheless, given that the Department expects the number of referrals to be low, it does not expect this cost to be significant overall.

The Department has also identified familiarisation costs to the public sector of £43,200 and ongoing costs of approximately £40,350 each year to deal with the referral of cases.

On the most controversial cases, the IA explains that the proposal may help to reduce the likelihood of third parties delaying licences through actions such as judicial reviews, potentially saving businesses money. The Department has not quantified these benefits.

Quality of submission

The Department identifies the impacts to business and quantifies them where possible. Where the Department has used certain assumptions, for example in the expected number of cases likely to be affected by the proposal, it sets out how these have been developed. In particular, it has supported its calculations with evidence gathered through consultation. For instance, the hourly rate used to calculate familiarisation costs was adjusted to capture uncertainty regarding the seniority of staff reviewing the amended regulations.

Given that only a small number of large-scale applications will be eligible for Secretary of State determination, the Department explains that it is unlikely that the proposal will have an impact on small or micro-businesses. This appears reasonable.

Initial departmental assessment

Classification	Qualifying regulatory provision
Equivalent annual net cost to business (EANCB)	£0.003 million
Business net present value	- £0.03 million

RPC assessment¹

Classification	Qualifying regulatory provision
EANCB – RPC validated	£0.00 million
Small and micro business assessment	Sufficient

A handwritten signature in black ink, appearing to read "Michael Gibbons", with a long horizontal line underneath it.

Michael Gibbons CBE, Chairman

¹ The RPC verification of the estimated equivalent annual net cost to business (EANCB) and assessment of whether the measure is a qualifying regulatory provision are based on current working assumptions.