

EXPLANATORY MEMORANDUM TO
THE MARINE LICENSING (NOTICES 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. This instrument provides for a right of appeal to the First-tier Tribunal against a range of notices served under the Marine and Coastal Access Act 2009, together with associated powers. The notices relate to the variation, suspension or revocation of a marine licence (or the extension of a period of suspension), and four types of enforcement notice to address non-compliance with the requirements of that Act in the marine environment, and/or to put right harm and prevent further harm to the environment or human health or interference with other sea-users.

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. Part 4 of the Act also makes provision for a range of notices to be served by the licensing authority or enforcement authority under the Act, which may be used in relation to marine licences granted under the Act or to enforce provisions relating to licensable marine activities. Those notices relate to the variation, suspension or revocation of a marine licence, or the extension of a period of suspension, (section 72), compliance notices (section 90), remediation notices (section 91), stop notices (section 102) and emergency safety notices (section 104).
- 4.3. Section 108 of the Act requires the appropriate licensing authority to make provision for any person to whom any of those notices are issued to be able to appeal against that notice. This instrument covers the provision of that right of appeal.

4.4. This instrument is being made by the Secretary of State as the relevant licensing authority for activities carried out in the areas of sea as set out in section 113. Under section 114 of the Act, the relevant licensing authority is also the relevant enforcement authority.

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 they are carried out if they are carried out by a British vessel, vehicle, aircraft, marine structure or floating container or if the vessels etc have been loaded in the United Kingdom (except Scotland) or in the UK marine licensing area.

5.3. The Secretary of State intends to delegate most of the Secretary of State’s licensing and enforcement functions to the Marine Management Organisation (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 devolved administrations except for certain reserved matters (such as oil and gas related matters), in relation to which the Secretary of State is the licensing authority under section 113. This instrument applies to notices issued by the Secretary of State or by the Marine Management Organisation (acting as the Secretary of State’s delegate).

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 (Notices Appeals) Regulations 2011 are compatible with the Convention rights.

7. Policy background

What is being done and why?

7.1. The Act introduces a range of enforcement tools to enable a more proportionate approach to enforcement in the marine environment, in place of the more limited tools available under the licensing and consenting regimes of the Food and Environment Protection Act 1985 and the Coast Protection Act 1949 that are replaced by the Act. The notices to which this instrument relates form part of those enforcement tools. Some notices may be given in relation to marine licences that have been issued (such as notices of variation, suspension or revocation, and

compliance notices), others regardless of whether or not there is a marine licence (such as stop notices).

7.2. Although most of the notices to which this instrument relates are used in the context of enforcement, notices of variation, suspension or revocation of a marine licence may also be issued where there has been no breach of the licence provisions, but where there has been a change in circumstances, e.g. relating to the environment or human health (section 72(3)).

7.3. To ensure that the new notices are used fairly and in accordance with good enforcement principles, and that the licensing authority or enforcement authority is accountable for its decisions, the Act requires regulations to be made to make provision for appeals against such notices. This instrument sets out a right of appeal to the independent First-tier Tribunal (which was set up under the Tribunals, Courts and Enforcement Act 2007), together with associated powers. Appeals will be heard by the General Regulatory Chamber of that Tribunal.

Consolidation

N/A

8. Consultation outcome

8.1. The Government consulted on a draft of this instrument from 9th March to 1st June 2010.

8.2. The consultation asked for views on whether the First-tier Tribunal was the right body to hear notice appeals and whether its powers were appropriate; views on whether the Tribunal should have the power to assess the validity of an appeal; and whether requirements in only specific notices should be automatically suspended pending determination of an appeal.

8.3. There were a total of seventeen responses to the consultation from a range of stakeholders including the commercial sector, academic and research institutions and conservation bodies. Respondents generally supported the right to appeal to the First-tier Tribunal. Respondents were mainly content that the separate First-tier Tribunal procedural Rules would meet the requirements of appeals in the context of marine licensable activities.

8.4. Certain respondents felt that requirements in a remediation notice should not be suspended during an appeal, in line with proposals for stop and emergency safety notices, since a remediation notice could require action to protect the environment from further harm as well as restoring harm already done. The Government agreed with this approach but acknowledged that there may be cases where it would be appropriate to suspend the requirements of a remediation notice pending appeal. In light of this, the instrument gives the First-tier Tribunal the power to decide whether requirements in a remediation notice should or should not be suspended.

9. Guidance

9.1. The Department for Environment, Food and Rural Affairs has published guidance on this instrument (and other secondary legislation forming part of the new marine licensing system). The Marine Management Organisation will produce separate guidance on how it intends to use the new enforcement tools. The Department for Energy and Climate Change will produce guidance for the enforcement of oil and gas-related marine licences.

10. Impact

10.1. An Impact Assessment has been prepared on the impact of the provisions in this instrument and will be 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 benefit recipients of certain statutory notices in allowing them to challenge a decision with which they disagree.

11. Regulating small business

11.1. The legislation applies to small business. Small businesses – as any other organisation – may be served with a statutory notice relating to an activity that has been or is being carried out in the marine environment. Under this instrument, these businesses will have the right to challenge its imposition.

12. Monitoring and review

12.1. The use of the new enforcement tools and the appeals process will be reviewed two years after their introduction. Further information is available in Annex 2 of the Impact Assessment.

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.