

**EXPLANATORY MEMORANDUM TO
THE MARINE AND COASTAL ACCESS ACT 2009 (COMMENCEMENT NO.2 AND
TRANSITIONAL PROVISIONS) ORDER 2010**

2010 No. 298 C.23

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 two appointed days (1 April 2010 and 1 January 2011), on which the provisions of the Marine and Coastal Access Act 2009 (“the Act”) listed in the Schedule to the Order will come into force. It contains transitional provisions relating to two sections brought into force by the Order.

3. Matters of special interest to the [Joint Committee on Statutory Instruments *or* the Select Committee on Statutory Instruments]

3.1 None

4. Legislative Context

4.1 The Marine and Coastal Access Act 2009 received Royal Assent on 12 November 2009. Whilst the Act provides for automatic commencement of some provisions either on Royal Assent or two months afterwards (section 324(1) and (2)), the remaining provisions have to be brought into force by means of an Order (section 324(3)). The first commencement Order (S.I. 2009/3345) brought certain provisions of the Act into force on 12 January 2010. This instrument brings certain provisions relating to Parts 1, 4, 7 and 11 into force on 1 April 2010, and further provisions relating to Parts 7 and 11 into force on 1 January 2011.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

• *What is being done and why*

7.1 This instrument commences, on 1 April 2010, provisions in Part 1 of the Act relating to the Marine Management Organisation, in particular the transfer from the Secretary of State to the Marine Management Organisation of certain functions

relating to nature conservation, and consenting and safety zone functions under the Electricity Act 1989 and the Energy Act 2004 (and the instrument contains transitional provisions relating to these latter two functions). The only remaining provisions of Part 1 still to be commenced are sections 4 to 8 (which transfer certain fisheries functions from the Secretary of State to the Marine Management Organisation). It is the Government's intention that those provisions should be commenced once the Welsh Zone (Boundaries and Transfer of Functions) Order 2010 (currently laid in draft before Parliament) is made and comes into force. It commences, on 1 April 2010, provisions in Schedule 8 to the Act (so far as not already commenced on Royal Assent), which make amendments to the Petroleum Act 1998. These amendments relate to pipelines.

This instrument also brings into force a number of fisheries-related provisions in Part 7 of the Act. Chapter 4 of that Part (which deals with the repeal of obsolete fisheries enactments) and relevant provisions in the repeals Schedule to the Act (Schedule 22) are being commenced on 1 April 2010. Amongst these repeals is that of the White Herring Fisheries Act 1771, no further representations from the fishing industry in relation to this Act having been received by the Department. The remaining provisions of Chapter 3 (migratory and freshwater fish) and Schedule 16 (which allows for consequential and supplementary amendments in relation to licensing and authorisation of fisheries) will come into force on 1 January 2011 (at which point the whole of Part 7 will be in force).

- ***Consolidation***

7.2 This instrument commences provisions in the Act and there are no issues relating to consolidation.

8. Consultation outcome

8.1 The Marine and Coastal Access Act has been the subject of extensive consultation, both before and during its Parliamentary process. In 2002 the Government and devolved administrations jointly published '*Safeguarding Our Seas*', setting out the shared vision of "clean, healthy, safe, productive and biologically diverse oceans and seas". In 2005 the paper, '*State of Our Seas – Charting Progress*' was published. In March 2006, the government consulted on initial proposals and the strategic direction for a Marine Bill, and received 1233 responses. In March 2007, the Government published a Marine Bill White Paper and partial Regulatory Impact Assessment for public consultation, and 8519 responses were received. Proposals for the regulation and management of salmon and freshwater fisheries, following recommendations made by a Review Group in 2000 were taken up in the Bill.

The draft Marine Bill was published on 3 April 2008 for public consultation, and was subject to pre-legislative scrutiny by a Joint Committee of Parliament during the Summer of 2008. The Joint Committee reported in July 2008, and the Government published its response in September of the same year. (There was also extensive consultation relating to the provisions of the Act relating to coastal access, although these provisions do not relate to this instrument.) Copies of the relevant documents, consultation responses, policy paper and the impact assessment prepared for the Act

are available from the website of the Department for Environment, Food and Rural Affairs at www.defra.gov.uk.

9. Guidance

9.1 No guidance has been prepared for this instrument.

10. Impact

10.1 The impact on business, charities or voluntary bodies is nil.

10.2 The impact on the public sector is nil.

10.3 An Impact Assessment has not been prepared for this instrument because no impact on the private or voluntary sector is foreseen. An impact assessment was prepared for the Act, and copies may be obtained from the website of the Department for Environment, Food and Rural Affairs at www.defra.gov.uk.

11. Regulating small business

11.1 This instrument does not apply to small business, although the provisions of the 2009 Act being commenced by this instrument do so apply.

Monitoring & review

- 12.** 12.1 As set out in the Impact Assessment prepared for the Marine and Coastal Access Act 2009, the overall objectives of Parts 1 to 8 of the Act are to help implement the Government's strategy for sustainable development of the marine and coastal area. This is to be done by introducing a marine planning system, streamlining the licensing process for specified marine activities, introducing a new flexible system mechanism for conserving marine biodiversity, simplifying, modernising and extending some arrangements for managing marine fisheries, establishing a new Marine Management Organisation, and modernising freshwater and migratory fisheries management powers. A Post-Implementation Review will take place three years after Royal Assent for some of the provisions, four years after Royal Assent for Inshore Fisheries and Conservation Authorities and after approximately five and ten years for marine planning, marine licensing and marine biodiversity provisions.

13. Contact

Fiona Walters at the Department for Environment, Food and Rural Affairs Tel: 020 7238 6839 or email: Fiona.Walters@defra.gsi.gov.uk can answer any queries regarding the instrument.