

EXPLANATORY MEMORANDUM TO
THE MARINE MANAGEMENT ORGANISATION (PRESCRIPTION OF POWERS
TO FIX FEES AND CHARGES) ORDER 2010

2010 No. 603

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.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

2.1 This instrument prescribes, for the purposes of section 17 of the Marine and Coastal Access Act 2009 (“the Act”) a number of existing fee or charge fixing powers exercisable by the Secretary of State. Those prescribed powers can then be included in any agreement made under section 14 of the Act between the Secretary of State and the Marine Management Organisation (a Non-Departmental Public Body created by the Act) authorising the Marine Management Organisation to perform certain marine functions.

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

3.1 The powers prescribed in the instrument relate to existing powers of the Secretary of State. Although the Department considers that all the prescribed powers could be argued to be powers to ‘fix’ a fee or charge, it recognises that in some cases involving the power to recover reasonable expenses a contrary case could be argued. The Department has decided to err on the side of caution and included those powers to ensure that the validity of including such powers in any agreement made under section 14 is not impeached.

4. **Legislative Context**

4.1 The Marine and Coastal Access Act 2009 received Royal Assent on 12 November 2009. The Act establishes the Marine Management Organisation (MMO) and creates a power (under section 14) for the Secretary of State to enter into agreements with the MMO authorising the MMO to perform ‘marine functions’. However, section 17 of the Act provides that an agreement under section 14 may not authorise the performance of a ‘non-delegable function’. Section 17(3)(e) provides that ‘non-delegable functions’ includes any power to fix fees and charges, other than a power prescribed by an order made by the Secretary of State. This instrument prescribes the powers to fix fees or charges for the purposes of that section, in effect providing that such prescribed powers are no longer ‘non-delegable functions’.

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 It is the Government's intention that the MMO should carry out certain marine functions that are currently a function of the Secretary of State and be able to recover its costs where there is provision to do so. This requires that the Secretary of State enables the MMO the power to fix such charges.

- *Consolidation*

7.2 This is the first exercise of a new power under the Act and no question of consolidation arises.

8. Consultation outcome

8.1 The Marine and Coastal Access Act 2009 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 since the effect of the instrument is limited to removing a prohibition on the MMO being enabled (by means of a section 14 agreement) to fix certain fees or charges and hence, 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 The legislation does not apply to small business.

12. Monitoring & review

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

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