

**EXPLANATORY MEMORANDUM TO**  
**THE MARINE LICENSING (APPLICATION FEES) REGULATIONS 2014**

**2014 No. 615**

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 Order sets out a revised fee structure for applications for marine licences made under Part 4 of the Marine and Coastal Access Act 2009 (“the Act”). This new structure is intended to achieve a higher level of cost recovery and greater efficiency of the administration process relating to marine licences.

- 2.2 It does not relate to fees which may be charged for marine licence applications in relation to oil and gas activities regulated under the Act.

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

- 3.1 None

4. **Legislative Context**

- 4.1 Part 4 of the Act makes provision for the marine licensing system controlling a broad range of activities at sea and for the enforcement of that system. The marine licensing system came into effect in April 2011.

- 4.2 Although most of the Secretary of State’s licensing and licensing enforcement functions are delegated<sup>1</sup> to the Marine Management Organisation (MMO)<sup>2</sup>, application fees for marine licences must still be determined by the Secretary of State (in respect of applications for which the Secretary of State is the appropriate licensing authority). The 2011 Regulations provided the basis for marine licence application fees when the system came into effect in April 2011.

- 4.3 The primary function of this Order is to recover MMO’s costs in relation to determining a marine licence.

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<sup>1</sup> Marine Licensing (Delegation of Functions) Order 2011

<sup>2</sup> Marine Management Organisation was established by under the Marine and Coastal Access Act 2009, Part 1, Chapter 1, Section 1

- 4.4 A separate Order namely the Public Bodies (Marine Management Organisation Fees) Order [2014] is being produced which will provide for a fee to be payable to the MMO for costs it incurs in relation to monitoring and variations or transfer of a marine licence.

## **5. Territorial Extent and Application**

- 5.1 This instrument extends to England and Wales, Scotland and Northern Ireland, and applies in relation to those areas and activities for which the Secretary of State is the appropriate licensing authority under the Act.
- 5.2 For the purposes of marine licensing the Secretary of State is the appropriate licensing authority for England's inshore waters (those within the seaward limits of the territorial waters adjacent to England), and the offshore waters of England, Wales and Northern Ireland (those within British fishery limits beyond the seaward limits of the territorial waters adjacent to Wales and Northern Ireland, respectively, and any other waters beyond the seaward limits of the UK's territorial waters but within the limits of the UK sector of the continental shelf, other than waters within the Scottish offshore region).
- 5.3 For this purpose the "Scottish offshore region" is (a) those waters adjacent to Scotland within British fishery limits, other than the territorial sea; and (b) those waters outside British fishery limits but within the limits of the UK sector of the continental shelf, which are nearer to any point on the baselines from which the breadth of the territorial sea adjacent to Scotland is measured than to any point on the baselines in any other part of the UK.
- 5.4 The Secretary of State also remains the appropriate licensing authority for certain reserved matters specified in sections 113(2), (4) and (6) of the Act in (a) the Welsh inshore region and Northern Ireland inshore region (those waters within the seaward limits of the territorial waters adjacent to Wales and Northern Ireland, respectively), and (b) the Scottish offshore region (as defined above).

## **6. European Convention on Human Rights**

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

## **7. Policy background**

- 7.1 Marine licensing aims to facilitate the sustainable use of the marine environment so that economically beneficial activities within the marine environment such as construction, deposits (e.g. of sediment), removals (e.g. of marine aggregates), and dredging can be permitted whilst minimising negative environmental effects and avoiding interference with navigation.

- 7.2 Marine licensing fees cover the MMO's costs in processing and determining applications including the costs of advice from the Centre for Environment, Fisheries and Aquaculture Science ("Cefas"), an executive agency of Defra. Cefas provides advice to the MMO on most applications except those that relate to the smallest, lowest risk activities.
- 7.3 The MMO has identified a list of activities which are considered to be contained within Band 1. These activities are defined by the fact the MMO does not need to consult its advisors on whether a licence is required. A list of such activities has been included in the Schedule of the 2014 Regulations.
- 7.4 The policy aims behind the 2014 Regulations are to:
- ensure that the administration of marine licensing is as efficient as possible, in order to minimise burdens on applicants whilst protecting the environment and human health and preventing interference with other marine users;
  - fully recover the costs of administering marine licences, whilst avoiding excessive burdens on smaller projects;
  - remove the risk of cross-subsidy between applicants, so that applicants do not risk paying more than the actual cost of processing their application;
  - provide transparency and certainty - the MMO wishes to provide marine licence applicants, particularly small and medium sized enterprises, with a clear view of what their costs are likely to be.

## **8. Consultation outcome**

- 8.1 Defra consulted on the marine licensing fees and charges proposals in autumn 2013. A total of 32 responses were received from a range of sectors including Government agencies, local government, ports and harbours, business and civil society. The main points arising from the consultation were:
- A general recognition of the policy to recover costs and a welcome to the proposals to limit costs for smaller projects and remove the risk of one applicant cross-subsidising another;
  - Concern that the level of MMO's hourly rate is too high;
  - A desire to see incentives for the MMO to operate efficiently and provide a quality service to applicants; there are suggestions that the MMO could provide for more customer review of its charging methods;
  - Some wider comments on exemptions and the need for guidance on how certain activities should be treated.
- 8.2 The Government recognises that, starting with the old "FEPA" licensing system (pre 2011), there has been a steady movement towards the full cost recovery of marine

licensing and this has meant several successive increases. The Government's view remains that where practicable charges should be set at a level to enable public authorities to fully recover their costs. It is also essential that public authorities control their costs so that public money is used efficiently and effectively. The MMO's aim is therefore to use efficiency measures to keep those any increases in fees to the minimum necessary to deliver the service.

- 8.3 The improved marine licensing processes, case officer utilisation and other efficiencies alongside the greater number of bands for routine projects and the longer licence lengths should provide applicants with improved value for money and remove the risk of cross-subsidisation between applicants. The calculation of the hourly fee follows Treasury guidance and is made up of direct staff costs along with costs of support staff, overheads and estates. Ceilings for fast track and routine applications will limit the impact on smaller projects where that would otherwise result in significant increases in fees and/or would represent an excessive cost in relation to the size of the project.
- 8.4 In response to the concerns expressed about transparency and critical review, the MMO will implement a new process whereby a customer feedback form/postcard is issued along with each new licence to gather feedback on the levels of customer service and the efficiency and effectiveness of the marine licensing delivery.

#### **The 2014 Regulations:**

- 8.5 The Regulations take effect as follows:

Regulation 4 sets out how the marine licence fee is calculated with the basic principle being hourly charging. An upper limit ("cap") may be specified in relation to any application of a certain description ("band"). Where a cap is specified the fee is the lesser of the two amounts. The bands and (where specified) the caps are set out in the Schedule to the Order.

These Regulations contain revocation, transitional and saving provisions in relation to the Marine Licensing (Application Fees) Regulations 2011 ("the 2011 Regulations"). The transitional provisions are set out in regulation 9 of these Regulations and explained below.

- 8.6 Regulation 8 revokes the Marine Licensing (Application Fees) Regulations 2011 (SI 2011 No. 564, "the 2011 Regulations"). However regulation 9 saves and modifies those Regulations for a transitional period so that they continue to apply to any application received prior to 6 April 2014.
- 8.7 For outstanding applications being processed under Bands 1 and 2 of the 2011 Regulations and which are currently subject to a fixed charge, the fee will be the lower of the amounts calculated under the 2011 and 2014 Regulations (since in some cases the new fee structure will result in a decrease in the fee). For outstanding applications being processed under Band 3 of the 2011 Regulations, the time to determine a licence is based on an hourly rate of £80. The revised hourly rate of £94

will apply to work undertaken from the date the 2014 Regulations come into force (6 April 2014). The transitional rule for Bands 1 and 2 is designed to eliminate the risk of over-charging/continued cross subsidy beyond April 2014; no such risk applies to Band 3 cases.

- 8.8 These Regulations also contain additional provisions relating to the payment of such fees, deposits, repayment, waiver and reduction of fees.
- 8.9 The Regulations have had Treasury approval. The Regulatory Policy Committee confirmed that the measure could be cleared under the fast track clearance route as it is “low cost”. They have also validated the Equivalent Annual Net Costs to Business figure which is £80k.

## **9. Guidance**

- 9.1 The MMO will provide guidance to operators on the new fees structure explaining in detail how banding and the other provisions will operate.

## **10. Impact**

- 10.1 The MMO will replace fixed fee Bands with hourly charging subject to a range of maximum fee caps for applications that do not have complex characteristics and therefore require predictable levels of effort. Fee ceilings will provide certainty to applicants to allow for simpler financial planning whilst avoiding risks of cross-subsidy between applicants. This will mainly benefit small and medium industry and public bodies.

The proposals do not include exemptions for microbusinesses since all licensable activities which pose potential risks to the environment or to safety of navigation need to be assessed. However, it is intended that microbusinesses will benefit from certain aspects of the proposals- in particular where the activities are fast track or routine projects where the fee ceilings would apply.

- 10.2 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on [www.legislation.gov.uk](http://www.legislation.gov.uk).

## **11. Regulating small business**

- 11.1 The legislation applies to small business. Measures have been introduced to minimise the impact on small to medium businesses. Caps have been introduced on charges for ‘fast track’ and ‘routine’ projects. A public subsidy of £130k will make up the shortfall in funding for the MMO.

## **12. Monitoring & review**

Defra and the MMO will review the application of the new fees structure, including the level of cost recovery and public subsidy, within 12 – 18 months of operation.

## **13. Contact**

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