

EXPLANATORY MEMORANDUM TO

THE MARINE LICENSING (APPLICATION FEES) (AMENDMENT) REGULATIONS 2018

2018 No. 850

1. Introduction

- 1.1 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.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument amends the Marine Licensing (Application Fees) Regulations 2014 (the Fees Regulations). This instrument amends the fee structure and fee rates for marine licence applications made under Part 4 of the Marine and Coastal Access Act 2009 (the Act). These amendments are intended to achieve full cost recovery and greater efficiency of the administration process relating to marine licences.
- 2.2 The instrument 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 Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The instrument introduces a new hourly fee rate for certain marine licence applications. The new rate represents a 30 per cent increase, which is above the rate of inflation. This level of increase is necessary to ensure that applicants meet all costs associated with the determination of a marine licence application; reducing reliance on public subsidy. No further increases are currently planned.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

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. Although most of the Secretary of State's licensing and licensing enforcement functions are delegated¹ to the Marine Management Organisation (MMO), 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 Fees Regulations provide the basis for marine licence application fees.

¹ Marine Licensing (Delegation of Functions) Order 2011, as amended by the Marine Licensing (Delegation of Functions) (Amendment) Order 2015.

4.2 This instrument amends the fee structure and fee rates set out in the Fees Regulations.

5. Extent and Territorial Application

5.1 The territorial extent of this instrument is the United Kingdom.

5.2 The territorial application of this instrument is:

5.2.1 the English inshore region, the English offshore region, and the Northern Ireland offshore region², and

5.2.2 solely in respect of certain reserved matters (as specified in sections 113(3), (5) and (7) of the Act), the Scottish offshore region, the Welsh inshore region, the Welsh offshore region and the Northern Ireland inshore region.

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

What is being done and why

7.1 The Act introduced the current marine licensing system, which came into effect in April 2011. This system aims to facilitate the sustainable use of the marine environment so that any activities such as construction, deposits (e.g. of sediment), removals, (e.g. of marine aggregates) and dredging can be permitted having regard to any environmental impacts and preventing interference with other legitimate users of the sea.

7.2 The current licensing fees regime has been in place since 2014. As a result of the consideration of planned reductions in Grant in Aid to the MMO, it was identified that the full cost of determining a marine licence was no longer being met by the current licensing fees regime. It was considered that a revision was therefore needed to ensure that fee levels reflected the full cost of determining a marine licence, and to enable the MMO to achieve full cost recovery.

7.3 The instrument will:

- introduce a new fixed fee of £50 for Band 1 applications (instead of an hourly fee rate of £94, subject to a maximum fee amount of £175);
- simplify the categorisation of Band 2 marine licences from five to two subcategories;
- introduce revised maximum fee amounts for Band 2 licences of £1,400 for Band 2A and £2,200 for Band 2B;
- introduce a new hourly fee rate of £122 for Band 2 and Band 3 applications (instead of an hourly fee rate of £94);
- introduce a new travel fee, which is comprised of a charge for travel time at an hourly fee rate of £122 and a charge for reasonable travel costs;

² Following the commencement of section 46 of the Wales Act 2017 on 1 April 2018, the Welsh Ministers are the appropriate licensing authority for the Welsh offshore region.

- make transitional provision for Band 2 applications received but not determined prior to the implementation date of 1 September 2018.

7.4 These changes will:

- ensure that administration of marine licensing is as efficient as possible and reduce the burden on applicants, whilst protecting the environment and human health and preventing interference with other marine users;
- enable the MMO to fully recover the costs of determining a marine licence application; reducing the burden of subsidy on the tax payer, whilst avoiding excessive burdens on smaller projects and
- improve transparency and certainty to marine licence applicants of the likely cost to be incurred in making an application, particularly small and medium sized enterprises.

8. Consultation outcome

8.1 Defra consulted on the marine licensing fees and charges proposals between the 21 December 2017 and 2 February 2018. A total of 76 responses were received from industry, members of the public, the Harbour and Ports sector, divers and associated clubs and Government organisations.

8.2 Overall, respondents to the consultation supported the introduction of a new fixed fee rate for Band 1 marine licence applications. Simplification of the sub-categories of Band 2 marine licence applications and the retention of a maximum fee cap for Band 2 applications was welcomed. The increase in the hourly fee rate for Band 2 and Band 3 marine licence applications, and for the new travel fee, was not received well by a majority of respondents, neither was the continued absence of a maximum cap on fees for Band 3 marine licence applications. Some respondents also did not support the lead-in period before implementation of proposed changes.

8.3 Having carefully considered all consultation responses, the Government concluded that it was appropriate to proceed with all proposals consulted on. Further detailed responses to the issues raised within the consultation are published in the Government's response to the consultation, which was published on 16 July 2018 at Gov.UK.

9. Guidance

9.1 The MMO will publish guidance on the new fees structure explaining in detail how the revised fee structure, and the transitional provisions, will operate.

10. Impact

10.1 The impact on business, charities or voluntary bodies, allowing for interest at 2% per annum over a 10 year period, is estimated to be £28.007m; the additional present value of cost businesses is estimated to be £6.9m (range £6.2m to £7.6m³).

10.2 The impact on the public sector is limited to instance where public bodies undertake activities that are licensable under the Regulations.

10.3 An Impact Assessment has not been prepared for this instrument. A Regulatory Triage Assessment for these proposals was undertaken.

³ Range accounts for 10% sensitivity.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses.
- 11.2 No specific action is proposed to minimise regulatory burdens on small businesses.
- 11.3 The MMO consulted small and medium size businesses (SME's) through its Customer Insight Group and Stakeholder Focus Groups. Based on the types of marine licence applications historically made by SME's, it is expected that SME's are more likely to be involved in low to medium scale projects; due to the scale of opportunity of investment. Therefore, the potential impact on SMEs has been assessed against changes to Band 1 and Band 2. Band 1 applications will benefit from a new fixed fee and simplified online application process. Band 2 applications will benefit from simplified banding and cost certainty through the revised maximum fee amounts. No further mitigation to support SMEs has been planned, evidence suggests that an increase in applications from the larger businesses is expected rather than SMEs / individual operations.

12. Monitoring & review

- 12.1 The application of changes introduced by this instrument will be monitored and reviewed within three years of this Regulation coming into effect.

13. Contact

- 13.1 Amanda Desmond at the Department for Environment, Food and Rural Affairs (Telephone: 0208 02 64311 or email: Amanda.Desmond@defra.gsi.gov.uk) can answer any queries regarding the instrument.