

Explanatory Memorandum to the Marine Licensing (Delegation of Functions) (Wales) Order 2017

This Explanatory Memorandum has been prepared by the Department for Economy, Skills and Natural Resources and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Marine Licensing (Delegation of Functions) (Wales) Order 2017.

Lesley Griffiths AM

Cabinet Secretary for Environment and Rural Affairs

4 October 2017

1. Description

This instrument delegates certain marine licensing functions from the Welsh Ministers to the Natural Resources Body for Wales (“NRW”).

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

None.

3. Legislative background

This Order is made in the exercise of the powers conferred by section 98(1) of the Marine and Coastal Access Act 2009 (“the 2009 Act”). The exercise of these powers is subject to the negative resolution procedure, pursuant to section 316(8) of the 2009 Act.

Part 4 of the 2009 Act provides for a marine licensing system and for the enforcement of that system. Part 6 of the Environment (Wales) Act 2016 (the “2016 Act”) amended the 2009 Act to provide new functions to the Welsh Ministers in relation to charging and associated functions for marine licensing.

Pursuant to section 113(4)(b) of the 2009 Act the Welsh Ministers are the licensing authority for Wales and the Welsh Inshore region except for activities for which the Secretary of State is the licensing authority as specified in section 113(4)(a) and (5) of the 2009 Act (activities relating to the exploration for, and production of, petroleum and certain defence activities).

This Order is made under section 98(1) which enables the Welsh Ministers to delegate certain of their marine licensing functions under Part 4 of the 2009 Act.

NRW has consented to the making of this instrument, as required under section 98(3) of the Act.

This instrument supplements the Marine Licensing (Delegation of Functions) (Wales) Order 2013 (the “2013 Order”) which will remain in force. The 2013 Order and this instrument should be read in conjunction with one another.

4. Purpose and intended effect of the legislation

The UK marine licensing system was established through Part 4 of the 2009 Act and is supplemented by a suite of Welsh secondary legislation. The Welsh Ministers are the licensing authority under Part 4 of the 2009 Act and in April 2013 delegated the majority of their licensing authority functions to NRW through the 2013 Order. The 2013 Order will remain in force and is supplemented by this instrument. The 2013 Order and this instrument should be read in conjunction with one another

The 2016 Act amended the 2009 Act to provide new functions to the Welsh Ministers in relation to charging and associated functions for marine licensing. This Order delegates certain functions to NRW.

The functions to be delegated are any function of the licensing authority under:

- a) section 67A of the 2009 Act (advice and other assistance from the Welsh Ministers);
- b) section 72A of the 2009 Act (further fees chargeable where the Welsh Ministers are the appropriate licensing authority);
- c) section 107A of the 2009 Act (deposits on account of fees payable to the Welsh Ministers);
- d) section 107B of the 2009 Act (supplementary provisions about fees payable to the Welsh Ministers);
- e) the Marine Licensing (Notices Appeals) (Wales) Regulations 2011 as amended by the Marine Licensing (Notices Appeals) (Wales) (Amendment) Regulations 2017; and
- f) the Marine Licensing (Fees) (Wales) Regulations 2017.

The Welsh Ministers will continue to exercise the excepted functions set out in section 98(6) of the 2009 Act (as amended by the 2016 Act), which include the power to set fees, adjust the list of licensable activities, exempt activities from licensing, and to establish civil sanctions and appeals mechanisms.

No enforcement authority functions under Part 4 of the 2009 Act are being delegated to NRW. The Welsh Ministers (in practice the Welsh Governments' Marine and Fisheries Division) will continue to be responsible for enforcement.

5. Consultation

A consultation on a revision to marine licensing fees and associated charges to be charged by NRW took place between 5 September and 28 November 2016. The proposals were taken forward as consulted upon. The consultation responses can be found via the attached link;

<https://consultations.gov.wales/consultations/marine-licensing-fees-and-associated-charges-wales>

6. Regulatory Impact Assessment (RIA)

No RIA has been completed as this Order does not change the regulatory system for marine activities in Wales or the Welsh inshore area and imposes no additional costs on the public, private, charitable or voluntary sectors.