

EXPLANATORY MEMORANDUM TO

The Marine Licensing (Application Fees) Regulations (Northern Ireland) 2011

Introduction

1. This Explanatory Memorandum has been prepared by the Department of the Environment to accompany the Statutory Rule detailed above which is laid before the Northern Ireland Assembly.
2. The Statutory Rule has been made under sections 74 and 316(1) of the Marine and Coastal Access Act 2009 (“the 2009 Act”) and is subject to the negative resolution procedure.

Purpose

3. This Statutory Rule is required to enable the Department to set fees for the determination and issue of marine licences, in order to recover the costs of this work. It applies in relation to any area, and any licensable marine activity taking place in that area, in relation to which the Department of the Environment is the appropriate licensing authority under section 113(6)(b) of the 2009 Act.

Background

4. Part 4 of the 2009 Act provides a framework for a new marine licensing system for activities carried out in the marine environment. These activities are defined in section 66 of the 2009 Act and include construction on the sea bed, off-shore renewable energy installations and dredging. The Department of the Environment is the appropriate licensing and enforcement authority for devolved matters within the Northern Ireland “inshore region” as defined in section 322 of the 2009 Act.
5. The marine licensing system provided for in the 2009 Act will replace that set out in Part 2 of the Food and Environmental Protection Act 1985 (FEPA) and will take effect through a Commencement Order on 6 April 2011. It will be supplemented by a suite of subordinate legislation which is being brought forward by the UK government and each of the Devolved Administrations.
6. The Northern Ireland Environment Agency (NIEA), an Executive Agency within the Department, will act as the appropriate licensing and enforcement authority. It will determine licence applications having regard to the need to protect the environment, human health and other legitimate users of the sea and in accordance with sustainable development principles and the requirements of national, European and international law.

Policy Objectives of the Statutory Rule

7. NIEA is required to achieve full cost recovery in applying its regulatory functions through the use of fees. The Agency is currently working

towards this objective and is increasing fees on an annual basis, in line with the Gross Domestic Product (GDP) deflator, for the period April 2010 to March 2013.

8. The Regulations provide the fee structure for licensing the following activities: marine construction, maintenance and capital dredging, and the subsequent disposal of dredged material, marine mineral extraction and offshore renewable energy projects. The fees levels have been increased in line with the GDP deflator from those applicable under the FEPA system during the financial year 2010-11.
9. The Regulations provide for an annual inflationary amendment to the fee levels for subsequent years.
10. The fees tables within the Regulations have been simplified, to show the overall figure payable at the time of application for a marine licence. In addition, the site sensitivity supplement, which had been proposed for construction and renewable projects, has been removed. NIEA costs associated with environmental assessments for sensitive areas will be recoverable under the Marine Works (Environmental Impact Assessment) Regulations 2007

Consultation

11. A statutory consultation on the proposals was carried out and concluded on 3 November 2010. Thirty written responses were received which were generally supportive of the Department's proposals. In response to comments received the Department intends that the duration of a marine licence may be extended up to 5 years, for small scale maintenance dredging.

Equality Impact Assessment

12. The Marine Licensing (Application Fees) Regulations (Northern Ireland) 2011 have been screened for compliance with section 75 of the Northern Ireland Act 1998. The revised licensing system will benefit the whole of Northern Ireland in terms of sustainable use of marine resources. It was therefore found that a full EQIA was not necessary.

Regulatory Impact

13. A Regulatory Impact Assessment (RIA) was prepared which considered the regulatory impact of the range of subordinate legislation proposed to fully implement the requirements of the 2009 Act.
14. Two options were considered within the RIA; option 1 "do nothing", and option 2 "introducing the legislation".
15. A single benefit, in respect of the "do nothing" option was identified as savings in the cost of staff time spent developing the legislation. The cost of pursuing this option was expressed in costs of continuing to operate an outdated system. This was considered a disbenefit, although difficult to quantify.

16. The costs were expressed in terms of not providing a modern fee licensing system.
17. The amendments to the fee structure reflect the amount of the regulatory effort made by the Department. This, along with the small rise in fee levels, which would have occurred under FEPA licensing in any case, is intended to provide both protection for the public purse while stimulating the development of the NI inshore region.
18. The benefits identified in introducing the legislation include enabling NIEA to move towards full cost recovery. This is in line with DFP and NIEA policy. The costs of option 2 were in terms of an increase in fee levels, in the region of 2.5% for 2010-11. However, this increase would also have happened under the existing FEPA system.
19. The Department has considered the impact on small harbours which may have to apply for a licence to undertake dredging for the first time. To lessen any potential impact, the lower fee levels have been set, and the licence for such activities may be extended for up to 5 years.
20. On balance the Department has judged that the benefits outweigh the costs.

Financial Implications

21. The financial implications of the Statutory Rule are minimal. Fee increases would have been brought forward under the FEPA licensing system.

Section 24 of the Northern Ireland Act 1998

22. The Statutory Rule does not discriminate on the grounds of religious belief or political opinion nor does it modify the European Communities Act, the Human Rights Act 1998 or the statutory provisions listed at section 7 of the 1998 Act.

EU Implications

23. Not applicable.

Parity or Replicatory Measure

24. Similar legislation is being introduced simultaneously by the other UK Administrations to allow for a common approach to marine licensing. There are minor differences between the GB and Northern Ireland legislation. This reflects local circumstances, structures and priorities.

Additional Information

25. Not applicable.

**PLANNING POLICY DIVISON
DEPARTMENT OF THE ENVIRONMENT
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