

EXPLANATORY MEMORANDUM TO

The Marine Licensing (Appeals) 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 in draft before the Northern Ireland Assembly.
2. The Statutory Rule will be made under sections 73, 108 and 316(1)(b) of the Marine and Coastal Access Act 2009 ("the 2009 Act") and is subject to the draft affirmative resolution procedure.

Purpose

3. The Statutory Rule will allow operators to make appeals to the Water Appeals Commission against marine licensing decisions and enforcement notices issued by the Department of the Environment in its role as 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.
7. Under the FEPA system, enforcement authorities are limited in their ability to sanction offenders. Part 4 of the 2009 Act introduced a range of statutory enforcement notices: compliance, remediation, stop and emergency safety notices which sit below prosecution. Access to these proportionate and flexible enforcement tools will help the Department protect the environment and ensure fair competition between economic operators active in the marine environment.

Policy Objectives of the Statutory Rule

8. The ethos of the new system is that outstanding issues are resolved during the application process through consultation and dialogue and that enforcement tools are used proportionately and fairly and in accordance with good enforcement principles. An independent appeals mechanism is required however to resolve outstanding differences and ensure that the system is fair, balanced and accountable.
9. The Water Appeals Commission (the Appeals Commission), which was established under the Water and Sewerage Services (Northern Ireland) Order 2006, has been chosen as the appellate body because it is an independent body which has an efficient and effective appeals mechanism in place.
10. The Regulations make provision for operators who are unhappy with a marine licensing decision (e.g. the conditions included in a marine licence, or the refusal, variation, suspension or revocation of a licence) or who have been issued with an enforcement notice under the 2009 Act (compliance, remediation, stop and emergency safety notices) to make an appeal to the Appeals Commission within defined timescales. Appeals will be determined in accordance with the existing procedures of the Appeals Commission. The Regulations specifies the information which must be provided to both the Appeals Commission and the Department when an appeal is lodged.
11. The Appeals Commission will have the power to confirm, vary or quash licensing and enforcement decisions. To provide for this, an amendment to Article 293(10) of the Water and Sewerage Services (Northern Ireland) Order 2006 is contained within the draft Regulations.

Consultation

12. 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 to use the Water Appeals Commission as the appellate body and of the proposed powers of the appellate body.

Equality Impact Assessment

13. The Marine Licensing (Appeals) Regulations (Northern Ireland) 2011 has 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

14. 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.
15. Two options were considered within the RIA; option 1 "do nothing", and option 2 "introducing the legislation".
16. 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 a dated and inflexible system which makes limited provision for appeals against decisions of the

licensing or enforcement authority. This was considered a disbenefit, although difficult to quantify.

17. The benefits identified in introducing the legislation include an increased perception that the system is fair and balanced which should lead to higher levels of trust if all parties know the decisions are robust and can withstand challenge. This in turn could encourage higher levels of compliance with marine licensing legislation and a resultant improvement in the quality of the marine environment. This could subsequently help Northern Ireland meet its European obligations, such as the requirements of the Marine Strategy Framework Directive
18. A number of benefits in using of the Water Appeals Commission as the appellate body have been identified. The body has a sound reputation as a fair and independent body with tried and tested procedures in place. The start up costs of the appeals system will therefore be minimised which will result in an efficient use of public money.

Financial Implications

19. The financial implications of the Statutory Rule are minimal. Historically the existing appeals process which allows appeals to the Department has never been used. Although the greater suite of tools available for enforcement and the existence of an independent appellate body could increase the number of appeals the Department considers it is unlikely that a high volume of appeals would be made. The use of the Water Appeals Commission as the appellant body will ensure effective and efficient use of public money as the set-up costs of the appeals system will be minimal.

Section 24 of the Northern Ireland Act 1998

20. 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

21. Not applicable.

Parity or Replicatory Measure

22. Similar legislation is being introduced simultaneously by the other UK Administrations to allow for a common approach to appeals against marine licensing and enforcement decisions. There are minor differences between the GB and Northern Ireland legislation such as the choice of appellate body. This reflects local circumstances, structures and priorities.

Additional Information

23. Not applicable.