

## **EXPLANATORY MEMORANDUM TO The Marine Licensing (Civil Sanctions) Order (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 93, 95 and 316(1)(b) <sup>1</sup> 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 provide the Department, as the appropriate enforcement authority under section 114(2) of the 2009 Act, with powers to impose civil sanctions (Fixed and Variable Monetary Penalties) on an operator in relation to minor offences committed under sections 85(1) (breach of a requirement for, or conditions of a marine licence), 89(1) (information) and 92(3)(b) (failure to comply with a remediation notice) of the 2009 Act.
4. The Statutory Rule makes provision for appeals against the imposition of a civil sanction to an independent tribunal, the Water Appeals Commission.

### **Background**

5. 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 area” as defined in section 322 of the 2009 Act.
6. 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.
7. The Northern Ireland Environment Agency (NIEA), an Executive Agency within the Department will act as the appropriate licensing and enforcement authority and will make use of the civil sanctions created by this Order to address non-compliance. NIEA will follow the procedures for their imposition prescribed by this Order.
8. 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 effective enforcement tools will help the Department protect the environment

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<sup>1</sup> The Department has carried out a consultation in accordance with paragraph 8 of Schedule 7 to the 2009 Act.

and ensure fair competition between economic operators active in the marine environment.

### **Policy Objectives of the Statutory Rule**

9. The policy intention is to introduce an effective, efficient and balanced alternative to prosecution which will allow the enforcement authority to impose financial penalties to address instances of non-compliance, remove any competitive advantage derived as a consequence of non-compliance and to introduce a deterrent to future non-compliance.
10. The ethos of the new marine licensing system is a consultative one and the Statutory Rule makes provision for a process which involves discussion and agreement between the enforcement authority and the non-compliant operator.
11. Fixed Monetary Penalties (FMPs) have been set at £100 for individuals and £300 for all others and will be used to signal in a proportionate way the need for compliance.
12. Variable Monetary Penalties (VMPs) will enable the enforcement authority to take account of the social and economic impacts as well as any environmental damage caused by the non-compliance. The amount of a VMP will be determined on a case by case basis and will comprise the sum of the estimated financial benefit derived from the non-compliance, an appropriate deterrent which is proportionate to the severity of the non-compliance less any costs incurred by the offender. There is no upper limit on the penalty which could be imposed.
13. The Department will publish reports which specify cases where civil sanctions have been imposed: an additional and cost effective compliance incentive.
14. The Statutory Rule makes provision for an independent appeals mechanism (to the Water Appeals Commission) to ensure the new enforcement tools are used proportionately and fairly and that the enforcement authority is fully accountable for its decisions.

### **Consultation**

15. A statutory consultation on the proposals was carried out and concluded on 3 November 2010. Thirty written responses were received which were generally supportive. Any requests for clarification on the proposals are contained in the Department's response and will also be covered in Guidance to be produced by the enforcement authority.

### **Equality Impact Assessment**

16. The Marine Licensing (Civil Sanctions) Order (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**

17. 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. These are:
18. Two options were considered with in the RIA; option 1 “do nothing”, and option 2 “introducing the legislation”.
19. 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 inadequate provision for the use of sanctions against breaches in requirements and has resulted in action being taken in only the most serious cases. This was considered a disbenefit, although difficult to quantify.
20. The benefits identified in introducing the legislation include higher levels of compliance with 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. It is anticipated that the legislation will also provide benefits to industry as it will promote a level playing field and a culture where non-compliance is perceived as unprofitable. This in turn should engender fair competition which should ultimately deliver benefits to consumers of marine goods and services in terms of quality and price.
21. A further benefit was identified as the introduction of an independent appeals mechanism with appeals to the Water Appeals Commission. This should help develop confidence in the impartiality and robustness of the system and should further promote compliance. The benefits of using the Water Appeals Commission are that it has tried and tested procedures in place, a sound reputation as an independent and fair tribunal and as such start up costs will be minimised.

## **Financial Implications**

22. The financial implications of the Statutory Rule are minimal. The cost of imposing a FMP is low, while the Order makes provision for the Department to recover the costs it has incurred in imposing a VMP through Cost Recovery Notices. The use of Cost Recovery Notices will help ensure the enforcement costs to the Department are minimal and act as an additional compliance incentive. 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**

23. 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**

24. Not applicable.

**Parity or Replicatory Measure**

25. The 2009 Act allows for similar legislation to be introduced by the other UK Administrations. Wales will be introducing similar legislation in April 2011 while England and Scotland are working to different timescales

**26. Additional Information**

27. Not applicable.

**PLANNING POLICY DIVISION  
DEPARTMENT OF THE ENVIRONMENT  
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