

Explanatory Memorandum to the Marine Licensing (Delegation of Functions) (Wales) Order 2013

This Explanatory Memorandum has been prepared by the Department for Environment and Sustainable Development 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 2013.

John Griffiths

Minister for Environment and Sustainable Development

26 February 2013

1. Description

This instrument delegates marine licensing functions under Part 4 of the Marine and Coastal Access Act 2009 (the “2009 Act”) from the Welsh Ministers to Natural Resources Wales (“NRW”).

The instrument also makes related provision amending article 5 of the Marine Licensing (Exempted Activities) (Wales) Order 2011 so that the Welsh Ministers’ functions under that provision are transferred to NRW.

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

This Order is made in the exercise of the powers conferred by section 98(1) and 316(1)(b) of the 2009 Act. The exercise of these powers is subject to the negative resolution procedure, pursuant to section 316(8) of the 2009 Act. As section 3 of this Memorandum explains, section 2(2) of the European Communities Act 1972 (“ECA 1972”) is also relied upon for the purposes of substituting references to NRW for references to the licensing authority at article 5(4) and 5(5) of the Marine Licensing (Exempted Activities) (Wales) Order 2011.

By virtue of section 59(3) of the Government of Wales Act 2006, the Welsh Ministers are to determine whether an instrument made in exercise of section 2(2) ECA 1972 is to be subject to the negative or affirmative procedure.

There was no factor indicating the use of affirmative procedure. The amendments made in reliance of section 2(2) do not affect primary legislation and are a minor part of the overall legislative scheme. Accordingly, the Welsh Ministers have determined that this Order is to be subject to the negative procedure.

3. Legislative background

Part 4 of the 2009 Act provides for a marine licensing system and for the enforcement of that system. The Welsh Ministers are the licensing authority for the area specified in section 113(4)(b) of the Act, and for licensable marine activities carried on in that area, 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). The area specified is Wales and the Welsh inshore region, meaning the territorial sea adjacent to Wales.

This Order is made under sections 98(1) and 316(1)(b) of the 2009 Act, which, amongst other things, give the Welsh Ministers power to delegate certain of their marine licensing functions under Part 4 of the 2009 Act and to make consequential, transitional and savings provision.

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

The Order is also made under section 2(2) ECA 1972. Section 2(2) provides that a Minister of the Crown or government department may be designated by Order in Council for the purposes of making provision to implement any EU obligation of the United Kingdom, or dealing with any matters arising out of or related to such obligations. By virtue of section 59(1) of the Government of Wales Act 2006, the power to designate under section 2(2) may be exercised to designate the Welsh Ministers.

Article 3 of the European Communities (Designation) (No.2) Order 2010 (S.I. 2010/1552) designated the Welsh Ministers for the purpose of section 2(2) in relation to the prevention, reduction and management of waste.

In reliance on this designation and functions under Part 4 of the 2009 Act, the Welsh Ministers made the Marine Licensing (Exempted Activities) (Wales) Order 2011. In particular, section 2(2) was relied upon to make article 5 of that Order, which makes provision about when a marine licence is not required for activities relating to the disposal or recovery of waste (and implements in part Directive 2008/08/EC of the European Parliament and Council on waste (OJ No L 312, 22.11.2008, p.3)). Accordingly, section 2(2) is relied upon to substitute references to the NRW for references to the licensing authority at article 5(4) and 5(5).

4. Purpose and intended effect of the legislation

The Welsh Ministers intend to delegate certain of their marine licensing functions to NRW who will be the Welsh Government's natural resources management expert. Delegation was proposed in order to simplify regulation and provide a single point of contact; to improve resilience by embedding the function within a wider, much larger, regulatory group; and to allow for the possibility that the Welsh Ministers undertake the appellate function.

The Welsh Ministers will continue to exercise the order and regulation powers within Part 4 of the 2009 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.

Enforcement functions under Part 4 of the 2009 Act are not being delegated to NRW. The Welsh Ministers (in practice the Welsh Government's Fisheries Unit) will continue to be responsible for enforcement.

5. Consultation

The Welsh Government consulted on the delegation of marine licensing to NRW between 9 February and 2 May 2012 as part of 'Natural Resources Wales - Proposed arrangements for establishing and directing a new body for the management of Wales' natural resources.'

The majority of those who responded on this matter supported the proposed changes to marine licensing.

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.