EXPLANATORY MEMORANDUM TO

THE DEPOSITS IN THE SEA (EXEMPTIONS) (AMENDMENT) (ENGLAND AND WALES) ORDER 2010

2010 No. 304

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs (Defra) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The instrument amends the Deposits in the Sea (Exemptions) Order 1985[1] ("the principal order") so that a licence will be required under section 5 of the Food and Environment Protection Act 1985[2] ("FEPA"), in respect of (i) the deposit, in the course of its laying, of any cable transmitting 132 kilovolts or more (or associated equipment), for the purpose of transmitting electricity from an offshore generating station, and (ii) the loading of a vehicle, vessel, aircraft, hovercraft, marine structure or floating container with such articles for deposit in the course of such an operation.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Background

4.1 A licence is required under section 5 of FEPA for the deposit of substances or articles within United Kingdom waters, either in the sea or under the seabed, from a vehicle, vessel, aircraft, hovercraft or marine structure; a container floating in the sea; or from a structure on land constricted or adapted wholly or mainly for the purpose of depositing solids in the sea. Such a licence is also required for the loading of a vehicle or vessel etc. with substances or articles for deposit.

4.2 Under section 8 of FEPA, the licensing authority, in determining whether to issue a licence, shall have regard to the need to protect the marine environment, the living resources which it supports and human health, and the need to prevent interference with legitimate uses of the sea. The licensing authority shall include provisions that it considers to be necessary or expedient for these purposes.

4.3 Under the Marine Works (Environmental Impact Assessment) Regulations 2007[3], an environmental impact assessment is required if such an activity being licensed under section 5 of FEPA is carried out in the course of a project listed in Annex I of Directive 85/337/EEC[4] (the Environmental Impact Assessment Directive), or a project listed in Annex II of that Directive which is likely to have significant effects on the environment.

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[1] S.I. 1985/1699.
[2] 1985, c.48.
[3] S.I. 2007/1518
[4] Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, OJ L 175, 5.7.1985, p. 40-48

4.4 Article 3 and paragraph 5 of the Schedule to the principal order exempt the deposit of cables and associated equipment in the course of cable laying from the requirement to obtain a licence under section 5 of FEPA. These provisions also exempt the loading of vehicles or vessels etc. with such articles for deposit from the requirement for a licence.

4.5 Where a submarine cable connects to a project that includes a licensable activity under FEPA, such as the construction of an offshore wind farm (which in practice is what this Order is concerned with), the transmission cable has been assessed and licensed within the whole project by the Marine and Fisheries Agency under FEPA.

4.6 From June 2010, submarine transmission cables of 132 kilovolts and above connected to offshore wind farms will become the responsibility of Offshore Transmission Owners under a new system established by the Department of Energy and Climate Change, and administered by Ofgem. For this reason, such submarine cables will need to be licensed in their own right, as the responsibility for the transmission and the generation assets will be separated, and therefore they will no longer be licensed under alongside the main project .

4.7 By removing the exemption from the requirement for a licence for the laying of cables of 132 KV or above and associated equipment, and for the loading of such cables for deposit, this Order will close this unintended regulatory gap, enabling environmental regulation of cables transmitting electricity from offshore wind farms to continue as usual.

5. Territorial Extent and Application

5.1 This instrument applies in England and Wales. It is a composite Order that is being simultaneously signed by Welsh and Defra Ministers.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 This Order will enable the Marine Management Organisation (which will take on the licensing functions of the Marine and Fisheries Agency as of 1 April 2010) to maintain business as usual in terms of licensing the deposit of transmission cables of 132 kilovolts and above connected to offshore wind farms under section 5 of the Food and Environment Protection Act 1985. The only difference will be that instead of one licence being issued, licence conditions will be ‘split’ into one licence for the wind farm owner, and one licence for the Offshore Transmission Owner.

7.2 Only cables of 132 kilovolts and above and associated equipment for transmitting electricity from a generating station constructed on the sea bed, and which are deposited after 6 April 2010 (when this Order will commence) will be covered by this Order. In practice, this means submarine transmission cables connected to new offshore wind

farms. Maintenance work will not require a licence through this Order, although the licensing provisions under the Marine and Coastal Access Act 2009 will bring changes to this area when commenced in 2011.

8. Consultation outcome

8.1 In accordance with section 7(3A), the Food Standards Agency has been consulted on this Order.

8.2 A public consultation was carried out on the proposal for this amendment between 27 July and 26 October 2009. Seventeen responses were received, with this amendment being the favoured option.

8.3 The Department of Energy and Climate Change, Ofgem and the Marine and Fisheries Agency have been engaged in this process.

9. Guidance

9.1 No guidance has been produced for the Order, as regulators are working closely with interested parties to ensure business as usual as far as is possible for the regulation of the transmission cables covered by this Order.

10. Impact

10.1 An Impact Assessment has not been prepared for this instrument as it has no new impact on business, charities or voluntary bodies.

10.2 DECC and Ofgem have consulted extensively on the new offshore transmission regime.

11. Regulating small business

11.1 This legislation does not apply to small business.

12. Monitoring and review

12.1 This legislation will be replaced in 2011 by the enduring regime established under the Marine and Coastal Access Act 2009.

13. Contact

13.1 Jonathan Lartice at the Department for Environment, Food and Rural Affairs Tel: 020 7238 4361 or e-mail: jonathan.lartice@defra.gsi.gov.uk can answer any queries regarding the instrument.