EXPLANATORY MEMORANDUM TO

THE LEGISLATIVE AND REGULATORY REFORM (REGULATORY FUNCTIONS) (AMENDMENT) ORDER 2010

2010 No. [ ]

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

2. **Purpose of the instrument**

2.1 The effect of this instrument is to require the Marine Management Organisation, as an organisation exercising regulatory functions, to have regard to the five principles of good regulation and to comply with the Regulators' Compliance Code (as set out in sections 21 and 22 of the Legislative and Regulatory Reform Act 2006. (These duties are referred to as "the better regulation duties" in this memorandum). The five principles of good regulation stipulate that regulation should be transparent, accountable, proportionate, consistent and targeted. The Regulators' Compliance Code imposes obligations in relation to economic progress, risk assessment, advice and guidance, inspections, information requirements, compliance and enforcement actions and accountability.

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

3.1 The effect of this instrument is to make the MMO subject to requirements set out in primary legislation (the Legislative and Regulatory Reform Act 2006) and the draft instrument is subject to affirmative resolution. The draft instrument was sent for comment to the Joint Committee on Statutory Instruments and cleared by them on 26 January 2010.

3.2 Under section 24(6) of the Legislative and Regulatory Reform Act 2006, the person making an Order specifying functions which are to be subject to the better regulation duties must first consult any person whose functions are to be specified in the order and such other persons as the Secretary of State considers appropriate. There is no requirement to conduct a full public consultation.

3.3 Section 3(2) of the Marine and Coastal Access Act 2009 specifically disapplied the requirement to consult the MMO. This was because the intention was that this instrument would come into force by the time the MMO started exercising its regulatory functions. There was seen to be a strong possibility that there would be insufficient time for such consultation following the appointment of MMO Board members.

3.4 However, given the delay in subjecting this Order to parliamentary scrutiny (due to pressure of time in the last session of Parliament), the MMO Board has been formally consulted on and agrees with the draft instrument. The MMO has, in any event, been complying with the better regulation duties as these are set out in the

Framework Document which governs the relationship between the MMO, this Department (its principal sponsor) and other Government Departments.

4. Legislative context

4.1 This Order amends the Legislative and Regulatory Reform (Regulatory Functions) Order 2007 (SI 2007/3544) by inserting a reference to the Marine Management Organisation, a body corporate established by section 1 of the Marine and Coastal Access Act 2009 (c.23), into Part 1 of the Schedule to that Order. The Schedule lists the regulatory functions to which the better regulation duties set out in sections 21 and 22 of the Legislative and Regulatory Reform Act 2006 (c.51) apply and these include the functions of most regulatory bodies.

5. Territorial extent and application

5.1 This instrument extends to the United Kingdom. It applies in the United Kingdom and in other areas where the Marine Management Organisation exercises functions but does not affect the exercise of any functions relating to reserved matters in Scotland, transferred matters in Northern Ireland or functions only exercisable in or in relation to Wales.

6. European Convention on Human Rights

6.1 The Secretary of State for Environment, Food and Rural Affairs, Caroline Spelman, has made the following statement regarding Human Rights:

"In my view, the provisions of the Legislative and Regulatory Reform (Regulatory Functions) (Amendment) Order 2010 are compatible with the Convention rights."

7. Policy background

What is being done and why

7.1 The Marine and Coastal Access Act 2009, which received Royal Assent on 12 November 2009, introduced a new system of marine management for the UK. It also established a new body, the Marine Management Organisation (MMO). The MMO is responsible for exercising a number of regulatory functions in the marine area, including for example the licensing of construction and fishing activity. As is the case for other UK regulators the MMO should, in exercising its functions, be bound by the better regulation duties.

7.2 In order to ensure in a transparent way that the MMO is bound by the better regulation duties, we are adding the MMO to the list of bodies to which the provisions of the Legislative and Regulatory Reform Act apply. This is being done by amending the Legislative and Regulatory Reform (Regulatory Functions) Order 2007.

Consolidation

7.3 No consolidation. The effect of the draft instrument is to add the MMO to the list of other regulators set out in the Legislative and Regulatory Reform (Regulatory Functions) Order.

8. **Consultation**

8.1 The MMO was consulted on the draft instrument and consents to it being made. Further detail about consultation requirements is set out in paragraph 3 above.

9. **Guidance**

9.1 No guidance has been prepared for this instrument but, as noted above, the Framework Document governing relations between the MMO, this Department and other Government Departments, already requires the MMO to comply with the better regulation duties.

10. **Impact**

10.1 The impact on business, charities and voluntary bodies and on the public sector (beyond seeking transparently to ensure better regulation) is nil.

10.2 An Impact Assessment has not, therefore, been prepared for this instrument. An impact assessment was prepared for the Marine and Coastal Access Act, and copies may be obtained from the website of the Department for Environment, Food and Rural Affairs at www.defra.gov.uk.

11. **Regulating small business**

11.1 This instrument does not apply to small business, although the provisions of the 2009 Act establishing the MMO do and imposing better regulation duties on the MMO should be of benefit to small business.

12. **Monitoring and review**

12.1 The MMO is required to prepare an annual account on how it has discharged its functions during the year (Marine and Coastal Access Act 2009, Schedule 1, paragraph 26). Defra, as the MMO's sponsoring department, monitors the MMO's performance.

13. **Contact**

13.1 Fiona Walters at the Department for Environment, Food and Rural Affairs, tel. 020 7238 6839 or e-mail: Fiona.Walters@defra.gsi.gov.uk can answer any queries regarding the instrument.