**EXPLANATORY MEMORANDUM TO**

**THE MARINE AND COASTAL ACCESS ACT 2009 (COMMENCEMENT NO.5, CONSEQUENTIAL AND TRANSITIONAL PROVISIONS) ORDER 2011**

**2011 No. 556 (C.19)**

**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 This purpose of this instrument is to commence various provisions of the Marine and Coastal Access Act 2009 ("the Act") relating to (a) to the establishment of Inshore Fisheries and Conservation Authorities (IFCAs) and (b) marine licensing and enforcement. The instrument also includes transitional and consequential provisions.

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

3.1 This instrument makes amendments to several pieces of secondary legislation, consequential on this instrument's commencement of Part 4 of the Act and provisions amending the Food and Environment Protection Act 1985 (FEPA). Part 4 of the Act establishes a marine licensing system which replaces that established under Part 2 of FEPA. Amongst the amended instruments are three made by the Welsh Ministers (S.I. 2004/3054 (W.263); 2005/1806 (W.138); and 2009/995 (W.81)), replacing references to licences under Part 2 of FEPA with references to marine licences under Part 4 of the Act. These amendments have been included at the request of the Welsh Ministers, and are not considered to give rise to any question of policy that would require debate before the National Assembly for Wales.

## 4. Legislative Context

4.1 The Act received Royal Assent on 12 November 2009. Whilst the Act provides for automatic commencement of some provisions either on Royal Assent or two months afterwards (section 324(1) and (2)), the remaining provisions have to be brought into force by means of an Order (section 324(3)).

4.2 There have been five previous orders commencing provisions of the Act: S.I. 2009/3345, 2010/298, 2010/630 (in relation to Wales); 2010/907 and 2010/2195. S.I. 2010/298 brought certain provisions relating to Part 4 (marine licensing), amongst others, into force on 1 April 2010. S.I. 2010/2195 brought certain provisions relating to Part 6 (management of inshore fisheries) into force on 1 October 2010. Under S.I. 2010/630, the Welsh Ministers brought into force on 1 April 2010 two provisions relating to inshore fisheries in relation to Wales.

4.3 This instrument provides for coming into force on 1 April 2011 of the remaining provisions of the Act relating to Part 6 (dealing with inshore fisheries and

conservation authorities and local fisheries committees) and the coming into force on 6 April 2011 of provisions of the Act relating to marine licensing and enforcement.

4.4 This instrument makes changes to the transitional arrangements that would otherwise apply by virtue of paragraph 2(1) to (3) of Schedule 9 to the Act as they apply to certain dredging projects. The instrument also makes several changes to secondary legislation consequential on the commencement of Part 4 of the Act

## 5. Territorial Extent and Application

5.1 The order extends to all of the United Kingdom in relation to marine licensing. The provisions in Part 6 (inshore fisheries) commenced by this Order extend mostly to England and Wales, although section 166 and 186 also extend to Scotland.

5.2 The Secretary of State and the devolved administrations are licensing and enforcement authorities under Part 4 of the Act (as specified in sections 113 and 114 of the Act). The Secretary of State's licensing and enforcement functions are being delegated to the Marine Management Organisation (MMO) as far as permitted under section 98 of the Act except that the Secretary of State has retained licensing responsibilities for oil and gas-related activities.

## 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

*Inshore Fisheries and Conservation Authorities*

7.1 There are 11 Sea Fisheries Committees (SFCs) in England. They were established by the Sea Fisheries Regulation Act 1888 to regulate sea fisheries within their District, and now operate principally under the Sea Fisheries Regulation Act 1966.

7.2 Under Part 6 of the Act, the existing SFCs in England will be replaced with IFCAs. The main duties of IFCAs are set out in sections 153, 154, 155 -160 of the Act. In summary, IFCAs will have a new duty to protect the marine environment and promote its recovery from the effects of sea fisheries exploitation. IFCAs must contribute to the achievement of sustainable development and must exercise their powers to ensure that the conservation objectives of any Marine Conservation Zone (MCZ) in their district are furthered.

7.3 As well as introducing and enforcing their own byelaws to protect sea fisheries resources from the effects of exploitation, IFCAs will also be able to introduce byelaws to protect an MCZ, where the impact is from fishing activity. IFCAs will also be able to enforce MMO byelaws introduced for the protection of MCZs. This instrument commences the repeal of the Sea Fisheries Regulations Act 1966 (other than in relation to Wales, where the repeal of this Act has already been commenced

by a separate instrument), abolishes SFCs and commences the remaining sections in Part 6.

*Marine licensing and enforcement*

7.5 Part 4 of the Act makes provision for a new marine licensing system and for the enforcement of that system. Part 8 of the Act includes further provisions relating to the inspection and investigation powers of enforcement officers to enforce the marine licensing system. The new system will replace the need for consents under Part 2 of the Food and Environment Protection Act (FEPA)1985 (except in Scottish inshore waters where FEPA will remain for certain reserved matters in particular in relation to the oil and gas industries). The new licensing system will also replace the need for a navigational safety consent under Part 2 of the Coast Protection Act (CPA) 1949. It will also remove the need for a separate consent under the Electronic Communications Code 1984.

7.6 Article 4 of this instrument narrows the application of transitional provisions in paragraph 2(1) to (3) of Schedule 9 to the Act as they apply to certain marine mineral dredging. Schedule 9, paragraph 2 (1) to (3), provides that a CPA consent relating to an operation which will be a licensable marine activity when the new marine licensing system commences (at which time the CPA is repealed) will have effect as if it were a marine licence under Part 4 of the Act (a 'deemed' marine licence). Article 4 of this instrument provides that CPA consents granted in relation to certain marine minerals dredging will not have effect as deemed marine licences unless an environmental impact assessment has been carried out which meets the requirements of the EIA Directive. This is to provide for compliance with the EIA Directive.

7.7 The Schedule to the instrument makes changes to secondary legislation which are consequential on the replacement of Part 2 of FEPA and Part 2 of the CPA. In most cases, the changes involve substituting references to the older Acts with references to Part 4 of the Act.

## 8. Consultation outcome

8.1 The Act was the subject of extensive consultation, both before and during its Parliamentary process.

8.2 The policy relating to the reform of inshore fisheries management and the establishment of IFC districts and their associated authorities has also been subject to separate consultation. A first consultation from 28 January 2009 to 22 April 2009 sought views on inshore fisheries and conservation district (IFC district) boundaries, the number of IFC districts to be established and which upper tier and unitary local authorities would be included within each IFC district.

8.3 A second consultation from 22 March 2010 to 14 June 2010 sought views on IFCA implementation and the detail of the provisions to be included in each of the Orders establishing them. Part 1 sought views on issues such as district boundaries and the membership of each IFCA. Part 2 sought views on matters relating to the

effective operation of IFCAs and optional provisions for inclusion in the Orders. 49 responses were received during the consultation period.

8.4 Defra and the Welsh Assembly Government carried out a first consultation in 2009 on the principles and general approach to marine licensing. This consultation informed the development of legislative proposals needed to bring the licensing system into effect. Defra carried out further consultations in March and July 2010 on licensing enforcement and on licensing legislation respectively. The July 2010 consultation was carried out jointly with the Department of Energy and Climate Change who will be issuing licences for oil and gas-related activities. We received 17 responses to the March 2010 consultation and 69 replies to the July 2010 consultation. Government responses to both consultation are available at: http://www.defra.gov.uk/corporate/consult/closed.htm

8.5 Further informal consultations were carried out at the end of 2010/early 2011 with key stakeholders on the fees that will apply to marine licences and to technical changes to legislation on Environmental Impact Assessment and habitats protection legislation needed as a consequence of the introduction of the new marine licensing system.

## 9. Guidance

9.1 The Department for Environment, Food and Rural Affairs will publish guidance on the legislation that brings Part 4 of the Marine and Coastal Access Act into effect. The MMO will produce public guidance before the new system starts on how it proposes to carry out its delegated functions. The Department of Energy and Climate Change will produce guidance for oil and gas-related applications. No guidance is needed on the IFCA provisions.

## 10. Impact

10.1 An Impact Assessment has not been prepared for this instrument because it has no new impact on business, charities or voluntary bodies. However, an Impact Assessment was prepared for the Marine and Coastal Access Bill. Further impact assessments were produced for the first consultation on IFCA boundaries (which identified the costs and benefits for local government) and on the marine licensing system (which identified the costs and benefits to industry and the MMO).

## 11. Regulating small business

11.1 The effects on small business of the new marine licensing system were considered in the licensing Impact Assessment. This concluded that the costs of the measures are not expected fall disproportionately on small businesses. Small businesses may gain particularly for example from the more risk-based approach of the new licensing system: to the extent that this reduces administrative costs this will be of particular benefit to smaller companies with less resource for administration. The IFCAs provisions do not apply to small businesses.

## 12. Monitoring and review

12.1 The MMO's performance in carrying out its licensing responsibilities is subject to a Service Level Agreement with Defra. This will set out performance measures and the process for monitoring and reviewing the extent to which the organisation has met its targets.

## 13. Contact

Chris Preston at the Department for Environment, Food and Rural Affairs Tel: 020 7979 8563 or email: chris.preston@defra.gsi.gov.uk can answer any queries on IFCAs relating to the instrument.

Haroona Chughtai at the Department for Environment, Food and Rural Affairs, Tel: 020 7238 4896 or email: haroona.chughtai@defra.gsi.gov.uk can answer any queries on marine licensing and enforcement relating to the instrument.