EXPLANATORY MEMORANDUM TO

THE MARINE LICENSING (APPLICATION FEES) (AMENDMENT) REGULATIONS 2014

2014 No. 950

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.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This Order amends the Marine Licensing (Application Fees) Regulations 2014 (The Fees Regulations). The Fees Regulations set out a revised fee structure for applications for marine licences made under Part 4 of the Marine and Coastal Access Act 2009 ("the Act"). This Order corrects defects in the Fees Regulations to ensure that the MMO has the power to require a deposit from any applicant for a marine licence..

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

3.1 The following errors have been identified in the Marine Licensing (Application Fees) Regulations 2014:

Regulation 6(1), which relates to fees chargeable for deposits, refers to 'licensee'. Using the common meaning of the term 'licensee' this regulation implies that a 'licence holder' only could be required to pay a deposit. The intention to charge a deposit is not only for those who have already been granted a licence but also to those who have applied for a licence. For these reasons, in regulation 6 'licensee' needs to be changed to "applicant".

Regulation 6(4) refers to "application", when the clear intention is to refer to the person applying for a marine licence. For this reason the word "application" should be changed to "applicant". Regulation 2(2) of this Order makes this change.

3.2 This Statutory Instrument will be issued free of charge.

4. Legislative Context

4.1 Part 4 of the Act makes provision for the marine licensing system controlling a broad range of activities at sea and for the enforcement of that system. The marine licensing system came into effect in April 2011.

4.2 Although most of the Secretary of State's licensing and licensing enforcement functions are delegated[1] to the Marine Management Organisation (MMO)[2], application fees for marine licences must still be determined by the Secretary of State (in respect of applications for which the Secretary of State is the appropriate licensing authority). The Marine Licensing (Application Fees) Regulations 2011 provided the basis for marine licence application fees when the system came into effect in April 2011.

4.3 The primary function of the Fees Regulations and this Order is to recover MMO's costs in relation to determining a marine licence.

5. Territorial Extent and Application

5.1 The Fees Regulations and this Order extend to England and Wales, Scotland and Northern Ireland, and apply in relation to those areas and activities for which the Secretary of State is the appropriate licensing authority under the Act.

5.2 For the purposes of marine licensing the Secretary of State is the appropriate licensing authority for England's inshore waters (those within the seaward limits of the territorial waters adjacent to England), and the offshore waters of England, Wales and Northern Ireland (those within British fishery limits beyond the seaward limits of the territorial waters adjacent to Wales and Northern Ireland, respectively, and any other waters beyond the seaward limits of the UK's territorial waters but within the limits of the UK sector of the continental shelf, other than waters within the Scottish offshore region).

5.3 For this purpose the "Scottish offshore region" is (a) those waters adjacent to Scotland within British fishery limits, other than the territorial sea; and (b) those waters outside British fishery limits but within the limits of the UK sector of the continental shelf, which are nearer to any point on the baselines from which the breadth of the territorial sea adjacent to Scotland is measured than to any point on the baselines in any other part of the UK.

5.4 The Secretary of State also remains the appropriate licensing authority for certain reserved matters specified in sections 113(2), (4) and (6) of the Act in (a) the Welsh inshore region and Northern Ireland inshore region (those waters within the seaward limits of the territorial waters adjacent to Wales and Northern Ireland, respectively), and (b) the Scottish offshore region (as defined above).

6. European Convention on Human Rights

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

7. Policy background

7.1 Full details of the aims of marine licensing are set out in the Explanatory Memorandum for the Fees Regulations.

7.2 The revised licensing structure set out in the Fees Regulations covers the MMO's costs in processing and determining applications including the costs of advice from the Centre for Environment, Fisheries and Aquaculture Science ("Cefas"), an executive agency of Defra. Cefas provides advice to the MMO on most applications except those that relate to the smallest, lowest risk activities.

7.3 The policy aims behind the Fees Regulations are to:

- ensure that the administration of marine licensing is as efficient as possible, in order to minimise burdens on applicants whilst protecting the environment and human health and preventing interference with other marine users;
- fully recover the costs of administering marine licences, whilst avoiding excessive burdens on smaller projects;
- remove the risk of cross-subsidy between applicants, so that applicants do not risk paying more than the actual cost of processing their application;
- provide transparency and certainty - the MMO wishes to provide marine licence applicants, particularly small and medium sized enterprises, with a clear view of what their costs are likely to be.

7.4 The policy aim of this Order is to ensure the MMO have the power to request a deposit for from first time applicants. It is also to ensure that the Regulations are worded correctly to require the applicant to pay the deposit.

8. Consultation outcome

8.1 Details of the consultation which took place prior to the introduction of the Fees Regulations are set out in the Explanatory Memorandum for those regulations.

8.2 The Fees Regulations take effect as follows:

Regulation 4 sets out how the marine licence fee is calculated with the basic principle being hourly charging. An upper limit ("cap") may be specified in relation to any application of a certain description ("band"). Where a cap is specified the fee is the

lesser of the two amounts. The bands and (where specified) the caps are set out in the Schedule to the Order.

These Regulations contain revocation, transitional and saving provisions in relation to the Marine Licensing (Application Fees) Regulations 2011 ("the 2011 Regulations"). The transitional provisions are set out in regulation 9 of these Regulations and explained below.

8.3 Regulation 8 revokes the Marine Licensing (Application Fees) Regulations 2011 (SI 2011 No. 564, "the 2011 Regulations). However regulation 9 saves and modifies those Regulations for a transitional period so that they continue to apply to any application received prior to 6 April 2014. These provisions are unaffected by this Amendment Regulation.

8.4 Regulation 6(1) ensures that deposits can be requested both from applicants who have received a marine licence previously and from applicants who have not yet been granted a licence. Regulation 6(4) ensures that it is the applicant who is required to pay the deposit. All other provisions remain unchanged.

9. Guidance

9.1 The MMO has provided guidance to operators on the new fees structure explaining in detail how banding and the other provisions will operate.

10. Impact

10.1 The overall impact of the Regulations remains the same as set out in the Explanatory Memorandum for the Fees Regulations.

10.2 An Impact Assessment for the Fees Regulations has been published.

11. Regulating small business

11.1 The legislation applies to small business. The impacts on small businesses remain the same as explained in the Explanatory Memorandum for the Fees Regulations.

12. Monitoring & review

Defra and the MMO will review the application of the new fees structure, including the level of cost recovery and public subsidy, within 12 – 18 months of operation.

13. Contact

Amanda Furlonger at the Department for Environment, Food and Rural Affairs Tel: 020 7238 6830 or email: Amanda.furlonger@defra.gsi.uk can answer any queries regarding the instrument.