EXPLANATORY MEMORANDUM TO

The Marine Licensing (Application Fees) (Amendment) Regulations (Northern Ireland) 2024

SR 2024 No. 204

1. Introduction

1.1. This Explanatory Memorandum has been prepared by the Department of Agriculture, Environment and Rural Affairs (DAERA) to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.

1.2. The Statutory Rule is made under sections 67(2) and 316(1) of the Marine and Coastal Access Act 2009 and is subject to the negative resolution procedure.

2. Purpose

2.1. This Rule amends the Marine Licensing (Application Fees) Regulations (Northern Ireland) 2011. The Regulations set out fees that may be charged for an application for a marine licence.

2.2. DAERA is concious of its responsibilities under "Managing Public Money NI". This states that, with some exceptions, "fees for services should generally be charged at cost".

2.3. The Department is therefore required to achieve full cost recovery in applying its regulatory functions through the use of fees. The revised fees have been calculated and the amending Regulations drafted with that imperative in mind.

2.4. The policy objective is to review the marine licensing system and to make it more efficient and equitable. It is based on the principle that users should pay for the service they receive. Achieving full cost recovery could enable DAERA's Marine Licensing Branch to increase staff resources and meet the increased scale of marine developments.

3. Background

3.1. The Marine and Coastal Access Act 2009 is designed to help achieve clean, healthy, safe, productive and biologically diverse seas. It provides for the sustainable use of marine resources and an integrated planning system for the marine area.

3.2. Part 4 of the Act introduced a streamlined marine licensing system that came into effect in April 2011. DAERA (previously DOE) is the appropriate licensing authority for the Northern Ireland inshore region (0 to 12 nautical miles) as set out in section 113(6)(b) of the Act. The Secretary of State (SoS) is the licensing authority for the Northern Ireland offshore region (12 nautical miles to the boundary with other jurisdictions) as set out in section 113(6)(a) of the Act.

3.3. The Marine Licensing (Application Fees) Regulations (Northern Ireland) 2011 detail the fees payable for marine licences in the Northern Ireland

inshore region. Amending the Regulations will ensure that the legislation is current, responsive to the needs of users of the marine area, and enable the provision of resources to provide a more efficient marine licensing service.

4. Consultation

4.1. DAERA issued a consultation entitled "Proposals to Revise Marine Licensing Fees" on the 9th July 2024. The consultation ran for eight weeks and closed on the 3rd September 2024. Seventeen responses were received from stakeholders which included environmental bodies, industry, government agencies, local government and private inidivduals. DAERA engaged with stakeholders before and during the consultation period with three stakeholder events. This included and an in person event at Peatlands Park on the 29th November 2023, a further in person event during the consultation on 15th August 2024 in DAERA offices in Clare House, and an on-line event on 22nd August 2024.

4.2. A number of issues were discussed at the stakeholder events and also in response to the consultation. The range of the views expressed ran from opposition through caveated acceptance, to agreement that the service should be adequately financed.

4.3. General points made by respondents included acceptance of the increases and comments that increases should be efficiently incurred. It was apparent that certainty over fee levels is important to stakeholders.

4.4. A number of respondents accepted that DAERA needed to recover the cost of providing marine licensing services in line with Managing Public Money NI and commented that commercial rates would be higher. Others appeared to suggest that marine licensing should be used as a support to business.

4.5. Respondents also expressed concern that small projects would not be considered with the required robustness due to thier percived reduced risk of environmental impact.

5. Equality Impact

5.1. The Department undertook a screening exercise which indicated that no adverse equality impacts would result from the enactment of the Regulations. A revised Equality Screening Analysis was completed to take account of comments received as a result of the consultation. However, the conclusion that a full Equality Impact Assessment was not required did not change.

6. Regulatory Impact

6.1. A Regulatory Impact Assessment (RIA) was prepared which considered the impact of the legislation to fully implement the requirements of "Managing Public Money NI".

6.2. Two options were considered within the RIA; option 1 “do nothing”, and option 2 “introducing the legislation”.

6.3. Option 1 (do nothing) – This option involves no change and to continue to utilise powers under the Marine Licensing (Application Fees) Regulations

(Northern Ireland) 2011 to amend fees annually in line with the application of the GDP deflator.

6.4. Option 2 (preferred option) - This involves achieving full cost recovery by increasing fees for all marine licences.

7. Financial Implications

7.1. The Regulations enable DAERA to recover the cost of determining applications for marine licences. The S. R. will increase costs for most marine licence types/bands. Most bands will be see a fee increase in the region of 141.95% on the fees charged during 2023/24 financial year. This was calculated using 2023/24 receipts and staff costs.

7.2. However, the cost of a licence for certain projects with an estimated low value will decrease signifcantly with the addition of two new construction licence fee bands. An additional band for construction licences for projects with a value of over £50 million will also be introduced and will take account of increases to project costs since 2011. Two additional bands bands, R3 and R4 for renewable energy licences are being introduced. These were calculated with reference to staff costs for determining applications for this type of project.

8. Section 24 of the Northern Ireland Act 1998

8.1. The Statutory Rule does not discriminate on the grounds of religious belief or political opinion, the Human Rights Act 1998 or statutory provisions listed in section 7 of the 1998 Act.

9. EU Implications

9.1. Not applicable, the legislation does not transpose an European Directive.

10. Parity or Replicatory Measure

10.1. Equivalent legislation was brought forward by UK Administrations in 2011 to ensure a common approach to marine licensing although there were minor differences. In the intervening years other Administrations have increased their fee charging powers through amendments to the Marine and Coastal Access Act 2009. Subsequent amendments have also been made to Fee Regulations resulting in disparities in the approaches taken by each Administration.

10.2. Particularly relevant are the Regulations made by DEFRA (2011 No. 564), as the Secretary of State (SoS) is the licensing authority for the Northern Ireland offshore region. Marine licensing in this region is delivered by the Marine Management Organisation (MMO) on behalf of the SoS. The equivalent legislation applied by the MMO relies on the application of an hourly rate (applied with caps for small projects) rather than the current banded fee structure applied in Northern Ireland. Welsh Ministers took similar action in 2016 and moved from the banded fee structure to an hourly rate. Scottish Ministers have retained the banded fee structure, but recently received powers through section 232 of the recently enacted Levelling-up and Regeneration Act 2023. This extended the fee charging powers available to Welsh Ministers and the SoS to Scottish Ministers. However, Scotland has not yet moved to an hourly rate.

10.3. The cost recovery rates achieved by other UK Administration are generally higher than that achieved by DAERA. DAERA has begun work to bring those same powers to Northern Ireland through the amendment of the Marine and Coastal Access Act 2009.

10.4. The Department considered the "Do nothing" option, but the risks that the current poor cost recovery rate could result in a reduced service, with the resources of the marine licensing team not being adequate to meet the probable future demand likely to be placed upon it, hence the need for intervention.

11. Additional Information

11.1. None.