WELSH STATUTORY INSTRUMENTS

2011 No. 923 (W.132)

ENVIRONMENTAL PROTECTION, WALES
MARINE POLLUTION, WALES
TRIBUNALS AND INQUIRIES, WALES

The Marine Licensing (Notices Appeals) (Wales) Regulations 2011

Made - - - -	*22 March 2011*
Coming into force - -	*6 April 2011*

The Welsh Ministers, as the appropriate licensing authority under section 113(4)(b) of the Marine and Coastal Access Act 2009(**1**), make the following Regulations in exercise of the powers conferred by section 108 of that Act.

In accordance with section 316(6)(b) and (7)(f) of that Act, a draft of these Regulations has been laid before, and approved by, a resolution of, the National Assembly for Wales.

Title, commencement and interpretation

1.—(1) The title of these Regulations is the Marine Licensing (Notices Appeals) (Wales) Regulations 2011.

(2) These Regulations come into force on 6 April 2011.

(3) In these Regulations "the 2009 Act" ("*Deddf 2009*") means the Marine and Coastal Access Act 2009.

Application

2. These Regulations apply in relation to any licensable marine activity for which the Welsh Ministers are—

(a) the appropriate licensing authority(**2**) (and references in these Regulations to "the licensing authority" are to be read accordingly);

(**1**) 2009 c. 23.

(**2**) By virtue of section 113(4)(b) of the 2009 Act, the Welsh Ministers are the appropriate licensing authority as respects anything done in the course of carrying on a licensable marine activity in relation to Wales and the Welsh inshore region, other than activities for which the Secretary of State is the appropriate licensing authority by virtue of sections 113(4)(a) and (5) of that Act. *See* section 322(1) for a definition of the Welsh inshore region.

(b) an enforcement authority(**3**) (and references in these Regulations to "the enforcement authority" are to be read accordingly).

Appeals against variation, suspension or revocation of marine licence

3.—(1) A person to whom a notice under section 72 of the 2009 Act (notice varying, suspending or revoking a marine licence, or extending a period of suspension) has been issued may appeal to the First-tier Tribunal(**4**) against the notice.

(2) A notice referred to in paragraph (1) varying a marine licence is suspended in relation to that variation pending determination of the appeal.

(3) The First-tier Tribunal may suspend any other notice referred to in paragraph (1), wholly or in part, pending determination of the appeal.

Appeals against enforcement notices, stop notices and emergency safety notices

4.—(1) A person to whom any of the notices referred to in paragraph (2) has been issued may appeal to the First-tier Tribunal against the notice.

(2) The notices are—

(a) a compliance notice;

(b) a remediation notice;

(c) a stop notice;

(d) an emergency safety notice(**5**).

(3) A compliance notice and any requirement in any such notice, is suspended pending determination of an appeal against the notice.

(4) The First-tier Tribunal may suspend a remediation notice, a stop notice or an emergency safety notice, wholly or in part, pending determination of the appeal.

Appeals — further provisions

5.—(1) In any appeal the burden of proof is on the licensing authority or enforcement authority (as appropriate), and—

(a) if the appeal involves the alleged commission of an offence the authority must prove the commission of the offence beyond reasonable doubt, and

(b) the First-tier Tribunal must determine the standard of proof in any other case.

(2) The First-tier Tribunal may—

(a) withdraw the notice or any requirement contained in it;

(b) confirm the notice or any requirement contained in it;

(c) vary the notice or any requirement contained in it;

(d) take such steps as the licensing authority or enforcement authority (as appropriate) could take in relation to the act or omission giving rise to the notice;

(e) remit the decision whether to confirm the notice, or any matter relating to that decision, to the licensing authority or enforcement authority (as appropriate).

(**3**) The Welsh Ministers are an enforcement authority for the area for which the Welsh Ministers are the appropriate licensing authority by virtue of section 114(2) of the 2009 Act.

(**4**) Appeals are assigned to the General Regulatory Chamber of the First-tier Tribunal by virtue of article 3 of the First-tier Tribunal and Upper Tribunal (Chambers) Order 2010 (S.I. 2010/2655). The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (S.I. 2009/1976) set out procedural rules relating to such appeals.

(**5**) In relation to the notices mentioned in paragraph (2)(a) to (d), see sections 90, 91, 102 and 104 of the 2009 Act.