STATUTORY INSTRUMENTS

2015 No. 1674

LICENSING (MARINE)

MARINE MANAGEMENT

The Marine Licensing (Delegation of Functions) (Amendment) Order 2015

Made - - - -	*8th September 2015*
Laid before Parliament	*10th September 2015*
Coming into force - -	*1st October 2015*

The Secretary of State, as the appropriate licensing authority under section 113(2)(a), 4(a), 6(a) and (8) of the Marine and Coastal Access Act 2009(**1**), makes the following Order in exercise of the powers conferred by sections 98(1), 99(2) to (5) and 316(1)(b) of that Act.

In accordance with section 98(3) of that Act, the Marine Management Organisation has consented to the making of this Order.

Citation and commencement

1. This Order—

(a) may be cited as the Marine Licensing (Delegation of Functions) (Amendment) Order 2015; and

(b) comes into force on 1st October 2015.

Amendment to the Marine Licensing (Delegation of Functions) Order 2011

2.—(1) The Marine Licensing (Delegation of Functions) Order 2011(**2**) is amended as follows.

(2) In article 3—

(a) for paragraph (3)(b) substitute—

"(b) the Marine Licensing (Exempted Activities) Order 2011(**3**)

(b) for paragraph (3)(d) substitute—

(**1**) 2009 c.23.
(**2**) S.I. 2011/627.
(**3**) S.I. 2011/409, amended by S.I. 2013/526.

"(d) the Marine Licensing (Application Fees) Regulations 2014(**4**)

(3) After article 4 insert—

"**Determination by the Secretary of State of applications for a marine licence**

5.—(1) Where the Marine Management Organisation receives a notification from the Secretary of State under paragraph (5)(b) in relation to an application for a licence, to the effect that the application is to be determined by the Secretary of State, the functions of the licensing authority under section 69 (determination of applications), section 70 (inquiries) and section 71 (licences) of the Marine and Coastal Access Act 2009, which would otherwise be exercisable by the Marine Management Organisation by virtue of section 99(1) of the Marine and Coastal Access Act 2009(**5**) and article 4, cease to be so exercisable in relation to that application.

(2) Following receipt of an application for a licence, the Marine Management Organisation must decide whether the application is one which must be referred, or which it is appropriate to refer, to the Secretary of State for a decision as to whether that application is to be determined by the Secretary of State.

(3) For the purpose of the decision of the Marine Management Organisation under paragraph (2)—

(a) an application must be referred to the Secretary of State where a representation has been made by any local planning authority or Inshore Fisheries and Conservation Authority affected by the activity to which the application relates, stating that in the opinion of the authority the criteria specified in paragraph (7)(a) are met in relation to the application; and

(b) an application is one which it is appropriate to refer to the Secretary of State where the Marine Management Organisation considers that the criteria specified in paragraph (7)(b) are met in relation to that application.

(4) Where the Marine Management Organisation considers that the application is one which must be referred, or which it is appropriate to refer, to the Secretary of State, it must—

(a) refer the application accordingly; and

(b) notify the applicant in writing that it has been referred.

(5) Where an application has been referred to the Secretary of State under paragraph (4), the Secretary of State must—

(a) decide whether the criteria specified in paragraph (7)(a) or (b) are met and, if so, whether that application should be determined by the Secretary of State;

(b) notify the Marine Management Organisation and the applicant in writing of that decision; and

(c) where the Secretary of State's decision under sub-paragraph (a) is that the application should be determined by the Secretary of State, notify the Marine Management Organisation of the particulars relating to the application that are prescribed in relation to it for the purposes of section 101 of the Marine and Coastal Access Act 2009.

(6) A notification under paragraph (4)(b) or (5)(b) or (c) may be given by means of an electronic communication.

(7) The criteria referred to in paragraph (3) and (5)(a) are—

(a) that the proposed activity to which the application relates—

(**4**) S.I. 2014/615, amended by S.I. 2014/950.
(**5**) 2009 c.23.

(i) falls into band 3 of the Schedule to the Marine Licensing (Application Fees) Regulations 2014;

(ii) would take place wholly or partly within that part of the UK marine licensing area adjacent to England and extending to 6 nautical miles from the baseline(**6**); and

(iii) is capable of having a significant effect and raises issues which are appropriate for examination in an inquiry; or

(b) that the activity to which the application relates raises issues which—

(i) are of significance to the UK as a whole and are not addressed, or for this purpose not adequately addressed, by the appropriate marine policy documents as defined in section 59 of the Marine and Coastal Access Act 2009; and

(ii) are accordingly appropriate for examination in an inquiry.

(8) Paragraph (2) does not apply in relation to any application submitted before 1st October 2015.

(9) In this article—

"electronic communication" means a communication transmitted (whether from one person to another, from one device to another or from a person to a device or vice versa)—

by means of an electronic communications network (within the meaning given by section 32(1) of the Communications Act 2003(**7**)); or

by other means but while in an electronic form;

"Inshore Fisheries and Conservation Authority" means the authority for a district established by order under section 149(1) of the Marine and Coastal Access Act 2009;

"licence" means a marine licence granted or to be granted under section 71(1)(a) or (b) of the Marine and Coastal Access Act 2009, other than one—

(a) granted or to be granted on an application in a case to which section 78 (special procedure for applications relating to harbour works) or section 79 (special procedure for applications relating to certain electricity works) of the Marine and Coastal Access Act 2009 applies; or

(b) deemed to have been issued by provision in a development consent order made by virtue of section 149A of the Planning Act 2008(**8**); and

"local planning authority" has the same meaning as in section 336(1) of the Town and Country Planning Act 1990(**9**)."

Review

3.—(1) The Secretary of State must from time to time—

(a) carry out a review of this Order;

(b) set out the conclusions of the review in a report, and

(c) publish the report.

(**6**) The expression "baseline" is defined by s.322(1) of the Marine and Coastal Access Act 2009 as the baseline from which the breadth of the territorial sea is measured. The breadth of the territorial sea is designated by section 1(1)(a) of the Territorial Sea Act 1987 (c. 49) and the Territorial Sea (Limits) Order 1989 (S.I. 1989/482), as amended by S.I. 2013/3164.

(**7**) 2003 c.21. The definition of "electronic communications system" given by section 32(1) also applies for the purposes of the definition of "electronic communication" in section 15(1) of the Electronic Communications Act 2000 (c.7) (which is reproduced in the definition of this term contained in new article 5(8) of the principal Order, inserted by article 2(3) of this Order): see paragraphs 1(1) and 158 of Schedule 17 to the Communications Act 2003.

(**8**) 2008 c.29.

(**9**) 1990 c.8.