Draft Order laid before Parliament under section 11 of the Public Bodies Act 2011, for approval by resolution of each House of Parliament after the expiry of the 40-day period referred to in section 11(4) of that Act.

DRAFT STATUTORY INSTRUMENTS

2014 No.

PUBLIC BODIES

The Public Bodies (Marine Management Organisation) (Fees) Order 2014

Made - - - - ***

Coming into force in accordance with article 1

The Secretary of State for Environment, Food and Rural Affairs ("the Secretary of State") makes the following Order in exercise of the powers conferred by section 4(1) and (3)(b) and section 6(1) of the Public Bodies Act 2011(**1**) ("the Act").

The consent of the Treasury has been obtained in accordance with section 4(2) of the Act.

In accordance with section 8 of the Act, the Secretary of State considers that—

(a) this Order serves the purpose of improving the exercise of public functions, having had regard to the factors set out in section 8(1); and

(b) the conditions in section 8(2)(a) and (b) are satisfied.

The Secretary of State has consulted in accordance with section 10 of the Act.

A draft of this Order, and an explanatory document containing the information required by section 11(2) of the Act, have been laid before Parliament in accordance with section 11(1) of the Act after the end of the period of twelve weeks mentioned in section 11(3) of the Act. In accordance with section 11(4) of the Act, the draft of this Order has been approved by a resolution of each House of Parliament after the expiry of the 40-day period referred to in that provision.

Citation and commencement

1. This Order may be cited as the Public Bodies (Marine Management Organisation) (Fees) Order 2014 and comes into force on the day after the date on which it was made.

Interpretation

2. In this Order—

(**1**) 2011 c.24. Section 36(1) contains a definition of "Minister".

"the 2009 Act" means the Marine and Coastal Access Act 2009(**2**);

"licence" means a marine licence granted under section 71(1)(a) or (b) of the 2009 Act or deemed to have been issued under section 149A of the Planning Act 2008(**3**);

"the MMO" means the Marine Management Organisation(**4**); and

"monitoring", in relation to a licence, means monitoring carried out by the MMO in connection with the functions of a licensing authority under Part 4 of the 2009 Act—

(a) for the purposes of determining the environmental, economic or social consequences of any activity permitted by that licence; or

(b) for the purposes of determining whether the holder of that licence is complying with any conditions attached to that licence under section 71(1)(b) of the 2009 Act or, in the case of a licence which is deemed to have been issued by provision in a development consent order made by virtue of section 149A of the Planning Act 2008, with any conditions deemed to be attached to that licence under subsection (3) of that section.

Application

3. This Order applies in relation to any licence in relation to which the Secretary of State is the appropriate licensing authority under section 113 of the 2009 Act(**5**), other than any such licence relating to an activity falling within the subject matter of—

(a) the Petroleum Act 1998(**6**); or

(b) Part 1 (gas importation or storage), Part 4 (provisions relating to oil and gas storage) or Part 4A (works detrimental to navigation) of the Energy Act 2008(**7**).

Fee payable for monitoring

4.—(1) The MMO may charge the holder of a licence a fee for monitoring an activity authorised by that licence.

(2) The fee payable in respect of monitoring of a description specified in the first column of Schedule 1 in relation to licences of a description specified in the second column of that Schedule are set out in the third column of that Schedule.

Fee payable for variation or transfer

5.—(1) The MMO may charge a fee in respect of determining an application for—

(a) the variation of a licence under section 72(3) of the 2009 Act; or

(**2**) 2009 c.23.

(**3**) 2008 c.29. Section 149A was inserted by section 112(1) and paragraph 4(1) and (2) of Schedule 8 to the 2009 Act. Section 149A applies to an order granting development consent (which is required by section 31 of the Planning Act 2008 if the development forms part of a "nationally significant infrastructure project", a term defined by section 14 of that Act. Section 14(1) was amended by S.I. 2012/1645).

(**4**) The MMO was established by section 1 of the 2009 Act. The functions of the Secretary of State under Chapter 4 of the 2009 Act have (with some exceptions) been delegated to the MMO by S.I. 2011/627.

(**5**) By virtue of section 113(2)(a), 4(a), (6)(a) and (8) of the 2009 Act, the Secretary of State is the appropriate licensing authority as respects anything done in the course of carrying on certain activities in the Scottish offshore region, Wales and the Welsh inshore region, Northern Ireland and the Northern Ireland inshore region, and in relation to any other area not mentioned in subsection (2), (4) or (6). See section 322(1) for the definition of those regions.

(**6**) 1998 c.17. Relevant amending instruments are the Energy Act 2004 (c.20), the Energy Act 2008 (c.32), the 2009 Act and the Energy Act 2011 (c.16), and S.I.s 2000/1937, 2004/2043, 2007/290 and 2011/2305, 2704.

(**7**) 2008 c.32. In Part 1, sections 1 and 35(1) were amended by section 41(8) of, and paragraph 5 of Schedule 4 to, the 2009 Act. Part 4A was inserted by section 314(1) of the Act. Section 30 was amended, and sections 30A and 30B were inserted, by section 107 of the Energy Act 2011; section 46 was amended by section 106 of that Act; and section 88 was amended by section 73 of that Act. Sections 41, 46, 49, 50, 54, 59, 63, 65 and 66 were amended by sections 116, 146 and 149 of the Energy Act 2013 and section 45A was inserted by section 149 of that Act. Sections 17 to 19, 21 to 23, 26 to 28, 30, 31 and 35 were amended by S.I. 2011/2453 and SSI 2011/224. Section 100 was amended by S.I. 2011/2195.

(b) the transfer and variation of a licence under section 72(7) of the 2009 Act.

(2) The fees payable under paragraph (1) in the circumstances specified in the first column of Schedule 2 in relation to licences of a kind specified in the second column of that Schedule are set out in the third column of that Schedule.

(3) Paragraph (1) does not apply in relation to any application received before the date on which these Regulations come into force.

Calculation and determination of fees

6.—(1) Where a fee is to be calculated at an hourly rate, the total number of hours worked may be expressed as a fraction where—

(a) less than one hour is worked; or

(b) the total amount of time worked is more than one hour but cannot be expressed as a whole number in hours.

(2) Where an activity or a licence falls within more than one description specified in Schedule 1 or Schedule 2 (as the case may be), the higher fee is payable in relation to the activity.

(3) Subject to paragraph (4), the fee payable in respect of monitoring of any description specified in the first column of Schedule 1 may be charged on each occasion on which the monitoring is carried out.

(4) Where monitoring in relation to a licence of a kind mentioned in the first entry in the second column of Schedule 1 is carried out on more than one occasion, the maximum specified in the third column of that Schedule in relation to the fee for such monitoring applies in relation to the aggregate of the various amounts that (but for that limit) would be payable by way of fees in respect of the monitoring carried out on those occasions.

Deposits

7.—(1) The MMO may require the holder of a licence to pay a deposit of such amount as it may determine on account of any fee payable under article 4 or 5 which—

(a) is not subject to a maximum specified in Schedule 1 or 2; or

(b) is subject to a maximum specified in Schedule 1 of—

(i) £750; or

(ii) £15,000.

(2) The amount of the deposit payable under paragraph (1) in a case within sub-paragraph (a) or (b)(ii) of that paragraph may not exceed £10,000.

(3) The amount of the deposit must be calculated on the basis of an estimate of the total amount of the fee.

Payment of fees

8.—(1) Any fee charged under this Order must be paid on demand to the MMO.

(2) Payment of any fee may be made by electronic means.

(3) Payment of a fee is not to be taken to be received until the MMO has received cleared funds for the full amount.

(4) The MMO may require a fee charged under article 4(1) or 5(1) to be payable in advance of the activity to which it relates being carried out.

(5) The amount of any unpaid fee may be recovered by the MMO as a civil debt (in addition to any action taken by the MMO under paragraph (6) or (7).