Draft Regulations laid before Parliament under section 316(6)(b) and (7)(c) of the Marine and Coastal Access Act 2009, for approval by a resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2011 No.

ENVIRONMENTAL PROTECTION
LICENSING (MARINE)
MARINE POLLUTION
TRIBUNALS AND INQUIRIES

The Marine Licensing (Licence Application Appeals) Regulations 2011

Made - - - -	***
Coming into force - -	*6th April 2011*

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 these Regulations in exercise of the powers conferred by sections 73 and 316(1) of that Act.

In accordance with section 316(6)(b) and (7)(c) of that Act, a draft of these Regulations has been laid before, and approved by a resolution of, each House of Parliament.

PART 1

Introduction

Citation and commencement

1. These Regulations—

(a) may be cited as the Marine Licensing (Licence Application Appeals) Regulations 2011, and

(b) come into force on 6th April 2011.

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

Application

2. These Regulations apply in relation to any area, and any licensable marine activity carried on in that area, for which the Secretary of State is the appropriate licensing authority under section 113 of the Act(**2**).

Interpretation

3. In these Regulations—

"the Act" means the Marine and Coastal Access Act 2009;

"the appointed person" means the person appointed under regulation 5;

"the Authority" means the person who took the decision under section 71 of the Act that is the subject of the appeal under these Regulations(**3**);

"document" includes a map, photograph or report;

"the relevant time limits" means the time limits specified in these Regulations or in any direction given or requirement made by the appointed person by virtue of these Regulations, or such later time as is specified by virtue of regulation 25(1);

"start date" has the meaning given by regulation 8(3);

"valid notice of appeal" means a notice of appeal that—

(a) complies with regulation 7(1);

(b) was accompanied by the documents required by regulation 7(2); and

(c) was received by the Secretary of State within the relevant time limits.

PART 2

Appeals – general

Appeal against marine licensing decisions

4.—(1) A person who has applied for a marine licence may by notice appeal against a decision taken under section 71(1)(b) or (c), (4) or (5) of the Act (refusal of licence or grant subject to conditions etc).

(2) Appeals must be made in accordance with these Regulations.

(3) Any requirement in these Regulations for the Secretary of State to give or send any notice or other thing to the Authority, or for the Authority to give or send notice or other thing to the Secretary of State, does not apply where the Authority is the Secretary of State.

Determination of appeal by appointed person

5.—(1) Any appeal under these Regulations must be determined by a person appointed for that purpose by the Secretary of State.

(2) An appointment under paragraph (1)—

(**2**) By virtue of section 113(2)(a), (4)(a), (6)(a) and (8) of the Marine and Coastal Access Act 2009, 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 subsections (2), (4) or (6). See section 322(1) for definitions of those regions.

(**3**) That person will either be 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, or, where the function under section 71 of that Act is exercisable by a person by virtue of an Order made under section 98(1) of that Act, that person.

(a) must be in writing;

(b) may relate to any particular appeal specified in the appointment or to appeals of a class or description so specified;

(c) may provide for any function to which it relates to be exercisable subject to such conditions as may be specified in the appointment;

(d) may provide for payment to be made to the appointed person.

(3) The Secretary of State may at any time, by notice given to the appointed person, revoke the appointment in respect of any appeal which has not been determined before that time.

(4) Where an appointment is so revoked in respect of any appeal, the Secretary of State must appoint another person under paragraph (1) to determine the appeal instead.

(5) Where a new appointment is made, the consideration of the appeal, or any hearing or inquiry in connection with it, must be begun afresh.

(6) But nothing in paragraph (5) requires any person to be given an opportunity of making new representations or comments or modifying or withdrawing any representations or comments already made.

PART 3

Starting the appeal

Time limit for the notice of appeal

6.—(1) Notice of an appeal must be received by the Secretary of State within the period of 6 months beginning with the date of the decision to which the appeal relates.

(2) A person who sends a notice of appeal to the Secretary of State must, at the same time, send a copy of that notice to the Authority.

(3) In this regulation, "notice of appeal" means a notice of appeal complying with regulation 7(1) and accompanied by the documents specified in regulation 7(2).

Contents of the notice of appeal

7.—(1) A notice of appeal must include—

(a) the name, address (including any e-mail address) and telephone number of the appellant and any agent acting for the appellant;

(b) a statement of the grounds of appeal;

(c) a statement as to whether the appellant wishes to have the appeal dealt with by way of written representations, a hearing or an inquiry;

(d) a list of all the documents, including dates (where any document is dated), specified in paragraph (2).

(2) A notice of appeal must be accompanied by—

(a) a copy of the decision to which the appeal relates; and

(b) a copy of all documents upon which the appellant wishes to rely.

Decision as to appeal procedure and start date

8.—(1) The Secretary of State must, as soon as practicable after receipt of a valid notice of appeal, decide whether the appeal is to be determined by means of written representations, a hearing or an inquiry.

(2) The Secretary of State must notify the appellant and the Authority of that decision.

(3) The date on which that notification is sent is the start date for the appeal.

(4) A decision under paragraph (1) may be varied by a subsequent decision under that paragraph at any time before the proceedings are determined.

(5) But before making such a variation the Secretary of State must consult—

(a) the appellant, and

(b) where the Authority is not the Secretary of State, the Authority.

(6) Where the decision is varied—

(a) the Secretary of State must notify the appellant, the Authority and any other person who has made written representations in respect of the appeal of such change;

(b) anything done in relation to the former appeal procedure which could have been done under any corresponding provision of these Regulations relating to the new appeal procedure has effect as if done under that corresponding provision; and

(c) the Secretary of State may give consequential directions as to the procedure.

(7) Nothing in paragraphs (4) to (6) affects the start date under paragraph (3).

(8) The Secretary of State must publish the criteria that are to be applied in making a decision under paragraph (1).

PART 4

Action following the start date

Notice to interested persons

9.—(1) The Authority must, within the period of 2 weeks beginning with the start date, give notice that an appeal has been lodged—

(a) to any person (other than the appellant) who has made representations to the Authority in respect of the subject matter of the appeal, and

(b) to any other person it considers likely to have an interest.

(2) The notice must state—

(a) the start date;

(b) the name and location of the site to which the appeal relates;

(c) the name of the appellant;

(d) that the appeal will be determined by way of written representations, a hearing or an inquiry (as the case may be);

(e) that, within the period of 4 weeks beginning with the date of the notice, the recipient may send to the Secretary of State any written representations the recipient wishes to make;

(f) the address to which such representations must be sent;

(g) that any representations received will be sent to the appellant and the Authority;

(h) that if the recipient makes representations, the recipient will be notified by the Secretary of State of the date of any hearing or inquiry that may be held.

(3) The notice must be accompanied by a copy of the decision to which the appeal relates.

(4) The Authority must, within the period of 2 weeks beginning with the start date, send to the Secretary of State and the appellant—

(a) a list of the persons to whom, and the dates on which, notice under paragraph (1) was given; and

(b) copies of all representations referred to in paragraph (1)(a).

Representations and further comments

10.—(1) Where an appeal is to be determined by way of written representations—

(a) the Authority must, within the period of 6 weeks beginning with the start date, send to the Secretary of State any representations it wishes to make on the appeal together with any documents it wishes to rely on;

(b) if the appellant wishes to make any further representations to those referred to in the notice of appeal or the documents accompanying it referred to in regulation 7(2), the appellant must send 2 copies of those further representations to the Secretary of State within the period of 6 weeks beginning with the start date.

(2) Where an appeal is to be determined by way of hearing or inquiry, the appellant and the Authority must each, within the period of 6 weeks beginning with the start date, send to the Secretary of State a statement containing full particulars of the case they propose to put forward at the hearing or inquiry and a list of any documents they propose to refer to or put in evidence.

(3) At the end of the period of 6 weeks beginning with the start date, the Secretary of State must—

(a) where the appeal is to be determined by way of written representations—

(i) send a copy of the Authority's representations to the appellant, and

(ii) send a copy of any further representations received under paragraph (1)(b) to the Authority;

(b) where the appeal is to be determined by way of hearing or inquiry, send, at the same time, a copy of the Authority's statement and list of documents to the appellant and a copy of the appellant's statement and list of documents to the Authority;

(c) in all cases, send, at the same time, copies of any other representations received by the Secretary of State to the appellant and the Authority.

(4) The appellant and the Authority may, within the period of 9 weeks beginning with the start date, send comments on those representations or statements to the Secretary of State.

(5) The Secretary of State must, as soon as is reasonably practicable after that 9-week period, send, at the same time, a copy of the Authority's comments to the appellant and a copy of the appellant's comments to the Authority.

PART 5

Hearings and inquiries

Scope

11. This Part applies if an appeal is to be determined by way of hearing or inquiry (but certain provisions apply only to hearings or only to inquiries).