

DRAFT WELSH STATUTORY
INSTRUMENTS

2011 No. (W.)

**ENVIRONMENTAL
PROTECTION, WALES**

MARINE POLLUTION, WALES

TRIBUNALS AND INQUIRIES, WALES

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

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for appeals to be made to the First-tier Tribunal against certain notices issued under Part 4 of the Marine and Coastal Access Act 2009 (“the 2009 Act”).

The notices are—

- (a) a notice varying, suspending or revoking a marine licence, or extending a period of suspension, issued under section 72 of the 2009 Act in relation to which the Welsh Ministers are the appropriate licensing authority (regulations 2(a) and 3);
- (b) a compliance notice, a remediation notice, a stop notice, or an emergency safety notice, in relation to which the Welsh Ministers are an enforcement authority (regulations 2(b) and 4). See section 115 of the 2009 Act for definitions of those notices.

Regulation 5 sets out powers of the First-tier Tribunal, and regulation 6 sets out provision for recovery of any sum payable pursuant to a decision of that Tribunal.

A full impact assessment of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector is available from the Marine Consents Unit, Welsh Assembly Government, Cathays Park, Cardiff, CF10 3NQ or at

Draft Regulations laid before the National Assembly for Wales under section 316(6)(b) and (7)(f) of the Marine and Coastal Access Act 2009, for approval by resolution of the National Assembly for Wales

the Welsh Assembly Government website at www.wales.gov.uk.

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Made

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” means the Marine and Coastal Access Act 2009.

(1) 2009 c. 23.

Application

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

- (a) the appropriate licensing authority⁽¹⁾ (and references in these Regulations to “the licensing authority” are to be read accordingly);
- (b) an enforcement authority⁽²⁾ (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⁽³⁾ 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;

(1) 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.

(2) 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.

(3) 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.

- (c) a stop notice;
- (d) an emergency safety notice⁽¹⁾.

(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).

Recovery of sums payable

6.—(1) Any sum payable in pursuance of a decision of the First-tier Tribunal must be paid within 56 days of that decision.

(2) Any such sum not paid within that time is—

- (a) recoverable as a civil debt;
- (b) recoverable, on the order of a court, as if payable under a court order.

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

Draft Regulations laid before the National Assembly for Wales under section 316(6)(b) and (7)(f) of the Marine and Coastal Access Act 2009, for approval by resolution of the National Assembly for Wales

Name

Minister for Environment, Sustainability and Housing,
one of the Welsh Ministers

Date