

2013 No. 414 (W.50)

**LICENSING (MARINE),
WALES**

**MARINE MANAGEMENT,
WALES**

**The Marine Licensing (Delegation
of Functions) (Wales) Order 2013**

EXPLANATORY NOTE

(This note is not part of the Order)

This Order delegates the exercise of certain functions of the Welsh Ministers as a licensing authority under the Marine and Coastal Access Act 2009 (“the 2009 Act”) to the Natural Resources Body for Wales.

This Order does not apply to those functions of the licensing authority (mainly relating to the making of subordinate legislation) which are excepted functions and not delegable by virtue of section 98(5)(a) of the 2009 Act (article 2(2)).

Article 3 designates functions of the Welsh Ministers as licensing authority under Part 4 (marine licensing) of the 2009 Act (including functions under subordinate legislation made under that Part).

Article 4 provides that the designated functions are exercisable by or in relation to the Natural Resources Body for Wales acting on behalf of the licensing authority (instead of being exercisable by or in relation to that authority). The licensing authority has the power to give directions to the Natural Resources Body for Wales with respect to the performance of the delegated functions (see section 100 of the 2009 Act, which power is an excepted function).

Article 5 amends article 5 of the Marine Licensing (Exempted Activities) (Wales) Order 2011 (the “2011 Order”). Article 5 of the 2011 Order makes provision about when a marine licence is not required for activities relating to the disposal or recovery of waste (and implements in part Directive 2008/08/EC of the

European Parliament and Council on waste (OJ No L 312, 22.11.2008, p.3)). References to the licensing authority in article 5(4) and (5) are substituted with references to the Natural Resources Body for Wales.

Article 6 makes provision consequential on the delegation of the Welsh Ministers' functions as a licensing authority under the Marine Licensing (Appeals Against Licensing Decisions) (Wales) Regulations 2011.

Article 7 contains transitional provisions and savings to ensure continuity between things done by, or in relation to, the Welsh Ministers as licensing authority prior to 1 April 2013 and the assumption by the Natural Resources Body for Wales of the exercise of certain functions of the licensing authority pursuant to this Order.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to this Order. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with this instrument.

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**MARINE MANAGEMENT,
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**The Marine Licensing (Delegation
of Functions) (Wales) Order 2013**

Made 26 February 2013

Laid before the National Assembly for Wales
26 February 2013

Coming into force 1 April 2013

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 Order in exercise of the powers conferred by sections 98(1) and 316(1)(b) of that Act, and by section 2(2) of the European Communities Act 1972⁽²⁾.

The Welsh Ministers are designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to the prevention, reduction and management of waste⁽³⁾.

In accordance with section 98(3) of the Marine and Coastal Access Act 2009, the Natural Resources Body for Wales consents to the making of this Order.

Title and commencement

1.—(1) The title of this Order is the Marine Licensing (Delegation of Functions) (Wales) Order 2013.

(1) 2009 c.23.
(2) 1972 c.68.
(3) Article 3 of the European Communities (Designation) (No.2) Order 2010 (S.I. 2010/1552).

(2) This Order comes into force on 1 April 2013.

Application

2.—(1) This Order applies in relation to any licensable marine activity for which the Welsh Ministers are the appropriate licensing authority under section 113(4)(b) of the Marine and Coastal Access Act 2009⁽¹⁾ and references in this Order to “the licensing authority” are to be read accordingly.

(2) Nothing in this Order applies in relation to any excepted function within the meaning of section 98(6) of that Act.

Designation

3.—(1) The functions referred to in paragraph (2) are designated for the purposes of section 98(1)(a) of the Marine and Coastal Access Act 2009.

(2) The functions are any function of the licensing authority under—

- (a) Part 4 of that Act (sections 65 to 115 and Schedules 7 to 9);
- (b) the Marine Licensing (Application Fees) (Wales) Regulations 2011⁽²⁾;
- (c) the Marine Licensing (Register of Licensing Information) (Wales) Regulations 2011⁽³⁾;
- (d) the Marine Licensing (Exempted Activities) (Wales) Order 2011⁽⁴⁾, except any function of the licensing authority under article 5;
- (e) the Marine Licensing (Appeals Against Licensing Decisions) (Wales) Regulations 2011⁽⁵⁾, as amended by article 6 of this Order.

Delegation to the Natural Resources Body for Wales

4. The functions designated by article 3, instead of being exercisable by or in relation to the licensing authority, are exercisable by or in relation to the

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- (1) By virtue of section 113(4)(b) of the Marine and Coastal Access Act 2009, the Welsh Ministers are the appropriate licensing authority as respects anything done in the course of carrying on licensable marine activities in relation to Wales and the Welsh inshore region other than activities for which the Secretary of State is the appropriate licensing authority under section 113(4)(a) and (5) of that Act. *See* section 322(1) for a definition of the Welsh inshore region.
- (2) S.I. 2011/555 (W.78).
- (3) S.I. 2011/557 (W.79).
- (4) S.I. 2011/559 (W.81).
- (5) S.I. 2011/925 (W.134). Certain functions relating to appeals under regulations 4(1), 5(1), (4) and (5), 6, 8(8) and 18(4) are functions of the Welsh Ministers, rather than the licensing authority, and accordingly fall outside the scope of the designation under this Order.

Natural Resources Body for Wales acting on behalf of the licensing authority.

Amendment of the Marine Licensing (Exempted Activities) (Wales) Order 2011

5.—(1) Article 5 of the Marine Licensing (Exempted Activities) (Wales) Order 2011 is amended as follows.

(2) In paragraphs (4) and (5), for “licensing authority” substitute “Natural Resources Body for Wales”.

Consequential amendment of the Marine Licensing (Appeals Against Licensing Decisions) (Wales) Regulations 2011

6.—(1) Regulation 6 of the Marine Licensing (Appeals Against Licensing Decisions) (Wales) Regulations 2011 is amended as follows.

(2) That regulation becomes paragraph (1) of that regulation.

(3) After paragraph (1) insert—

“(2) A person who sends notice of an appeal to the Welsh Ministers must, at the same time, send a copy of that notice to the Licensing Authority.”

Transitional Provisions and Savings

7.—(1) In this article—

- (a) “the effective date” means 1 April 2013;
- (b) “relevant function” means any function which, by virtue of any provision made by this Order, becomes exercisable on the effective date by the Natural Resources Body for Wales.

(2) Anything (including, without limitation, legal proceedings) which, at the effective date, is in the process of being done by or in relation to the licensing authority in the exercise of, or in connection with, a relevant function may be continued by or in relation to the Natural Resources Body for Wales acting on behalf of the licensing authority.

(3) Anything done by or in relation to the licensing authority before the effective date in the exercise of, or otherwise in connection with, a relevant function is, so far as is required for continuing its effect on and after that date, to have effect as if done by or in relation to the Natural Resources Body for Wales acting on behalf of the licensing authority.

John Griffiths

Minister for Environment and Sustainable
Development, one of the Welsh Ministers

26 February 2013