1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument
   
   2.1 This instrument extends the Marine Management Organisation’s (MMO) ability to recover the costs it incurs in dealing with licence applications under Part 4 of the Marine and Coastal Access Act 2009 (“MCAA”).

3. Matters of special interest to the Joint Committee on Statutory Instruments or the Select Committee on Statutory Instruments
   
   3.1 None.

4. Legislative Context
   
   4.1 The Public Bodies Act 2011 confers powers on Ministers in relation to certain public bodies. Section 4 of the Act enables Ministers to make an Order modifying the funding arrangements of bodies specified in Schedule 4, and this includes conferring power to charge fees. The MMO was included in Schedule 4 of the Act as a body whose funding arrangements may be modified by an Order.

   4.2 The Order will provide for a fee to be payable to the MMO for monitoring and variations or transfer of a marine licence. This applies where the Secretary of State is the appropriate licensing authority under section 113 of the MCAA and has delegated relevant functions to the MMO. The functions of the Secretary of State have been delegated to the MMO by the Marine Licensing (Delegation of Functions) Order 2011\(^1\). The fee charging regime in this Order will allow the MMO to recover the costs of its regulatory activity under section 67 (1) (b) of the MCAA.

5. Territorial Extent and Application
   
   5.1 This instrument extends to England and Wales, Scotland and Northern Ireland, and applies in relation to those areas and activities for which the Secretary of State is the appropriate licensing authority under the MCAA.

   5.2 For the purposes of marine licensing the Secretary of State is the appropriate licensing authority for England’s inshore waters (those within the seaward limits of the

\(^1\) SI 2011/627
territorial waters adjacent to England), and the offshore waters of England, Wales and Northern Ireland (those within British fishery limits beyond the seaward limits of the territorial waters adjacent to Wales and Northern Ireland, respectively, and any other waters beyond the seaward limits of the UK’s territorial waters but within the limits of the UK sector of the continental shelf, other than waters within the Scottish offshore region).

5.3 For this purpose the “Scottish offshore region” is (a) those waters adjacent to Scotland within British fishery limits, other than the territorial sea; and (b) those waters outside British fishery limits but within the limits of the UK sector of the continental shelf, which are nearer to any point on the baselines from which the breadth of the territorial sea adjacent to Scotland is measured than to any point on the baselines in any other part of the UK.

5.4 The Secretary of State also remains the appropriate licensing authority for certain reserved matters specified in sections 113(2), (4) and (6) of the MCAA in (a) the Welsh inshore region and Northern Ireland inshore region (those waters within the seaward limits of the territorial waters adjacent to Wales and Northern Ireland, respectively), and (b) the Scottish offshore region (as defined above).


6.1 The Minister for Farming, Food and Marine Environment, George Eustice, has made the following statement regarding Human Rights:

“In my view the provisions of The Public Bodies (Marine Management Organisation Fees) Order 2014 are compatible with the Convention rights”.

7. Policy background

What is being done and why?

7.1 In keeping with Government’s policy that those who carry out an activity should bear its full cost, the Government aims to recover the full costs of licensing marine activities. This is not the case at present because the MMO cannot fully recover its costs under the current legislative powers. Taxpayers and other users are partly funding the costs of licence applications and Government intervention aims to address this.

7.2 The MMO is a public body that regulates activities in the seas around England. It was launched in April 2010 and was created under the MCAA. The MMO is the regulator in England for delivering a number of priorities such as:

- regulation of major industry;
- marine planning;
- protecting and enhancing the natural environment;
- promoting biodiversity;
- licensing activities in the marine area
- fisheries management;
- providing UK statistical information to support data analysis;
- preventing worldwide illegal, unregulated and unreported fishing;
• making European funding available to the fishing industry.

7.3 The MCAA is designed to help the UK to achieve clean, healthy, safe, productive and biologically diverse oceans and seas. It provides for the better protection of the marine environment; sustainable use of marine resources; an integrated planning system for managing our seas, coasts and estuaries; a robust legal framework for decision-making, streamlined regulation and enforcement; and access to the coast.

7.4 Under Part 4 of the MCAA a new streamlined marine licensing system for most UK waters was created. This replaced the ‘old licensing system’ under Part 2 of the Food and Environmental Protection Act (FEPA) 1985. The new licensing system, which came into effect in April 2011, aims to enable consistent and sustainable decision-making about what activities are allowed to take place in the marine environment. Developments subject to licensing can range from small projects, such as installation of buoys or construction of small jetties to larger harbour or wind farm developments.

7.5 The Secretary of State for Defra is one of several ‘licensing authorities’ defined under section 113 of the MCAA. The Secretary of State’s licensing functions are delegated to the MMO under section 98 of the Act (except for some oil and gas related activities which are licensed by DECC). The MMO is responsible for most licensing in English inshore and offshore waters and in relation to Welsh and Northern Ireland offshore waters.

7.6 As a regulator the MMO has the power under section 67(1)(b) of the MCAA to charge for marine licence applications. The fees that the MMO apply are set in the Marine Licensing (Application Fees) Regulations 2011 (due to be updated in April 2014). The fees set are fixed (or in the future capped) for small or routine projects. For more complex cases, the fee is based on the time the MMO and its scientific advisers, the Centre for Environment, Fisheries and Aquaculture Science (Cefas) spend on an application.

7.7 Historically, FEPA Part 2 section 8 (7), (8), (9) allowed the licensing authority to charge a reasonable fee for marine licence applications, although the Government did not fully recover the costs of issuing licences. The Government has begun to move towards full cost recovery under the MCAA. However, this objective has not yet been achieved, in part because the scope of the charging power in section 67 of the MCAA is insufficient to allow the recovery of costs incurred in:

a. monitoring sites where licensable activity is taking place (e.g. verifying that aggregate dredging is undertaken within the boundary of the dredge site);

b. reviewing monitoring reports required from licence holders (e.g. surveys of sea floor deposits, suspended solids assessment);

c. varying existing licences, (e.g. change of vessel name on issued licence or significant variation including assessment).
7.8 Monitoring costs for dredging can be recovered in some cases (where dredging is part of a project within the scope of the Environmental Impact Assessment Directive), but in many cases it is not. The regular dredging of ports and harbours to keep navigation channels open, which may involve millions of tonnes of material, is not generally subject to an Environmental Impact Assessment. The disposal of this dredged material however can have significant environmental effects. The UK is required under international obligations to monitor the effects of such disposal. The cost of this monitoring is the main cost that MMO cannot currently recover under the charging powers in the MCAA.

7.9 The Government therefore proposes to make an Order under the Public Bodies Act to enable the MMO to charge for marine licensing monitoring, variations and transfers. The draft Order includes the level of fees that may be charged for different descriptions of activities. The hourly fee has been calculated on a consistent basis with the new marine licensing fee structure proposed in a separate consultation by Government (see paragraph 7.10). Fees for simple or routine projects are charged on an hourly basis but subject to caps; fees for monitoring associated with disposal sites use a formula based on annual tonnage.

7.10 The proposal to modify the MMO’s charging powers complements proposals to revise the overall marine licensing fees and charges structure. The Government consulted on these proposals between September and November 2013. The aim is for the new structure to come into effect in April 2014.

Compliance with section 8(1) of the Public Bodies Act 2011

7.11 Section 8(1) of the Public Bodies Act 2011 provides that a Minister may make an Order under sections 1 to 5 only if the Minister considers that the order serves the purpose of improving the exercise of public functions, having regard to –

(a) efficiency,
(b) effectiveness,
(c) economy, and
(d) securing appropriate accountability to Ministers.

Efficiency

7.12 The proposals to modify the MMO’s charging powers form part of a wider strategy for marine licensing which aims to improve cost recovery by the MMO, reduce unnecessary burdens on business and maintain a high level of protection for the marine environment. In the first place the Government and the MMO have focussed on reducing unnecessary burdens on businesses and other marine users. The main measures have been to increase the number of exempt activities which do not require a marine licence, expand the use of longer licences (reducing renewal costs for dredging and disposal activities), bring in fast track licensing for simple applications and agree a “Coastal Concordat” to better coordinate the consenting process for coastal development in England. In addition the MMO has brought in various efficiency measures, e.g. to reduce processing times and increase case officer utilisation for chargeable work. Together with acquiring the power to charge for monitoring and licence variations and the proposed revision to the fees and charges proposed.

2 Consultation on changes to marine licensing fees and charges
structure the benefits and improved delivery of efficiencies produce a theoretical saving of around 10% and should increase cost recovery from around 60% to 96%.

Effectiveness

7.13 The proposal to modify the MMO’s charging powers contributes to effectiveness by:

- improving the rate of cost recovery, reducing reliance on either cross subsidy from other marine users or public subsidy;

- ensuring that essential monitoring – to verify compliance with licence conditions - is adequately funded, and that as a result the marine environment continues to be protected; and

- limiting impacts on smaller businesses by capping the amounts payable on smaller or routine projects.

Economy

7.14 It is vital in the current economic climate that financial savings are made across Government. Presently the MMO cannot recover the annual overall costs for monitoring and variations of licences which amount to £674k in total. The proposed recovery of this is estimated at around £600k annually. The annual loss of income that the MMO is currently unable to recover has had to be funded through Government subsidy in the last two years and hence the cost is forfeited to the taxpayer. Allowing the MMO to charge for these activities will result in a saving to the taxpayer.

Securing appropriate accountability to Ministers

7.15 The modification to the MMO’s charging powers will not lead to a reduction in the levels of the MMO’s accountability to Ministers. The Chair and Chief Executive of the MMO are appointed by the Ministers and the Secretary of State and are directly accountable to Ministers for the exercise of various functions carried out by the MMO. Performance is regularly reviewed by a cross-Government sponsorship group chaired by Defra and reported through the publication of the MMO’s Annual Report. Accountability is achieved through the publication of the MMO’s Performance Metrics. This sets out the results for the seven Key Performance Indicators (KPI) for marine licensing and shows the targets achieved and serves as an indicator of efficiency and effectiveness. The KPI will be amended to include functions on monitoring and variations when the Order comes into force. The MMO will evaluate its performance through its Stakeholder Forum Group, Customer satisfaction Survey and KPI. A Framework Document also sets out the overarching framework for the sponsorship, governance and accountability arrangements between Marine Management Organisation (MMO) and Government. This document is available at http://www.marinemanagement.org.uk/about/documents/mmo-framework-update.pdf

Satisfying the requirements of section 8(2) of the Public Bodies Act 2011

7.16 Section 8(2) of the Public Bodies Act 2011 provides that a Minister may make an order under sections 1 to 5 only if the Minister considers that –

(a) the order does not remove any necessary protection, and
(b) the order does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise.

7.17 The Minister considers that the conditions in section 8(2) are met. The power to modify funding arrangements which will enable the MMO to charge for its regulatory activities will not remove any necessary protection nor prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise.

Discussions in Parliament during passage of the Public Bodies Bill

7.18 The inclusion of the MMO in the Public Bodies Bill was debated in the House of Lords Committee on 7th March 2011 (the relevant text from Hansard can be found at http://www.publications.parliament.uk/pa/ld201011/ldhansrd/text/110307-0004.htm#11030822000081 columns 1503 – 1508). An amendment had been tabled to remove a group of bodies from the Bill, including the MMO. The House wanted to know why these bodies, who had very significant responsibilities in terms of sustaining and protecting the environment, had been included in the Bill.

7.19 In relation to the MMO, the House was informed that the changes were very minor and were intended to remove the financial burden from the taxpayer. In light of this the amendment was withdrawn.

Consolidation

N/A

8. Consultation outcome

8.1 The Government has carried out a consultation in accordance with section 10 of the Public Bodies Act. The requirement of section 11(3) of the Act has also been met in that more than twelve weeks have passed since that consultation was begun.

8.2 The consultation on the proposal to extend the MMO’s ability to recover the costs it incurs in dealing with licence applications under Part 4 of the MCAA was launched on 12 July 2013 and ended on 5 September 2013. The consultation sought comments on the following questions:

1. Do you have comments on whether the Government should extend the MMO’s ability to recover costs associated with marine licensing by charging application fees for:
   a. Monitoring costs?
   b. The costs of varying licences?

2. Do you have comments on the approach to the fee structure?

3. Are there better alternatives that would achieve the Government’s goal of fully recovering the costs of dealing with licence applications?

4. Do you have any other comments?
8.3 Stakeholders such as those who have an interest in the marine environment including Local Authorities, NGOs, Ports and Harbour Authorities, Recreational and Leisure Groups, Water and Water Industries, Energy Industries and Commercial Fisherman Organisations were invited to respond. A total of 26 responses were received. Most respondents agreed the overall principle and recognised the need to recover costs. The main issues identified by the consultation were:

a) The overall level of fees for marine licensing and impacts on smaller businesses and organisations;

b) Proportionality, efficiency and transparency;

c) Rationale and method of charging for monitoring;

d) Rationale for charging for simple administrative changes for variations;

e) Method of charging for complex variations;

f) Processing matters.

8.4 Several of the issues, particularly a, b and f above were relevant to the separate consultation on marine licensing fees and charges (see paragraph 7.10), since they raised questions of wider concern than the powers of the MMO to charge for certain functions. These are being picked up in the Government’s response to that consultation. However, in relation to issues mentioned at c, d and e, the consultation confirmed a need for the MMO to clearly communicate the basis for charging on both monitoring and variations; ensure consistency in processing times between caseworkers and allow stakeholders the opportunity to review and provide feedback on the MMO’s performance.

8.5 The Government’s and the MMO’s aims are to ensure that the administration of marine licensing is as efficient as possible, but also to fully recover the costs of administering marine licences, while avoiding cross-subsidisation and excessive burdens on smaller projects. The Government’s response to the consultation, confirms that, monitoring will be limited to ensuring that licence conditions are being complied with and that minor projects will often not require any monitoring at all. The Order will clarify the definition of basic administrative changes for licence variations, while for more complex variations the MMO will provide estimates of likely costs to applicants. The MMO will evaluate its performance through its Stakeholder Forum Group, Customer Satisfaction Survey and Key Performance Indicators. The Stakeholder Forum Group brings together key social, economic and environmental bodies and acts as a sounding board for MMO delivery with a particular focus on marine licensing and planning. The Group meets quarterly and provides an opportunity to recognise and act upon the views of the people most affected by the MMO’s decisions.

8.6 A copy of the summary of response is attached at Annex A and is also available at https://www.gov.uk/government/consultations/marine-licensing-applications-charges-for-monitoring-and-licences
9. Guidance

9.1 The MMO will publish information on the new fees rates alongside other information about marine licensing on the MMO’s web-page at: http://www.marinemanagement.org.uk/licensing/marine.htm

10. Impact

10.1 Impact on business - The cost to business on charging for licences for monitoring and variation (including dredge material disposal monitoring) based on Equivalent Annual Net Cost to Business (EANCB) is estimated at a total net cost of £0.46million per year.

10.2 Micro-businesses are less likely to be affected as MMO experience shows that it is generally larger businesses that request licence variations or have impacts that require monitoring. Monitoring costs where there is currently a funding gap largely apply to the major ports. The maximum fee ceilings proposed will provide certainty to applicants to allow for simpler financial planning whilst avoiding risks of cross-subsidy between applicants.

10.3 A copy of the Impact Assessment is attached to this memorandum at Annex B.

11. Regulating small business

11.1 While small businesses potentially fall within the scope of the measure, they would only be affected in those circumstances where monitoring information was required or where a variation to the licence was requested by the operator. Where possible, fee ceilings will limit the cost for smaller scale projects and provide greater certainty to applicants. The cost of these ceilings will be met by public subsidy.

12. Monitoring & review

12.1 The Public Bodies (Marine Management Organisation Fees) Order 2014 will be reviewed in June 2016. The Marine Management Organisation’s licensing performance will be monitored in the Corporate Governance system overseen by Defra. The Framework Document describes the relationship between the MMO, its four sponsoring departments and the process for assessing the extent to which the MMO has met its objectives. A three year Corporate Plan, reviewed each year, sets out agreed performance measures and the steps required to meet them.

13. HM Treasury

13.1 HM Treasury have been consulted on this proposal and the drafting of the order from an early stage. They have provided written confirmation on 28 January 2014 that they are content with both the proposal and the draft order provided that
Defra seeks an early legislative opportunity to amend section 67 of the MCAA so that these charging powers are brought within the Act itself.

14. Contact

14.1 Philip Stamp at Defra, Marine Environment Strategy and Evidence. (Tel: 020 7238 4607 or email: Philip.stamp@defra.gsi.gov.uk) or Neeta Parmar at Defra, Marine Environment, Strategy and Evidence) (Tel: 020 7238 3221 or email: neeta.parmar@defra.gsi.gov.uk) can answer any queries regarding the instrument.