

**EXPLANATORY MEMORANDUM TO**  
**THE MARINE WORKS (ENVIRONMENTAL IMPACT ASSESSMENT) AND**  
**MARINE STRATEGY (AMENDMENT) REGULATIONS 2018**

**2018 No. 287**

**1. Introduction**

- 1.1 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 amends the Marine Works (Environmental Impact Assessment) Regulations 2007, as amended (the Marine Works (EIA) Regulations) and the Marine Strategy Regulations 2010, as amended (the Marine Strategy Regulations). The amendments are required as a consequence of the transfer to the Welsh Ministers by the Wales Act 2017 (the Wales Act) of certain functions relating (i) to harbours that are wholly in Wales, and (ii) to marine licensing and marine conservation in the Welsh offshore area under the Marine and Coastal Access Act 2009 (the 2009 Act).

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None.

*Other matters of interest to the House of Commons*

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

**4. Legislative Context**

- 4.1 This instrument is made in order to amend the Marine Works (EIA) Regulations and the Marine Strategy Regulations as a consequence of the transfer to the Welsh Ministers of certain functions by the Wales Act.
- 4.2 Section 29 of the Wales Act transfers to the Welsh Ministers a number of functions relating to harbours that are wholly in Wales, other than reserved trust ports.
- 4.3 Section 46 of the Wales Act provides that the Welsh Ministers are the appropriate licensing authority for Wales, the Welsh inshore region and the Welsh offshore region (other than for certain retained functions) for the purposes of Part 4 (Marine Licensing) of the 2009 Act<sup>1</sup>.
- 4.4 Section 47 of the Wales Act provides that the Welsh Ministers are the appropriate authority in the Welsh offshore region, allowing them to designate areas as marine conservation zones in that region pursuant to Part 5 (Nature Conservation) of the 2009 Act.

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<sup>1</sup> Section 149A of the Planning Act 2008 provides that an order for granting development consent may include provision deeming a marine licence to have been issued under Part 4 of the 2009 Act.

- 4.5 Sections 29, 46 and 47 of the Wales Act will be commenced on 1 April 2018.
- 4.6 Schedule 7 of the Wales Act contains transitional provisions relevant to sections 46 and 47 of the Wales Act (paragraphs 9 and 6, respectively). The Wales Act 2017 (Transitional Provisions and Savings) Regulations 2018 contain transitional provisions relevant to section 29 of the Wales Act.
- 4.7 The Marine Works (EIA) Regulations have also been amended to remove the requirement for the Secretary of State, the Marine Management Organisation and Welsh Ministers to obtain Treasury consent for the determination of a reasonable fee under regulation 3.
- 4.8 The Marine Strategy Regulations have also been amended to reflect the transfer of certain functions between Departments in Northern Ireland by the Departments (Transfer of Functions) Order (Northern Ireland) 2016.

## **5. Extent and Territorial Application**

- 5.1 The extent of this instrument is the United Kingdom.
- 5.2 To the extent that this instrument relates to the Marine Works (EIA) Regulations, the territorial application is the English inshore region, English offshore region, Scottish inshore region (with respect to certain reserved projects), Scottish offshore region, Welsh inshore region, Welsh offshore region, Northern Ireland inshore region and Northern Ireland offshore region.
- 5.3 To the extent that this instrument relates to the Marine Strategy Regulations, the territorial application is the marine strategy area. This area includes territorial seas, including coastal waters as defined by the Water Framework Directive (Directive 2000/60/EC), and offshore waters out to the limits of the UK's renewable energy zone. The marine strategy area also includes areas of the UK's Continental Shelf beyond the renewable energy zone, but for these areas the instrument only applies to the seabed and not the water column above it.

## **6. European Convention on Human Rights**

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

### *What is being done and why*

- 7.1 Environmental assessment is a procedure that ensures that the environmental implications of decisions are taken into account before the decisions are made. The Environmental Impact Assessment Directive (2014/52/EU) (EIAD) ensures that projects likely to have significant effects on the environment are made subject to an environmental assessment, prior to their approval or authorisation. This process is part of European law and has been implemented into national legislation by (amongst other instruments) the Marine Works (EIA) Regulations.
- 7.2 The Marine Strategy Framework Directive (2008/56/EC) (MSFD) sets out a high-level framework which requires EU Member States to put in place measures to achieve or maintain good environmental status (GES) in their marine waters by 2020. The MSFD has been transposed by the Marine Strategy Regulations. Achieving GES involves protecting the marine environment, preventing its deterioration and restoring

it, where practical, while using marine resources sustainably. For the UK these are as set out in our Marine Strategy documents 1, 2 and 3 published in December 2012, August 2014 and December 2015, respectively.

- 7.3 Recommendation 12 a. of the “Empowerment and Responsibility: Legislative Powers to Strengthen Wales” report (Silk II report) (published in March 2014) stated that: “port development, including harbour orders and oversight of Trust ports” should be devolved.
- 7.4 Recommendation 15 d. of Silk II report stated that: “responsibility for issuing marine licences in Welsh offshore waters should be devolved”. Recommendation 18 of that report stated that: “The existing executive responsibilities for marine conservation and licensing in the Welsh inshore area should be extended to the Welsh offshore area.”
- 7.5 At paragraph 8.5.1 of the Silk II report the evidence quoted from the Welsh Government was that: “The Welsh Ministers already have executive responsibilities for marine conservation, including marine protected sites, and marine licensing in the Welsh inshore area. These responsibilities should be extended to the Welsh offshore area. This would allow the Welsh Ministers, who are the marine planning authority under the Marine and Coastal Act 2009 for both the Welsh inshore and offshore areas, to plan for and manage the whole of Welsh seas more coherently”.
- 7.6 The UK Government agreed with those recommendations. The UK Government’s St David’s Day devolution package published in the “Powers for a Purpose: Towards a lasting devolution settlement for Wales” report in February 2015 included at paragraph 2.4.21 the statement that: “The UK Government agrees that Welsh Ministers’ existing responsibilities for marine conservation and licensing in the Welsh inshore area should be extended to the offshore area. Welsh Ministers are the marine planning authority for both the Welsh inshore and offshore areas and this change would ensure that they are responsible for marine planning, marine conservation and fisheries in the same maritime area”.

## **8. Consultation outcome**

- 8.1 No formal public consultation was undertaken as this instrument does not introduce any new policy or regulatory burden. This instrument introduces changes in responsibility for harbours that are wholly in Wales, and functions relating to marine licensing and marine conservation in the Welsh offshore region which have already been subject to public scrutiny.
- 8.2 Informal consultation took place with the Welsh Government, the Northern Ireland Executive, Her Majesty’s Treasury, the Department for Transport, the Department for Business, Energy & Industrial Strategy and Defra policy teams with an interest in this instrument. No significant issues were raised.

## **9. Guidance**

- 9.1 With respect to the Marine Works (EIA) Regulations, the instrument sets out what marine licensing functions will be transferred to the Welsh Ministers on commencement of the Wales Act. Online advice provided to applicants will be updated accordingly to provide greater clarity.
- 9.2 With respect to the Marine Strategy Regulations, the instrument set out what functions will be transferred to the Welsh Ministers on commencement of the Wales Act. No guidance is required as the changes are purely administrative.

## **10. Impact**

- 10.1 This instrument provides for the transfer of existing functions to the Welsh Ministers. No additional burden will impact businesses, charities, voluntary bodies or other applicants other than some familiarisation costs as information will be made available by Welsh Government following commencement.
- 10.2 An impact assessment has not been produced for this instrument since it involves changes to the powers of the Welsh Ministers which have been considered in the impact assessment which accompanied the Wales Bill. That impact assessment is accessible at [http://webarchive.nationalarchives.gov.uk/20160611073307/https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/527740/Wales\\_Bill\\_impact\\_assessment.pdf](http://webarchive.nationalarchives.gov.uk/20160611073307/https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/527740/Wales_Bill_impact_assessment.pdf). A copy of this document is available from the Marine Planning, Licensing & Coastal Integration Policy Team, Marine and Fisheries Directorate, Department for Environment, Food and Rural Affairs, 9 Millbank, c/o 17 Smith Square, London, SW1P 3JR. In addition, a copy of this document has been placed in the libraries of both Houses of Parliament.

## **11. Regulating small business**

- 11.1 The legislation applies to activities that are undertaken by small businesses.

## **12. Monitoring & review**

- 12.1 A review provision is not included in this instrument; this instrument makes amendments to existing regulations which are subject to existing monitoring and review arrangements.
- 12.2 A review provision is included in the Marine Works (EIA) Regulations (regulation 31). The provision requires that a first report setting out the conclusions of the review be published before 16 May 2022.
- 12.3 The European Commission, Council and Parliament carried out a review of the MSFD in 2017, resulting in the amendments set out in Commission Directive 2017/845. A domestic review of the implementation of the MSFD will be carried out by the end of 2018, as set out in the MSFD.

## **13. Contact**

- 13.1 Marine Works (EIA) Regulations: Amanda Desmond at the Department for Environment Food and Rural Affairs, Telephone: 0208 02 64311 or email: [Amanda.Desmond@defra.gsi.gov.uk](mailto:Amanda.Desmond@defra.gsi.gov.uk) can answer any queries regarding the instrument.
- 13.2 Marine Strategy Regulations: Andrew Scarsbrook at the Department for Environment Food and Rural Affairs, Telephone: 0208 02 64314 or email: [Andrew.Scarsbrook@defra.gsi.gov.uk](mailto:Andrew.Scarsbrook@defra.gsi.gov.uk) can answer any queries regarding the instrument.