

2014 No. 615

ENVIRONMENTAL PROTECTION

LICENSING (MARINE)

MARINE POLLUTION

The Marine Licensing (Application Fees) Regulations 2014

<i>Made</i> - - - -	<i>13th March 2014</i>
<i>Laid before Parliament</i>	<i>14th March 2014</i>
<i>Coming into force</i> - -	<i>6th April 2014</i>

In exercise of the powers conferred by sections 67(2), (3) and 316(1)(b) of the Marine and Coastal Access Act 2009(a), the Secretary of State, as the appropriate licensing authority under section 113(2)(a), (4)(a), (6)(a) and (8) of that Act(b), makes the following Regulations.

Citation and commencement

1. These Regulations—

- (a) may be cited as the Marine Licensing (Application Fees) Regulations 2014; and
- (b) come into force on 6th April 2014.

Interpretation

2. In these Regulations—

- “the Act” means the Marine and Coastal Access Act 2009;
- “the 2011 Regulations” means the Marine Licensing (Application Fees) Regulations 2011(c);
- “activity” means a licensable marine activity; and
- “licence” means a marine licence granted under section 71(1)(a) or (b) of the Act.

Application

3. These Regulations apply in relation to any application for a licence in relation to which the Secretary of State is the appropriate licensing authority under section 113 of the Act, other than any activity relating to an activity falling within the subject-matter of—

(a) 2009 c.23.
(b) 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 and Northern Ireland and the Northern Ireland inshore region, and in relation to any other area not mentioned in subsection (2), (4) or (6). See section 322(1) for the definition of those regions.
(c) S.I. 2011/564.

- (a) the Petroleum Act 1998(a); or
- (b) Part 1 (gas importation or storage), 4 (provisions relating to oil and gas) or 4A (works detrimental to navigation) of the Energy Act 2008(b).

Fees for applications for licences

4.—(1) Subject to paragraph (2), the fee payable for determining an application for a licence is calculated by multiplying the total number of hours worked by £94.

(2) Where the fee that would otherwise be payable under paragraph (1), taken together with the fee (if any) charged under section 67(5) of the Act, would exceed the specified maximum, the amount payable in respect of both such fees taken together is the maximum (“cap”) specified in relation to an application of the kind in question.

(3) The cap applicable in respect of an application falling within any band specified in the first column of paragraph 1 of the Schedule (and of a kind described in the second column of that paragraph) is specified in relation to that band in the third column of that paragraph.

(4) For the purposes of paragraph (1), the total number of hours worked may be expressed as a fraction where—

- (a) less than one hour is worked; or
- (b) the total amount of time worked is more than one hour but cannot be expressed as a whole number in hours.

Payment of fees

5.—(1) All fees are payable on demand to the Secretary of State.

(2) Payment of any fee may be made by electronic means.

(3) Payment of a fee is not received until the Secretary of State has received cleared funds for the full amount due.

(4) Any unpaid fee may be recovered by the Secretary of State as a civil debt.

Deposits in cases where fee payable at hourly rate

6.—(1) The Secretary of State may require a licensee to pay a deposit of such amount as the Secretary of State may determine on account of the fee payable.

(2) Subject to paragraph (3), the amount of the deposit must be calculated by reference to the estimated duration of the work likely to be required in relation to the application and the hourly rate payable.

(3) In relation to any application which falls within Band 3 in the Schedule, the amount of the deposit may not exceed £10,000.

(4) If an application fails to comply with a requirement to pay a deposit made under paragraph (1), the Secretary of State may—

- (a) refuse to proceed with the application, or
- (b) refuse to proceed with it until the deposit is paid in full.

(a) 1998 c.17. Relevant amending instruments are the Energy Act 2004 (c.20), the Energy Act 2008 (c.32), the Act and the Energy Act 2011 (c.16), and S.I.s 2000/1937, 2004/2043, 2007/290 and 2011/2305, 2704.

(b) 2008 c.32. In Part 1, sections 1 and 35(1) were amended by section 41(8) of, and paragraph 5 of Schedule 4 to, the Act. Part 4A was inserted by section 314(1) of the Act. Section 30 was amended, and sections 30A and 30B were inserted, by section 107 of the Energy Act 2011; section 46 was amended by section 106 of that Act; and section 88 was amended by section 73 of that Act. Sections 41, 46, 49, 50, 54, 59, 63, 65 and 66 were amended by sections 116, 146 and 149 of the Energy Act 2013 and section 45A was inserted by section 149 of that Act. Sections 17 to 19, 21 to 23, 26 to 28, 30, 31 and 35 were amended by S.I. 2011/2453 and SSI 2011/224. Section 100 was amended by S.I. 2011/2195.

Repayment, waiver or reduction of fee

7.—(1) The Secretary of State must refund any payment made in excess of the fee payable, but fees paid are not otherwise refundable.

(2) The Secretary of State may waive or reduce any fee if the Secretary of State sees fit.

Revocation of the 2011 Regulations

8. Subject to regulation 9, the 2011 Regulations are revoked.

Transitional and saving provisions

9.—(1) Paragraph (2) applies in respect of any licence application that was received by the Secretary of State before 6th April 2014 but which was not determined by the Secretary of State before that date.

(2) The 2011 Regulations continue to have effect in relation to the application, subject to the exception in paragraph (3) and the modification in paragraph (4).

(3) Where the application falls within the description in Band 1 or Band 2 in the Schedule to the 2011 Regulations and the amount of the fee, if it were determined in accordance with the 2011 Regulations, would be greater than the amount of the fee if it were determined in accordance with these Regulations, the fee is to be determined in accordance with these Regulations.

(4) The fee in respect of an application falling within the description in Band 3 in the Schedule to the 2011 Regulations is to be determined as if, for “£80 per hour or part thereof”, there were substituted “£80 per hour or part thereof worked before 6th April 2014 and £94 per hour or part thereof worked on or after that date”.

(5) For the purposes of paragraph (1), an application is not received until an applicant has supplied such information or produced such articles as in the opinion of the Secretary of State may be necessary or expedient to enable the Secretary of State to determine the application.

13th March 2014

George Eustice
Parliamentary Under Secretary of State
Department for Environmental, Food and Rural Affairs

SCHEDULE

Regulation 4(3)

APPLICATION BANDS AND MAXIMUM FEES (“CAPS”)

1. The bands and (where specified) the caps are as follows—

<i>Band</i>	<i>Description of application</i>	<i>Cap</i>
Band 1	Any application relating to: (a) the burial of a body at sea; (b) erecting scaffolding for discrete maintenance projects; (c) removing poles, girders, joists and objects of a similar nature unattached to the seabed or any structure; (d) resurfacing a slipway; (e) repairing joints of any structure; or (f) any activity of a similarly	£175

	minor nature.	
Bands 2A-2E	Any application which does not fall, or does not fall exclusively, within the description in Band 1 and relates to a specified activity or activities which has, or (in the case of more than one activity) taken together have, an estimated cost falling within one of the following ranges—	
Band 2A	£0 to £4,999	£450
Band 2B	£5,000 to £19,999	£700
Band 2C	£20,000 to £49,999	£1,400
Band 2D	£50,000 to £199,999	£2,200
Band 2E	£200,000 to £999,999	£2,700
Band 3	Any application which does not fall, or does not fall exclusively, within the description in Band 1 and does not fall within any description in Band 2A to 2E.	

2.—(1) In paragraph 1, “specified activity” means any activity falling within item 1 (deposits within the UK marine licensing area etc), 7 (construction, alteration or improvement of works etc) or 8 (use of vehicle to remove substances etc) of section 66(1) of the Act, but does not include any such activity where it is—

- (a) to be carried out in the course of an Annex I project;
- (b) to be carried out in the course of an Annex II project, if it is likely because of its size, nature or location to have significant effects on the environment;
- (c) a plan or project likely (either alone or in combination with other plans or projects) to have a significant effect on a European site;
- (d) capable of affecting (other than insignificantly)—
 - (i) the protected features of an MCZ; or
 - (ii) any ecological or geomorphological process on which the conservation of any protected feature of an MCZ is (wholly or in part) dependent;
- (e) likely to have a significant effect on a Ramsar site; or
- (f) an activity with respect to which an environmental impact assessment is required by virtue of regulation 5 (requirement of assessment by agreement) of the EIA Regulations.

(2) In paragraph 2(1)(a) and (b)—

- (a) “Annex I project” means a project of a type specified in Annex I to Council Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment^(a); and
 - (b) “Annex II project” means a project of a type specified in Annex II to that Directive.
- (3) In paragraph 2(1)(c)—
- “European site” means a European site within the meaning of regulation 8(1) of the Conservation of Habitats and Species Regulations 2010^(b) or a European offshore marine site within the meaning of regulation 15 of the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007^(c); and
- “plan or project” has the same meaning as in Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora^(d).
- (4) In paragraph 2(1)(d)—
- (a) “an MCZ” means a marine conservation zone from time to time designated by an order made under section 116 of the Act; and
 - (b) “protected feature” has the meaning given by section 147(1) of the Act.
- (5) In paragraph 2(1)(e) “Ramsar site” means a site designated under paragraph 1 of Article 2 of the Ramsar Convention^(e) by the Secretary of State, the Scottish Ministers, the Welsh Ministers or, in Northern Ireland, the Department of the Environment^(f).
- (6) In paragraph 2(1)(f)—
- (a) “EIA Regulations” means the Marine Works (Environmental Impact Assessment) Regulations 2007^(g); and
 - (b) “environmental impact assessment” means an assessment under Part 3 of the EIA Regulations.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations apply in relation to any application for a marine licence in relation to which the Secretary of State is the appropriate licensing authority under the Marine and Coastal Access Act 2009, other than any application relating to an activity specified in the exception to regulation 3.

Under section 67(1)(b) of that Act the appropriate licensing authority may require that an application for a marine licence be accompanied by a fee. These Regulations set out those fees.

Regulation 4 provides that the fee for determining a licence is an amount calculated by multiplying the number of hours worked by £94, subject to an upper limit (“cap”) in relation to any application of a certain description (“band”). The bands and (where specified) the caps are set out in paragraph 1 of the Schedule.

Band 1 relates to applications relating to activities of a minor nature. Bands 2A to 2E relate to any application which does not fall within Band 1 or exclusively within that Band, and which is a “specified activity” the estimated cost of which falls within one of the ranges listed in the Schedule. “Specified activity” is defined in paragraph 2 of the Schedule and includes deposits

(a) OJ L 26, 28.1.2012, p.1.

(b) S.I. 2010/490; relevant amendments were made by S.I. 2012/1927.

(c) S.I. 2007/1842; relevant amendments were made by S.I. 2012/1928.

(d) OJ No. L 206, 22.7.1992, p.7, last amended by Council Directive 2013/17/EU (OJ No. L 158, 10.06.2013, p. 193).

(e) The Convention of Wetlands of International Importance especially as Waterfowl Habitat signed at Ramsar on 2nd February 1971, as amended by the Protocol known as the Paris Protocol done at Paris on 3rd December 1982 and the amendments known as the Regina Amendments adopted at the Extraordinary Conference of the Contracting Parties held at Regina, Saskatchewan, Canada, between 28th May and 3rd June 1987.

(f) The Department of the Environment is constituted for the purposes of the Northern Ireland Act 1998 (1998 c.47) by section 21 of that Act and is continued in existence by article 3(3) and (8) of the Departments (Northern Ireland) Order 1999 (S.I. 1999/283 (N.I.1)) and Schedule 1 to that Order.

(g) S.I. 2007/1518; amended by S.I. 2011/735 and 1043.

within the UK marine licensing area, the construction, alteration or improvement of works and the use of a vehicle to remove substances, but excludes certain activities which have potentially serious implications for the environment or human health. Band 3 relates to any application relating to a “specified activity” the estimated cost of which exceeds £999,999, and any application relating to any activity which neither falls exclusively within Band 1 nor falls within Band 2.

Regulations 5 to 7 contain additional provisions relating to the payment of such fees, deposits, repayment, waiver and reduction of fees.

Regulation 8 revokes the Marine Licensing (Application Fees) Regulations 2011 (“the 2011 Regulations”), and regulation 9 contains transitional and saving provisions. By virtue of these provisions the 2011 Regulations apply to any application received before 6th April 2014 (whether or not determined by the Secretary of State before that date), except where such an application falls within the description in Band 1 or Band 2 in the Schedule to the 2011 Regulations and the amount of the fee determined in accordance with the 2011 Regulations would be greater than it would be if it were determined in accordance with these Regulations.

A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available at www.gov.uk/defra and is annexed to the Explanatory Memorandum which is available alongside the instrument at www.legislation.gov.uk.

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