

## **Marine Bill Northern Ireland**

Presented to Parliament pursuant to section 15(1) of the Northern  
Ireland Act 1998

**1 July 2013**

**London: The Stationery Office**

**£ 14.75**

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# Marine Bill

[AS AMENDED AT CONSIDERATION STAGE]

## LEGISLATIVE COMPETENCE

At Introduction the Minister of the Environment had made the following statement under section 9 of the Northern Ireland Act 1998:

*“In my view the Marine Bill would be within the legislative competence of the Northern Ireland Assembly.”*

## SECRETARY OF STATE’S CONSENT

The Secretary of State had consented under section 8 of the Northern Ireland Act 1998 to the Assembly considering this Bill.



# Marine Bill

[AS AMENDED AT CONSIDERATION STAGE]

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**SCHEDULES:**

Schedule 1	Marine plans: preparation and adoption
Schedule 2	Further provision about fixed monetary penalties under section 35





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# B I L L

TO

Provide for marine plans in relation to the Northern Ireland inshore region; to provide for marine conservation zones in that region; to make further provision in relation to marine licensing for certain electricity works in that region; and for connected purposes.

**B**E IT ENACTED by being passed by the Northern Ireland Assembly and assented to by Her Majesty as follows:

## PART 1

### PRELIMINARY

#### **Sustainable development**

5 **1.**—(1) Nothing in this Act affects the duty of the Department under section 25 of the Northern Ireland (Miscellaneous Provisions) Act 2006 to exercise its functions in accordance with that section.

(2) Accordingly, the Department must in exercising its functions under this Act—

10 (a) act in the way it considers best calculated to contribute to the achievement of sustainable development in Northern Ireland, except to the extent that it considers that any such action is not reasonably practicable in all the circumstances of the case; and

(b) have regard to any strategy or guidance relating to sustainable development issued by the Department.

#### 15 **The Northern Ireland inshore region**

**2.**—(1) In this Act the “Northern Ireland inshore region” means the area of sea within the seaward limits of the territorial sea of the United Kingdom adjacent to Northern Ireland, including the bed and subsoil of the sea within that area.

(2) In this Act “sea” includes—

20 (a) any area submerged at mean high water spring tide,

PART 1

- (b) the waters of every estuary, river or channel, so far as the tide flows at mean high water spring tide.
- (3) The area of sea referred to in subsection (2)(a) includes waters in any area—
  - (a) which is closed, whether permanently or intermittently, by a lock or other artificial means against the regular action of the tide, but 5
  - (b) into which seawater is caused or permitted to flow, whether continuously or from time to time, and
  - (c) from which seawater is caused or permitted to flow, whether continuously or from time to time.
- (4) In relation to Part 3, subsections (1) to (3) are subject to section 13(2). 10
- (5) The boundaries between the parts of the territorial sea of the United Kingdom adjacent to Northern Ireland and the parts not so adjacent are to be determined by reference to an Order in Council under section 98(8) of the Northern Ireland Act 1998 if, or to the extent that, the Order in Council is expressed to apply— 15
  - (a) for the purposes of this Act, or
  - (b) if no such provision has been made, for the general or residual purposes of that Act.

**Arrangements to promote co-ordination of functions in Northern Ireland inshore region** 20

- 3.—**(1) The Department may enter into arrangements with a relevant public authority designed to promote the effective co-ordination of the exercise by the parties to the arrangements of their respective functions in the Northern Ireland inshore region.
- (2) The Department shall keep arrangements made under this section under review. 25
- (3) The Department shall—
  - (a) within one year of the date on which this Act receives Royal Assent publish details of any arrangements made under this section; and
  - (b) within three years of the date on which this Act receives Royal Assent lay 30 before the Assembly a report on the effectiveness of any arrangements made under this section.
- (4) For the purposes of this section “the relevant public authorities” are—
  - (a) the Department of Agriculture and Rural Development;
  - (b) the Department of Culture, Arts and Leisure; 35
  - (c) the Department of Enterprise, Trade and Investment;
  - (d) the Department for Regional Development;
  - (e) the Agri-food and Biosciences Institute;
  - (f) the Foyle, Carlingford and Irish Lights Commission.

PART 2

MARINE PLANNING

*Marine plans*

**Marine plans for Northern Ireland inshore region**

5       **4.**—(1) The Department may prepare a marine plan for an area (a “marine plan area”) consisting of the whole or any part of the Northern Ireland inshore region.

(2) Where a marine policy statement governs marine planning for the Northern Ireland inshore region, the Department must seek to ensure that every part of that region is within an area for which a marine plan is in effect.

10       (3) A “marine plan” is a document which—

(a) has been prepared and adopted for a marine plan area by the Department in accordance with Schedule 1,

(b) states the policies of the relevant Northern Ireland departments (however expressed) for and in connection with the sustainable development of the area, and

15       (c) states that it is a marine plan prepared and adopted for the purposes of this section.

(4) A marine plan must identify (by means of a map or otherwise) the marine plan area for which it is a marine plan.

20       (5) Unless relevant considerations indicate otherwise, a marine plan must be in conformity—

(a) with any marine policy statement which governs marine planning for the marine plan area; and

25       (b) in the case of a plan for part of the Northern Ireland inshore region, with any marine plan in effect for the whole of that region.

(6) A marine plan must state whether it includes provision relating to retained functions.

(7) A marine plan may also include statements or information relating to policies contained in the plan.

30       (8) If to any extent a policy stated in a marine plan conflicts with any other statement or information in the plan, that conflict must be resolved in favour of the policy.

(9) A marine plan comes into effect when it has been published by the Department in accordance with Schedule 1.

35       (10) For the purposes of this Part a marine policy statement “governs marine planning” for an area if—

(a) it has been adopted by the Department under Schedule 5 to the 2009 Act,

(b) it has been published in accordance with paragraph 12 of that Schedule,

(c) it has not been replaced or withdrawn, and

40       (d) the Department has not withdrawn from it.

(11) For the purposes of this Part “the relevant Northern Ireland departments” are—

- (a) the Department;
- (b) the Department of Agriculture and Rural Development;
- (c) the Department of Culture, Arts and Leisure;
- (d) the Department of Enterprise, Trade and Investment; and
- (e) the Department for Regional Development.

5

### **Amendment of marine plan**

**5.**—(1) The Department may amend a marine plan.

(2) The provisions of this Part that relate to the preparation, adoption, publication and coming into effect of a marine plan also apply in relation to amendments of a marine plan.

10

(3) Any reference in this Act to a marine plan includes a reference to a marine plan as amended.

### **Withdrawal of marine plan**

15

**6.**—(1) A marine plan may be withdrawn at any time, but only in accordance with the following provisions of this section.

(2) If, after consultation with the other relevant Northern Ireland departments, the Department decides to withdraw a marine plan—

- (a) it is to publish notice of the withdrawal of the plan in the Belfast Gazette, and
- (b) the marine plan is withdrawn as from the date on which the notice is so published.

20

(3) If at any time the Secretary of State decides to withdraw agreement previously given under paragraph 15(2) of Schedule 1 to a marine plan—

25

- (a) the Secretary of State is to give notice of that decision to the Department,
- (b) within 7 days of receiving that notice, the Department must publish notice of the withdrawal of the marine plan in the Belfast Gazette, and
- (c) the marine plan is withdrawn as from the date on which the notice is so published.

30

(4) Where a marine plan is withdrawn under this section, the Department must—

- (a) publish notice of the withdrawal of the marine plan on the Department’s website; and
- (b) take such further steps as it considers appropriate to secure that the withdrawal of the marine plan is brought to the attention of interested persons.

35

(5) In this section “interested persons” means—

- (a) any persons appearing to the Department to be likely to be interested in, or affected by, the withdrawal of the marine plan, and
- (b) members of the general public.

40

**Duty to keep relevant matters under review**

7.—(1) The Department must keep under review the matters which may be expected to affect the exercise of its functions relating to—

- (a) the identification of areas which are to be marine plan areas, and
- 5 (b) the preparation, adoption, review, amendment or withdrawal of marine plans for those areas.

The reference in paragraph (b) to review is a reference to the functions of the Department under section 9.

(2) The matters include—

- 10 (a) the physical, environmental, social, cultural and economic characteristics of the Northern Ireland inshore region and of the living resources which the region supports;
- (b) the purposes for which any part of the region is used;
- (c) the communications, energy and transport systems of the region;
- 15 (d) any other considerations which may be expected to affect those matters.

(3) The matters also include—

- (a) any changes which could reasonably be expected to occur in relation to any such matter;
- 20 (b) the effect that any such changes may have in relation to the sustainable development of the region, its natural resources, or the living resources dependent on the region.

(4) The reference in subsection (2)(a) to the cultural characteristics of the Northern Ireland inshore region includes a reference to characteristics of that region which are of a historic or archaeological nature.

25 *Decisions affected by a marine plan*

**Decisions affected by a marine plan**

8.—(1) A public authority must take any authorisation or enforcement decision in accordance with any appropriate marine plan, unless relevant considerations indicate otherwise.

- 30 (2) If a public authority takes an authorisation or enforcement decision otherwise than in accordance with any appropriate marine plan, the public authority must state its reasons.

(3) A public authority must have regard to any appropriate marine plan in taking any decision—

- 35 (a) which relates to the exercise of any function capable of affecting the whole or any part of the Northern Ireland inshore region, but
- (b) which is not an authorisation or enforcement decision.

(4) An “authorisation or enforcement decision” is any of the following—

- 40 (a) the determination of any application (whenever made) for authorisation of the doing of any act which affects or might affect the whole or any part of the Northern Ireland inshore region,
- (b) any decision relating to any conditions of such an authorisation,

- (c) any decision about extension, replacement, variation, revocation or withdrawal of any such authorisation or any such conditions (whenever granted or imposed),
  - (d) any decision relating to the enforcement of any such authorisation or any such conditions, 5
  - (e) any decision relating to the enforcement of any prohibition or restriction (whenever imposed) on the doing of any act, or of any act of any description, falling within paragraph (a).
- (5) In this section “authorisation” means any approval, confirmation, consent, licence, permission or other authorisation (however described), whether special or general. 10
- (6) Subject to subsection (7), to the extent that the decision relates to a marine plan area, any marine plan which is in effect for that area is an appropriate marine plan.
- (7) But in relation to the exercise of retained functions by a public authority a marine plan is only an appropriate marine plan if— 15
- (a) it contains a statement under section 4(6) that it includes provision relating to retained functions,
  - (b) it was adopted with the agreement of the Secretary of State under paragraph 15(2) of Schedule 1, and 20
  - (c) it was prepared and adopted at a time when a marine policy statement was in effect which governed marine planning for the Northern Ireland inshore region.

*Monitoring and reporting on marine plans*

**Monitoring of, and periodical reporting on, marine plans** 25

- 9.—**(1) For so long as a marine plan is in effect, the Department must keep under review—
- (a) the effects of the policies in the marine plan;
  - (b) the effectiveness of those policies in securing that the objectives for which the marine plan was prepared and adopted are met; 30
  - (c) the progress being made towards securing those objectives;
  - (d) if a marine policy statement governs marine planning for the Northern Ireland inshore region, the progress being made towards securing that the objectives for which the marine policy statement was prepared and adopted are met in that region. 35
- (2) The Department must from time to time prepare and publish a report on the matters kept under review pursuant to subsection (1).
- (3) After publishing a report under subsection (2), the Department must—
- (a) lay a copy of the report before the Assembly; and
  - (b) decide whether or not to amend or replace the marine plan. 40
- (4) The first report under subsection (2) must be published before the expiration of 3 years beginning with the date on which the marine plan was adopted; and

successive reports under that subsection must be published at intervals of no more than 3 years following the date of publication of the previous report.

(5) Any reference in this section to the replacement of a marine plan is a reference to—

- 5 (a) preparing and adopting, in accordance with the provisions of this Part, a fresh marine plan (whether or not for the identical marine plan area), and  
(b) if the Department has not already done so, withdrawing the marine plan that is to be replaced.

10 (6) The Department must from time to time prepare and lay before the Assembly a report which—

- (a) identifies any marine plans which the Department has prepared and adopted;  
(b) describes any intentions the Department may have for the amendment of any marine plans which it has prepared and adopted;  
15 (c) describes any intentions the Department may have for the preparation and adoption of any further marine plans.

(7) The first report prepared under subsection (6) must be laid before the Assembly before the expiration of the period of 6 years beginning with the date of the passing of this Act; and successive reports under that subsection must be laid  
20 at intervals of no more than 6 years following the laying of the previous report.

(8) No report under subsection (6) is required to be laid in a case where the period of 6 years following the laying of the previous report ends on or after 1st January 2030.

#### *Validity of marine plans and amendments*

#### 25 **Validity of marine plans**

**10.**—(1) This section applies to—

- (a) any marine plan,  
(b) any amendment of a marine plan.

30 (2) Anything falling within the paragraphs of subsection (1) is referred to in this section as a “relevant document”.

(3) A relevant document must not be questioned in any legal proceedings, except in so far as is provided by the following provisions of this section.

(4) A person aggrieved by a relevant document may make an application to the High Court on any of the following grounds—

- 35 (a) that the document is not within the appropriate powers;  
(b) that a procedural requirement has not been complied with.

(5) Any such application must be made not later than 12 weeks after the publication of the relevant document.

(6) In this section—

40 “the appropriate powers” means the powers conferred by sections 4 to 7 or Schedule 1;



“procedural requirement” means any requirement under the appropriate powers which relates to the preparation, adoption or publication of a relevant document.

**Powers of the High Court on an application under section 10**

**11.—**(1) This section applies in any case where an application under section 10 is made to the High Court. 5

(2) The court may make an interim order suspending the operation of the relevant document—

- (a) wholly or in part,
- (b) generally or as it affects a particular area; 10

and an interim order has effect until the proceedings are finally determined.

(3) Subsection (4) applies if the court is satisfied as to any of the following—

- (a) that a relevant document is to any extent outside the appropriate powers;
- (b) that the interests of the applicant have been substantially prejudiced by failure to comply with a procedural requirement. 15

(4) The court may—

- (a) quash the relevant document;
- (b) remit the relevant document to the Department.

(5) If the court remits the relevant document under subsection (4)(b), it may give directions as to the action to be taken in relation to the relevant document. 20

(6) Directions under subsection (5) may in particular—

- (a) require the relevant document to be treated (generally or for specified purposes) as not having been adopted or published;
- (b) require specified steps in the process that has resulted in the adoption of the relevant document to be treated (generally or for specified purposes) as having been taken or as not having been taken; 25
- (c) require action to be taken by the Department.

(7) The court’s powers under subsections (4) and (5) are exercisable in relation to the whole or any part of the relevant document.

(8) Expressions used in this section and in section 10 have the same meaning in this section as they have in that section. 30

*Interpretation*

**Interpretation of this Part**

**12.—**(1) In this Part—  
“adopted”— 35

- (a) in the case of a marine policy statement, is to be read in accordance with section 44 of, and paragraph 12 of Schedule 5 to, the 2009 Act;
- (b) in the case of a marine plan, is to be read in accordance with section 4 of, and paragraph 15 of Schedule 1 to, this Act;

“marine plan” has the meaning given in section 4; 40

“marine plan area” has the meaning given in section 4;

“marine policy statement” is to be construed in accordance with sections 44 and 47 of the 2009 Act;

5 “the relevant Northern Ireland departments” has the meaning given in section 4(11);

“retained functions” has the meaning given in section 60 of the 2009 Act.

(2) Any reference in this Part to a marine policy statement governing marine planning for an area is to be construed in accordance with section 4(10).

### PART 3

## 10 MARINE PROTECTION

### *Designation of MCZs*

#### **Designation of marine conservation zones**

**13.**—(1) The Department may by order designate any area of sea falling within the Northern Ireland inshore region as a marine conservation zone (an “MCZ”).

15 (2) For the purposes of this Part “the Northern Ireland inshore region” and “the sea” do not include any waters upstream of the fresh-water limit of estuarial waters.

(3) In this Part “estuarial waters” means any waters within the limits of transitional waters, within the meaning of the Water Framework Directive (that is to say, Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy).

(4) The reference in subsection (1) to an area of sea includes a reference to any island in the sea, whether or not any part of it lies above mean high water spring tide.

(5) The Department may not designate any area of sea under this section without the agreement of the Secretary of State.

### *MCZs*

#### **Grounds for designation of MCZ**

30 **14.**—(1) The Department may make an order under section 13 designating an area as an MCZ if it thinks that it is desirable to do so for the purpose of conserving—

(a) marine flora or fauna;

(b) marine habitats or types of marine habitat;

35 (c) features of geological or geomorphological interest.

(2) The order must state—

(a) the protected feature or features;

(b) the conservation objectives for the MCZ.

(3) Any reference in this Part to the conservation objectives stated for an MCZ is a reference to the conservation objectives stated for the MCZ under subsection (2)(b).

(4) The reference in subsection (1)(a) to conserving marine flora or fauna includes, in particular, a reference to conserving any species that is rare or threatened because of—

- (a) the limited number of individuals of that species, or
- (b) the limited number of locations in which that species is present.

(5) The references in subsection (1)(a) and (b) to conserving marine flora or fauna or habitat include references to conserving the diversity of such flora, fauna or habitat, whether or not any or all of them are rare or threatened.

(6) Any reference in this Part to conserving a thing includes references to—

- (a) assisting in its conservation;
- (b) enabling or facilitating its recovery or increase.

(7) In considering whether it is desirable to designate an area as an MCZ, the Department must have regard to any economic, cultural or social consequences of designating that area and, so far as possible, to—

- (a) the extent to which any of the following activities are likely to be prohibited or significantly restricted within that area if it is designated—
  - (i) any licensable marine activity (within the meaning of Part 4 of the 2009 Act);
  - (ii) fishing for or taking animals or plants from the sea;
- (b) the likely impact on the environment within that area if that area is not designated;
- (c) the likely impact on the environment elsewhere in the Northern Ireland inshore region as a result of any activity mentioned in paragraph (a) being displaced from that area if it is designated.

(8) The reference in subsection (7) to any social consequences of designating an area as an MCZ includes a reference to any consequences of doing so for any sites in that area (including any sites comprising, or comprising the remains of, any vessel, aircraft or marine installation) which are of historic or archaeological interest.

**Further provision as to orders designating MCZs**

**15.—**(1) An order under section 13 designating an area as an MCZ must identify the boundaries of the area designated.

(2) The boundary of an MCZ may be determined by, or by reference to, mean high water spring tide.

(3) An MCZ may (in addition to an area of sea) include an area of the seashore lying above mean high water spring tide if—

- (a) the area of seashore adjoins the area of sea; and
- (b) any of the conditions in subsection (4) is satisfied.

(4) The conditions are that—

- (a) the protected feature or features leading to the designation of the area of sea is or are also present in the area of seashore;
  - (b) the area of sea is designated for the purpose of conserving marine flora or fauna which are dependent (wholly or in part) on anything which takes place in, or is present in, the area of seashore;
  - (c) without the inclusion of the area of seashore, the identification of the boundary of the MCZ (either in the order designating the area or on the ground for the purposes of exercising functions in relation to it) would be impossible or impracticable.
- (5) An order under section 13 designating an area as an MCZ—
- (a) must designate an area of land (whether or not that land is covered by water), and
  - (b) may designate some or all of the water covering that land.

*Designation procedure*

**15 Consultation before designation**

**16.**—(1) Before making an order under section 13, the Department must comply with subsections (2) to (4).

(2) The Department must publish notice of its proposal to make the order.

(3) The notice under subsection (2) must—

- (a) be published in such manner as the Department thinks is most likely to bring the proposal to the attention of any persons who are likely to be affected by the making of the order;
- (b) contain a statement of the terms of the proposed order.

(4) The Department must consult—

- (a) the Secretary of State; and
- (b) any other persons who the Department thinks are likely to be interested in, or affected by, the making of the order.

(5) If the Department fails to make the order before the end of the period of 12 months beginning with the date on which notice was published under subsection (2), then anything done by the Department for the purposes of complying with subsections (2) to (4) of this section is, for those purposes, to be treated as not having been done.

(6) In a case where the Department thinks that there is an urgent need to protect the area proposed to be designated as an MCZ, the Department need not comply with subsections (2), (3) and (4)(b).

(7) In such a case, the order designating the area as an MCZ remains in operation for a period not exceeding two years, unless the Department makes a further order before the end of that period confirming the designation.

(8) Before making such an order, the Department must comply with subsections (2) to (4) (and subsection (5) applies accordingly).

**Publication of orders**

**17.**—(1) This section applies where an order has been made under section 13.

- (2) The Department must publish notice of the making of the order.
- (3) The notice under subsection (2) must—
  - (a) be published in such manner as the Department thinks is most likely to bring the order to the attention of any persons who are likely to be affected by the making of it; 5
  - (b) give an address at which a copy of the order may be inspected.
- (4) The Department must—
  - (a) make a copy of the order available for inspection at the address specified under subsection (3)(b) at all reasonable hours without payment;
  - (b) provide a copy of the order to any person who requests one. 10
- (5) The Department may charge a fee, not exceeding its costs, for providing a copy under subsection (4)(b).

### Hearings

- 18.—**(1) This section applies where the Department has the function of deciding whether to make an order under section 13 designating an area as an MCZ. 15
- (2) The Department may, before making that decision, give to any person the opportunity of—
  - (a) appearing before and being heard by a person appointed for that purpose;
  - (b) providing written representations to such a person. 20
- (3) The Department may make regulations providing for the procedure to be followed (including decisions as to costs) at hearings held under subsection (2).
- (4) A person appointed under subsection (2) must make a report to the Department of any oral or written representations made under that subsection.

### Review of orders 25

- 19.** The Department must review any order it has made under section 13 if the Department receives representations that the order should be amended or revoked from—
  - (a) the Secretary of State,
  - (b) the Scottish Ministers, or 30
  - (c) the department of the Government of Ireland with responsibility for marine conservation in any area adjoining or adjacent to the area designated by the order.

### *Duties of Department*

### Creation of network of conservation sites 35

- 20.—**(1) In order to contribute to the achievement of the objective in subsection (2), the Department must designate MCZs under section 13.
- (2) The objective is that the MCZs designated by the Department, taken together with—

- (a) any marine conservation zones designated under section 116 of the 2009 Act;
- (b) any nature conservation marine protected areas designated under section 67 of the Marine (Scotland) Act 2010; and
- 5 (c) any relevant conservation sites in the UK marine area, form a network which satisfies the conditions in subsection (3).

(3) The conditions are—

- (a) that the network contributes to the conservation or improvement of the marine environment in the UK marine area;
- 10 (b) that the features which are protected by the sites comprised in the network represent the range of features present in the UK marine area;
- (c) that the designation of sites comprised in the network reflects the fact that the conservation of a feature may require the designation of more than one site.

15 (4) For the purposes of subsection (2), the following are “relevant conservation sites”—

- (a) a European marine site within the meaning of the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995;
- (b) a European offshore marine site within the meaning of the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007;
- 20 (c) the whole or part of any area of special scientific interest within the meaning of Part 4 of the Environment (Northern Ireland) Order 2002;
- (d) the whole or part of any Ramsar site, that is to say any site designated under the Convention on Wetlands of International Importance especially as Waterfowl Habitat signed at Ramsar on 2nd February 1971, as amended by—
- 25 (i) the Protocol known as the Paris Protocol done at Paris on 3rd December 1982; and
- (ii) 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; and
- 30 (iii) any further amendments coming into force from time to time.

(5) When complying with the duty imposed by subsection (1), the Department must have regard to any obligations under EU or international law that relate to the conservation or improvement of the marine environment.

(6) In subsection (3)(a) the reference to “the conservation or improvement of the marine environment” includes the preservation, maintenance and re-establishment of a sufficient diversity and area of habitat for wild birds in Northern Ireland in implementation of Article 3 of the Wild Birds Directive (including by means of the upkeep, management and creation of such habitat, as appropriate), having regard to the requirements of Article 2 of that Directive.

(7) Before the end of the period of 2 months beginning with the date on which this section comes into operation, the Department must—

- (a) prepare a statement setting out such principles relating to the achievement of the objective in subsection (2) as the Department intends to follow when complying with the duty imposed by subsection (1), and
  - (b) lay a copy of the statement before the Assembly.
- (8) A statement prepared by the Department under this section may also set out other matters relating to the achievement of that objective which the Department intends to take into account when complying with the duty imposed by subsection (1). 5
- (9) The Department must—
- (a) keep under review any statement it has prepared under this section, and 10
  - (b) if it considers it appropriate in consequence of a review, prepare a revised statement of the principles referred to in subsection (7) and lay a copy of it before the Assembly.
- (10) In this section—
- “feature” means anything falling within paragraphs (a) to (c) of section 14(1); 15
  - “UK marine area” has the meaning given by section 42 of the 2009 Act;
  - “the Wild Birds Directive” means Directive 2009/147/EC of the European Parliament and of the Council on the conservation of wild birds.

**Reports**

- 21.—**(1) Before the end of every relevant period, the Department must lay before the Assembly a report setting out— 20
- (a) the extent to which, in the opinion of the Department, the objective in section 20(2) has been achieved;
  - (b) any further steps which, in the opinion of the Department, are required to be taken in order to contribute to the achievement of that objective. 25
- (2) The report must also contain the following information—
- (a) the number of MCZs which the Department has designated during the relevant period;
  - (b) in relation to each such MCZ— 30
    - (i) the size of the MCZ, and
    - (ii) the conservation objectives stated for the MCZ;
  - (c) the number of MCZs designated by the Department in which the following activities are prohibited or significantly restricted—
    - (i) any licensable marine activity;
    - (ii) fishing for or taking animals or plants from the sea; 35
  - (d) information about any amendments which the Department has made to any orders made under section 13;
  - (e) the extent to which, in the opinion of the Department, the conservation objectives stated for each MCZ which it has designated have been achieved; 40

(f) any further steps which, in the opinion of the Department, are required to be taken in relation to any MCZ in order to achieve the conservation objectives stated for it.

(3) In this section—

5 “licensable marine activity” has the same meaning as in Part 4 of the 2009 Act;

“relevant period” means—

(a) the period beginning on the date on which this section comes into operation and ending on 31 December 2018;

10 (b) each subsequent period of 6 years.

*Duties of public authorities*

**General duties of public authorities in relation to MCZs**

**22.**—(1) This section applies to any public authority having any function the exercise of which is capable of affecting (other than insignificantly)—

15 (a) the protected features of an MCZ;

(b) any ecological or geomorphological process on which the conservation of any protected feature of an MCZ is (wholly or in part) dependent.

(2) Every public authority to which this section applies must (so far as is consistent with their proper exercise)—

20 (a) exercise its functions in the manner which the authority considers best furthers the conservation objectives stated for the MCZ;

(b) where it is not possible to exercise its functions in a manner which furthers those objectives, exercise them in the manner which the authority considers least hinders the achievement of those objectives.

25 (3) If a public authority (other than the Department) considers that any of its functions is such that the exercise of the function would or might significantly hinder the achievement of the conservation objectives stated for the MCZ, it must inform the Department of that fact.

30 (4) Subject to subsection (6), subsection (5) applies in any case where a public authority (other than the Department) intends to do an act which is capable of affecting (other than insignificantly)—

(a) the protected features of an MCZ;

(b) any ecological or geomorphological process on which the conservation of any protected feature of an MCZ is (wholly or in part) dependent.

35 (5) If the authority believes that there is or may be a significant risk of the act hindering the achievement of the conservation objectives stated for the MCZ, the authority must notify the Department of that fact.

(6) Subsection (5) does not apply where—

40 (a) the Department has given the authority advice or guidance under section 24 in relation to acts of a particular description,

(b) the act which the authority intends to do is an act of that description, and

(c) the advice or guidance has not ceased to apply.



(7) Where the authority has given notification under subsection (5), it must wait until the expiry of the period of 28 days beginning with the date of the notification before deciding whether to do the act.

(8) Subsection (7) does not apply where—

- (a) the Department notifies the authority that it need not wait until the end of the period referred to in that subsection, or 5
- (b) the authority thinks that there is an urgent need to do the act.

(9) If a public authority (other than the Department) considers that a relevant event has occurred, it must inform the Department of that fact.

(10) A “relevant event” is any act— 10

- (a) in relation to which the public authority exercises functions,
- (b) which the authority believes to be an offence, and
- (c) which the authority considers will or may significantly hinder the achievement of the conservation objectives for an MCZ.

(11) In carrying out its duties under this section a public authority must have regard to any advice or guidance given by the Department under section 24. 15

**Duties of public authorities in relation to certain decisions**

**23.—**(1) This section applies where—

- (a) a public authority (other than the Department) has the function of determining an application (whenever made) for authorisation of the doing of an act, and 20
- (b) the act is capable of affecting (other than insignificantly)—
  - (i) the protected features of an MCZ;
  - (ii) any ecological or geomorphological process on which the conservation of any protected feature of an MCZ is (wholly or in part) dependent. 25

(2) If the authority believes that there is or may be a significant risk of the act hindering the achievement of the conservation objectives stated for the MCZ, the authority must notify the Department of that fact.

(3) Where the authority has given notification under subsection (2), it must wait until the expiry of the period of 28 days beginning with the date of the notification before deciding whether to grant authorisation for the doing of the act. 30

(4) Subsection (3) does not apply where—

- (a) the Department notifies the authority that it need not wait until the end of the period referred to in that subsection, or
- (b) the authority thinks that there is an urgent need to grant authorisation for the doing of the act. 35

(5) The authority must not grant authorisation for the doing of the act unless the condition in subsection (6) or the condition in subsection (7) is met.

(6) The condition in this subsection is that the person seeking the authorisation satisfies the authority that there is no significant risk of the act hindering the achievement of the conservation objectives stated for the MCZ. 40

(7) The condition in this subsection is that, although the person seeking the authorisation is not able to satisfy the authority as mentioned in subsection (6), that person satisfies the authority that—

- 5 (a) there is no other means of proceeding with the act which would create a substantially lower risk of hindering the achievement of conservation objectives stated for the MCZ,
- (b) the benefit to the public of proceeding with the act clearly outweighs the risk of damage to the environment that will be created by proceeding with it, and
- 10 (c) the person seeking the authorisation will undertake, or make arrangements for the undertaking of, measures of equivalent environmental benefit to the damage which the act will or is likely to have in or on the MCZ.

(8) The reference in subsection (7)(a) to other means of proceeding with an act includes a reference to proceeding with it—

- 15 (a) in another manner, or
- (b) at another location.

(9) In a case falling within subsection (7), the authority must, if it has power to grant the authorisation subject to conditions, exercise that power so as to make it a condition of the authorisation that the measures mentioned in subsection (7)(c) are undertaken.

(10) In carrying out its duties under this section a public authority must have regard to any advice or guidance given by the Department under section 24.

(11) In this section—

25 “authorisation” means any approval, confirmation, consent, licence, permission or other authorisation (however described), whether special or general;

“damage” includes the prevention of an improvement.

### **Advice and guidance by the Department**

24.—(1) The Department may give advice and guidance as to—

- 30 (a) the matters which are capable of damaging or otherwise affecting any protected feature or features of an MCZ;
- (b) the matters which are capable of affecting any ecological or geomorphological process on which the conservation of any protected feature or features is (wholly or in part) dependent;
- 35 (c) how any conservation objectives stated for an MCZ may be furthered, or how the achievement of any such objectives may be hindered;
- (d) how the effect of any activity or activities on any MCZ, or such zones generally, may be mitigated;
- 40 (e) which activities are, or are not, of equivalent environmental benefit (for the purposes of section 23(7)(c)) to any particular damage to the environment (within the meaning of that provision).

(2) Advice or guidance may be given—

- (a) either in relation to a particular MCZ or such zones generally;

(b) either to a particular public authority or public authorities generally.

(3) The Department must give advice to any other public authority if the authority requests it.

**Failure to comply with duties, etc.**

**25.**—(1) This section applies if, in the opinion of the Department, any other public authority has failed— 5

(a) to comply with the duty imposed by section 22(2) or the duty imposed by section 23(5);

(b) to act in accordance with advice or guidance given by the Department under section 24. 10

(2) Where this section applies—

(a) the Department must request from the public authority an explanation for the failure; and

(b) the public authority must provide the Department with such an explanation in writing within the period of 28 days from the date of the request under paragraph (a) or such longer period as the Department may allow. 15

*Byelaws*

**Byelaws for protection of MCZs**

**26.**—(1) The Department may make byelaws for the purpose of furthering the conservation objectives stated for an MCZ. 20

(2) Byelaws under this section may be made so as to apply to any area in the Northern Ireland inshore region or in any other part of Northern Ireland.

(3) The provision that may be made by byelaws under this section includes, in particular, provision— 25

(a) prohibiting or restricting entry into, or any movement or other activity within, the MCZ by persons or animals;

(b) prohibiting or restricting entry into, or any movement or other activity within, the MCZ by vessels or (where appropriate) vehicles;

(c) restricting the speed at which any vessel may move in the MCZ or in any specified area outside the MCZ where that movement might hinder the conservation objectives stated for the MCZ; 30

(d) prohibiting or restricting the anchoring of any vessel within the MCZ;

(e) prohibiting or restricting the killing, taking, destruction, molestation or disturbance of animals or plants of any description in the MCZ; 35

(f) prohibiting or restricting the doing of anything in the MCZ which would interfere with the sea bed or damage or disturb any object in the MCZ.

(4) The provision that may be made by byelaws under this section also includes provision prohibiting or restricting entry into, or any movement or other activity on, any part of the seashore that adjoins the MCZ by persons, animals or vehicles. 40

(5) Byelaws under this section may provide for the Department to issue permits authorising anything which would, apart from such a permit, be unlawful under the byelaws.

5 (6) The Department may attach to a permit under subsection (5) any condition which the Department thinks appropriate to attach to that permit.

(7) Byelaws under this section may be made subject to specified exceptions.

(8) Byelaws under this section may make different provision for different cases, including (in particular)—

- 10 (a) different parts of the MCZ;
- (b) different times of the year;
- (c) different means or methods of carrying out any activity.

(9) In this section “specified” means specified in the byelaws.

**Byelaws: procedure**

15 **27.**—(1) Subject to subsection (10), before making any byelaws under section 26, the Department must comply with subsections (2) to (6).

(2) The Department must place a copy of a draft of the byelaws in such place or places as the Department thinks is or are likely to be most convenient for the purpose of enabling the draft to be inspected by persons likely to be affected by the making of the byelaws.

20 (3) The Department must provide a copy of a draft of the byelaws to any person who requests one.

(4) The Department may charge a fee, not exceeding its costs, for providing a copy under subsection (3).

(5) The Department must publish notice of its proposal to make the byelaws.

25 (6) The notice under subsection (5) must—

- (a) be published in such manner as the Department thinks is most likely to bring the proposal to the attention of any persons who are likely to be affected by the making of the byelaws;
- 30 (b) state where the copy or copies of the draft byelaws have been placed by the Department in accordance with subsection (2);
- (c) state the time within which representations about the byelaws must be made to the Department.

35 (7) Byelaws made under section 26 do not have effect until they are confirmed by the Secretary of State; and byelaws which are confirmed come into operation—

- (a) on such date as may be determined by the Secretary of State, or
- (b) if no such date is determined, one month after the date on which they are confirmed.

40 (8) As soon as is reasonably practicable after the confirmation of byelaws made under section 26, the Department must publish notice of the making of the byelaws.

(9) The notice under subsection (8) must—

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(a) be published in such manner as the Department thinks is most likely to bring the byelaws to the attention of any persons who are likely to be affected by the making of the byelaws;

(b) state that a copy of the byelaws may be inspected at the offices of the Department. 5

(10) Nothing in this section applies where the Department thinks that there is an urgent need to protect an MCZ.

**Emergency byelaws**

**28.**—(1) Where the Department thinks that there is an urgent need to protect an MCZ, byelaws made by it for that purpose have effect without being confirmed by the Secretary of State. 10

(2) Byelaws that have effect by virtue of this section (“emergency byelaws”)—

(a) come into operation on a date specified in the byelaws, and

(b) remain in operation (unless revoked) for such period, not exceeding 12 months, as is specified in the byelaws. 15

(3) The Department must publish notice of the making of emergency byelaws.

(4) The notice under subsection (3) must—

(a) be published in such manner as the Department thinks is most likely to bring the byelaws to the attention of any persons who are likely to be affected by the making of the byelaws; 20

(b) state that a copy of the byelaws may be inspected at the offices of the Department;

(c) state that the Secretary of State has power to revoke the byelaws and that any person affected by the making of the byelaws may make representations to the Secretary of State. 25

(5) The Secretary of State may revoke emergency byelaws.

(6) The Department must keep under review the need for emergency byelaws to remain in operation.

(7) The Department may, by further byelaws, provide that emergency byelaws are to remain in operation for such period beyond that specified under subsection (2)(b) as is specified in the further byelaws. 30

(8) The Department may not make byelaws under subsection (7) unless—

(a) it intends to make byelaws under section 26 in respect of the MCZ in accordance with section 27 (“the permanent byelaws”), and

(b) it has, in respect of the permanent byelaws, complied with section 27(5). 35

(9) A period specified under subsection (7) may not exceed 6 months.

**Interim byelaws for MCZ**

**29.**—(1) The Department may make byelaws for the purpose of protecting any feature in an area in Northern Ireland if the Department thinks—

(a) that there are or may be reasons for the Department to consider whether to designate the area as an MCZ, and 40

(b) that there is an urgent need to protect the feature.

(2) In this Part “interim byelaws” means byelaws made under subsection (1).

5 (3) Interim byelaws must contain a description of the boundaries of the area to which they apply (which must be no greater than is necessary for the purpose of protecting the feature in question).

(4) Subsections (2) to (9) of section 26 apply to interim byelaws as they apply to byelaws made under that section, except that any reference to an MCZ is to be read as a reference to the area to which the interim byelaws apply.

(5) Interim byelaws—

- 10 (a) come into operation on a date specified in the byelaws, and  
(b) remain in operation (unless revoked) for such period, not exceeding 12 months, as is specified in the byelaws.

(6) The Department must publish notice of the making of interim byelaws.

(7) The notice under subsection (6) must—

- 15 (a) be published in such manner as the Department thinks is most likely to bring the byelaws to the attention of any persons who are likely to be affected by the making of the byelaws;  
(b) state that a copy of the byelaws may be inspected at the offices of the Department;  
20 (c) state that the Secretary of State has power to revoke the byelaws and that any person affected by the making of the byelaws may make representations to the Secretary of State.

(8) The Secretary of State may revoke interim byelaws.

25 (9) The Department must keep under review the need for interim byelaws to remain in operation.

(10) The Department may by further byelaws extend the period for which interim byelaws remain in operation; but interim byelaws may not by virtue of this subsection remain in operation for an aggregate period exceeding 12 months.

30 (11) If, while interim byelaws are in operation, the Department gives notice of a proposal to make an order under section 13 designating any part of the area in question as an MCZ, the Department may direct that interim byelaws are to remain in operation—

- (a) until the Department has decided whether to make the order under section 13;  
35 (b) if the Department decides to make such an order, until that order comes into effect.

(12) The Department must publish a direction under subsection (11) in such manner as the Department thinks is most likely to bring the direction to the attention of any persons who are likely to be affected by the making of it.

40 (13) In this section “feature” means any flora, fauna, habitat or feature which could be a protected feature if the area in question were designated as an MCZ.

**Byelaws: supplementary**

- 30.**—(1) This section applies to byelaws made under section 26 or 29.
- (2) The Department must—
- (a) make a copy of any byelaws to which this section applies available for inspection at its offices at all reasonable hours without payment; 5
  - (b) provide a copy of any such byelaws to any person who requests one.
- (3) The Department may charge a fee, not exceeding its costs, for providing a copy under subsection (2)(b).
- (4) In the case of byelaws made under section 26 in accordance with section 27, subsections (2) and (3) apply only after the byelaws have been confirmed under section 27(7). 10
- (5) Byelaws to which this section applies are not statutory rules for the purposes of the Statutory Rules (Northern Ireland) Order 1979.

**Hearings**

- 31.**—(1) This section applies where the Secretary of State has the function of— 15
- (a) deciding (under section 27(7)) whether to confirm byelaws made under section 26;
  - (b) deciding (under section 28(5)) whether to revoke emergency byelaws;
  - (c) deciding (under section 29(8)) whether to revoke interim byelaws.
- (2) This section also applies where the Department has the function of— 20
- (a) deciding whether to make byelaws under section 26;
  - (b) deciding whether to make interim byelaws under section 29.
- (3) The Secretary of State or (as the case may be) the Department may, before making that decision, give to any person the opportunity of—
- (a) appearing before and being heard by a person appointed for that purpose; 25
  - (b) providing written representations to such a person.
- (4) The Department may make regulations providing for the procedure to be followed (including decisions as to costs) at hearings held under subsection (3).
- (5) A person appointed under subsection (3) must make a report to the Secretary of State or (as the case may be) the Department of any oral or written representations made under that subsection. 30

*Offences*

**Offence of contravening byelaws**

- 32.**—(1) It is an offence for a person to contravene any byelaws made under section 26 or 29. 35
- (2) A person who is guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (3) Proceedings for an offence under this section may be taken, and the offence may for all incidental purposes be treated as having been committed, in any part of Northern Ireland. 40



**Offence of damaging, etc. protected features of MCZ**

**33.**—(1) A person is guilty of an offence under this section if—

- (a) the person without lawful excuse does a prohibited act,
- (b) at the time of doing that act, the person knows, or ought to have known,  
5 that the feature to which the act relates is in, or forms part of, an MCZ,  
and
- (c) the act has significantly hindered, or may significantly hinder, the  
achievement of the conservation objectives stated for the MCZ.

(2) For the purposes of subsection (1), a person does a prohibited act if the  
10 person—

- (a) intentionally or recklessly kills or injures any animal in an MCZ which is  
a protected feature of that MCZ,
- (b) intentionally picks or collects, or intentionally or recklessly cuts, uproots  
or destroys, any plant in an MCZ which is a protected feature of that  
15 MCZ,
- (c) intentionally or recklessly takes anything from an MCZ which is, or forms  
part of, a protected feature of that MCZ, or
- (d) intentionally or recklessly destroys or damages any habitat or feature  
which is a protected feature of an MCZ.

(3) For the purposes of determining whether anything done by a person in  
20 relation to a protected feature is a prohibited act for the purposes of subsection  
(1), it is immaterial whether the person knew, or ought to have known, that the  
feature was a protected feature.

(4) A person who is guilty of an offence under this section is liable—

- (a) on summary conviction, to a fine not exceeding £50,000;
- (b) on conviction on indictment, to a fine.

(5) In determining the amount of any fine to be imposed on a person convicted  
of an offence under this section, the court must in particular have regard to any  
financial benefit which has accrued or appears likely to accrue to the person in  
30 consequence of the offence.

(6) Proceedings for an offence under this section may be taken, and the offence  
may for all incidental purposes be treated as having been committed, in any part  
of Northern Ireland.

**Exceptions**

**34.**—(1) A person is not guilty of an offence under section 32 or 33 if the act  
35 which is alleged to constitute the offence—

- (a) was done in accordance with section 22(2) by a public authority;
- (b) was expressly authorised by an authorisation granted in accordance with  
section 23, or was necessarily incidental to such an act;
- (c) was done in accordance with a permit issued by the Department (whether  
40 under section 26(5) or otherwise);
- (d) was necessary in the interests of the prevention or detection of crime, or  
was necessary for securing public health;



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- (e) was necessary for the purpose of securing the safety of any vessel, aircraft or marine installation;
- (f) was done for the purpose of saving life.
- (2) Subsection (1)(e) does not apply where the necessity was due to the fault of the person or of some other person acting under the person's direction or control. 5
- (3) A person is not guilty of an offence under section 32 by reason of doing anything that is an offence under section 33.
- (4) It is a defence for a person who is charged with an offence under section 33 to show that—
  - (a) the act which is alleged to constitute the offence was— 10
    - (i) an act done for the purpose of, and in the course of, sea fishing, or
    - (ii) an act done in connection with such an act, and
  - (b) the effect of the act on the protected feature in question could not reasonably have been avoided.
- (5) The Department may by order amend this section so as to remove, or restrict the application of, the defence provided by subsection (4). 15

*Fixed monetary penalties*

**Fixed monetary penalties**

- 35.—**(1) The Department may by order make provision to confer on the Department the power by notice to impose a fixed monetary penalty on a person in relation to an offence under section 32. 20
- (2) Provision under this section may only confer such a power in relation to a case where the Department is satisfied beyond reasonable doubt that the person has committed the offence.
- (3) For the purposes of this Part a “fixed monetary penalty” is a requirement to pay to the Department a penalty of a prescribed amount. 25
- (4) The amount of the fixed monetary penalty that may be imposed in relation to an offence may not exceed level 1 on the standard scale.
- (5) In this section “prescribed” means prescribed in an order made under this section. 30

**Fixed monetary penalties: procedure**

- 36.—**(1) Provision under section 35 must secure the results in subsection (2).
- (2) Those results are that—
  - (a) where the Department proposes to impose a fixed monetary penalty on a person, the Department must serve on that person a notice of what is proposed (a “notice of intent”) which complies with subsection (3), 35
  - (b) the notice of intent also offers the person the opportunity to discharge the person's liability for the fixed monetary penalty by payment of a prescribed sum (which must be less than or equal to the amount of the penalty), 40
  - (c) if the person does not so discharge liability—

- (i) the person may make written representations and objections to the Department in relation to the proposed imposition of the fixed monetary penalty, and
- 5 (ii) the Department must at the end of the period for making representations and objections decide whether to impose the fixed monetary penalty,
- (d) where the Department decides to impose the fixed monetary penalty, the notice imposing it (“the final notice”) complies with subsection (5), and
- 10 (e) the person on whom a fixed monetary penalty is imposed may appeal against the decision to impose it.
- (3) To comply with this subsection the notice of intent must include information as to—
- (a) the grounds for the proposal to impose the fixed monetary penalty,
- (b) the effect of payment of the sum referred to in subsection (2)(b),
- 15 (c) the right to make representations and objections,
- (d) the circumstances in which the Department may not impose the fixed monetary penalty,
- (e) the period within which liability to the fixed monetary penalty may be discharged, which must not exceed the period of 28 days beginning with
- 20 the day on which the notice of intent is received, and
- (f) the period within which representations and objections may be made, which must not exceed the period of 28 days beginning with the day on which the notice of intent is received.
- (4) Provision pursuant to subsection (2)(c)(ii)—
- 25 (a) must secure that the Department may not decide to impose a fixed monetary penalty on a person where the Department is satisfied that the person would not, by reason of any defence, be liable to be convicted of the offence in relation to which the penalty is proposed to be imposed, and
- (b) may include provision for other circumstances in which the Department
- 30 may not decide to impose a fixed monetary penalty.
- (5) To comply with this subsection the final notice referred to in subsection (2)(d) must include information as to—
- (a) the grounds for imposing the penalty,
- (b) how payment may be made,
- 35 (c) the period within which payment must be made,
- (d) any early payment discounts or late payment penalties,
- (e) rights of appeal, and
- (f) the consequences of non-payment.
- (6) Provision pursuant to subsection (2)(e) must secure that the grounds on
- 40 which a person may appeal against a decision of the Department include the following—
- (a) that the decision was based on an error of fact;
- (b) that the decision was wrong in law;
- (c) that the decision was unreasonable.

(7) In this section “prescribed” means prescribed in an order made under section 35.

**Fixed monetary penalties: further provision**

37. Schedule 2 (which makes further provision about fixed monetary penalties) has effect. 5

*Enforcement powers*

**Enforcement officers**

38.—(1) The Department may appoint persons for the purposes of enforcing—  
 (a) Articles 4, 6, 7, 10, 12, 13, 14, 15 and 15A of the Wildlife (Northern Ireland) Order 1985; 10  
 (b) regulations 34, 36 and 38 of the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995;  
 (c) any byelaws made by virtue of regulations 23 or 31 of those Regulations;  
 (d) Article 46 of the Environment (Northern Ireland) Order 2002;  
 (e) any byelaws made under section 26 or 29 of this Act; and 15  
 (f) section 33 of this Act.

(2) For the purposes of enforcing those provisions, a person appointed under this section has the common enforcement powers (see section 39).

(3) Subject as follows, those powers may be exercised in the Northern Ireland inshore region and in any other part of Northern Ireland. 20

(4) Those powers may not be exercised in relation to any ship belonging to Her Majesty and forming part of the armed forces.

(5) Those powers may not be exercised in relation to any vessel within subsection (6) unless, in the case of a third country vessel (other than a vessel falling within paragraph (b) or (c) of that subsection), the United Kingdom is entitled under international law to exercise those powers without the consent of the flag state. 25

(6) The vessels are—  
 (a) a third country vessel;  
 (b) a warship that is being used by the government of a State other than the United Kingdom; 30  
 (c) any other vessel that is being used by such a government for any non-commercial purpose.

(7) In this section—  
 “flag state”, in relation to a vessel, means the State whose flag the vessel is flying or is entitled to fly; 35

“third country vessel” means a vessel which—  
 (a) is flying a flag of, or is registered in, any State or territory (other than Gibraltar) which is not a member State; and  
 (b) is not registered in a member State. 40

(8) Sections 289 to 292 of the 2009 Act (which provide for the identification, liability and protection of enforcement officers under that Act) apply to a person appointed under this section as they apply to such enforcement officers, but with the substitution—

- 5 (a) for references to any power conferred by Part 8 of the 2009 Act of references to any of the common enforcement powers conferred by subsection (2);
- (b) for references to functions under that Act of references to functions under this Part; and
- 10 (c) for the reference in section 292(10) to the United Kingdom of a reference to Northern Ireland.

### **The common enforcement powers**

**39.**—(1) For the purposes of this Part, the common enforcement powers are the powers set out in Chapter 2 of Part 8 of the 2009 Act.

- 15 (2) Accordingly, that Chapter applies (with any appropriate modifications) where those powers are conferred by section 38(2) as it applies where those powers are conferred by the 2009 Act.

### *Supplementary*

### **Repeals, amendments and transitional provisions**

- 20 **40.**—(1) The following provisions (which relate to marine nature reserves) are repealed—

- (a) in the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985—
- (i) Articles 20 and 21;
- 25 (ii) in Article 31 “21” (wherever it occurs); and
- (iii) Part 2 of Schedule 3;
- (b) in the Territorial Sea Act 1987—
- (i) section 3(2)(c); and
- (ii) in Schedule 1, paragraph 9.

- 30 (2) Any area which, immediately before the day on which this section comes into operation, is designated by an order under Article 20 of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985 as a marine nature reserve is to be treated, on and after that day, as if it were a marine conservation zone designated by an order under section 13.

- 35 (3) The designation having effect by virtue of subsection (2) includes (in accordance with section 15(5)(b)) the area of land designated by the order under Article 20, together with all of the water covering that land.

- 40 (4) Any byelaws which, immediately before the day on which this section comes into operation, are in operation under Article 21 of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985 for the protection of any area designated as a marine nature reserve have effect, on and after that date, as if they were byelaws made under section 26.

(5) In regulation 31 of the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (byelaws for protection of European marine site) for paragraphs (1) and (2) substitute—

“(1) The Department may make byelaws for the protection of a European marine site under section 26 of the Marine Act (Northern Ireland) 2013 (byelaws for protection of marine conservation zones). 5

(2) The provisions of Part 3 of that Act relating to byelaws under section 26 apply, with the following modifications, in relation to byelaws made by virtue of paragraph (1) of this regulation—

(a) any reference to an MCZ is to be read as a reference to a European marine site; 10

(b) in section 26(1) the reference to furthering the conservation objectives of an MCZ is to be read as a reference to protecting a European marine site;

(c) the reference in section 26(3)(c) to hindering the conservation objectives stated for an MCZ is to be read as a reference to damaging a European marine site.” 15

(6) Regulation 66 of those Regulations shall cease to have effect in relation to byelaws under Article 21 of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985. 20

### Interpretation of this Part

**41.** In this Part—

“animal” includes any egg, larva, pupa, or other immature stage of an animal;

“emergency byelaws” has the meaning given by section 28;

“interim byelaws” means byelaws made under section 29; 25

“marine installation” means any artificial island, installation or structure;

“MCZ” means a marine conservation zone designated by an order under section 13;

“protected feature”, in relation to an MCZ or proposed MCZ, means any flora, fauna, habitat or feature which is sought to be conserved by the making of the order designating the zone; 30

“seashore” means—

(a) the foreshore, that is to say, land which is covered and uncovered by the ordinary movement of the tide, and

(b) any land, whether or not covered intermittently by water, which is in apparent continuity (determined by reference to the physical characteristics of that land) with the foreshore, as far landward as any natural or artificial break in that continuity; 35

“vehicles” includes—

(a) bicycles and other non-motorised forms of transport, and 40

(b) hovercraft;

“vessels” includes—

(a) hovercraft,

- (b) aircraft capable of landing on water, and
- (c) any other craft capable of travelling on, in or under water, whether or not capable of carrying any person.

PART 4

5 MARINE LICENSING: GENERATING STATIONS

**Special procedure for applications relating to generating stations**

42. In Chapter 2 of Part 4 of the 2009 Act (marine licensing: exemptions and special cases) after section 79 insert—

10 **“Special procedure for applications relating to certain electricity works (Northern Ireland)**

79A.—(1) This section has effect in cases where a person who proposes to carry on an activity must first make both—

- 15 (a) an application to the Department of the Environment in Northern Ireland (“the Department”) for a marine licence to carry on that activity (the “marine licence application”), and
- (b) a related application for a generating station consent (the “generating station application”).

(2) A “related application for a generating station consent” is an application to DETI for a consent under Article 39 of the Electricity Order (consent for construction, etc. of generating stations) in relation to—

- 20 (a) the activity for which the marine licence is required, or
- (b) other works to be undertaken in connection with that activity.

(3) In any case where—

- 25 (a) both the marine licence application and the generating station application have been made,
- (b) DETI decides (with the agreement of the Department) that the two applications are to be considered together, and
- (c) DETI has given notice of that decision to the applicant,

the two applications are to be considered together.

30 (4) Subsection (5) applies in any case where—

- (a) one of the applications has been received but not the other,
- (b) DETI decides (with the agreement of the Department) that the two applications are to be considered together, and
- (c) DETI has given notice of that decision to the applicant.

35 (5) In any such case—

- (a) the application that has been received is not to be considered until the other application has also been received,
- (b) the two applications are to be considered together, and
- 40 (c) the condition in subsection (3)(b) is to be regarded as satisfied by virtue of subsection (4)(b),

PART 4

but this is subject to any provision that may be made by virtue of subsection (6)(c) or (d).

- (6) The Department may by order do any of the following—
- (a) make provision falling within subsection (7) for cases where subsection (3) applies; 5
  - (b) make provision falling within subsection (7) for cases where subsection (5) applies;
  - (c) make provision falling within subsection (7) or (8) for cases where DETI (with the agreement of the Department) comes to the conclusion that the marine licence application is not going to be made; 10
  - (d) make provision falling within subsection (7) or (8) for cases where DETI comes to the conclusion that the generating station application is not going to be made.
- (7) The provision that may be made by virtue of this subsection is— 15
- (a) provision that such procedural provisions of this Part as are specified in the order are not to apply to the marine licence application;
  - (b) provision that such procedural provisions of the Electricity Order as are so specified are to apply to that application instead; 20
  - (c) provision modifying the provisions of the Electricity Order in their application by virtue of paragraph (b).
- (8) The provision that may be made by virtue of this subsection is provision modifying—
- (a) such procedural provisions of this Part as are specified in the order, or 25
  - (b) such procedural provisions of the Electricity Order as are specified in the order.
- (9) In this section—
- “DETI” means the Department of Enterprise, Trade and Investment in Northern Ireland; 30
  - “the Electricity Order” means the Electricity (Northern Ireland) Order 1992;
  - “procedural provisions” means any provisions for or in connection with the procedure for determining an application.”. 35

PART 5

SUPPLEMENTARY

**Regulations and orders**

- 43.**—(1) Regulations under this Act are subject to negative resolution.
- (2) Except as provided by subsections (3) to (5), orders made by the Department under this Act are subject to negative resolution. 40

(3) An order to which this subsection applies shall not be made unless a draft of the order has been laid before, and approved by resolution of, the Assembly.

(4) Subsection (3) applies to—

- (a) an order under section 34(5);
- 5 (b) an order under section 35;
- (c) an order under section 46(1) which amends or repeals an Act of Parliament or any Northern Ireland legislation.

(5) Subsection (2) does not apply to an order under section 13 (orders made for the purpose of designating MCZs).

10 (6) Orders made under section 13 are not statutory rules for the purposes of the Statutory Rules (Northern Ireland) Order 1979.

(7) Regulations and orders made by the Department under this Act may contain such incidental, consequential, supplementary, transitional and savings provisions as appear to the Department to be necessary or expedient.

15 **Offences: companies, etc.**

**44.**—(1) For the purposes of an offence under this Act, section 20(2) of the Interpretation Act (Northern Ireland) 1954—

- (a) applies with the omission of the words “the liability of whose members is limited”, and
- 20 (b) in a case where the affairs of a body corporate are managed by its members, applies in relation to the acts or defaults of a member in connection with the member’s functions of management as if the member were a director of the body corporate.

(2) If an offence under this Act is committed by a partnership (whether or not a limited partnership) and is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of—

- (a) a partner, or
  - (b) a person purporting to act as a partner,
- that person (as well as the partnership) commits the offence.

30 **Disapplication of requirement for consent to certain prosecutions**

**45.** Section 3 of the Territorial Waters Jurisdiction Act 1878 (consents to prosecutions of certain offences committed on the open sea) does not apply to any proceedings for an offence under this Act.

**Supplementary, incidental, consequential, transitional provision etc.**

35 **46.**—(1) The Department may by order make—

- (a) such supplementary, incidental or consequential provision,
- (b) such transitory, transitional or saving provision,

as it considers appropriate for the general purposes, or any particular purpose, of this Act, or in consequence of, or for giving full effect to, any provision made by this Act.

40



(2) An order under subsection (1) may amend, repeal, revoke or otherwise modify any statutory provision (including this Act).

(3) Nothing in this Act affects the generality of the power conferred by this section.

**Crown application**

5

**47.**—(1) This Act binds the Crown to the full extent authorised or permitted by the constitutional laws of Northern Ireland and applies in relation to any Crown land as it applies in relation to any other land.

(2) No contravention by the Crown of any provision of this Act is to make the Crown criminally liable; but the High Court may, on the application of the Department, declare unlawful any act of the Crown which constitutes such a contravention. 10

(3) Despite subsection (2), the provisions of this Act apply to persons in the public service of the Crown as they apply to other persons.

(4) For the purposes of this section “Crown land” means land an interest in which— 15

(a) belongs to Her Majesty in right of the Crown,

(b) belongs to a Northern Ireland department or a department of the government of the United Kingdom or is held in trust for Her Majesty for the purposes of any such department. 20

**Interpretation**

**48.** In this Act—

“the 2009 Act” means the Marine and Coastal Access Act 2009;

“act” includes omission;

“the Department” means the Department of the Environment; 25

“notice” means notice in writing;

“public authority” means any of the following—

(a) a Minister of the Crown or a department of the government of the United Kingdom;

(b) a Northern Ireland department; 30

(c) a statutory undertaker within the meaning given by section 250(1) of the Planning Act (Northern Ireland) 2011;

(d) a district council;

(e) any other body established under a statutory provision;

(f) the holder of any office under the Crown or any office established under a statutory provision; 35

“statutory provision” has the meaning given by section 1(f) of the Interpretation Act (Northern Ireland) 1954.

**Commencement**

**49.** This Act comes into operation on the day after the day on which this Act receives Royal Assent. 40

**Short title**

**50.** This Act may be cited as the Marine Act (Northern Ireland) 2013.

SCHEDULES

Section 4.

SCHEDULE 1

MARINE PLANS: PREPARATION AND ADOPTION

*Department to notify relevant authorities of decision to prepare plan*

1.—(1) Where the Department decides to prepare a marine plan for a marine plan area it must, before beginning to prepare the plan, give notice of its intention to do so to each of the relevant authorities. 5

(2) The “relevant authorities” are—

(a) the Secretary of State;

(b) the Scottish Ministers; 10

(c) any district council whose district adjoins or is adjacent to the marine plan area;

(d) the department of the Government of Ireland with responsibility for marine planning in any area adjoining or adjacent to the marine plan area.

*Secretary of State to be kept informed of Department’s intentions as to certain matters* 15

2.—(1) This paragraph applies in any case where the Department gives notice to the Secretary of State under paragraph 1(2)(a).

(2) The notice must state whether the Department proposes to include in the plan provision relating to retained functions. 20

(3) The notice must state whether the Department proposes so to prepare the marine plan that it will not be in conformity with any marine policy statement which governs marine planning for the marine plan area.

(4) The Department must keep the Secretary of State informed (by giving further notices) of any changes that may from time to time occur in its intentions with respect to any of the matters mentioned in sub-paragraph (2) or (3). 25

*Marine plans to be compatible with certain other marine plans and development plans*

3.—(1) In preparing or amending a marine plan for a marine plan area the Department must take all reasonable steps to secure that the plan is compatible with— 30

(a) the marine plan for any marine plan area (whether or not within the Northern Ireland inshore region) which is related to that area;

(b) the development plan under Article 4 of the Planning (Northern Ireland) Order 1991 for any area which is related to the marine plan area. 35

(2) For the purposes of this paragraph, one area is “related to” another if one or more of the following conditions is met—

- (a) the one area adjoins or is adjacent to the other;
- (b) the one area lies wholly or partly within the other;
- (c) the whole or any part of the one area affects or is affected by the whole or any part of the other.

5 (3) In sub-paragraph (1)(a) “marine plan” and “marine plan area” include a marine plan and a marine plan area within the meaning given by section 51 of the 2009 Act.

*Consultation with other relevant Northern Ireland departments*

10 4. The Department must consult the other relevant Northern Ireland departments—

- (a) during the preparation of the consultation draft under paragraph 11, and
- (b) during the settling of the text of the plan for adoption and publication under paragraph 15.

*Statement of public participation*

15 5.—(1) Before preparing a marine plan for any marine plan area, the Department must prepare and publish a statement of public participation (an “SPP”).

(2) An SPP is a statement of the policies settled by the Department for or in connection with the involvement of interested persons in the preparation of the proposed marine plan.

(3) An SPP must identify (by means of a map or otherwise) the area for which the marine plan is being prepared.

(4) If the Department proposes to include provision relating to retained functions, the SPP—

- 25 (a) must state that that is the case, and
- (b) may be published only with the agreement of the Secretary of State.

(5) An SPP must invite the making of representations in accordance with the SPP as to matters to be included in the proposed marine plan.

30 (6) The Department must publish the SPP in a way calculated to bring it to the attention of interested persons.

(7) The Department must take all reasonable steps to comply with the SPP.

(8) In this paragraph “interested persons” means—

- 35 (a) any persons appearing to the Department to be likely to be interested in, or affected by, policies proposed to be included in the marine plan, and
- (b) members of the general public.

*Further provision about the content of an SPP*

6.—(1) An SPP must include a proposed timetable.

(2) The proposed timetable must include such provision as the Department considers reasonable for each of the following—

- (a) the preparation and publication of the consultation draft under paragraph 11 (including the carrying out of the sustainability appraisal under paragraph 10);
  - (b) the making of representations about the consultation draft;
  - (c) the consideration of representations under paragraph 12 and the settling of the text of the marine plan for adoption and publication under paragraph 15; 5
  - (d) the adoption and publication of the marine plan under that paragraph.
- (3) An SPP may include provision for or in connection with the holding of public meetings about the consultation draft. 10
- (4) An SPP must include provision about the making of—
- (a) representations, in response to the invitation issued under paragraph 5(5), about the matters to be included in the proposed marine plan, and
  - (b) representations under paragraph 12 about the consultation draft.
- (5) The provision to be made under sub-paragraph (4) includes provision about— 15
- (a) the manner in which representations may be made, and
  - (b) the time within which representations must be made.

*Review and revision of the SPP*

- 7.—(1) The Department must keep the SPP under review. 20
- (2) If at any time the Department considers it necessary or expedient to revise the SPP, it must do so.
- (3) The Department must revise the SPP if—
- (a) it proposes to include in the marine plan provision relating to retained functions, and 25
  - (b) the SPP does not already include a statement that that is the case.
- (4) Where the Department revises the SPP, it must publish the SPP as revised.
- (5) In any case where the SPP is required to be revised by virtue of sub-paragraph (3), the revised SPP may be published only with the agreement of the Secretary of State. 30
- (6) Any reference in this Schedule to an SPP includes a reference to an SPP as revised.

*Advice and assistance*

- 8.—(1) In connection with the preparation of a marine plan, or of any proposals for a marine plan, the Department may seek advice or assistance from any body or person in relation to any matter in which that body or person has particular expertise. 35
- (2) The steps that the Department may take for the purpose of facilitating the involvement of interested persons in—
- (a) the development of proposals for inclusion in a proposed marine plan, or 40
  - (b) consultation in connection with such proposals,

include the convening of groups of persons for such purposes, and in such manner, as the Department considers appropriate.

(3) In this paragraph “interested persons” has the same meaning as in paragraph 5.

5 *Matters to which the Department is to have regard in preparing a marine plan*

9.—(1) The matters to which the Department is to have regard in preparing a marine plan include each of the matters in sub-paragraph (2).

(2) Those matters are—

- 10 (a) the requirement under section 4(5)(a) for a marine plan to be in conformity with any marine policy statement which governs marine planning for the marine plan area, unless relevant considerations indicate otherwise,
- 15 (b) the duties imposed by paragraph 3(1) with respect to securing compatibility with marine plans or development plans for areas which are related to the marine plan area,
- (c) the effect which any proposal for inclusion in the plan is likely to have on any area which is related to the marine plan area,
- (d) the results of the review required by section 7,
- (e) the SPP,
- 20 (f) any representations made in response to the invitation issued under paragraph 5(5),
- (g) any advice received under paragraph 8(1),
- 25 (h) any plan (not falling within paragraph 3(1)) prepared by a public authority in connection with the management or use of the sea or the coast, or of marine or coastal resources, in the marine plan area or in any adjoining or adjacent area in Northern Ireland or the UK marine area (within the meaning given by section 42 of the 2009 Act),
- (i) the powers and duties of the Crown Estate Commissioners under the Crown Estate Act 1961,

30 and such other matters as the Department considers relevant.

(3) For the purposes of this paragraph, one area is related to another if one or more of the following conditions is met—

- (a) the one area adjoins or is adjacent to the other;
- (b) the one area lies wholly or partly within the other;
- 35 (c) the whole or any part of the one area affects or is affected by the whole or any part of the other.

*Sustainability appraisal*

10.—(1) The Department must carry out an appraisal of the sustainability of its proposals for inclusion in any marine plan.

40 (2) The Department may proceed with those proposals only if it considers that the results of the appraisal indicate that it is appropriate to do so.

(3) The Department must publish a report of the results of the appraisal.

(4) The report is to be published when the Department publishes the consultation draft under paragraph 11.

*Preparation and publication of a consultation draft*

11.—(1) The Department must publish a draft containing its proposals for inclusion in a marine plan (the “consultation draft”). 5

(2) If the draft includes provision relating to retained functions, it may be published only with the agreement of the Secretary of State.

(3) The Department must publish the consultation draft in such manner as it considers appropriate.

(4) The Department must also take such steps as it considers appropriate to secure that the proposals contained in the consultation draft are brought to the attention of interested persons. 10

(5) In this paragraph “interested persons” has the same meaning as in paragraph 5.

*Representations about the consultation draft* 15

12.—(1) Any person may make representations about the consultation draft.

(2) Any such representations are to be made in accordance with the SPP.

(3) If any representations are made about the consultation draft, the Department must consider them in the course of settling the text of the marine plan for adoption and publication under paragraph 15. 20

*Independent investigation*

13.—(1) Where it has published a consultation draft in accordance with paragraph 11, the Department must consider appointing an independent person to investigate the proposals contained in that draft and to report on them.

(2) In deciding whether to appoint such a person, the Department must have regard to— 25

(a) any representations received about the matters to be included in the proposed marine plan, in response to the invitation issued pursuant to paragraph 5(5),

(b) any representations received about the proposals published in the consultation draft, 30

(c) the extent to which matters raised by representations falling within paragraph (b) have not been resolved,

and such other matters as the Department considers relevant.

(3) Any person so appointed must— 35

(a) report on the proposal within the period of 6 months from the date of that person’s appointment, or such longer period as the Department may approve,

(b) make recommendations, and

(c) give reasons for the recommendations. 40

(4) The Department must publish the recommendations and the reasons given for them.

*Matters to which Department is to have regard in settling text for adoption*

5 14. In settling the text of a marine plan for adoption and publication under paragraph 15 the Department must have regard to—

- (a) any recommendations made by any person appointed under paragraph 13,
  - (b) the reasons given by any such person for any such recommendations,
- and any other matters that the Department considers relevant.

*Adoption and publication of a marine plan*

10 15.—(1) A marine plan is “adopted” by the Department when the Department has decided to publish the plan (and “adopt” and related expressions are to be read accordingly).

(2) A marine plan which includes provisions relating to retained functions may be so adopted only with the agreement of the Secretary of State.

15 (3) The marine plan which the Department decides to publish may be—

- (a) the same as the proposals published in the consultation draft, or
- (b) those proposals with such modifications as the Department thinks fit.

(4) The Department must publish the marine plan as soon as reasonably practicable after its adoption, together with statements of each of the following—

- 20 (a) any modifications that have been made to the proposals published in the consultation draft,
- (b) the reasons for those modifications,
- 25 (c) if any recommendations made by any independent person appointed under paragraph 13 have not been implemented in the marine plan, the reasons why those recommendations have not been implemented.

*Action taken by the Department before commencement*

16.—(1) This paragraph applies to any action taken by the Department before commencement which, after commencement, could have been taken in accordance with a provision of paragraphs 1 to 10.

30 (2) For the purposes of this Act, it is immaterial that the action was taken before rather than after commencement; and any reference in this Schedule to an action taken under or for the purposes of any provision of paragraphs 1 to 10 is to be read accordingly.

35 (3) In this paragraph “commencement” means the coming into operation of this Act.



SCHEDULE 2

FURTHER PROVISION ABOUT FIXED MONETARY PENALTIES UNDER SECTION 35

*Fixed monetary penalties: other sanctions*

- 1.—(1) An order under section 35 must secure that, in a case where a notice of intent referred to in section 36(2)(a) is served on a person— 5
  - (a) no criminal proceedings for the offence to which the notice relates may be instituted against the person in respect of the act to which the notice relates before the end of the period in which the person may discharge liability to the fixed monetary penalty pursuant to section 36(2)(b), and 10
  - (b) if the person so discharges liability, the person may not at any time be convicted of the offence to which the notice relates in relation to that act.
- (2) An order under section 35 must also secure that, in a case where a fixed monetary penalty is imposed on a person, that person may not at any time be convicted of the offence in relation to which the penalty is imposed in respect of the act giving rise to the penalty. 15

*Monetary penalties*

- 2.—(1) An order under section 35 may include provision—
  - (a) for early payment discounts;
  - (b) for the payment of interest or other financial penalties for late payment of the fixed monetary penalty, such interest or other financial penalties not in total to exceed the amount of that penalty; 20
  - (c) for enforcement of the penalty.
- (2) Provision under sub-paragraph (1)(c) may include—
  - (a) provision for the Department to recover the fixed monetary penalty, and any interest or other financial penalty for late payment, as a civil debt; 25
  - (b) provision for the fixed monetary penalty, and any interest or other financial penalty for late payment, to be recoverable, on the order of a court, as if payable under a court order.

*Appeals* 30

- 3.—(1) An order under section 35 may not provide for the making of an appeal other than to a tribunal created under a statutory provision.
- (2) In sub-paragraph (1) “tribunal” does not include an ordinary court of law.
- (3) An order under section 35 which makes provision for an appeal in relation to the imposition of any requirement or service of any notice may include— 35
  - (a) provision suspending the requirement or notice pending determination of the appeal;
  - (b) provision as to the powers of the tribunal to which the appeal is made;
  - (c) provision as to how any sum payable in pursuance of a decision of that tribunal is to be recoverable. 40

(4) The provision referred to in sub-paragraph (3)(b) includes provision conferring on the tribunal to which the appeal is made power—

- (a) to withdraw the requirement or notice;
- (b) to confirm the requirement or notice;
- 5 (c) to take such steps as the Department could take in relation to the act giving rise to the requirement or notice;
- (d) to remit the decision whether to confirm the requirement or notice, or any matter relating to that decision, to the Department;
- (e) to award costs.

10 *Consultation*

4.—(1) Before making an order under section 35, the Department must consult the following—

- (a) such organisations as appear to the Department to be representative of persons substantially affected by the proposals, and
- 15 (b) such other persons as the Department considers appropriate.

(2) If, as a result of any consultation required by sub-paragraph (1), it appears to the Department that it is appropriate substantially to change the whole or any part of the proposals, the Department must undertake such further consultation with respect to the changes as it considers appropriate.

20 (3) If, before the day on which this Schedule comes into operation, any consultation was undertaken which, had it been undertaken after that day, would to any extent have satisfied the requirements of this paragraph, those requirements may to that extent be taken to have been satisfied.

*Guidance as to use of fixed monetary penalties*

25 5.—(1) An order under section 35 must secure the results in sub-paragraph (2).

(2) Those results are that—

- (a) the Department must publish guidance about its use of the fixed monetary penalty,
- (b) the guidance must contain the relevant information,
- 30 (c) the Department must revise the guidance where appropriate,
- (d) the Department must consult such persons as the order may specify before publishing any guidance or revised guidance, and
- (e) the Department must have regard to the guidance or revised guidance in exercising its functions.

35 (3) The relevant information referred to in sub-paragraph (2)(b) is information as to—

- (a) the circumstances in which the fixed monetary penalty is likely to be imposed,
- (b) the circumstances in which it may not be imposed,
- 40 (c) the amount of the penalty,
- (d) how liability for the penalty may be discharged and the effect of discharge, and

- (e) rights to make representations and objections and rights of appeal.

*Guidance as to enforcement of offences*

- 6.—(1) Where an order under section 35 confers powers to impose a fixed monetary penalty in relation to an offence, the Department must prepare and publish guidance about how the offence is enforced. 5
- (2) The guidance must include guidance as to—
  - (a) the sanctions (including criminal sanctions) to which a person who commits the offence may be liable,
  - (b) the action which the Department may take to enforce the offence, whether by virtue of section 35 or otherwise, and 10
  - (c) the circumstances in which the Department is likely to take any such action.
- (3) The Department may from time to time revise guidance published by it under this paragraph and publish the revised guidance.
- (4) The Department must consult such persons as it considers appropriate before publishing any guidance or revised guidance under this paragraph. 15

*Publication of enforcement action*

- 7.—(1) An order under section 35 must secure the result in sub-paragraph (2) unless the Department considers that it would be inappropriate to do so.
- (2) That result is that the Department must from time to time publish reports specifying— 20
  - (a) the cases in which a fixed monetary penalty has been imposed, and
  - (b) the cases in which liability to the penalty has been discharged pursuant to section 36(2)(b).
- (3) In sub-paragraph (2)(a), the reference to cases in which a fixed monetary penalty has been imposed does not include cases where a penalty has been imposed but overturned on appeal. 25

*Disclosure of information*

- 8.—(1) Information held by or on behalf of a person mentioned in sub-paragraph (2) may be disclosed to the Department where— 30
  - (a) the person has an enforcement function in relation to an offence, and
  - (b) the information is disclosed for the purpose of the exercise by the Department of any powers conferred on it under section 35 in relation to that offence.
- (2) The persons are— 35
  - (a) the Public Prosecution Service for Northern Ireland, or
  - (b) a member of the Police Service of Northern Ireland.
- (3) It is immaterial for the purposes of sub-paragraph (1) whether the information was obtained before or after the coming into operation of this paragraph. 40

(4) A disclosure under this paragraph is not to be taken to breach any restriction on the disclosure of information (however imposed).

(5) Nothing in this paragraph authorises the making of a disclosure in contravention of—

- 5       (a) the Data Protection Act 1998, or  
         (b) Part 1 of the Regulation of Investigatory Powers Act 2000.

(6) This paragraph does not affect a power to disclose which exists apart from this paragraph.

# Marine Bill

[AS AMENDED AT CONSIDERATION STAGE]

A Bill to provide for marine plans in relation to the Northern Ireland inshore region; to provide for marine conservation zones in that region; to make further provision in relation to marine licensing for certain electricity works in that region; and for connected purposes.

Introduced by: Mr Alex Attwood, Minister of the Environment

On: 21 February 2012

As Amended at  
Consideration Stage: 30 April 2013

Bill Type: Executive

## ACCOMPANYING DOCUMENTS

**An Explanatory and Financial Memorandum is printed separately as  
NIA Bill 5/11-15 REVISED.**

## **MARINE BILL**

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### **EXPLANATORY AND FINANCIAL MEMORANDUM**

#### **INTRODUCTION**

1. This Explanatory and Financial Memorandum has been prepared by the Department of the Environment in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.
2. The Memorandum needs to be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause or Schedule does not seem to require an explanation or comment, none is given.

#### **BACKGROUND AND POLICY OBJECTIVES**

3. It is accepted that the United Kingdom's marine environment is not a limitless resource, and that the potential for competition and conflict between the various activities which take place there is increasing. Those activities, both separately and cumulatively, may also have environmental impacts in the long term which would require mitigation.
4. In addition, the current framework of domestic and international legislation used to manage the United Kingdom's seas is complex.
5. In recognition of this situation, the United Kingdom Government and devolved administrations committed jointly to the introduction of new marine legislation based on sustainable development principles.
6. This commitment was first formalised by the Northern Ireland Executive in March 2008 when it agreed to new marine legislation being introduced in Northern Ireland. The aim was to establish a new framework for the marine environment based on a strategic system of marine planning that would balance environmental, social and economic needs.

7. However, due to the nature of the devolution settlement for Northern Ireland, and the complex mix of devolved and non-devolved functions, that framework could only be achieved in Northern Ireland through three interlocking pieces of legislation:
  - the Marine and Coastal Access Act 2009 (c.23), which received Royal Assent on 12 November 2009;
  - United Kingdom-wide Marine Strategy Regulations 2010 (No.1627), which came into operation on 15 July 2010, and which transpose the Marine Strategy Framework Directive (2008/56/EC); and
  - the Marine Bill for Northern Ireland.
8. The Bill will build on the provisions set out in the Marine and Coastal Access Act 2009. It will establish a strategic system of marine planning in Northern Ireland's inshore region (out to 12 nautical miles) that will be proactive, co-ordinated and responsive; assist in the delivery of a modernised licensing and enforcement regime that is streamlined, consistent and promotes integrated decision making; and contribute to the delivery of the United Kingdom's aim of establishing an "ecologically coherent network of Marine Protected Areas", so that marine biodiversity is protected and international and European commitments are met.
9. It will contribute ultimately to the United Kingdom's vision of clean, healthy, safe, productive and biologically diverse oceans and seas.

## **CONSULTATION**

10. The policies reflected in the Bill have been informed by a series of consultation exercises undertaken over a number of years, including the 2004 Marine Spatial Planning Project in the Irish Sea.
11. There was also a United Kingdom-wide consultation on proposals for a United Kingdom Marine Bill in March 2006, the responses from which provided a significant evidence base that contributed to further assessment of the proposals and led to the publication of a United Kingdom Marine Bill White Paper in 2007. This was followed by consultation on a draft United Kingdom Marine Bill in 2008, and ultimately introduction of the Marine and Coastal Access Act 2009.
12. The Department has been closely associated with each of these consultations and a number of associated stakeholder events, all of which helped inform its consultation on the policy proposals for the Bill.
13. The Department consulted on those policy proposals between 10 April and 9 July 2010, receiving 41 responses (including 5 no comments) from a variety of interests. All of those who provided responses were supportive of the policy proposals and no substantive changes were sought.

14. Responses emphasised the importance of widespread stakeholder engagement; called for flexible, simple and clear processes; and sought assurances that the optimum environmental, social and economic benefits would be achieved.
15. The Assembly's Environment Committee was provided with a synopsis of responses, and on 2 December 2010 indicated that it was content for the Department to proceed with the policy. Executive approval to draft the Bill on the basis of this policy was obtained on 16 December 2010.
16. The consultation paper and synopsis of responses can be accessed at: [www.doeni.gov.uk/index/protect\\_the\\_environment/water.htm](http://www.doeni.gov.uk/index/protect_the_environment/water.htm).

### **OPTIONS CONSIDERED**

17. The Department assessed the implications of not introducing a Bill for Northern Ireland against the implications of introducing one. It determined that not to introduce a Bill would risk the future health and sustainability of Northern Ireland's marine environment, and could additionally place Northern Ireland's marine businesses at a competitive disadvantage.

### **OVERVIEW**

18. The Bill consists of 50 clauses, 6 Parts and 2 Schedules.

Part 1: Sustainable Development

Part 2: The Northern Ireland Inshore Region.

Part 3: Marine Planning.

Part 4: Marine Protection.

Part 5: Marine Licensing: Generating Stations.

Part 6: Supplementary.

Schedule 1: Marine plans: preparation and adoption.

Schedule 2: Further provision about fixed monetary penalties under clause 35.



## **COMMENTARY ON CLAUSES**

19. A commentary on the provisions follows below. Comments are not given where the wording is self-explanatory.

### **Part 1: SUSTAINABLE DEVELOPMENT**

#### Clause 1: Sustainable Development

Clause 1 reiterates the sustainable duty contained in the Northern Ireland (Miscellaneous Provisions) Act 2006. This places a duty on all public authorities in respect of sustainable development. Section 25 of that Act states that a public authority must, in exercising its functions, act in the way it considers best calculated to contribute to the achievement of sustainable development in Northern Ireland, except to the extent that it considers that any such action is not reasonably practicable in all the circumstances of the case.

### **Part 2: THE NORTHERN IRELAND INSHORE REGION**

#### Clause 2: The Northern Ireland inshore region

This clause defines the geographical area referred to elsewhere in this Bill for the purposes of managing Northern Ireland's maritime space. It includes the sea and seabed within the territorial sea (out to 12 nautical miles) adjacent to Northern Ireland and describes the landward limit of the marine area. This includes areas that would be open to the tide, apart from the fact that they are generally isolated from it by an artificial barrier such as a closed weir, but where seawater may flow or be caused to flow.

#### Clause 3: Arrangements to promote co-ordination of functions in the Northern Ireland Inshore region

This clause provides for the Department to enter into arrangements with other public authorities in order to promote the effective co-ordination of their respective functions in the Northern Ireland inshore region. The Department will keep any such arrangements under review and must provide the Assembly with a report on their effectiveness within three years of the Act gaining Royal Assent.

### **Part 3: MARINE PLANNING**

#### Clause 4: Marine plans for Northern Ireland inshore region

This clause provides for the creation of marine plans, and sets out certain basic requirements as to their content and the way in which they are to be prepared.

*Subsection (1)* allows the Department to prepare marine plans for “marine plan areas” within the Northern Ireland inshore region.

*Subsection (2)* places a duty on the Department to seek to ensure that marine plans are prepared for all parts of the Northern Ireland inshore region where the Marine Policy Statement (MPS) (prepared in accordance with the Marine and Coastal Access Act 2009) “governs marine planning” (see *subsection (10)*).

*Subsection (3)* defines a marine plan and requires that a marine plan must:

- be prepared and adopted by the Department;
- be prepared in accordance with the process set out in Schedule 1; and
- state the policies of the “relevant Northern Ireland departments” (see *subsection (11)*).

*Subsection (5)* specifies that a marine plan must be in conformity with any MPS which “governs marine planning” in the Northern Ireland inshore region, unless relevant considerations indicate otherwise. Marine plans are intended to set out how the policies and objectives stated in the MPS apply at the local level, based on information about specific activities and processes taking place in that area. This ensures that there is a close link between the general policy in the MPS and how it is applied in specific situations in marine plans.

*Subsection (10)* explains that a MPS “governs marine planning” where the MPS has been adopted and published by the Department (under Schedule 5 to the Marine and Coastal Access Act 2009), has not been replaced or withdrawn and the Department has not withdrawn from it.

#### Clause 6: Withdrawal of marine plans

This clause enables the Department (after consultation with the relevant Northern Ireland departments) to withdraw a marine plan. When a marine plan is withdrawn the Department must bring the withdrawal to the attention of anyone likely to be interested in or affected by it, as well as members of the general public and must publish a notice on the Departmental website and in the Belfast Gazette.

This clause also allows the Secretary of State to withdraw his agreement to a plan (if his agreement was required to the plan’s adoption). If the Secretary of State

decides to withdraw agreement to the plan, he must give notice to the Department, which then has 7 days to withdraw the plan (by publishing a notice in the Belfast Gazette).

#### Clause 7: Duty to keep relevant matters under review

This clause requires the Department to keep under review matters which may affect its functions of identifying marine plan areas and preparing etc. marine plans. This is to ensure that the Department stays up to date with what is happening in the Northern Ireland inshore region, in order to make effective planning decisions.

*Subsection (2)* sets out a non-exhaustive list of the matters which the Department must keep under review.

*Subsection (3)* requires the Department, on a review, to consider how the matters described in subsection (2) might be expected to change, and the effect that any such changes might have on the Northern Ireland inshore region and its sustainable development.

#### Clause 8: Decisions affected by a marine plan

This clause makes provision about the effect which “any appropriate marine plans” are to have on the taking of certain decisions by “a public authority”.

*Subsection (1)* provides that all authorisation and enforcement decisions must be taken in accordance with any appropriate marine plans, unless relevant considerations indicate otherwise. *Subsection (2)* requires that “a public authority” give its reasons if making decisions which do not follow the marine plan.

*Subsection (3)* requires “a public authority” to have regard to any appropriate marine plan when taking any decision which relates to a function capable of affecting the Northern Ireland inshore region that is not an authorisation or enforcement decision.

*Subsection (4)* defines “authorisation or enforcement decisions”. These decisions relate to the licensing (or other authorisation) of particular activities which affect, or might affect, the Northern Ireland inshore region; the conditions attached to those authorisations; and the enforcement action to be taken with a view to securing that any such activities are carried out only under licence, and in accordance with any conditions attached to the licence, and not in breach of any prohibition or restriction.

*Subsections (6) and (7)* describe when a marine plan will be an appropriate marine plan and, therefore, affect decisions. The effect of subsection (6) is that any marine plan for an area is an appropriate marine plan for the purposes of decisions

relating to that area, subject to subsection (7). The effect of subsection (7) is that a marine plan for an area in the Northern Ireland inshore region is not an “appropriate marine plan” for the purposes of decisions relating to the exercise of “retained functions” (defined in section 60 of the Marine and Coastal Access Act 2009) unless the marine plan states that:

- it includes provisions for retained functions;
- it was adopted with the agreement of the Secretary of State; and
- it was prepared and adopted whilst an MPS governed marine planning for the Northern Ireland inshore region.

#### Clause 9: Monitoring of, and periodical reporting on, marine plans

Clause 9 sets out the duties imposed on the Department in relation to the monitoring of and reporting on marine plans. *Subsection (1)* sets out the duty on the Department to keep the effects, effectiveness and progress of marine plans under review. Such reports must also cover any progress made in the Northern Ireland inshore region towards achieving the objectives set in a MPS.

*Subsections (2), (3) and (4)* require that the Department reports on a review at least every three years after each marine plan is adopted, and must decide after each report whether or not the plan needs to be amended or replaced. These reports must be laid before the Assembly.

*Subsections (6), (7) and (8)* impose a second reporting duty, requiring the Department to report at least every six years until 2030 on the marine plans it has prepared, and its intentions as to the amendment of existing plans or preparation of additional plans. Again, these reports must be laid before the Assembly.

#### Clause 10: Validity of marine plans

This clause sets out how and when people may challenge a marine plan or an amendment to a marine plan. The grounds for challenge are that the plan or amendment to the plan is not within the “appropriate powers” (*subsection 4*), or that a “procedural requirement” (*subsection 4*) has not been complied with. A challenge must be brought within 12 weeks of publication.

#### Clause 11: Powers of the High Court on an application under clause 10

This clause sets out the powers of the High Court when hearing a challenge to the validity of a marine plan (and amendments).

*Subsection (2)* enables the High Court to make an interim order suspending the operation of all or part of the marine plan or amendment generally or in relation to a particular area until the legal proceedings are over.

*Subsection (3)* sets out the conditions which must be satisfied before the High Court may grant any of the remedies set out in *subsection (4)*. The High Court must be satisfied either that the marine plan or amendment is outside or beyond the “appropriate powers” or that the applicant has been substantially prejudiced by a failure to meet a “procedural requirement”.

If the High Court is satisfied that one of the conditions in *subsection (3)* has been met, *subsection (4)* enables it to quash the marine plan or amendment or remit it to the Department.

Where the High Court remits the plan or amendment to the Department *subsections (5)* and *(6)* then enable the High Court to give directions relating to whether the marine plan or amendment should be treated as not having been adopted or published, relating to whether procedural or other steps should be treated as having been taken or as not having been taken, or requiring action by the Department. This means that whatever was wrong with the document can be put right, without necessarily having to start the whole preparation process from the beginning.

*Subsection (7)* provides that the High Court is able to quash or remit the whole or only parts of a marine plan or amendment.

#### **Part 4: MARINE PROTECTION**

##### Clause 13: Designation of marine conservation zones

This clause provides a power for the Department to designate areas as marine conservation zones (MCZs) by means of an administrative order.

*Subsections (2) and (3)* identify those areas within which an MCZ may be designated. The ‘Northern Ireland inshore region’ is defined in clause 2.

*Subsection (5)* states that the Department may not designate an MCZ without agreement from the Secretary of State.

##### Clause 14: Grounds for designation of MCZ

This clause sets out the circumstances in which the Department may designate an MCZ. This must be for the purpose of conserving species of marine flora and fauna, particularly if they are rare or threatened, or for conserving the diversity of marine flora or fauna, habitat, or features of geological or geomorphological interest whether or not they are considered rare or threatened (*subsections (1), (4) and (5)*).

*Subsection (2)* provides that the order designating the MCZ must state both the protected features and the conservation objectives for the MCZ. The level of protection for an individual MCZ will depend on the site’s conservation objectives, which may take account of relevant conservation, social and economic considerations. The conservation objectives will need to be clear to ensure that all public authorities understand the implications of the duties placed on them by clauses 22 and 23.

*Subsection (7)* allows the Department to take account of the economic, cultural or social consequences of designation. This ensures MCZs may be designated in such a way as to conserve biodiversity and ecosystems whilst minimising any economic and social impacts. Where an area contains features which are rare, threatened or declining, or informs a biodiversity hotspot, greater weight is likely to be attached to ecological considerations. Where there is a choice of alternative areas which are equally suitable on ecological grounds, socio-economic factors could be more significant in deciding which areas may be designated as an MCZ.

The Department must have regard, so far as possible, to the likely environmental impact within a proposed MCZ if certain activities are not restricted, or elsewhere in the Northern Ireland marine area as a result of such an activity being displaced.

*Subsection (8)* clarifies that the reference to “social” consequences of designating an MCZ includes any consequences of doing so for sites of historic or archaeological interest.

#### Clause 15: Further provisions as to orders designating MCZs

This clause sets out further requirements for MCZ designations, including the requirement to specify the boundaries of the designated area.

*Subsection (3)* provides for the inclusion in an MCZ of any island regardless of whether the land lies above mean high water spring tide. Islands which should be excluded from an MCZ may be identified in the designation order.

*Subsections (4) and (5)* allow the Department to extend the boundary of an MCZ to include an additional adjacent area of seashore above mean high water spring tide if certain conditions apply. These conditions include the feature(s) which comprise the grounds for designating the MCZ being present in the extended area. This may be appropriate where a threatened species is also present in the area of land above mean high water spring tide and protection depends on extending the boundary of the MCZ.

*Subsection (5)* further requires that an MCZ includes land whether or not it is covered in water (which will include the sea bed and foreshore).

#### Clause 16: Consultation before designation

This clause requires the Department to carry out public consultation before designating an MCZ.

*Subsections (2) and (3)* require notice of a proposed designation order to be published. This enables any party likely to be affected by a proposed order the opportunity to have their interests taken into account.

*Subsection (5)* requires the Department to make a decision regarding designation of an individual MCZ within 12 months of publishing the notice. Failure to designate a site within that time will mean that the process will need to begin again before an area may be designated as an MCZ.

*Subsections (6) and (7)* provide an exemption from the general requirements of publication and consultation if there is an urgent need to designate an MCZ, although the Department will still need to consult with the Secretary of State. In such cases, an urgent order may only remain in force for up to two years unless the Department makes an order confirming the designation within those two years. Publication and consultation in accordance with *subsections (2) to (4)* are required in relation to an order confirming the designation (and *subsection (5)* applies accordingly).

Clause: 17: Publication of orders

This clause makes provision for the Department to publish notice of the making of an order. This clause requires that the notice is published in a way most likely to bring it to the attention of interested individuals and requires that a copy of the order is made available for inspection and anyone who asks for a copy is provided with one. The Department may charge a fee for providing a copy.

Clause 18: Hearings

This clause allows the Department to hold hearings before deciding whether to make an order under clause 13 to designate an MCZ.

*Subsection (2)* gives the Department discretion to give any persons the opportunity of being heard by an appointed person, either orally or in writing.

*Subsection (4)* requires these representations to be reported back to the Department.

Clause 19: Review of orders

This clause requires the Department to review any order designating an MCZ if it receives representations, that the order should be amended or revoked, from the Secretary of State, the Scottish Ministers or the department of the Government of Ireland with responsibility for marine nature conservation.

Clause 20: Creation of network of conservation sites

This clause places a duty on the Department to designate MCZs so as to contribute to the creation of a network of marine sites.

*Subsections (1) and (2)* set out the duty to designate MCZs and the objective for such designation.

*Subsection (3)* sets out what the network of MCZs should achieve, listing three conditions.

*Subsection (4)* provides that the network of relevant conservation sites may include European Sites notified under the Wild Birds and Habitats Directives, Areas of Special Scientific Interest and wetland sites designated under the Ramsar Convention.

*Subsection (5)* requires the Department to have regard to relevant obligations under EU and international law when complying with the duty in subsection (1).

*Subsection (6)* refers to specific obligations under the Wild Birds Directive.



*Subsection (7)* requires the Department to prepare a statement setting out the principles which it will apply in designating MCZs to help create the UK network. It is a requirement to lay the statement before the Assembly, and it must be reviewed and, if necessary, updated periodically.

#### Clause 21: Reports

This clause requires the Department to report to the Assembly on progress in designating a network of MCZs.

*Subsection (2)* sets out the information that must appear in the report.

#### Clause 22: General duties of public authorities in relation to MCZs

This clause places a general duty on public authorities (defined in clause 48) to carry out their functions in the manner that they consider best furthers – or least hinders - the conservation objectives set for MCZs. The duty only applies so far as is consistent with the proper exercise of a public authority's functions and only where such functions may have a more than insignificant effect on the MCZ.

If a public authority (other than the Department) thinks that the exercise of its functions will or might significantly hinder the conservation objectives of an MCZ, it has to notify the Department.

*Subsections (4) to (8)* provide that a public authority must inform the Department if it intends to carry out an activity which might significantly hinder the conservation objectives of the MCZ. This duty does not apply if standing advice from the Department under clause 24 applies.

Where a public authority has notified the Department under *subsection (5)*, the authority must wait 28 days before deciding whether to go ahead as planned. However, this 28-day rule does not apply if the Department notifies the authority that it need not wait or if the situation is urgent.

*Subsections (9) and (10)* require a public authority to inform the Department when it considers that an offence (in relation to which it has functions) has occurred that will or may significantly hinder the achievement of an MCZ's conservation objectives.

*Subsection (11)* requires public authorities to have regard to any advice issued by the Department under clause 24.

#### Clause 23: Duties of public authorities in relation to certain decisions

This clause applies to all public authorities (other than the Department) with responsibility for authorising applications for certain activities capable of affecting a protected feature of an MCZ or any geological or geomorphological processes on which the conservation of a feature is partially or wholly dependent. It does not apply where the effect is insignificant, in order to avoid capturing very minor matters.

*Subsection (2)* requires a public authority to inform the Department if it believes a proposed activity will hinder the achievement of the conservation objectives of an MCZ.

*Subsection (3)* states that no authorisation may be granted until 28 days have passed since notice was given. This does not apply, however, where the Department informs the authority that it does not need to wait 28 days or where the authority thinks there is an urgent need to grant the authorisation.

*Subsections (5), (6) and (7)* impose a duty on an authority not to grant authorisation unless it is satisfied that there is no significant risk that the activity will hinder the achievement of the conservation objectives or if certain conditions in subsection (7) are met. These conditions are: there is no other way to carry out the act which is less likely to hinder the objectives; the benefit of the act to the public clearly outweighs the risk of environmental damage; and the person seeking authorisation will take measures of equivalent environmental benefit to the damage that will be, or is likely to be, caused.

*Subsection (10)* requires public authorities to have regard to any advice or guidance given by the Department under clause 24.

#### Clause 24: Advice and guidance by the Department

This clause confers powers and duties on the Department to give advice or guidance to public authorities in respect of MCZs. Public authorities are required to have regard to this advice or guidance when carrying out their duties under clauses 22 and 23.

*Subsections (1) and (2)* specify the issues on which advice or guidance may be given and allows it to be issued in respect of one or more MCZs and to one or more authorities. Advice and guidance may be issued more generally on MCZs.

Clause 25: Failure to comply with duties, etc.

This clause enables the Department to obtain an explanation if it thinks a public authority has failed to exercise its functions to further (or where permissible, least hinder), the conservation objectives, or failed to act in accordance with the guidance provided by the Department. The public authority must provide a written explanation within 28 days or a longer period agreed with the Department. This clause has effect even when the public authority did not initially request the advice or guidance.

Clause 26: Byelaws for protection of MCZs

This clause gives the Department the power to make byelaws to protect MCZs in the Northern Ireland inshore region or in any other part of Northern Ireland.

*Subsection (3)* sets out some of the activities which may be controlled through the making of byelaws. These are primarily activities which are not otherwise controlled (for example under the marine licensing system). Research has shown that unregulated activities may threaten biodiversity.

*Subsection (4)* allows the Department to control specific activities on the seashore adjacent to the MCZ, for the purpose of protection (for example to control noise disturbance from vehicles or music).

*Subsections (5) and (6)* enable byelaws to provide for the Department to issue permits (with whatever conditions it feels appropriate) to authorise activities which would otherwise be unlawful under the byelaws.

Clause 27: Byelaws: procedure

This clause requires the Department to carry out public consultation before making any byelaws. It must publicise its intention to make byelaws and provide a copy of the draft byelaws, if asked, for which it may charge a fee to cover the cost of doing so.

Byelaws must be confirmed by the Secretary of State before they come into operation. Once confirmed, the Department must publish notice of the making of the byelaws.

Clause 28: Emergency byelaws

This clause enables the Department to make byelaws (under clause 26) urgently, without having to comply with the usual consultation and publication requirements and without confirmation by the Secretary of State. This is only permitted where the Department considers there is an urgent need to protect an MCZ.

A notice that the emergency byelaws have been made must be published (*subsection (3)*). Those affected may then make representations to the Secretary of State – who has the power to revoke emergency byelaws.

The Department must keep the emergency byelaws under review. Under *subsection (2)*, emergency byelaws remain in force for a maximum of 12 months (although they may be extended by up to a further six months by the Department (*subsections (7) to (9)*)).

#### Clause 29: Interim byelaws for MCZ

This clause enables the Department to make interim byelaws to protect features in an area where the Department considers there may be reasons for the Department to designate an MCZ and where there is an urgent need for protection. Delay in providing protection through byelaws could otherwise result in harm to the site. Byelaws under this clause are essentially the same as emergency byelaws made by virtue of clause 28 except that they apply to areas which are not yet designated as MCZs.

As there will be no MCZs designated in these cases, *subsection (3)* requires that the interim byelaws clearly state the boundaries to which they will apply.

As with the emergency byelaws, interim byelaws can be made without consultation, publication or confirmation by the Secretary of State, although the Department must then publish notice of them being made and the Department must keep the need for them under review.

*Subsection (5)* provides for interim byelaws to remain in operation for up to 12 months, unless revoked by the Secretary of State. In cases where the period specified in the byelaws is under 12 months, they may be subsequently extended by the Department (under *subsection (10)*) – but the byelaws cannot remain in force for more than 12 months in total.

20. If, while interim byelaws are in place, the Department gives notice of a proposal to make an order (under clause 13) to designate any part of the area as an MCZ, the Department may direct that the interim byelaws are to remain in place until the Department decides whether to make the order and until any such order comes into effect.

#### Clause 30: Byelaws: supplementary

This clause sets out the administrative and notification requirements in relation to byelaws (whether they are made urgently or not) and interim byelaws.

#### Clause 31: Hearings

This clause makes provision for either the Secretary of State or the Department to hold a hearing before deciding whether to make byelaws or interim byelaws, to confirm byelaws or to revoke emergency or interim byelaws.

*Subsection (3)* gives the Secretary of State or the Department the discretion to give any person the opportunity of being heard by an appointed person, either orally or in writing.

*Subsection (5)* requires these representations to be reported back to the Secretary of State or the Department.

*Subsection (4)* allows the Department to make regulations setting out the procedure to be followed, including the awarding of costs.

#### Clause 32: Offence of contravening byelaws

This clause provides that breaching byelaws is an offence.

*Subsection (2)* sets out the level of fine for a person guilty of the offence. A level 5 fine is a fine up to £5,000 (based on the current amount of a level 5 fine).

#### Clause 33: Offence of damaging, etc. protected features of MCZ

This clause creates a general offence to catch deliberate or reckless acts of damage to protected features of an MCZ.

*Subsections (1) and (2)* set out the circumstances in which a person is guilty of the offence. The offence is committed where a person intentionally or recklessly causes damage or harm to the protected features of an MCZ. This includes killing or injuring plants and animals and removing anything that is a protected feature from an MCZ. In order to be guilty of the offence, it is necessary that the person knows, or ought to have known, that the feature was in, or formed part of, an MCZ. In addition, an offence is committed only where the person's actions have significantly hindered, or may significantly hinder, the achievement of the conservation objectives of the MCZ.

*Subsection (5)* provides that a court determining the fine should have regard to any financial benefit the person obtained by committing the offence: the greater the gain, the higher the penalty is likely to be.

*Subsection (6)* states that an offence may be tried in any part of Northern Ireland.

#### Clause 34: Exceptions

This clause sets out the circumstances in which a person will not be guilty of an offence under clauses 32 and 33.

*Subsection (1)* sets out a number of exceptions.

*Subsection (3)* provides that a person is not also guilty of contravening byelaws by virtue of doing anything that would make that person guilty of the general offence.

*Subsection (4)* provides a defence to the general offence under clause 33 where the accused person proves the relevant act was done in the course of sea fishing and the damage could not reasonably have been avoided. If damage were caused for example by the use of illegal fishing gear where it would not have been so caused had legal fishing gear been used, then this defence would not be available. Such damage could reasonably have been avoided by using legal fishing gear, and therefore the person would not have met the condition in subsection (4)(b).

*Subsection (5)* provides a power for the Department to restrict or remove the defence set out in subsection (4). The power would have to be exercised within any relevant constraints of the Common Fisheries Policy.

#### Clause 35: Fixed monetary penalties

This clause enables the Department to make an order which confers a power on the Department to issue fixed monetary penalties for the breach of byelaws.

The Department may only impose a fixed monetary penalty when satisfied beyond reasonable doubt that the person has committed the relevant offence.

*Subsection (4)* provides for the maximum fixed financial penalty, which will be £200 (based on the current amount of a level 1 fine). A fixed monetary penalty may differ in amount according to whether the person liable is an individual or part of a corporate body. This level of fine reflects the nature of the likely offences, which will tend to be minor breaches of byelaws by an individual.

Clause 36: Fixed monetary penalties: procedure

This clause specifies certain minimum requirements that must be included in any fixed monetary penalty regime. In particular, when imposing the penalty, the Department must issue a notice of intent to the person setting out the information specified in *subsection (3)* of this clause and provide the person with the opportunity to discharge liability by payment of a prescribed sum which will be lower or equal to the amount of the penalty. If the sum is not paid, a person may make representations and objections to the Department. Having considered those representations, the Department will come to a decision on whether to impose a fixed monetary penalty (“final notice”) setting out the information specified in *subsection (5)*. A person on whom a final notice is served has a right of appeal.

*Subsection (6)* provides that an order allowing the Department to impose fixed monetary penalties must provide for the grounds for appeal set out in that subsection.

Clause 37: Fixed monetary penalties: further provision

This clause gives effect to the further provisions about fixed monetary penalties set out in Schedule 2.

Clause 38: Enforcement officers

This clause enables the Department to appoint officers for the purpose of enforcing any byelaws made under clause 26 or 29 and enforcing clause 33. The enforcement powers that may be exercised are “common enforcement powers”.

Enforcement officers will be able to exercise these powers in respect of other nature conservation legislation governing the marine area, namely the Wildlife (Northern Ireland) Order 1985; the Conservation (Natural Habitats etc.) Regulations (Northern Ireland) 1995 and associated byelaws; and the Environment (Northern Ireland) Order 2002.

Such powers may be exercised in the Northern Ireland inshore region and in any other part of Northern Ireland. The powers may not be exercised in relation to any British warship.

Additionally, the powers may not be exercised in relation to a third country vessel, a non-UK warship or any other vessel that is being used by a country other than the UK for any non-commercial purpose. The exception to this is where in the case of a third country vessel (other than a warship or a vessel being used by a third country for any non-commercial purpose) the United Kingdom is entitled under international law to exercise those powers without the consent of the flag state.

Clause 39: The common enforcement powers

This clause defines the “common enforcement powers” as those set out in Chapter 2 of Part 8 of the Marine and Coastal Access Act 2009 and further explains how the powers conferred under clause 38(2) are to apply.

Clause 40: Repeals, amendments and transitional provisions

This clause makes the repeals and transitional amendments relating to this Part of the Bill.

Clause 41: Interpretation of this Part

This clause contains definitions for words or expressions used in this Part of the Bill.



## **Part 5: MARINE LICENSING: GENERATING STATIONS**

### Clause 42: Special procedure for applications relating to generating stations

This clause provides for the situation where both a marine licence, and a consent under Article 39 of the Electricity (Northern Ireland) Order 1992 (in relation to offshore generating stations), are required.

In such cases the Department of Enterprise, Trade and Investment is to determine consent under Article 39 of the Electricity (Northern Ireland) Order 1992 and, in conjunction with the Department, may issue a notice to the applicant stating that both the application for an Article 39 consent and the application for a marine licence will be subject to the same administrative procedure. That procedure will secure that the two related applications for the two different permissions are dealt with in parallel at the same time rather than in sequence. In cases where only one of the applications has been received, that application must not be dealt with until the other application is received. When both applications have been received the process that the applications will go through is that which is to be determined by the Department in any order made under *subsection (6)*. That order may disapply any provision of the marine licensing process to the marine licence application, apply the process specified in the Electricity (Northern Ireland) Order 1992 to that application instead and modify the last process in its application to that marine licence application.

**Part 6: SUPPLEMENTARY**

Clause 43: Regulations and Orders

This clause contains general provisions for making regulations and orders under the Bill.

Clause 44: Offences: companies, etc

This clause provides for individual liability in cases where there is also corporate liability.

Clause 45: Disapplication of requirement for consent to certain prosecutions

Section 3 of the Territorial Waters Jurisdiction Act 1878 provides that a person who is not a British subject may not be prosecuted for an indictable offence committed in the territorial sea without the consent of the Secretary of State. This clause has the effect of disapplying section 3 of the 1878 Act in relation to proceedings for offences committed under the Bill.

Clause 46: Supplementary, incidental, consequential, transitional provision etc

This clause allows the Department to make, by order, supplementary and transitional provisions and savings for the Bill.

Clause 47: Crown application

The clause states that the Crown is bound by the provisions of the Bill.

Clause 48: Interpretation

This clause contains definitions of expressions used in the Bill.

## **SCHEDULES**

### Schedule 1: Marine plans: preparation and adoption

This Schedule sets out the procedure which must be followed when preparing and adopting marine plans under clause 4.

Paragraph 1 places duties on the Department to notify other “relevant authorities” of its intention to plan. These “relevant authorities” are the Secretary of State, Scottish Ministers, terrestrial planning authorities and the department in the Republic of Ireland with responsibility for marine planning in any area adjoining or adjacent to the marine plan area.

This is so that the other “relevant authorities” may consider how they might want to be involved.

Paragraph 2 sets out what must go into a notice to the Secretary of State under paragraph 1. This includes statements as to whether the marine plan will include provisions relating to “retained functions” (defined under section 60 of the Marine and Coastal Access Act 2009) and whether it will not be prepared in conformity with any MPS which governs the marine plan area. The Department must also advise the Secretary of State of any changes in its intentions by way of further notices.

Paragraph 3 provides that the Department must take all reasonable steps to secure compatibility between a marine plan for a marine plan area and marine plans or terrestrial development plans for “related” areas (that is, areas which adjoin or are adjacent to the area of the proposed marine plan, or which affect, or might be affected by, the area of the proposed marine plan).

Paragraph 4 places a duty on the Department to consult with the other relevant Northern Ireland departments at key stages of the plan preparation.

Paragraphs 5 to 7 set out the process and requirements relating to the preparation and publication by the Department of a “Statement of Public Participation” (“SPP”) for the marine plan. The SPP must set out how and when the Department intends to involve “interested parties” (as defined in paragraph 5(8)) in the planning process; the area which is to be planned for; and must invite people to make representations on what the plan should include.

The SPP must state whether the plan is to include provisions relating to “retained functions”, and in such cases the Department must not publish the SPP without the agreement of the Secretary of State.

The Department must keep the SPP under review, must amend it when necessary and must re-publish it as amended (subject to the Secretary of State’s agreement where it includes provisions relating to “retained functions”).

An SPP must contain a timetable for the various stages of preparing the plan, and must also set out how and when representations about the content of the plan or the consultation draft (paragraph 11) should be made.

The Department is obliged to take all reasonable steps to comply with the SPP.

Paragraph 8 relates to the provision of advice and assistance to the Department by any body or individual with relevant expertise, including from groups or people convened by it for that purpose.

Paragraph 9 sets out a non-exhaustive list of matters to which the Department must have regard in preparing a marine plan.

Paragraph 10 requires that the Department undertakes a sustainability appraisal for the policies proposed for inclusion in the plan. The Department is required to produce a report of the results of these appraisals which is to be published at the same time as the consultation draft. The results of the appraisals are to inform which proposals the Department takes forward, and these should only be included where the results indicate that it is appropriate to do so.

Paragraph 11 sets out the requirements for publication of the “consultation draft” of a marine plan. It must be published by the Department (only with the agreement of the Secretary of the State if it includes provisions relating to “retained functions”) and the Department must take steps to bring it to the attention of interested persons.

Paragraph 12 provides that anybody may make representations about the consultation draft, in accordance with the SPP. The Department is obliged to consider such representations before finalising the text of the marine plan.

Paragraph 13 requires the Department to consider holding an independent investigation into the consultation draft. Sub-paragraph (2) sets out the factors to which the Department must have regard when deciding whether to hold an independent investigation, and sub-paragraph (3) requires the investigator to make recommendations and give reasons for them. The investigator must provide a report within 6 months of their appointment, or a longer period agreed by the Department. Sub-paragraph (4) requires the Department to publish the recommendations and reasons given by the investigator.

Paragraph 14 sets out the matters the Department must consider before deciding to adopt a marine plan, these include the recommendations and reasons given by any independent investigator that it appointed.

Paragraph 15 sets out the process for adopting and publishing a marine plan in its final form. The Department “adopts” a marine plan by making the decision to publish it, and, if the plan contains provisions relating to “retained functions”, it can only do so with the agreement of the Secretary of State.

Paragraph 16 is a savings provision which ensures that any steps taken in relation to the preparatory work on the Marine Plan prior to the commencement of the Act are legally valid.

Schedule 2: Further provision about fixed monetary penalties under clause 35

This Schedule sets out the further provisions about fixed monetary penalties. Paragraph 1 states that an order allowing the imposition of fixed monetary penalties must provide that, where a fixed monetary penalty is imposed on a person, that person must not also be liable to criminal prosecution in respect of the relevant offence.

Paragraph 2 states that such an order may provide for discounts for early payment or interest for late payment of the original penalty. The total amount of any late payment penalty must not exceed the total amount of the penalty imposed.

This paragraph also provides for the enforcement of unpaid penalties (and any interest or late payment charges) through the civil courts.

Paragraph 3 makes provisions for appeals.

Paragraph 4 requires the Department, when it proposes to make an order allowing the use of fixed monetary penalties, to consult relevant organisations which it considers represent the interests of persons substantially affected by the proposals and such other persons the Department considers appropriate.

If, as a result of this consultation, there are substantial changes to any part of the proposals, the Department will be required to undertake such further consultation on the revised proposals as it considers appropriate.

Paragraph 5 provides that an order enabling the imposition of fixed monetary penalties must also require that the Department publishes guidance in relation to the use of these powers (“Penalty Guidance”). The Department must revise the Penalty Guidance where appropriate and must consult specific persons before publishing or revising the Penalty Guidance. The order must also state that the Department should have regard to the Penalty Guidance when exercising its functions.

The Penalty Guidance must contain information about the circumstances in which the sanction is likely to be imposed, the amount of the penalty and the person’s right of appeal.

Paragraph 6 requires that where the Department makes an order enabling the imposition of fixed monetary penalties in relation to an offence, the Department must prepare and publish guidance regarding the manner in which the offence is enforced (“Enforcement Policy”). The Enforcement Policy must set out the sanctions for committing an offence, the action the Department may take and the circumstances in which the Department is likely to take such action. The Enforcement Policy, in contrast to Penalty Guidance, is focused on how particular offences are enforced.

Paragraph 7 provides that any order enabling the imposition of fixed monetary penalties must (unless inappropriate to do so) require the Department to publish information concerning its use of those powers in cases where either a fixed monetary penalty has been imposed (but not overturned on appeal) or liability to a penalty has been discharged by payment of a prescribed sum.

Paragraph 8 permits those persons listed in sub-paragraph (2) to disclose information to the Department that has had the new enforcement powers conferred on it under clause 35. Information may only be disclosed where the person listed has an enforcement function in relation to offences and for the purposes of the Department exercising one of the new powers. The police will not have access to the new enforcement powers but if, for example, they have begun a criminal investigation but consider that it no longer merits a criminal prosecution, this provision would allow them to pass information to the Department so that it could determine whether to issue an alternative sanction.

#### **FINANCIAL EFFECTS OF THE BILL**

21. The Bill provides for enabling legislation, and as such it has been necessary to rely on certain assumptions based on experience of land-based systems, together with information drawn from pilot projects in the United Kingdom and elsewhere, in order to provide a reasonable assessment of the Bill's potential costs and benefits.
22. Furthermore, the added benefits gained by taking forward the Bill as part of a wider marine programme for Northern Ireland are difficult to quantify fully at this point, particularly in financial terms.
23. Nevertheless, a (draft) final Regulatory Impact Assessment has been prepared which identifies the benefits of providing greater certainty for marine businesses and conservation interests, together with synergies arising from the integrated management of marine activities.
24. This (draft) final Regulatory Impact Assessment can be accessed at: [http://www.doeni.gov.uk/index/protect\\_the\\_environment/natural\\_environment/marine\\_and\\_coast/marine\\_policy.htm](http://www.doeni.gov.uk/index/protect_the_environment/natural_environment/marine_and_coast/marine_policy.htm).
25. It is the Department's intention that the different policy areas associated with the Bill shall be subject to further assessments as they are implemented.

#### **HUMAN RIGHTS ISSUES**

26. The provisions of the Bill are, in the Department's view, not incompatible with the provisions of the Human Rights Act 1998.

## **EQUALITY IMPACT ASSESSMENT**

27. A preliminary screening exercise on the policy proposals giving effect to the Bill concluded that there would be no adverse impact on equality of opportunity. A full Equality Impact Assessment was therefore considered unnecessary.

## **LEGISLATIVE COMPETENCE**

28. The Minister of the Environment had made the following statement under section 9 of the Northern Ireland Act 1998:

*“In my view, the Marine Bill would be within the legislative competence of the Northern Ireland Assembly.”*

## **SECRETARY OF STATE CONSENT**

29. The Secretary of State had consented under section 8 of the Northern Ireland Act 1998 to the Assembly considering the Bill.





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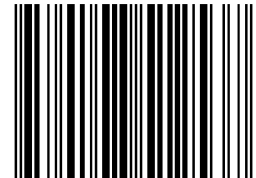
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