



# Draft Marine Bill

April 2008





# **Draft Marine Bill**

**Presented to Parliament by the Secretary of State for  
Environment, Food and Rural Affairs  
By Command of Her Majesty**

**April 2008**

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(note: each section is independently numbered)





# Draft Marine Bill

Policy Paper

April 2008

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## Foreword



The draft Marine Bill is a first for the UK. It will provide for the protection of our seas and will enhance our ability to balance the pressures on them. And it will create a healthier, productive and more biologically diverse marine environment.

The draft Marine Bill sets out in legislation the proposals which were widely supported last year in 'A Sea Change' (the Marine Bill White Paper). We are publishing our proposals in draft to enable public scrutiny which will help ensure that the legislation we put to Parliament is as good as possible.

At the heart of our proposals is a new marine planning system which will enable us to take a strategic approach to managing activities in our waters. It will benefit all those who use our seas and will be important for securing the maximum sustainable benefits from our marine resources whilst ensuring we can provide proper protection for them. There are new powers to enable us to put in place a network of marine conservation zones to protect marine life. There are also important reforms to a range of marine, migratory and freshwater fisheries management arrangements. New marine licensing rules will also be created, together with a new organisation to bring together many of these new arrangements, so as to ensure better marine management.

We are also taking this opportunity to bring forward proposals for greater access to the English coast. The coast is an important landscape which attracts over 70 million trips each year. The Marine Bill will build on existing access legislation to create a route around the coast of England.

Handwritten signature of Hilary Benn in blue ink.

**Hilary Benn**

Handwritten signature of Jonathan Shaw in blue ink.

**Jonathan Shaw**



## Executive Summary

- a) This paper accompanies the draft Marine Bill. The draft Bill helps fulfil the Government's 2005 election manifesto commitment to introduce a new framework for the seas based on marine spatial planning, that balances conservation, energy and resource needs.
- b) The proposals in the draft Bill have been developed through a series of consultations and reports dating back to 2001. The majority of the proposals were most recently consulted on in the Marine Bill White Paper in 2007.
- c) The publication of the Bill in draft allows for pre-legislative Parliamentary scrutiny and public consultation. The introduction of the Bill to Parliament will depend on the availability of Parliamentary time.

## Measures in the draft Bill

- d) The draft Bill contains a variety of measures designed to improve our ability to make long term, strategic decisions about what we want in our marine environment, and to simplify the systems we use to manage marine resources. The draft Bill also contains measures to improve management of migratory and freshwater fisheries and to increase access to the English coast. The measures cover:

**Creation of the Marine Management Organisation:** the draft Bill provides for the creation of a Marine Management Organisation (MMO) to deliver marine functions in the waters around England and in the UK offshore area (for matters that are not devolved). The MMO will be an independent Non-Departmental Public Body, and will deliver marine functions for the UK Government as a whole.

**Marine planning:** the draft Bill contains measures to deliver a new marine planning system. This includes explaining how we will set out our long term objectives for the marine area around the UK in a policy statement. We will then be able to create marine plans to set more detailed and spatial policy at a more local level, based on information about specific areas and their uses of the sea.

**Better licensing decisions:** the proposals in the draft Bill will change the system for licensing activities in the seas from a slow and complex one to a simplified system where, as far as possible, a one-stop-shop is provided for each project. This will let us look at applications in the round, to consider all the costs and benefits at the same time, and therefore make better decisions.

**Nature conservation:** the draft Bill provides for the designation of marine conservation zones, both for protection of individual habitats and species, and also for the creation of a network of sites representing marine ecosystems around the UK. Designation will take account of environmental, social and economic criteria. The draft Bill also provides for measures to prevent activities from damaging sites once designated.

**Managing marine fisheries:** the draft Bill introduces a number of measures to strengthen the management of marine fisheries. It includes measures to reform inshore fisheries management, replacing Sea Fisheries Committees with newly created Inshore Fisheries and Conservation Authorities, as well as enhancements to legislation underpinning sea fisheries conservation and shellfish management. There are also measures to increase the flexibility in the Government's existing power to charge for commercial fishing licences. In line with better regulation principles, the draft Bill repeals some out-of-date fisheries legislation.

**Reform of migratory and freshwater fisheries:** the proposals in the draft Bill modernise powers for the licensing and management of fisheries and allow for the introduction of a scheme to manage live fish movement.

**Enforcement:** the draft Bill streamlines and modernises enforcement powers. It introduces a common set of powers so that officers enforcing fisheries, nature conservation and licensing legislation will have access to a core set of enforcement powers for the purposes of inspection and investigation. This will clarify enforcement powers for those being inspected.

**Administrative penalties:** the draft Bill introduces a civil sanctions scheme for licensing and nature conservation offences and an administrative penalty scheme for domestic fisheries offences. In combination with enforcement tools ranging from advice to prosecution, these will give the ability to address offences in a proportionate, flexible and risk-based manner.

**Access to coastal land:** the draft Bill places a duty on the Secretary of State and Natural England to secure a long distance route ("the English coastal route") and land available for open-air recreation ("spreading room") accessible to the public around the coast of England. It amends existing legislation to provide a coastal margin, within which people will be able to walk along a long distance route for the length of the English coast (with certain exceptions, including, for example, developed land, Ministry of Defence land, land used as a park or garden, railways and quarries). In addition people will have access to coastal land such as beaches, cliffs, rocks and dunes, for the purposes of open-air recreation on foot.

## **How to have your say**

- e) We welcome your views on whether our proposals will deliver the outcomes we wish to see. You may submit comments in writing by 26 June 2008 to:

Marine Bill Team  
Department for Environment, Food and Rural Affairs  
Area 2C Nobel House  
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Alternatively, you may submit comments electronically to:  
[MarineBillTeam@defra.gsi.gov.uk](mailto:MarineBillTeam@defra.gsi.gov.uk)

## 1. Introduction

- 1.1 In its legislative programme for the 2007/08 session of Parliament, the Government announced it would publish a draft Marine Bill. The draft Bill will help fulfil the Government's 2005 election manifesto commitment to a Marine Act:

*“Through a Marine Act, we will introduce a new framework for the seas, based on marine spatial planning, that balances conservation, energy and resource needs. To obtain best value from different uses of our valuable marine resources, we must maintain and protect the ecosystems on which they depend”.*

- 1.2 The draft Bill published alongside this document has benefited from an extended period of consultation and policy development, and takes us a significant further step towards introducing a Bill into Parliament.
- 1.3 (See Box 1.1). We have developed the proposals set out in the draft Bill for a new, world-leading system for the sustainable use and protection of the marine environment. The draft Bill enables more strategic decisions to be made about what activities we want in the marine environment, and where they should take place, including where we want to do specific things for conservation purposes. It also simplifies the system for managing our use of natural resources and controlling activities that impact upon them, and introduces measures that are critical for the management and conservation of migratory and freshwater fisheries. The draft Bill also establishes a delivery body to allow the UK Government to manage all these activities as effectively as possible.
- 1.4 The publication of the Bill in draft will allow for pre-legislative Parliamentary scrutiny and ensure a full debate on the measures proposed. The aim is to ensure that we get the legislation right and can deliver the benefits provided for in the Bill, as outlined in Chapter 2.
- 1.5 Following scrutiny, we will consider the need for further adjustment of our proposals. This will include responding to any recommendations that may come from the pre-legislative scrutiny of the draft Bill. The introduction of the Bill to Parliament will depend on the availability of Parliamentary time.



### **Box 1.1 How we got here**

Work on the policies in the draft Marine Bill date back to 2001, when the Prime Minister committed the UK Government to new measures to improve marine conservation, including a series of Marine Stewardship reports. The first of these '**Safeguarding Our Seas**', jointly published a year later by the UK Government and devolved administrations, set out the shared vision of "clean, healthy, safe, productive and biologically diverse oceans and seas".

We followed this in 2005 with the first integrated assessment of the '**State of Our Seas – Charting Progress**'. This showed that although UK seas are productive and support a wide range of fish, mammals, seabirds and other marine life and the levels of monitored contaminants and pollution have decreased significantly, human activities have resulted in adverse changes to marine ecosystems and continue to do so. These direct human interventions, along with climate change, pose a real threat to the balance and integrity of the marine ecosystem.

In March 2006, we consulted on **initial proposals and the strategic direction** for a Marine Bill, asking specific questions on nature conservation, reform of marine licensing, introduction of marine planning, and the case for a new Marine Management Organisation and what its functions might be. We received 1233 responses, the majority of which were supportive of our proposals.

In March 2007, we published a **Marine Bill White Paper** and **partial Regulatory Impact Assessment** for public consultation. In this, we proposed new systems of marine planning and licensing, and new measures for managing marine nature conservation and fisheries. We also proposed a new body – the Marine Management Organisation – to deliver our objectives in the marine area. We received 8519 responses to the consultation which we have used to develop and refine our policy.

Work on proposals for the **regulation and management of migratory and freshwater fisheries** in England and Wales date back to a 1998 Government review of legislation and policy and the extent that continuing Government involvement was needed in this area. The Review Group reported in 2000 and the Government response, issued in 2001, accepted most of the 195 recommendations of the Report in full or in part. The Government made a commitment to introduce new primary legislation when Parliamentary time made this possible, and the majority of those recommendations requiring changes to primary legislation have been taken up in this draft Bill.

Provision for extending **access to the coast** was made in the Countryside and Rights of Way Act 2000. Subsequently Natural England have examined the situation on the coast and considered a number of options for improving access. Defra consulted on options, including the approach recommended by Natural England, in June 2007. We received 749 responses which contributed to the development of our proposals. The overall weight of the responses supported new legislation as the best way forward for improving access to the coast and proposals to implement this are included in this draft Bill.

Throughout the process of developing the proposals in the draft Marine Bill we have worked with the devolved administrations. There are different situations in the different areas, so different approaches are needed to enable us to work towards our shared vision throughout UK waters.

- 1.6 This document is Part 1 of 3 that make up the package published with the draft Marine Bill. It sets out the policy background and rationale for the proposals, summarises the provisions in the draft Bill and explains how they will be implemented. Parts two and three are:
- *Part 2: The draft Bill* – the proposed legislative provisions and the *explanatory notes* – to assist the reader in understanding the provisions of the draft Bill.
  - *Part 3: Impact Assessment* – analysing the costs and benefits of the proposals contained in the draft Bill.

### **Why do we need a Marine Bill?**

- 1.7 The UK is a world leader in many aspects of marine management and protection and is at the forefront of the development of many new and nationally important uses of the marine area, such as renewable energy production. We have made much progress in ensuring the sustainable use and protection of the resources that our seas provide. However, our seas are some of the busiest in the world and demands on their resources are increasing. If we are to ensure that we can continue to make the best sustainable use of those resources we need to be able to take a more strategic approach to managing marine activities and protecting marine resources in the future. The draft Bill gives us the legislative tools we need to take this strategic and coherent approach.
- 1.8 More information on the overall marine policy context for the draft Bill is at Annex A.

#### *Climate change*

- 1.9 Climate change is already having a significant impact in the marine area, on the goods and services it provides (see Box 1.2) and the way we use our marine space. The draft Bill will help us meet the challenges that climate change will bring. It will allow us to make better decisions about the activities in our marine area that will help mitigate climate change – for example the development of renewable energy projects – and the measures introduced under the draft Bill will be adaptable to allow us to manage and use new technologies as they come along. Provisions on marine nature conservation and fisheries will also help us to restore and maintain marine ecosystems to ensure they are resilient to the effects of climate change.

#### *Better regulation*

- 1.10 The draft Bill will significantly improve decision making in the marine environment by providing clearer direction and more certainty to developers, both from industry and local government, and to marine users generally. It streamlines and simplifies existing legislation and requirements. It reduces the number of regulatory bodies and regimes that developers have to deal with. However, it does not reduce environmental assessment requirements as these are key to ensuring we understand how our decisions and activities impact on the marine environment.

- 1.11 The draft Bill also modernises compliance mechanisms in line with the recommendations of the Macrory Review of Regulatory Penalties,<sup>1</sup> to ensure that all industry and business work on a level playing field. It will provide a transparent and equitable arrangement for managing marine activities and ensuring sustainable marine development.
- 1.12 The main industries which will benefit from the measures proposed in the draft Bill include ports and harbours, fisheries, aggregate dredgers, recreational service providers and renewable energy developers.

### **Box 1.2 Climate Change**

The 2007/8 Marine Climate Change Impacts Partnership (MCCIP) annual report card was launched in January 2008 . The MCCIP plays a vital role in helping us understand what we need to do to tackle the problem of climate change.

Key findings from this years' report include that climate change is having a significant impact on the marine environment and the goods and services it provides.

- Coastal erosion is occurring along 17 per cent of the UK coastline (30 per cent of England's coastline; 23 per cent of Wales; 20 per cent of Northern Ireland; 12 per cent of Scotland).
- Recent warmer conditions and associated shifts in the abundance and geographical distribution of plankton have led to reduced availability of prey fish for some seabirds, which has been strongly linked to recent poor breeding success and reduced survival rates.
- The impacts of climate change on the commercial services provided by our seas will be significant. Sea-level rise, coastal flooding, storms and bigger waves will affect ports, shipping and built structures. Fishing and fish farming will be affected by temperature change and plankton (prey) availability.

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1 [http://bre.berr.gov.uk/regulation/documents/pdf/macrory\\_penalties.pdf](http://bre.berr.gov.uk/regulation/documents/pdf/macrory_penalties.pdf)

### **Box 1.3 Territorial Extent**

The draft Bill applies across the United Kingdom and is in line with the current devolution settlement. We would like to achieve a UK-wide regime as far as possible, and are continuing to work with the devolved administrations.

As currently drafted, the UK Government will legislate for England, the waters around England, for some things in the “offshore waters” around the UK, and for certain functions within the territorial waters of Scotland, Wales and Northern Ireland (the “devolved administrations”) where we have agreed between us to do so. The positions and involvement of the devolved administrations in each of the elements of the draft Bill are summarised below and identified in Box 1.4 and Chapter 4 of this document.

This means that not all the proposals in the draft Bill will apply to the whole of the UK.

- **Marine Policy Statement** covers the whole of the UK’s waters but is restricted in content and impact in Scotland.
- The body being established to deliver planning, licensing, fisheries management and enforcement functions – **the Marine Management Organisation** – will do so in the waters around England and in the offshore area for matters that are not devolved.
- **Marine planning** applies in all UK waters apart from the territorial waters of Scotland and Northern Ireland.
- Reformed **marine licensing** applies across the UK apart from the territorial waters of Scotland. Amendments to harbours legislation do not apply in Northern Ireland or Scotland.
- New **marine nature conservation** arrangements apply in all UK waters apart from the territorial waters of Scotland and Northern Ireland.
- **Marine fisheries** provisions apply in England and Wales and out to British Fishery Limits excluding the Scottish Zone and the Northern Ireland Zone. Certain provisions apply on the high seas.
- **Migratory and freshwater fisheries** provisions apply in England and Wales, exclusive of the English part of the River Tweed (and its tributaries) and inclusive of the Scottish part of the Border Esk (and its tributaries).
- Provisions to improve **access to coastal land** apply in England.

### **Box 1.4 Devolved Administrations**

The **Welsh Assembly Government** is supportive of the need for a Marine Bill to better manage our shared sea resources, and has been working with Defra throughout the development process to ensure that what is being created is as suitable for the needs of Wales as it is for the needs of England and the UK as a whole. In general, where changes are being made or new powers are being created in England, similar changes or powers will also be made for Wales. This means that the majority of the proposals for England also apply for Wales. In areas where these changes are the responsibility of Welsh Ministers, it will be for them to decide how the powers will be used.

**Northern Ireland** is fully committed to the policy aims underpinning the draft UK Bill to introduce a new framework for the marine environment based on sustainable development principles, which will work towards delivering clean, healthy, safe, productive and biologically diverse oceans and seas.

Management of activities in the marine area fall within a complex mix of devolved and reserved responsibilities. Since the restoration of devolution in Northern Ireland, the Minister of the Environment, in considering the way forward, has endeavoured to strike a balance between the need to a) retain the UK Bill for those matters which are reserved and where it would be appropriate to do so and b) legislate by means of Northern Ireland legislation for those matters which are devolved or which are reserved but where it would be appropriate to legislate in Northern Ireland, with the consent of the Secretary of State.

**Scotland** has a unique coastal and marine environment. It provides an important natural resource upon which so many Scottish communities depend. The Scottish Executive also plans new marine legislation to ensure the sustainable management of Scotland's seas and coasts. This will balance the competing interests for use and protection of the seas. To take forward this work the Scottish Executive has established the Sustainable Seas Task Force. The Task Force is considering the arrangements for licensing and enforcement, conservation issues, marine management arrangements, planning and integrated coastal zone management and data and science needs. A Scottish Marine Management Organisation is planned which will lead delivery of the proposals within Scottish territorial waters and where matters are devolved.

The Task Force is working intensively with a view to developing a set of proposals for Scottish marine legislation. The Scottish Executive will undertake a full consultation on a Marine Bill shortly thereafter. That is because the Scottish Executive have indicated that they believe that the waters around Scotland would be better served by legislation emanating from Holyrood – the UK Government will discuss proposals contained within the draft Bill with the Scottish Executive.

The Scottish Executive has indicated that it seeks clarification of responsibilities in respect of new powers, particularly in the offshore zones where Scotland has devolved responsibility for certain matters, whilst other matters are reserved to the UK Government.

More detail on the position of each of the devolved administrations is given in Annexes B, C and D.

### **Box 1.5 Terminology and subdivisions in the Marine Area**

Broadly speaking, the marine area around the UK can be divided into a number of geographical areas defined in UK, European and international law. The principal divisions are:

- a) the **territorial sea**, which extends to a maximum of 12 nautical miles from the baseline (normally the coast), or, if less, to the mid-point between the UK and adjacent states (“the median line”). The UK territorial seas are defined under the Territorial Seas Act 1987 (75);
- b) UK **internal waters** which comprise marine waters to the landward side of the baseline;
- c) the draft Bill refers to the English, Scottish, Northern Ireland and Welsh **inshore regions** which means the internal waters and territorial seas adjacent to England, Scotland, Northern Ireland and Wales respectively.
- d) the **UK continental shelf**, which generally extends from the edge of the territorial sea to 200 nautical miles from the baseline or to the median line. In some cases, such as to the northwest of Scotland and off the southwest coast of England, it can extend beyond 200 nautical miles to the limit of the continental margin. The area of the continental shelf is defined under the Continental Shelf Act 1964 (58);
- e) **British fisheries limits** which, though largely matching the area of the continental shelf, in some places extend beyond it, are defined under the Fishery Limits Act 1976 (62);
- f) in some cases (e.g. offshore renewable energy resources, marine pollution control), particular rights have been asserted by the UK in relation to the area of what would (if formally designated) be an “**exclusive economic zone**”, i.e. to 200 nautical miles from the baseline or to the median line.
- g) The UK’s “**renewable energy zone**” is an area of the sea prescribed for the purposes of renewable energy generation beyond territorial waters (designated through the Energy Act 2004, under provisions in the United Nations Convention on the Law of the Sea (UNCLOS)).

A map showing the various marine areas around the UK is at Annex E.

## 2. Measures in the draft Bill

- 2.1 The draft Bill contains a variety of measures designed to improve our ability to make long term, strategic decisions about what we want for marine environment, and to simplify the systems we use to manage marine activities and resources to achieve these objectives. These measures were contained in the Marine Bill White Paper.
- 2.2 It contains measures to improve the management of marine, freshwater and migratory fisheries, in line with the principles of sustainable development.
- 2.3 It also contains measures to deliver increased coastal access to the English coast.
- 2.4 Briefly put, the measures comprise:

**PART 1: Creation of the Marine Management Organisation:** the draft Bill provides for the creation of a Marine Management Organisation (MMO) to deliver marine functions in the waters around England and in the UK offshore area (for matters that are not devolved). The MMO will be an independent Non-Departmental Public Body, and will deliver marine functions for the UK Government as a whole.

**PART 2: Marine planning:** the draft Bill contains measures to deliver a new marine planning system. This includes explaining how we will set out our long term objectives for the marine area around the UK in a policy statement. We will then be able to create marine plans to set more detailed and spatial policy at a more local level, based on information about specific areas and their uses of the sea.

**PART 3: Better licensing decisions:** the proposals in the draft Bill change the system for licensing activities in the seas from a slow and complex one to a simplified system where, as far as possible, a one-stop-shop is provided for each project. This will let us look at applications in the round, to consider all the costs and benefits at the same time, and therefore make better decisions.

**PARTS 4 & 5: Nature conservation:** the draft Bill provides for the designation of marine conservation zones, both for protection of individual habitats and species, and also for the creation of a network of sites representing marine ecosystems around the UK. Designation will take account of environmental, social and economic criteria. The draft Bill also provides for measures to prevent activities from damaging sites once designated.

**PARTS 6 & 7: Managing marine fisheries:** the draft Bill introduces a number of measures to strengthen the management of marine fisheries. It includes measures to reform inshore fisheries management, replacing Sea Fisheries Committees with newly created Inshore Fisheries and Conservation Authorities, as well as enhancements to legislation underpinning sea fisheries conservation and shellfish management. There are also measures to increase the flexibility in the Government's existing power to charge for commercial fishing licences. In line with better regulation principles, the draft Bill repeals some out-of-date fisheries legislation.

**PART 7: Reform of migratory and freshwater fisheries:** the proposals in the draft Bill modernise powers for the licensing and management of fisheries and allow for the introduction of a new scheme to manage live fish movement.

**PART 8: Enforcement:** the draft Bill streamlines and modernises enforcement powers. It introduces a common set of powers so that officers enforcing fisheries, nature conservation and licensing legislation will have access to a core set of enforcement powers for the purposes of inspection and investigation. This will clarify enforcement powers for those being inspected.

**PART 8: Administrative penalties:** the draft Bill introduces a civil sanctions scheme for licensing and nature conservation offences and an administrative penalty scheme for domestic fisheries offences. In combination with enforcement tools ranging from advice to prosecution, these will give the ability to address offences in a proportionate, flexible and risk-based manner.

**PART 9: Access to coastal land:** the draft Bill places a duty on the Secretary of State and Natural England to secure a long distance route ("the English coastal route") and land available for open-air recreation ("spreading room") accessible to the public around the coast of England. It amends existing legislation to provide a coastal margin, within which people will be able to walk along a long-distance route for the length of the English coast (with certain exceptions, including, for example, developed land, Ministry of Defence land, land used as a park or garden, railways and quarries). In addition people will have access to coastal land such as beaches, cliffs, rocks and dunes, for the purposes of open-air recreation on foot.



### 3. Implementation: how the enabling measures will work

- 3.1 Under the draft Bill, we will take powers which will be articulated in more detail, and implemented through for example secondary legislation and guidance. This implementation will take place over a number of years, and will include consultation on individual implementing measures. However to aid understanding of the draft Bill, we set out below how we envisage the powers in the draft Bill working in practice.
- 3.2 This chapter opens with the Marine Policy Statement which sets the scene for many of the subsequent provisions. It explains how provisions in each part of the draft Bill will work. Finally, it gives an overview of how we will ensure we move smoothly from our existing to new regimes.

#### Marine Policy Statement

- 3.3 A Marine Policy Statement (MPS) will be created for the whole of the UK waters. Our intention is that UK Government, the Welsh Assembly Government and Northern Ireland Assembly will work together on the statement, and agree it jointly. The draft Bill does enable individual administrations to opt out of participating in the statement, or for UK Government to proceed alone, but this is simply to ensure flexibility for the long term future if the circumstances of the administrations change. Scottish Ministers will not participate in the development and agreement of the statement, which is a change from our 2007 White Paper.
- 3.4 The draft Bill makes clear that the policies in the statement should contribute to the sustainable development of the UK marine area. The MPS will therefore set out a framework of high level objectives for the marine environment, and how it should be managed, in order to enable sustainable economic development to progress, within environmental limits. To support this, it is likely to include high level information about the current use of marine resources, predicted future trends and environmental changes, and the approach we aim to take towards them.
- 3.5 In 2004 the UK Government and the devolved administrations together adopted a number of strategic goals for the marine area and made a commitment to ensure that our policies and marine management contribute to meeting those goals<sup>2</sup>. Since then we have been working to develop, both nationally and internationally, the high level marine objectives mentioned above. They will set out the outcomes that we are seeking in the marine area, including recognition of, and integration between, different Government priorities, for example those relating to defence, conservation and energy generation. We expect that later this year we will publish a public consultation on first draft proposals for these

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<sup>2</sup> Department for Environment, Food and Rural Affairs (2004). The Government's response to its Seas of Change consultation to help deliver our vision for the marine environment. PB 9330. Defra publications, London.

objectives. Clarification of our objectives will be one of the first steps towards the development of the MPS.

- 3.6 Within this framework of objectives the Statement will bring together our policies on a range of different marine issues. The UK Government has already committed separately, through the Planning Bill that is going through Parliament, to creating National Policy Statements about our future intentions for infrastructure in key sectors, including energy and transport. The MPS will draw on, and if appropriate expand on those National Policy Statements, explaining how they relate to the marine area and sit within our wider policy for management of the marine area.
- 3.7 Our domestic priorities are shaped partly by our international commitments, and the MPS will need to explain how we are addressing those commitments and taking them forward through our domestic policies within each administration. Similarly our Statement cannot look at our seas in isolation. It offers us a useful opportunity to articulate our policy on how we can achieve integration in coastal areas between our objectives at sea and on land.
- 3.8 The draft Bill sets out a clear procedure for developing, consulting on, and agreeing the final statement. We intend that the first MPS will be in place within two years of Royal Assent, and that it should be revised regularly. We have not set out a timetable in the draft Bill, as we feel that would be too prescriptive. Individual policies are continually subject to development. Changes to policy will need to happen on varying timescales in response to the changing marine environment and its uses. We want to retain the flexibility to be able to consider the effect the statement is having on the implementation of marine plans, and the way decisions are made, and then update it when it is most appropriate.
- 3.9 Once it has been finalised, the MPS will provide a clear, and most importantly, a consistent steer to all marine regulators and users as to the policies that should be considered when decisions are made. The draft Bill sets out the effect that the MPS will have on decision making, which means that our policies on marine matters and integration at the coast will be delivered by all those carrying out functions there.

### **Functions of the Marine Management Organisation**

- 3.10 We need a way to deliver what we want – as outlined in the Marine Policy Statement – simply and efficiently. The Marine Management Organisation (MMO) will be UK Government's strategic delivery body in the marine area, charged with making the sustainable development of the marine area a reality. It will be the marine planning body on behalf of UK Government in the waters off England and in most of the offshore areas. It will be the UK Government's regulator of most activities in the marine environment. It will make decisions according to the Marine Policy Statement and marine plans on most marine development, license fishing activity under the European Union Common Fisheries Policy and license exemptions to nature conservation legislation. It will continue the marine fisheries management currently delivered by the Marine

& Fisheries Agency (MFA) and will also work closely with local authorities, Inshore Fisheries and Conservation Authorities (IFCAs) and others to integrate management of our seas with land at the coast. It will use modernised powers to enforce marine legislation, working effectively with other marine enforcement bodies. We want the MMO to be visible and approachable, an identifiable focus of UK Government activity in the marine area.

- 3.11 The MMO will be a Non-Departmental Public Body (NDPB) – independent of individual Government Departments and working closely with the full range of marine users and interests. Creating this marine delivery body will enable Government Departments such as Defra, the Department for Transport (DfT), Department for Business, Enterprise and Regulatory Reform (BERR), Communities and Local Government (CLG), Ministry of Defence (MoD) and Department for Culture, Media and Sport (DCMS) to focus on developing policy.
- 3.12 The MMO will work closely with Natural England and the Joint Nature Conservation Committee, the Environment Agency, the Infrastructure Planning Commission, the Maritime and Coastguard Agency and other bodies with similar interests.
- 3.13 It will build strong and effective relationships with local authorities and coastal stakeholders. In all activities which impact at the coast, the MMO and other delivery bodies will work closely to ensure that delivery of different functions is integrated and coastal stakeholders have a say in how their local environment is managed.
- 3.14 More detail on the functions of the MMO is at Annex F.

#### *Set up of the MMO*

- 3.15 Once the Marine Bill has received Royal Assent, we intend to establish a skeleton MMO (that is, a body without functions). This will comprise the MMO Board members and MMO senior executive team supported by a small staff. The skeleton body will work with Government to establish a framework for the new organisation. This is likely to include recruiting staff for the new functions, training existing staff for the move into the MMO, establishing the structure for the organisation, financial systems and due diligence, agreeing objectives, targets, performance measures/indicators and resources.
- 3.16 To minimise the risk associated with a ‘big bang’ launch of a new organisation, where everything changes at once, we are taking a ‘managed transition’ approach to establishing the MMO. The MMO will be built on the MFA and where practicable we are transferring functions to the MFA in advance of the establishment of the MMO. Gathering existing functions in the MFA will ease the transition to the MMO, maximise the ability of staff to adjust to the new organisation and minimise disruption to customers and those who will need to work alongside the MMO. In advance of the MMO vesting date, the MFA will continue to deliver these existing functions, leaving the skeleton MMO to focus

on preparations for the establishment of the MMO. At vesting of the MMO, the MFA will cease to exist.

- 3.17 The MMO itself will comprise up to eight board members and a Chair. Board members will be sought with experience and expertise across all three ‘pillars’ of sustainable development:
- Economic e.g. aggregate extraction, renewable energy, fishing, ports/ harbours, shipping;
  - Environmental e.g. habitats, fish stocks and water quality; and
  - Social e.g. heritage, recreation and defence.
- 3.18 There will be no specific sectoral representation or nomination rights to the Board. We have enabled the MMO to set up committees and subcommittees and expect it to establish a Stakeholder Advisory Committee so the Board can benefit from the advice and experience of representatives of the range of marine industries, sectors and interests. In addition, the MMO will have to consult relevant bodies when making decisions.
- 3.19 We have not yet determined when the MMO will be established, although it is likely to at the beginning of a financial year. We are learning from recent experience in establishing other NDPBs, particularly in terms of the need to plan carefully and allow sufficient time for the processes involved in establishing a new body.

#### *Location*

- 3.20 The MMO will have a strong coastal presence in the form of a network of coastal offices, complemented by a headquarters office providing a firm focus for the organisation. It will make use of the 18 English coastal offices currently operated by the MFA – subject to any mergers or relocations that may take place in the normal course of business.

#### *Staff*

- 3.21 The MMO will be an NDPB and those employed by the MMO will be public servants<sup>3</sup>. We expect around 40 new posts to be created in the MMO to deliver new functions including marine planning and to support the smooth running of the organisation.
- 3.22 The majority of MMO posts will be existing posts. The bulk are currently in the MFA – an executive agency of Defra. A few are elsewhere – for example in Department for Transport and Department for Business, Enterprise and Regulatory Reform. As explained above, some posts may transfer to the MFA in advance of MMO set up.

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3 Note this does not apply to MMO Board members, only MMO employees

- 3.23 Staff transferring to an NDPB would do so under COSOP<sup>4</sup> (using TUPE<sup>5</sup> principles) and there would therefore be no detriment to pay or terms and conditions of employment at the point of transfer. Any future changes would only happen through proper consultation with the relevant trade unions.

#### *Post-launch*

- 3.24 For a range of reasons including the need to maximise flexibility and dealing with functions according to local needs across the different UK administrations, several of the MMO's functions will be transferred to it using secondary legislation and/or powers set out in the draft Bill. The purpose of the MMO is set out in the primary legislation, so it is clear what it is being established to achieve.
- 3.25 The MMO will be UK Government's strategic delivery body in the marine area. It will be an NDPB of Defra so Defra's Secretary of State will be formally accountable to Parliament for its activities and performance. To reinforce the policy interest of a range of Departments in the work of the MMO, Defra's Secretary of State will be formally advised on discharge of his responsibilities in respect of the MMO by a cross-Government MMO Sponsorship Group made up of senior civil servants from relevant Departments: BERR (energy generation), Defra (marine nature conservation, fisheries, integrated coastal management, coastal erosion and flood defence management and the marine environment) DfT (shipping, ports and harbours), CLG (interaction with terrestrial planning system), MoD (defence activities in marine area) and DCMS (marine heritage, recreation and tourism).
- 3.26 The UK Government will support the MMO by providing general and specific guidance (for example on the contribution it is expected to make to sustainable development and the delivery of its functions).
- 3.27 We anticipate that the detail of relationships with other marine delivery bodies will be set out in memoranda of understanding drawn up with the skeleton MMO, but we are doing useful work in advance of this on how we envisage the relationships working.
- 3.28 We intend the MMO to keep under review all matters relating to its purpose, to assist it in delivering both its purpose and its individual functions. We expect this to include relevant research being undertaken by others including data or information resulting from such research and developments in marine science. The MMO will also be able to undertake, commission or support research and make the results available.
- 3.29 We also set out in the draft Bill some incidental powers of the MMO. These are intended to ensure the MMO as an organisation has all the powers it will need in order to carry out its functions and meet its purpose. We also want the MMO to be able to charge for any services it provides. We would expect these charges to be reasonable, and based on cost recovery.

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4 Cabinet Office Statement of Practice on Staff Transfers in the Public Sector

5 The Transfer of Undertakings (Protection of Employment) Regulations

### *Marine data and information*

- 3.30 Appropriate scientific data and information is needed to provide an evidence based approach to policy making both at the strategic level (planning) and for local marine management decisions (licensing, enforcement and nature conservation). A great deal of information has been collected by various bodies over time. However, much of the data has been collected using different standards, to different levels of quality and in an uncoordinated way which inevitably leads to more and more duplication.
- 3.31 Investigating the Oceans<sup>6</sup>, a report in 2007 produced by the Science and Technology Committee, recommended a “collect once, use many times” principle and recommended that a new marine agency should be responsible for “facilitating the release of data and interaction between producers and suppliers and users of data to maximise its value to the community at large”.
- 3.32 In responding to those recommendations, the Government stated that it is acutely aware of the need to maximise the value of data in order to meet a number of its key priorities such as the EU INSPIRE Directive<sup>7</sup> and marine planning. Government Departments and the devolved administrations have committed to the principle of “collect once, use many times” through the continued support of several key initiatives including the Marine Environmental Data and Information Network and the UK Directory of Marine Observing Systems (UKDMOS). It is through these initiatives and the on-going work within the UK Marine Monitoring and Assessment Strategy (UKMMAS) that issues pertaining to the release of data will be addressed and interactions between producers, suppliers and users of data strengthened.
- 3.33 In order to fulfil its functions, the MMO will need to access and use data and information to create maps, charts, graphs, tables and reports and will have to establish its own arrangements for marine data acquisition, manipulation and storage. Data covering habitats, species types, distribution, bathymetry, geology and hydromorphology will be required, along with information about marine uses and other socio-economic data.
- 3.34 The MMO will therefore need to secure access to a broad range of data types collected by industry, regulators and other organisations and contribute to establishing mechanisms to facilitate the release of data and interaction between producers, suppliers and users of data to maximise its value to the community at large; it will need to resolve many of the issues surrounding the sporadic way in which data has been collected and managed. It is likely that the breadth of the data handled will increase as the MMO is developed and the type of data required will change according to the needs of the MMO. Work is already ongoing to determine the data requirements of the new organisation. A suitable

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6 House of Common Science and Technology Committee – Investigating the Oceans, Tenth Report of Session 2006-07 Volume 1

7 INSPIRE aims to create a spatial data infrastructure to facilitate the sharing of spatial information between public authorities and provide improved public access.

management system will be developed to meet the needs of the MMO; this will be key to its effective operation.

### **Box 3.1 Research**

A strong research programme is a key underpinning element of our ability to make good policy and management decisions. Defra has a comprehensive research programme, encompassing projects and programmes on individual marine activities, such as aggregate extraction, through to studies to help us understand the ecological structure and function of our oceans and seas and to ensure we have the information we need to make policy decisions.

Defra's current marine environment research includes a number of projects looking at how best to manage marine activities in an integrated way. The findings of the projects within this programme will help inform how Government, and particularly the MMO, take decisions in the marine environment.

Defra is currently reviewing its marine environment research programme to ensure that it provides the right evidence for effective management of the marine environment. Together with marine monitoring, the output from research into topics such as how the ecosystem functions and man's impact on it will be essential for the effective implementation of marine planning.

Defra also has a programme of sustainable marine, migratory and freshwater fisheries research, which covers the impact of fishing on the marine ecosystem, the effects of the environment on fish stocks and fisheries management.

## **Marine Planning**

- 3.35 Once our policy objectives have been set out in the Marine Policy Statement, we intend to create a series of marine plans, which will apply that policy in more detail within specific parts of the UK's waters.
- 3.36 Although the allocation of responsibilities for planning and the procedure plan preparation should follow are set out in the draft Bill, we are carrying out research to help us determine in more detail how the process will operate in practice, and intend to develop this into guidance after consulting further.

### *Planning areas*

- 3.37 The draft Bill refers to different 'planning authorities' being responsible for different parts or 'regions' of the UK's waters. Our guiding principle is that the allocation of responsibility for marine planning should reflect the current distribution of functions under the devolution settlement. Inevitably this means that the planning responsibilities will vary within different administrative parts of the UK's waters.
- 3.38 Essentially UK Government Departments will be responsible for marine planning in the waters off the coast of England and for the whole of the offshore area of Great Britain, beyond 12 nautical miles. Although Government Departments will contribute to the development of plans and will agree to the final versions before

they are published, most of the planning activity in this area will be carried out by the MMO, so references to the “planning authority” throughout this section will often mean this.

- 3.39 In Welsh territorial waters, the Welsh Assembly Government will be the planning authority, but we will be exploring ways in which to take forward marine planning that addresses the complex mix of devolved and non-devolved issues.
- 3.40 In the waters offshore of Northern Ireland, we anticipate that Northern Ireland Departments will take the lead in preparing plans, however they will jointly agree the final versions with UK Government. Northern Ireland intend to take forward marine planning in their own territorial waters through their own separate legislative process, which is a change from our 2007 White Paper. Scottish Ministers intend to pursue any proposals for marine planning in their territorial waters themselves.
- 3.41 We are committed to making marine planning work effectively across the boundaries between these areas or regions. The draft Bill therefore requires each of the planning authorities above to notify the adjacent authorities or administrations prior to developing a new plan, so that they can consider the involvement they will need to have. Each authority is then also required to do what they can to ensure compatibility between plans that are adjacent to each other. This will be most beneficial in areas that are particularly difficult to manage, such as cross-border estuaries and the Irish Sea.
- 3.42 The planning authorities between them will be able to plan from the area covered at mean high water spring tide, out to furthest limits of either the continental shelf or the Renewable Energy Zone. This does not however mean that we will necessarily plan for the entire area. Certainly near the coast, and particularly in estuaries, we will need to make a judgement about the appropriate coverage of plans.
- 3.43 Each authority will also need to determine the appropriate breakdown of planning areas, within the limits of the regions for which they are responsible. We will be considering this over the next two years, taking account of administrative boundaries, existing management processes, and what we know about natural resources and the pattern of human activities. We will be seeking further advice and input on this issue. The draft Bill does enable the creation of ‘nested plans’, i.e. smaller plans within larger plans. We will continue to explore this, but our priority will be to ensure that there is a single, clear set of plan proposals in any given area.

#### *Planning cycle*

- 3.44 We envisage that plans will be created in a gradual, phased approach, partly because of the evolutionary nature of this new system, and partly because of the resources that will be available at any given time. Our aim will be to create two plans initially in the areas where it is determined that early planning will be of most benefit.



- 3.45 The draft Bill requires us to monitor the effects that these plans are having, and how well they are achieving their objectives, and then publish a report on that at least every three years. At this time we will determine whether the plan needs to be amended or replaced with a new one. The provisions do not require us to make amendments or new plans within a specific cycle, because we anticipate every plan will be different. With such a new system we do not want to be prescriptive early on, but enable ourselves to decide when changes are needed. At this initial stage however we anticipate that amendments or new plans might be needed six years after the plans have been adopted, which is what we said in the 2007 White Paper.

### *Planning Teams*

- 3.46 It will be important that we have the right teams in place to take forward the process set out in the draft Bill. Based on research and discussions with planning teams on land, it is apparent that planning teams should ideally consist of individuals who possess the ability to think strategically, communicate and mediate effectively, be objective about the demands and interests in the planning area, and make calculated judgements and decisions based on the available information. Within those teams a combination of formal town and planning qualifications, and experience of strategic project management and policy development are often helpful. We think that these skills are applicable and transferable to planning in the marine environment, if planning teams contain, or can draw on the right kind of marine expertise and will carry out further work to prepare for the implementation of planning on this basis.
- 3.47 We anticipate that a project board will be established to oversee the development of each marine plan, including the managing of budgets and setting of milestones. This will be taken forward by the bodies that carry out planning in the different parts of UK waters.

### *Preparation of Plans*

- 3.48 Although a clear and transparent procedure for preparing marine plans is set out in the draft Bill, we intend to develop guidance over the next two years that will set out in more detail the principles and processes that should be adopted through the planning process.
- 3.49 The planning authority will need to draw on spatial information about the marine environment and its uses, the relationships between them and forecasted changes. It will need to look at this alongside the policy objectives articulated through the MPS, and use a series of tools and methodologies to develop early options and plan proposals. We are currently beginning research to look at these tools and methodologies and are keen to work with a range of people with an interest in marine management, to ensure they are fit for purpose, and can be taken forward into guidance we produce at a later stage.
- 3.50 When plan options have been prepared the planning authority will be required to carry out an appraisal of the sustainability of the options and their likely environmental, social and economic effects, and within this process meet the

requirements of EU legislation, such as for strategic environmental assessment. This appraisal will steer the way in which the options are progressed into proposals for consultation.

### *Coastal integration*

- 3.51 Our 2007 White Paper set out how we intended marine planning would contribute to coastal integration. To further develop our ideas and to help formulate initial draft guidance we are carrying out a desk study exercise with the Environment Agency and other key coastal managers, to work through the proposals for marine planning as set out in the draft Bill, and ensure that they are contributing as effectively as possible to coastal integration. We will publish any findings of this exercise in due course, and will draw on them when consulting stakeholders on the development of any future guidance.
- 3.52 Coastal integration does however extend much further than our marine management proposals. It is important that changes we make to marine planning are considered alongside other changes being made to planning structures on land, and are made to work effectively with them. To help consideration of how these processes fit together we intend to publish a document later in 2008 setting out the initiatives being taken forward across Government, which will contribute to or improve coastal integration.

### *Involving others*

- 3.53 The draft Bill enables the planning authorities to seek advice from various organisations to help them develop plans effectively. We will be working closely with the range of organisations that may be called upon to provide advice in coming months to ensure that they are prepared for this and to discuss implications on resourcing and the need for guidance.
- 3.54 It is important that regulators, coastal communities and a range of individuals and organisations with an interest in the marine and coastal environment are able to shape the planning process and play a key role in the way that plans are developed. It is particularly important that those organisations which already hold key planning and regulatory roles in coastal areas and coastal waters – such as regional planning bodies, local authorities, the Environment Agency and the Crown Estate – are able to play a full and effective role throughout the process and ensure that marine planning integrates effectively with other management processes that will operate alongside it.
- 3.55 To facilitate this process and with the aim of making the process transparent, the planning authority will be required to publish a statement at the beginning of the development of each plan setting out how it intends to involve people during each stage. This will enable those with an interest to be clear about the anticipated process, consider the involvement they want to have and plan ahead for it.
- 3.56 The planning body will be responsible for involving stakeholders and consulting on plan proposals. We intend to provide guidance on this issue, but we cannot be

too prescriptive, because every part of the coast and UK waters is different, and engagement will need to be tailored accordingly. The planning body will need to consider the nature of the coastal communities and marine users affected in any given plan area, and consider what existing engagement structures, such as coastal partnerships, are in place. In the 2007 White Paper we proposed that the planning body should establish steering groups to support it in developing plans, particularly in coastal areas. It is clear from the varying stakeholder responses on this issue that different groups would be needed in different planning areas, so we will explore this issue further before providing guidance.

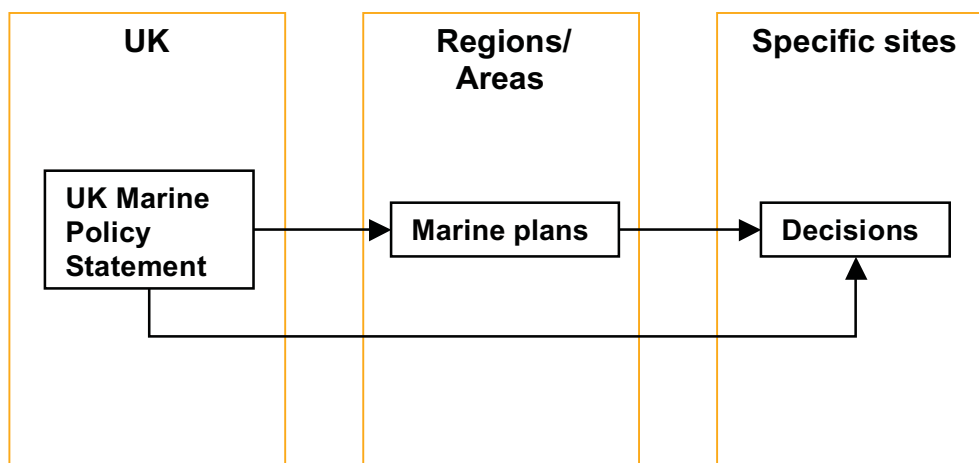
### *Scrutiny of plans*

- 3.57 Before the plan is finally adopted the draft Bill enables the planning body to ask that an independent person investigate the draft plan, the responses received to consultation on it, and any particular issues that have arisen, in order to provide advice and recommendations on further handling. The planning body will not be obliged to do this for every plan, to ensure that the process is proportionate to the issues that may arise during plan development – which may vary in how contentious they are depending on which part of the marine area is being planned for.

### *Effect of the Plans*

- 3.58 Plans will not remove the need for the current licensing process, which looks at an individual project or development, assesses the impact of that project and ultimately provides it with consent to proceed. Rather they will advise and steer marine users towards a more efficient, sensible use of marine space that will ultimately make the whole licensing process more efficient. Developers will be able to look at the information in plans, and benefit from the stakeholder agreement to the content of the plan, so they can decide whether approval for a new activity will be more or less likely. This will reduce their investment risks and costs.
- 3.59 We intend to ensure that decisions by public bodies operating in the marine area, will be made in accordance with the content of the marine plans and the MPS, unless relevant considerations indicate that another course of action is more appropriate. The kinds of decisions that will be affected will primarily be licensing decisions, including the final decision on the licence and enforcement activities. Furthermore when public bodies are operating generally in the marine area, they will need to have regard to the MPS and plans when making decisions about for example the creation of designated zones or plans.

## The effect of marine planning



## Improved marine licensing

- 3.60 Through the process of marine licensing, and the conditions we put into licences, we seek to promote economically and socially beneficial activity while minimising any adverse impact on the environment, navigational safety and other users of the sea. The MMO will have a key role in this process.
- 3.61 The major change to the licensing regime is the consolidation and modernisation of two existing Acts: the Food and Environment Protection Act 1985 (FEPA)<sup>8</sup> and the Coast Protection Act 1949 (CPA)<sup>9</sup>. When enacted, FEPA was intended to control dumping and incineration at sea, and construction on the seabed, to protect the marine environment, human health and other legitimate uses of the sea. The CPA was designed to ensure a safe environment for navigation following similar activities. Their consolidation removes the complexity and overlap that has grown up over the years with successive amendments and the advent of EU requirements. It draws together into a single licensing decision consideration of environmental, human health and navigational safety factors as well as the interests of other users of the sea.
- 3.62 The changes that we are making are intended to achieve two main objectives. The first is that by consolidating FEPA and the CPA, and making the legal links with other pieces of legislation as set out below, we aim to simplify and streamline the process of getting a licence. Where we are making these links, our reforms enable the MMO (for reserved matters) to use a single consenting process for decisions that are currently subject to different procedural rules, running to different timescales and with different considerations. That will save effort for all concerned, and in combination with the ability to make further provisions about the procedure, such as setting timescales for decisions, bring greater certainty to the outcome.

<sup>8</sup> Our proposals relate only to Part 2 of the Act.

<sup>9</sup> Our proposals relate only to Part 2 of the Act.

- 3.63 The second objective is to enable the licensing authorities to consider all of the factors relevant to many projects simultaneously, and so empower them to make decisions about each project as a whole. This is fundamental to the MMO's ability to deliver our sustainable development objectives. As is outlined for particular cases below, consideration of any one project will be undertaken so that the MMO can issue a consent covering associated works, such as those onshore, as well as the main marine part of the project.
- 3.64 The changes that we propose also introduce the ability for Ministers to establish a new appeals mechanism. We recognise that the process set out in FEPA does not meet modern expectations of transparency and accountability. We therefore intend to set up an independent appeals mechanism that will work to a clearly defined and transparent process.

#### *Integrating flood risk and marine licensing*

- 3.65 We recognise that many projects take place at the coast and straddle the land/sea boundary. Some of these involve coastal engineering, and there are therefore issues of flood risk and land drainage to consider. Projects that raise these issues also require assessment and consent under other legislation<sup>10</sup>, normally from the Environment Agency (EA). In future, when projects are mainly marine in nature, the draft Bill enables the MMO, with the EA's collaboration and consent, to incorporate the necessary flood risk management and land drainage conditions as part of a licence under the Marine Bill.

#### *Harbour Development*

- 3.66 Harbours lie at the interface of the marine and terrestrial worlds. The rules and regulations that apply to them are therefore as complex as for any marine development. Through the draft Bill, we are making it possible for a single organisation (the MMO for England) to be responsible for the two main marine consents required for harbour construction or alteration. These are the Harbour Empowerment or Revision Order, and the marine environmental consent (currently FEPA; in the future the Marine Act Licence). Furthermore, the provisions of the draft Bill enable us to put both of these consents through the same process. So when plans for harbour construction or alteration are detailed enough at the outset (this is not always the case), the draft Bill allows us to process the Harbour Order and Marine Act issues together, considerably simplifying matters for applicants.
- 3.67 As with other marine projects, harbours often involve land drainage and flood risk management considerations. The draft Bill clarifies that Harbour Orders will be able to consider the issues that these consents deal with.
- 3.68 The draft Bill also amends the Harbours Act to ensure that inquiries into draft Harbour Orders are only held when serious or substantial issues are raised or when the Secretary of State decides that one should be held. At present an

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<sup>10</sup> Flood risk management consent is given under the Water Resources Act 1991. Land drainage consent is given under the Land Drainage Act 1991.

inquiry must be held if any person raises an objection, even in cases where that person does not want an inquiry. This has proved costly and time-consuming in the past.

- 3.69 Added together, the benefit of these changes is outwardly to make the MMO the main, and in many cases the single point of contact for harbour developers. The MMO will consider the issues raised by as many as five different consenting regimes currently operated by three different authorities.

### *Dredging*

- 3.70 Dredging, depending on its method and purpose, currently falls under several different regimes. Some dredging is not regulated at all. The draft Bill brings consistency to its regulation, and puts all forms of dredging on an equal footing, so that each operation is treated according to the risks and impacts associated with it. Our proposals do not affect the rights of harbour authorities to carry out maintenance dredging where that is permitted by a local Act or Harbour Order.
- 3.71 Even where there is no local Act or Harbour Order in force, much dredging is carried out on a regular basis to keep navigation channels, harbours and marinas clear of silt and debris brought in by rivers and the tides. In most cases it has been undertaken in the same way for years if not decades with little apparent adverse impact and considerable socio-economic benefit. We envisage working with harbour authorities, dredgers and others over the next few years to establish a sound evidence base on which to exempt the vast majority of such cases from marine licensing.

### *Renewable electricity*

- 3.72 Marine renewable electricity installations currently require consent under section 36 of the Electricity Act 1989 and a licence under FEPA. Some also require CPA consent. As with our proposals on Harbour Orders, the draft Bill enables ministers to create provisions allowing the Marine Act licence application to be considered through the Electricity Act procedure. The effect is a single process for obtaining consent to build each new renewable energy development.

### *Enforcement*

- 3.73 Breaching a licence condition may lead to a fine of up to £50,000 on summary conviction (and an unlimited fine and/or up to two years imprisonment on indictment). To provide a range of more proportionate enforcement sanctions, statutory notices will be introduced for licensing offences covering “stop”, compliance and remediation purposes. These will enable the enforcement officer to:
- In urgent circumstances, get an operator to stop an activity, where that activity is harming or likely will harm the environment and/or human health or is interfering with other uses of the seas;

- Quickly to get the operator to take steps to prevent harm or interference with other uses of the sea when there is an urgent need to take action. For less serious situations the enforcement authority will be able to ensure that the licensee is left in no doubt as to what actions they need to undertake to comply with licence conditions; or
- Specify what needs to be done by way of remediation or compensation measures when the environment has been harmed.

3.74 The draft Bill also provides for a scheme of civil sanctions for monetary penalties and voluntary undertakings, similar to that being established by the Regulatory Enforcement and Sanctions Bill currently before Parliament – see 3.142 below.

#### *Cross-border issues*

3.75 Although rare, where activities or projects take place in waters controlled by two or more licensing authorities then, as now, developers will need to obtain the relevant licence from each authority.

3.76 So, for example, a project that involved dredging material in Wales and depositing where the MMO was the licensing authority would need:

- A licence to dredge from Welsh ministers (assuming the activity was not exempt); and
- A licence to deposit from the MMO.

There would need to be close working arrangements in place between officials of the two licensing authorities concerned to ensure that both authorities were content with the operation.

#### *Infrastructure Planning Commission*

3.77 The Planning Bill currently going through Parliament proposes an Infrastructure Planning Commission (IPC) to take decisions on nationally significant infrastructure projects. At sea, the IPC will be responsible for issuing development consents for large offshore renewable energy projects and the biggest harbours in the territorial waters around England and Wales and in the Renewable Energy Zone (except where Scottish ministers have responsibility). Both the MMO and the IPC will operate in accordance with Government policy in this area whether set out in the relevant National Policy Statement or in the Marine Policy Statement. The IPC will make decisions under the Planning Bill, and deem Marine Bill licences (FEPA licence and CPA consent until the Marine Bill licensing provisions come into force), advised by the MMO as the specialist marine licensing authority, including on licence conditions. Marine Enforcement Officers will use enforcement powers in the draft marine Bill to monitor and enforce Marine Bill licences and IPC development consents at sea except in the territorial waters around Wales where Welsh Enforcement Officers will be enforcing Marine Bill licences.

## Marine Nature Conservation

- 3.78 The draft Bill provides the tools needed to designate and protect a network of sites – Marine Conservation Zones (MCZs) – which will provide protected areas covering habitats and species which exist in our seas. MCZs will be both large enough, and close enough together, to support functioning communities of marine wildlife. MCZs will be used to protect areas that are important to conserve the diversity of rare, threatened and representative habitats and species, such as the rare fan shell (*Atrina fragilis*), the ocean quahog clam (*Arctica Islandica*), seagrass (*Zostera*) and maerl beds.
- 3.79 We have asked the statutory nature conservation agencies – that is, Natural England, the Joint Nature Conservation Committee and the Countryside Council for Wales – to develop programmes to enable designation of MCZs by the end of 2012. Sites will need to be selected on best available evidence, with consideration of social and economic consideration integrated into the decision-making process. For example, Natural England is proposing to set up stakeholder-led regional projects, based on the ‘Finding Sanctuary’ model in the Southwest.<sup>11</sup> Similar arrangements are being developed in Wales by the Welsh Assembly Government and Countryside Council for Wales. The JNCC is talking to the other devolved administrations about the possibility of collaborative projects in the Irish Sea and in waters around Scotland.
- 3.80 Early and full engagement in these regional projects will ensure that stakeholders, whether from relevant industries, conservation bodies or other sectors, are able to help shape the recommended networks of sites. Ministers will take the final decision on designating sites. They will not be bound by the regional projects’ recommendations, but will attach considerable weight to them (especially where they are based on consensus between the participating stakeholders).
- 3.81 Each site will have conservation objectives set out in the designating order, which will effectively determine the level of protection for the site. In most cases conservation objectives will allow sustainable and benign activities to take place, but there will be scope to set stringent conservation objectives thereby effectively creating ‘Highly Protected Marine Reserves’. We aim to include a number of such reserves within the network and their designation will need to be on the basis of scientific evidence and consultation.
- 3.82 All public bodies will have a duty to exercise their functions in ways which further – or at least do not hinder – the conservation objectives set for MCZs. In the case of the MMO, it will mainly do this through considering them (together with other material considerations) in the planning process and when exercising licensing and fisheries management functions. The duties are framed in a way which will best enable MCZs’ conservation objectives to be achieved, whilst allowing an appropriate degree of flexibility – with safeguards – where it is considered that development needs to proceed in the public interest.

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11 <http://www.finding-sanctuary.org/>



### *Conservation Orders*

- 3.83 The MMO (with advice from the statutory nature conservation bodies) will need to assess and manage potential threats to a site and to engage with stakeholders in addressing them. Most activities will already be controlled through existing regulatory regimes, but sometimes it may be necessary to control unregulated activities like jet-skiing, anchoring of boats or snorkelling. The MMO will therefore be able to make conservation orders (similar to byelaws) to control otherwise unregulated activities out to 12 nautical miles.
- 3.84 Sea users cannot always know when their activities will cause damage to marine wildlife or know with certainty what they can and cannot do. Rather than prohibiting “damage” in a general way, we want conservation orders to be used to control specific activities. This will improve clarity for sea users and simplify the enforcement of nature conservation offences.
- 3.85 Breaching a conservation order may lead to a fine of up to £50,000 on summary conviction (and an unlimited fine on indictment). The draft Bill also provides for a scheme to give enforcement authorities discretion to impose fixed administrative penalties and to accept voluntary undertakings.
- 3.86 We expect the statutory nature conservation agencies to work closely with public authorities (and other stakeholders) to ensure that measures are put in place to deliver MCZ conservation objectives. The conservation agencies will also monitor and report on the condition of MCZs (and the wider MPA network) to ensure that their objectives are being fulfilled.
- 3.87 Defra and the Welsh Assembly Government (with assistance from their statutory nature conservation advisors) are developing more detailed guidance on how it is anticipated the nature conservation provisions contained in the draft Bill will be implemented. This will be published on the Defra website over the coming months and will cover:
- Guidance on selection and designation of MCZs;
  - Guidance on achieving conservation objectives for MCZs through duties on public authorities;
  - Guidance on the use of conservation orders to protect MCZs; and
  - Guidance in relation to the setting of the seaward boundaries for Sites of Special Scientific Interest (SSSIs) and National Nature Reserves (NNRs).
- 3.88 Defra has published a leaflet (‘Protecting our marine environment through the Marine Bill’) to explain the nature conservation proposals to a wider audience. Copies can be downloaded from the Defra website.

## Marine Fisheries

### *Inshore fisheries and conservation authorities*

- 3.89 The draft Bill modernises inshore fisheries and environmental management arrangements in England and Wales. It replaces Sea Fisheries Committees with Inshore Fisheries and Conservation Authorities (IFCAs) whose purpose will be to manage the exploitation of fisheries resources occurring in their districts in a sustainable way. In carrying out their functions IFCAs will pay greater consideration to the wider environmental impacts of fishing activity and also consider the social and economic benefits of managing the exploitation of sea fisheries resources in certain ways. Whilst their focus will be sea fisheries management, IFCAs will also carry out an important role in enforcing the full range of marine environmental legislation.
- 3.90 IFCAs districts will extend around the entire coastline of England and Wales out to six nautical miles and in estuaries where IFCAs will have responsibility for sea fisheries management previously carried out by the Environment Agency. A new network of districts will be established through secondary legislation on which Defra will consult later this year.
- 3.91 The draft Bill provides for a new membership structure for IFCAs, the detail of which will be set out in secondary legislation. Membership will be limited to a maximum of 21 seats comprising one-third constituent local authorities; plus one seat each for the MMO (for IFCAs in Wales this will be a seat for the Welsh Ministers' representative), Natural England (for IFCAs in Wales this will be a seat for the Countryside Council for Wales) and the Environment Agency. The remainder will be appointed by the MMO or by Welsh Ministers and comprise people acquainted with the needs and opinions of the fishing community of the district, and people with knowledge of, or expertise in, marine environmental matters.
- 3.92 IFCAs will have powers to make byelaws for the management of sea fisheries resources within their districts as well as for wider environmental purposes such as the protection of species and habitats from fishing activity. Their powers will be broad enough to enable the regulation of the full range of marine fisheries activities including the introduction of chargeable permits, effort limitation, areas restricted to fishing.
- 3.93 The current process for proposing and making byelaws will be updated. IFCAs will be required to consult the Environment Agency, Natural England (for IFCAs in Wales this will be the Countryside Council for Wales), neighbouring IFCAs and the MMO on byelaws as well as all stakeholders who have an interest. Again, for flexibility, these requirements will be set out in secondary legislation and include the need to produce an Impact Assessment (or equivalent), to accompany the consultation.
- 3.94 IFCAs will be able to introduce emergency byelaws at short notice so that they are able to deal urgently with unforeseen events. An emergency byelaw would

not need to be confirmed by the Secretary of State (in respect of IFCA in England) or Welsh Ministers (in respect of IFCA in Wales) but would expire after 12 months. Emergency byelaws would be extendable once for a further period of up to 6 months with the written approval of the Secretary of State or the Welsh Ministers as appropriate.

- 3.95 IFCAs will have strengthened powers to enforce their byelaws and the maximum penalty for offences will be increased from £5,000 to £50,000. For offences involving a breach of a permit issued by an IFCA, the court may revoke or suspend the permit. Provision is also made for a system of financial administrative penalties for minor offending in lieu of a court hearing. This is based on the national fisheries model. As well as enforcing their own byelaws, IFCAs will have powers to enforce national and EC fisheries legislation in their district as well as the full range of marine environmental legislation such as byelaws introduced by the MMO.
- 3.96 Each IFCA must take such steps as it considers appropriate to co-operate with neighbouring IFCAs and with other public authorities exercising regulatory functions in sea areas falling within IFCA districts.
- 3.97 The draft Bill introduces new funding arrangements for IFCAs. All local authorities with a seashore must fund their local IFCA. This removes the current opt out exercised by some local authorities. Defra will provide funding to local authorities to cover the additional burden that will arise from the reform package. IFCAs will be able to charge fishermen to offset some of their costs of operating permits schemes.
- 3.98 IFCAs will have powers to collect such statistics as deemed necessary for carrying out their functions. They must produce an annual plan before the beginning of each year and must report on their activities in that year. A report on the conduct and operation of IFCAs must be laid before Parliament as regards IFCAs in England and before the National Assembly for Wales as regards IFCAs in Wales, every four years.

### *Shellfish*

- 3.99 The Sea Fisheries (Shellfish) Act 1967 provides for the establishment and improvement of commercial shellfisheries through a Several Order. It also allows the preservation and improvement of existing wild shellfisheries that may be at risk of over-exploitation through a Regulating Order. The first essentially grants an exclusive right to develop a private fishery (of certain types of shellfish specified in the Order) to the grantee (often a group of fisherman). The second either imposes restrictions or makes regulations (or both) respecting the dredging, fishing for, and taking of shellfish specified in the Order. A hybrid Order combines the rights of both types of Order.
- 3.100 The process of application, extension and operation of Several and Regulating Orders can be burdensome and costly. This means that over time more and more Orders might lapse with adverse consequences for long-term sustainability, local

economies and the marine environment. The draft Bill implements changes to reduce the cost and burden, and to improve enforcement of Orders in England and Wales.

- 3.101 The current criteria under which public inquiries are triggered during application will be removed. This will mean that inquiries are only held where serious or substantial issues are raised or when the Secretary of State decides that one should be held.
- 3.102 IFCA's and their enforcement officers will be able to enforce the provisions of Several and Regulating Orders. For both types of Order, when the Order is held by a body other than an IFCA, the officers will only be able to enforce it when the grantee asks them to do so. We envisage this will operate through some form of contractual arrangement.
- 3.103 The maximum penalty for offences will increase from £5,000 to £50,000 upon summary conviction and the grantees of Regulating Orders will be able to cancel licences following a single conviction, rather than two.
- 3.104 The draft Bill introduces greater flexibility over the use of certain fishing gears within a several fishery. Some gears are currently prohibited but could be used without adverse impact. The draft Bill provides for such matters to be specified in the Order establishing the individual fishery. The draft Bill also provides for other minor amendments to the Sea Fisheries (Shellfish) Act 1967 such as for the clarification of the tolls and royalties that may be levied by grantees of Regulating Orders.

#### *Charging for commercial licences*

- 3.105 The Government currently has powers to charge for commercial fishing licences, but does not use them. The current powers are flexible to some extent, in that they allow different charges to apply for different types of licence. They do not however allow variation according to, for example, the type of fishing gear to be used. A charge that related to the environmental costs of certain fishing methods could, for example, help provide incentives to use less damaging gears.
- 3.106 The draft Bill introduces greater flexibility to enable charges to be levied according to different classes of vessel and gears in England and Wales. Before any scheme were introduced there would need to be full consideration of questions such as the possible impact on national and international competitiveness and the equitable treatment across fishing sub-sectors.

#### *Recreational Sea Angling and unregulated fishing*

- 3.107 The draft Bill extends powers in the Sea Fish (Conservation) Act 1967 to regulate recreational sea angling from the shore and other unregulated fishing activity. Currently the Act generally only governs commercial fishing activities conducted from vessels. For certain species or in certain circumstances, the lack of a power to regulate recreational fishing from the shore could limit the effectiveness of a specific conservation measure.

3.108 The powers would allow the introduction of a 'bag limit' for particular species of fish (i.e. a limit on the number of fish which can be retained in any specified period) and allow a maximum size or a size range to be set for species of fish. The powers in the draft Bill would only be used to extend controls to activities on conservation or enforcement grounds. Any use of the powers would be through secondary legislation and would be subject to consultation.

#### *Out-of-date and redundant fisheries legislation*

3.109 The Marine Bill White Paper identified nine out-of-date fisheries Acts in response to the Davidson Review which considered, amongst other things, where out-dated legislation could be scrapped, simplified or consolidated in accordance with the principles of better regulation. Of the nine Acts identified in the White Paper, the draft Bill provides for six to be repealed together with a certain section of one other. We have identified provisions in the other two Acts that should be retained and therefore these will remain in force.

### **Migratory and Freshwater Fisheries**

3.110 These provisions were not included in the Marine Bill White Paper but fulfil our long-standing commitment to implement the principal recommendations of the Salmon and Freshwater Fisheries Review. They have been the subject of public consultation.

3.111 The day-to-day responsibility for regulation and management of salmon and freshwater fisheries in England and Wales lies with the Environment Agency (EA). The draft Bill will modernise the tools available to the EA for their management and enforcement role.

#### *Types of fish*

3.112 The EA's regulatory powers (including a licensing system, byelaw making powers, enforcement powers and certain other powers to restrict fishing effort) will be extended to include smelt and lamprey, two migratory species which currently fall outside the scope of fisheries management measures. In addition, Ministers will be able by Order to add further kinds of fish to the EA's remit; marine species such as flounder, mullet or bass can be found in significant numbers in freshwater and it is possible that new species of migratory fish could start to colonise English and Welsh inland waters as a result of climate change. There is no intention to lay such an Order until a fishery has developed or is developing, and we intend that any Order will limit the extension to inland waters only, to ensure there is no duplication of management with the relevant body responsible for managing sea fisheries in the marine area. This will allow for a more holistic approach to inland fisheries management; allowing all fish stocks to be managed at sustainable levels.

#### *Licensing*

3.113 To complement the new licensing powers, the current deeming provisions (whereby a salmon licence is deemed to allow fishing for trout etc) will be

repealed so that the EA will have more flexibility to determine the scope of the various licences it may issue. At present the EA intends to offer three separate licences for rod and line fishers:

- salmon, trout, smelt and coarse fish;
- trout and coarse fish; and
- eels and lamprey.

3.114 In practice little will change for anglers in the short term; however the EA will have the flexibility, should there be sufficient interest, to introduce licences covering different combinations of species.

3.115 Net and trap fisheries will either be licensed (generally those less intensive methods of fishing) or authorised (methods which pose a higher risk to either fish stocks or the aquatic environment). At present we intend that the following will be licensed:

- for salmon and trout – compass nets, haaf nets, draft hand and trammel/whammel nets, wade nets, coracle nets, T&J nets, drift nets gill nets and seine nets;
- for eels – fyke nets, dip nets pots, baskets and criggs; and
- fisheries currently undertaken under Certificates of Privilege or statutory entitlement.

3.116 The EA will be able to impose conditions on the use of “historic installations”. “Historic installations” include those fixed nets or traps that have been fished under privileged status since at least the 19<sup>th</sup> century. Their privileged status has prevented the EA from taking coherent action to control fishing pressure. The EA may use the new powers, for instance, to include a limitation on the number of fish which may be taken, the times at which they may be taken and specifications as to the fishing gear that may be used.

#### *Authorisations*

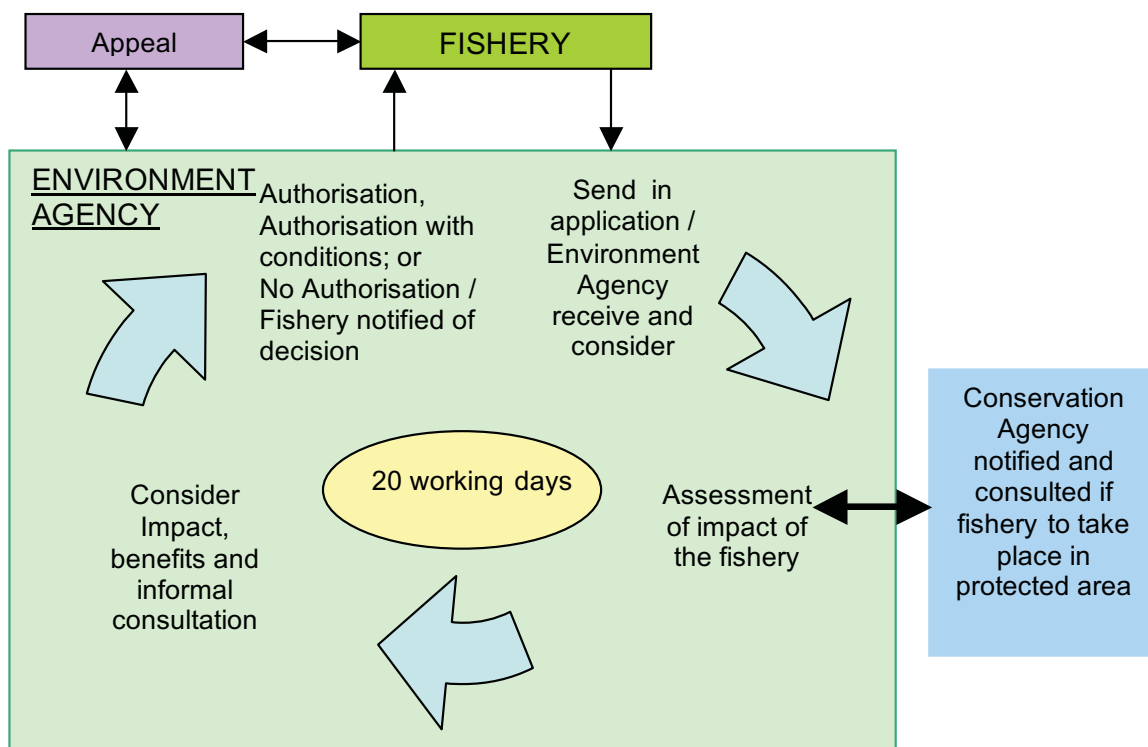
3.117 Those who wish to pursue fisheries not covered by licences will need to apply to the EA for an authorisation to fish. This will most likely include the following:

- Crayfish traps, eel racks, eel traps, coops, electric fishing and stake nets; and
- Fisheries undertaken for scientific or management purposes (such as those during a close season that would otherwise be illegal);

3.118 This formal separation allows for the assessment of those fisheries that may pose a higher risk to either fish stocks or the aquatic environment, or which

involve new fishing methods that may develop and which have potential to harm the aquatic environment. The EA will be able to refuse to grant an authorisation or place conditions on any authorisation such as the number of fish that may be taken or specifications on the gear used.

### Process for Authorisations



### Effort Limitation

3.119 The EA is currently able to restrict the number of licences in salmon or trout net and trap fisheries through Net Limitation Orders (NLOs). The draft Bill extends this power to all migratory species, and it will be for Ministers to determine whether a public enquiry into the Order is necessary (the current obligation to hold a public enquiry in certain circumstances will be removed). The EA will still be required to consult on proposed NLOs. The EA will be obliged to consider whether compensation should be payable to those, wholly dependent on the relevant fishery whose livelihood will be removed. It will be able to take into account cases in which other compensatory payments have been made for instance by private groups or organisations. Therefore safeguards will remain for fishers' livelihoods.

### Illegal instruments

3.120 The use of certain instruments (or implements) when fishing is already banned. The draft Bill gives Ministers the power (subject to consultation) to prohibit the use of further instruments that have the potential to take fish indiscriminately, damage fish such that subsequent release is unlikely to be successful or take a large proportion of fish present. The draft Bill makes clear that a licence to fish by rod and line does not entitle a person to use a gaff or tailer.

### *Power for EA to make emergency byelaws*

- 3.121 The draft Bill empowers the EA to introduce emergency byelaws in response to situations such as serious drought, collapse in numbers of returning fish, high temperatures (which can lead to de-oxygenation of the water) or water pollution. Such byelaws would be introduced for a maximum of 12 months in the first instance, with the possibility of extending them for a further 6 months where necessary. There will be no formal consultation on emergency byelaws, but Ministers will be obliged to revoke or amend the byelaws should they consider them at any time to be no longer necessary for the protection of fisheries.
- 3.122 Had these powers been available the Environment Agency would have used them to address problems with low flows on the River Usk during a prolonged drought which made salmon more vulnerable to fishing at various migration barriers. An emergency byelaw imposing a temporary ban on fishing adjacent to obstructions to up or downstream passage of fish would have reduced the vulnerability of salmon to fishing. Whilst such a byelaw would have temporarily reduced fishing opportunities at favoured locations other sites nearby would still have been available.

### *Reform of law on byelaws*

- 3.123 The draft Bill removes statutory close seasons and close season lengths. The current provisions impose an unnecessary restriction on the EA's ability to determine appropriate evidence-informed close seasons. The draft Bill gives the EA the power to set close seasons through byelaws, and whilst initially we do not envisage significant changes to the current close seasons, there will be more flexibility to adapt to future challenges such as different spawning times brought about by changes in water temperature due to climate change. This will allow the EA to protect fish stocks when they are most vulnerable.
- 3.124 In addition, the current right for owners of salmon and trout fisheries, and anyone with their permission, to remove freshwater fish by rod and line during the close season will be removed as this undermines any catch and release requirements or close seasons for freshwater fish.
- 3.125 The draft Bill also includes a power for the EA to make byelaws to prohibit the taking of fish larger than a particular size. Larger fish generally produce more eggs and more viable eggs, and protecting them can contribute significantly to the sustainability of the species concerned. The EA already has the power to make byelaws setting minimum landing sizes.

### *Reform of law on introduction of live fish*

- 3.126 The introduction of fish, whether native or alien, into inland waters can be detrimental to local and/or national biodiversity through competition, predation and hybridisation, or through impacts on the aquatic habitat. The draft Bill includes powers for Ministers to make regulations establishing a system for regulating the keeping, movement, release and removal of native species of live fish (together with certain non-native kinds of fish which are not regulated



through European Community law) to ensure all fish movements are regulated in a consistent and effective manner.

3.127 We intend that the key provision of this new scheme shall be an authorisation scheme. Each authorisation would be a consolidated consent detailing what species of fish may be kept at, introduced into or removed from a particular site. The authorisation would be a long-term consenting framework against which all future fish movements for that site would be made and would therefore reduce the administrative burden for both suppliers and the EA. The details an authorisation might contain include:

- Species that may be kept/stocked/removed;
- Notification periods for stocking/removal operations; and
- Stocking/removals to be undertaken by registered and licensed fish supplier.

3.128 The long term consent would require a “consignment note” and duty of care system for suppliers; in practice this means that they would report movements electronically as they carry them out and these reports will be matched up against consents already in place and recorded on the Live Fish Movements Database, kept by the Centre for Environment, Fisheries and Aquaculture Science (CEFAS) and the EA.

3.129 All fish farms would be covered by this scheme (they are not generally covered by current controls, unless they are selling fish for stocking into the ‘wild’). In addition carriers of live fish would be required to ensure that the fish they were carrying were accompanied by the relevant consents.

3.130 The proposed measures aim to steer away from dealing with native and non-native species separately in terms of the licensing and internal fish movement schemes. However, the conditions imposed through consents and licences will vary in proportion to the risk posed by particular species or activities. Controls on most native species are expected to be minimal.

3.131 In particular the proposed scheme would:

- Expand the scope of the offence of introduction of fish, to make owners and occupiers of inland waters liable where they know or suspect, or ought to know or suspect, that the fish were introduced without EA consent;
- Apply these requirements to fish farm waters in respect of native kinds of fish;
- Expand the scope of the offence of possession of live fish to cover a person who knows or suspects, or ought to know or suspect, that the fish will be introduced without EA consent; and
- Require prior authorisation for the removal of live fish from inland waters.

3.132 The details of the scheme will be laid out in secondary legislation and subject to consultation before introduction in spring 2010.

### **Marine Enforcement**

3.133 Effective enforcement is essential to ensure that the rules and regulations designed to manage the marine area effectively are implemented fairly. Under the draft Bill, we will take the opportunity to modernise tools and sanctions to provide a flexible, more proportionate marine enforcement regime. For licensing and nature conservation, we will introduce civil sanctions similar to some of the provisions in the Regulatory Enforcement and Sanctions Bill, which is currently going through Parliament.

3.134 The MMO will be able to appoint Marine Enforcement Officers (MEOs), and make the common enforcement powers set out in the draft Bill available to them to enforce sea fisheries, nature conservation and licensing legislation in the marine area. Similarly, Welsh ministers will be able to appoint Welsh Enforcement Officers (WEOs). The Department of the Environment in Northern Ireland may appoint people for the purpose of enforcing marine licensing. There will be additional powers that officers can rely on for specific regimes, which will complement the common set of powers. The area where enforcement officers can apply their Marine Bill powers depends on the regime (fisheries, licensing or nature conservation) and the vessel. Where the Marine Bill powers do not apply, enforcement powers will be provided by the existing legislation for British Sea Fisheries officers and other enforcement officers.

3.135 In the inshore area (0-6nm), and in estuaries there will be shared responsibility between the MMO, EA and IFCA for the management and enforcement of fisheries and nature conservation legislation. IFCA will continue to lead on introducing measures for local sea fisheries management and in cases where fisheries activities adversely impact on the wider marine environment. The EA will continue to lead on migratory and freshwater fisheries enforcement. The MMO will take action where national measures are required and in cases where nature conservation is at risk from non-fisheries threats. All three bodies will have extensive enforcement powers and the draft Bill will provide for cross warranting of officers to ensure efficient use of resources. A summary of these arrangements are set out at Annex G.

### *Common Enforcement Powers*

3.136 At the moment, enforcement powers in the marine area come from a number of pieces of legislation across marine fisheries, marine licensing and nature conservation. Differences in powers can make it confusing for the person being inspected and for the enforcement officer, leading to inefficiencies and potential error. At worst, the regulations we have to protect the environment may be weakened by these complications.

3.137 The draft Bill streamlines and modernises these powers so that enforcement officers have access to a single set of common enforcement powers. MEOs,

WEOs and Northern Ireland Enforcement Officers will be warranted officers and at sea may be regarded as similar to the police. Broadly put, these common powers will make existing abilities for enforcement officers more coherent, with respect to their ability:

- To stop, board, inspect and disembark a vessel or marine installation;
- To require a person to help them in carrying out their duties, such as opening a locked door on a vessel or providing a password to access documents on a computer;
- To enter premises to carry out their functions, with a warrant if those premises are used only as a dwelling; and
- To search, carry out investigations and seize objects (and containers for them).

3.138 Offences against enforcement officers will include not complying with a reasonable requirement made by the officer, obstructing them in their duties, providing false information to the officer or pretending to be an enforcement officer. We will review the offences against enforcement officers in the period preceding publication of the final Bill.

3.139 Responsibility for fisheries enforcement depends on the vessel nationality as well as the area. Currently the Marine and Fisheries Agency (MFA) works closely with the Scottish Fisheries Protection Agency, the Welsh Assembly Government and Northern Ireland Department of Agriculture and Rural Development. Reciprocal arrangements exist under which the MFA enforces legislation in respect of Scottish and Northern Irish fishing boats in the UK offshore area and Scottish, Northern Irish and Welsh fishing boats in the territorial waters around England and the Devolved Administrations enforce legislation in respect of English fishing boats in the Scottish and Northern Irish Zones and the territorial waters adjacent to Wales. We want to ensure the legal status of the MMO as an NDPB does not compromise the continuation of these arrangements and are considering the best way to achieve this. We anticipate that additional clauses will be needed in the Marine Bill before introduction to Parliament.

#### *Marine nature conservation-specific powers*

3.140 MEOs and WEOs will have the power to take sound recordings for the purpose of enforcing certain rules.

#### *Marine fisheries-specific powers*

3.141 Officers will be given new powers to inspect fishing gear in the sea and their powers to forfeit fish and gear where there has been an offence will be strengthened. They will also be given powers to seize and destroy fishing gear that can never lawfully be used according to the law of England and Wales, and to seize and destroy under-size fish. Officers' powers to detain fishing boats will be clarified and wherever fish or gear have been seized or a fishing boat

detained, the MMO will have the power to release the property on payment of a bond. The MMO will also have the power to sell fish seized and the courts will be given the powers to forfeit bonds and proceeds of sale in addition to their current powers to forfeit fish and gear.

### *Administrative penalties*

- 3.142 Using administrative penalties will allow us to address offences in a proportionate and risk-based manner. At the moment, there is less incentive to comply with the law than we would wish as it is often not in the public interest to prosecute. Monetary penalties offer an efficient, cost-effective and proportionate approach to enforcement in relation to such minor or localised offences. An advantage to the offender is that if pay the penalty they can avoid getting a criminal record. The proposals in the draft Bill implement the recommendations of the Macrory review and the provisions of the Regulatory Enforcement and Sanctions Bill.
- 3.143 For the marine licensing regime, we will use fixed monetary penalties to address offences of breaching a licence condition. Such penalties will be used to address minor non-compliances of conditions where little, if any, harm has been caused to the environment, human health or interference to other users of the sea. This will remove any competitive advantage afforded to non-compliance with licences for licensable activities. Fixed penalties will be used for low level offences, such as those which impact upon the efficiency of the licensing authority, for example when the licensee has not given the licensing authority advance warning that the licensed activity is due to start. We will use variable monetary penalties to address more serious breaches of licence conditions. The level of variable monetary penalty should be high enough to remove any commercial advantage obtained by breaching a licence or its conditions. It may be calculated by reference to the size or turnover of the organisation. It may include a punitive element and may take account of other aggravating factors such as the history of non compliance or the seriousness of the non-compliance.
- 3.144 Variable monetary penalties will be used where non-compliance brings greater benefits for the operator. For example, operators sometimes do not apply for a licence for works which require one. Currently, if the operation would have been permitted had a licence application been made, the licensing authority can find it difficult, particularly for minor works, to justify in the public interest a prosecution. This means that unlicensed operators can gain commercial advantage over those that apply for a licence (because they have avoided the costs associated with a licence). As in the Regulatory Enforcement and Sanctions Bill, we will enable the licensing authority to accept undertakings from offenders as a way of mitigating the cost of a variable monetary penalty, and enforcement undertakings volunteered by a suspected offender.
- 3.145 For example, someone constructs a jetty without a licence. The jetty impedes access to other users of the sea and causes a deterioration in water quality. The MMO could issue a remediation notice ordering the removal of the jetty and, depending upon the nature of the case, a variable monetary penalty issued for the offence of building the jetty without a licence.

- 3.146 The MMO will also be able to vary, suspend or revoke licences, where appropriate.
- 3.147 For nature conservation purposes we will use a fixed monetary penalty scheme when there is a breach of a conservation order or interim order. This might be appropriate where the breach refers to a single instance which is unlikely to have a major impact on the features for which the MCZ has been designated – for example: anchoring of a vessel in a prescribed area; or deliberately going within a certain distance of a specified species or feature. Enforcement authorities will also be able to accept, at their discretion, voluntary undertaking in place of prosecution or a fixed monetary penalty.
- 3.148 The Bill will contain a power enabling the fixed penalty scheme for marine fisheries offences (which we are currently introducing by secondary legislation for Community offences) can be extended to all fisheries offences.

#### *Transitional arrangements*

- 3.149 The draft Bill does not comprehensively set out the transitional arrangements that will allow us to make an efficient move from the current systems to the new ones being set up under the draft Bill. This section gives an outline of the arrangements we expect to put in place to ensure business is not disrupted by the move from old to new regimes.
- 3.150 **MMO:** As the MMO is a new organisation, there will be few transitional arrangements associated with setting it up. However, some transitional clauses will be needed to ensure continuity in functions being transferred to the MMO from the MFA and other bodies.
- 3.151 **Marine planning:**
- We intend to avoid uncertainty that may arise for developers and decision-makers between the announcement of a forthcoming plan and the publication of that plan, as to how they might have to adjust the way they operate. Similarly we want to avoid uncertainty arising when the intention to revise an existing plan is announced.
  - We will therefore make clear in guidance to decision makers, that plans ‘in preparation’ would not have any legal influence on decision making until they have been published in draft. Decision makers will still however be able to access any relevant research and information, alongside the MPS that have informed the plan, and should consider these when making decisions.
  - Once a plan has been published in draft, decision makers will be required to consider the plan proposals when carrying out their functions. However they will not be required to act in accordance with the plan until it has been adopted in its final form, because until then the content of the plan is subject to change.

- Where a plan is already in place following adoption, we would encourage developers to contact the plan making authority before submitting their formal applications for licences, to discuss any new information that may have come to light since the plan was published.

3.152 **Marine licensing:** transitional arrangements to move us from the current licensing regime to the new one are not in the draft Bill. This is a complex area which will become clearer as the provisions of the Bill firm up and as we start to tackle secondary legislation to implement them. Our initial thoughts on the principles for transitional rules are set out in Annex H.

3.153 **Marine Nature Reserves:**

- The new MCZ provisions will supersede those for Marine Nature Reserves (MNRs). The provisions in the Wildlife and Countryside Act 1981 which provide for the designation and protection of MNRs will therefore be repealed. There are only two MNRs – at Lundy Island in England and Skomer in Wales – and we intend to automatically convert them into Marine Conservation Zones (MCZs). The existing MNR byelaws will continue in force until an MCZ conservation order is made.
- In the case of European marine sites (that is, Special Protected Areas and Special Areas for Conservation), it is proposed to amend the 1994 and 2007 Regulations so that sites can be protected by conservation orders, similar to those proposed in the Bill for MCZs.
- The Secretary of State for Defra will exercise the power to make conservation orders until the MMO is vested.

3.154 **Inshore fisheries management:** In bringing in new arrangements, certain transitional provisions will be put in place to transfer the existing management regime into the new. These are set out in Annex I.

3.155 **Migratory and freshwater fisheries:** If the Marine Bill is granted Royal Assent in summer 2009, then we expect the new rod licences will be introduced in April 2010. Net and trap licences operate on the calendar year; we expect that the new licences will be in place from January 2010. The new authorisations will also be available from January 2010. The remaining provisions will take effect immediately, except the live fish movement scheme which will be introduced in spring 2010.

## 4. Coastal Access

### Introduction

- 4.1 Provision for extending access to the coast was made in the Countryside and Rights of Way Act 2000 (the CROW Act). A commitment to improve coastal access was included in the Defra Five Year strategy in December 2004. The Labour Party's election paper "Rural Communities forward not back" in April 2005 promised that "Improving access to coastal areas will be an early priority for a Labour third term".
- 4.2 The Government's vision is of "A coastal environment where rights to walk along the length of the English coast lie within a wildlife and landscape corridor that offers enjoyment, understanding of the natural environment and a high quality experience; and is managed sustainably in the context of a changing coastline".
- 4.3 Natural England (NE) was asked to research the access situation on the coast and look at a number of options for doing this, working to the vision set out above. NE looked at three existing options for improving coastal access – using existing public rights of way legislation; an order under section 3 of the Countryside and Rights of Way Act 2000; voluntary measures such as agreements to provide access through agri-environment schemes – and also an option for new legislation. The NE Board submitted its report on coastal access ("Improving coastal access – our advice to Government") to Defra at the end of February 2007<sup>12</sup>, recommending that the Government bring in new legislation. Defra consulted on options, including the approach recommended by NE, in June 2007.
- 4.4 The coastal access provisions in the draft bill only apply in relation to England. The Welsh Assembly Government is considering appropriate statutory provisions for Wales, subject to consultation, which might be included in the final Bill.

### Overall Policy Package

- 4.5 There were 72 million leisure visits to the coast (outside seaside towns) generating £1.4 billion spend in 2005, and going for a walk was the most popular main activity on these visits<sup>13</sup>. Half of the English public said they did not visit the coast frequently but would like to visit more.<sup>14</sup>
- 4.6 NE's report highlighted the fact that there are parts of the coast where public access on foot is not currently possible, making parts of our wonderful coast unavailable for the public to enjoy. The study has also shown that the English coast is a dynamic environment, where some stretches of existing coastal paths

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12 <http://www.naturalengland.org.uk>.

13 England Leisure Visits Survey 2005.

14 Ipsos MORI 2006

are closed or have fallen into the sea as a result of the natural changes which are occurring to our coastline. In other parts the feeling of confinement leaves the walker wishing for a better quality of experience and a sense of freedom with the elements. The coast is vitally important for nature conservation and wildlife. NE has developed its work in a way that has taken account of the coastal landscape and wildlife, not just the benefits that an improvement in access might bring.

- 4.7 In line with the findings from the June 2007 consultation, the draft Bill aims to improve public access to and enjoyment of the English coastline, providing secure and consistent rights for people to enjoy the whole English coast with confidence and certainty.

### **Implementation: how the enabling measures will work**

- 4.8 The English coastal route will be proposed by NE in consultation with local interests, taking due account of the existing pattern of physical features and boundaries, and of potential impacts on nature conservation and on other land uses, both for the route and for the associated spreading room. NE have published a document setting out the key principles they propose to apply to this work, available on their website<sup>15</sup>. These principles will be further developed and consulted on before implementation begins. Consultation with landowners and those with an interest in the land will take place in order to take account of their concerns over issues such as land management, privacy or business interests. There will also be discussion with other local interests – including parish councils, other local authorities and local access forums, and wildlife and user groups – which will form a key part of the local design. In practice NE will work through access authorities (typically county councils) in achieving much of the detailed setting out of the coastal margin, wherever they are satisfied that this will result in timely and effective delivery.
- 4.9 A right of access to the route and associated spreading room will be provided under the CROW Act, as amended by this Bill. The route itself will be established so that it can always remain open, for example, it will not go through areas where there would be an unacceptable impact on nature conservation or, for instance, through ports or defence establishments where security and safety are issues. Where coastline is subject to erosion, NE will be able to use its discretion to specify that the route should “roll back” with erosion. The route (but not the spreading room) will be able to be established on certain categories of land which are otherwise excepted from the CROW right of access, for example, arable fields. NE and the Secretary of State for Defra, will be under a duty to strike a fair balance between the interests of the public in acquiring a right of access and the interests of any owner or occupier of land over which the new right would apply. The right of access will be subject to restrictions or exclusions, for example, for nature conservation or land management purposes, although these will be somewhat different from those applicable to existing CROW access land, reflecting different conditions on the coast. Modifications to CROW will be

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15 <http://www.naturalengland.org.uk/leisure/access/coastal>



made by means of an Order. Details of the proposed content of such an Order are available on the Defra website.

- 4.10 Following the planning and consultation process for a particular section of the coast, NE will produce a report for the Secretary of State for Defra proposing the line of a long-distance route as part of the English coastal route. The report will indicate what other land will be subject to access as a result of the setting out of the route (in most cases by description rather than mapping), and any restrictions and exclusions that it proposes. Those with an interest in the land will be able to make representations to NE about the line of the route, or any restrictions or exclusions proposed or which they believe should be proposed. NE will present these representations, and a summary of any other representations, with the report to the Secretary of State. The Secretary of State will consider the report and the representations and will either approve or reject the report, or approve it with modifications.
- 4.11 Once the route is approved for a section, any necessary establishment work will be undertaken to facilitate and manage the new or improved access (infrastructure, signage, restrictions or exclusions). The rights will then come into force for that section of the English coastal route. The establishment of the English coastal route will be carried out over a period of years – the assumption is that most work will be complete after 10 years, but there is not a cut-off date for completing the work. NE will be free to focus on the areas of greatest need first.
- 4.12 The coast is a dangerous environment, but we believe that the public can and do make use of it safely and sensibly and should be allowed to make their own judgement on the level of risk they wish to undertake. General information on safety is important, and the public need to be made aware of any unusual or hidden risks, but we believe they should take responsibility for their own safety and the safety of any children or others for whom they are responsible. The legislation therefore removes occupier's liability in respect of any natural feature, as for other CROW access land, but in addition removes occupier's liability in respect of any non-natural feature. In both cases this is subject to the occupier not having acted intentionally or recklessly in respect of a known danger. The legislation will also clarify that NE owes no duty of care when preparing proposals for a long-distance route as part of the English coastal route, or in connection with any failure to exercise their power to erect signs warning of particular hazards or to exclude or restrict access to any area of coastal margin. The legislation will similarly clarify that the Secretary of State owes no duty of care when approving proposals for a long-distance route as part of the English coastal route.

## 5. Next Steps: Consultation and Scrutiny

- 5.1 The draft Bill is being made available for Parliamentary pre-legislative scrutiny. Further information on this process is available in a note by the House of Commons library.<sup>16</sup>
- 5.2 The publication of this draft Bill is intended to enable a full debate with all interested parties on the overall package of reforms and on the detail of the specific proposals.
- 5.3 It is important to get this complex legislation right and ensure that the final package of reforms makes sense to those who will have to work with it. That is why we have outlined how we plan it working in practice as far as possible.
- 5.4 Whilst we have not set out any specific consultation questions, we welcome your views on whether our proposals will deliver the outcomes we wish to see. You may submit comments in writing to:
- Marine Bill Team  
Department for Environment, Food & Rural Affairs  
Area 2C, Nobel House  
17 Smith Square  
London  
SW1P 3JR
- 5.5 Alternatively, you may submit comments electronically to:  
MarineBillTeam@defra.gsi.gov.uk
- 5.6 Please submit comments by 26 June 2008.
- 5.7 Following consultation and pre-legislative scrutiny, the Government will respond to comments and suggestions and make amendments to the draft Bill in preparation for introduction to Parliament.

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16 <http://www.parliament.uk/commons/lib/research/notes/snpc-02822.pdf>

## Annex A: The overall policy context for marine regulation

The draft Bill is only one strand of work in the marine environment. This Annex outlines some of the main policy context, in terms of our international and EU commitments.

### International Policy

1. The UK is party to the United Nations Convention on Law of the Sea (UNCLOS) which sets out the legal framework for all ocean activities. The Convention covers the governance of all aspects of ocean space, including environmental control, marine scientific research and economic and commercial activities. It also defines the areas of the sea over which countries have jurisdiction.
2. Shipping activity, whilst within the framework of UNCLOS, is managed by the UN's International Maritime Organization (IMO), of which the UK is a Member State. This agency of the UN regulates all aspects of shipping activity, from safety, through maritime security to the management of environmental impacts.
3. The UK is also party to a number of conventions and commissions which have specific implications for the marine environment. We work with the International Whaling Commission to support the current moratorium on commercial whaling, and with the North Atlantic Salmon Conservation Organisation (NASCO), which promotes the conservation and rational management of salmon stocks in the North Atlantic through international cooperation. We are working towards commitments under the World Summit on Sustainable Development and the Convention on Biological Diversity to achieve by 2010 a significant reduction in the current rate of biodiversity loss, encourage the application of the ecosystem approach, establish a network of marine protected areas by 2012 and restore depleted fish stocks by 2015 where possible.
4. Closer to home, the UK plays a key role in the Oslo-Paris Convention for Protection of the Marine Environment of the North East Atlantic (OSPAR). OSPAR concerns itself with the protection and conservation of marine biodiversity and ecosystems, eutrophication, hazardous substances, offshore oil and gas, radioactive substances and monitoring and assessment.
5. Under OSPAR, we are committed to developing ecological quality objectives for the North Sea, protecting species that are threatened or in decline, and managing human activities which may affect the marine environment. We are also committed to designating relevant areas of the UK's seas as areas of marine protection belonging to a network of well managed sites. The marine nature conservation proposals in the draft Bill will help us to deliver this.
6. We also work with the International Council for the Exploration of the Seas (ICES) which coordinates and promotes marine research in the North Atlantic, including adjacent seas such as the Baltic Sea and North Sea.

## EU framework

7. Along with OSPAR, EU legislation has been central to developing a variety of measures to manage important sectors and impacts in the marine environment. These cover areas such as conservation, fisheries, environmental pollution, renewable energy targets and water quality, and have been key to helping us improve and clean up our seas. Box 1 below shows some of the legislation that impacts on the management of our marine environment.

### Box 1 EU Measures

Existing EU measures include:

#### Industry

- Common Fisheries Policy
- Legislation on marine shipping fuel
- EU Renewables Directive

#### Conservation

- Birds Directive
- Habitats Directive

#### Water Quality and Inputs

- Water Framework Directive
- Shellfish Waters Directive
- Urban Waste Water Treatment Directive
- Bathing Waters Directive
- Habitats Directive

#### Assessment

- Environment Impact Assessment Directive
- Strategic Environmental Assessment Directive

8. The EU Marine Strategy Directive is about to be adopted. This requires member states to take the necessary measures to achieve “Good Environmental Status” (GES) in their waters. This will be developed using an ecosystem based approach; describing the environmental status of our waters to which we aspire, our impacts on them, and then developing a programme of measures to attain GES. Programmes of measures must include protected areas covering the range of marine habitats. The draft Bill will enable us to implement the Marine Strategy Directive in a coherent and systematic way.
9. Under the Directive, the UK (and other Member States) will need to co-ordinate our activities in the marine regions (such as the North Sea and the Channel) which we share with other countries. This means that we (for example the new Marine Management Organisation) will need to be alert to what is happening in other countries to ensure that licensing and other work reflect these.
10. The EU has also recently announced the publication of a Blue Book (a “vision document”) on an Integrated Maritime Policy for the EU. This is a thematic document setting out policy on maritime matters, covering a range of policy areas from marine planning through to shipping. The Marine Directive is seen by the European Commission as the environmental pillar of their Maritime Policy.

## Annex B: The Welsh Assembly Government

The Welsh Assembly Government is supportive of the need for a Marine Bill to better manage our shared sea resources, and has been working with Defra throughout the development process to ensure that what is being created is as suitable for the needs of Wales as it is for the needs of England and the UK as a whole. In general, where changes are being made or new powers are being created in England, similar changes or powers will also be made for Wales. This means that the majority of the proposals for England also apply for Wales. In areas where these changes are the responsibility of Welsh Ministers, it will be for them to decide how the powers will be used.

Joining up the management and delivery of functions in the sea will be accomplished within the Welsh Assembly Government. The Marine Management Organisation will operate mainly in the English inshore region and the offshore area. The MMO will have some responsibilities in Wales, for non-devolved activities, such as regulating non-fisheries harbours and renewable energy.

Welsh Ministers will work jointly with UK Government and Northern Ireland to agree a Marine Policy Statement. Welsh Assembly Government will be the planning authority, but we will be exploring ways in which to take forward marine planning that addresses the complex mix of devolved and non-devolved responsibilities. Current thinking (based on advice from the Wales Coastal & Maritime Partnership) is that there will be a single plan for Welsh waters.

Welsh Ministers are also currently responsible for licensing some activities in Welsh waters including those covered by the Food and Environment Protection Act, marine aggregate dredging, and marine species protection legislation. The Assembly Government has established a Marine Consents Unit (MCU) to take over the administration of these licences, providing a single point of contact for licence applications relating to the marine area for which the Welsh Ministers are responsible. The hand over of responsibility from different Departments in the Assembly Government and from the Marine and Fisheries Agency (MFA) is being done gradually. The MCU is working with the MFA to ensure that it will be able to access the same information to which the MFA (and later the MMO) will have access and will work closely with the MFA/MMO to ensure consistency of approach to licensing now, and through the regime proposed in the draft Bill, wherever possible. Welsh Ministers will be the licensing authority under the draft bill for the new licensing regime in relation to Wales.

The draft Bill also creates improved enforcement tools in Wales to ensure that Welsh Ministers and WAG have all the powers needed to enforce the regimes for which they are responsible. Welsh Ministers will be able to appoint Welsh Enforcement Officers (WEOs) as well as retaining the power to appoint British Sea Fishery Officers (BSFOs).

Nature conservation proposals in the draft Bill will apply in Wales, with Welsh Ministers carrying out those functions that the MMO or Secretary of State will exercise for England. Fisheries proposals to provide powers to modernise inshore fisheries and environmental management arrangements, including powers to replace SFCs with IFCA, apply in Wales as well as in England, and the proposals for implementing these are outlined in the relevant chapters of this document.

Finally, the Welsh Assembly Government is seeking to improve public access to the coast via path infrastructure improvements, including the delivery of a new All Wales Coastal Path. The Assembly Government is, however, interested in exploring how a legislative approach might complement and add value to the existing improvement programme in Wales. Consultation with stakeholders on the possible options for Wales is proposed as the next step. In the light of that consultation, provisions for Wales would then be considered for possible inclusion in the Bill when formally introduced to Parliament.

## Annex C: The Northern Ireland Assembly

Northern Ireland is fully committed to the policy aims underpinning the draft UK Bill to introduce a new framework for the marine environment based on sustainable development principles, which will work towards delivering clean, health, safe, productive and biologically diverse oceans and seas.

In Northern Ireland, marine responsibilities are spread across a number of Government Departments. The Minister of the Environment has responsibility for the majority of the work streams in the draft Bill. However, the Minister of Agriculture and Rural Development has responsibility for marine fisheries.

Management of activities in the marine area fall within a complex mix of devolved and reserved responsibilities. Since the restoration of devolution in Northern Ireland, the Minister of the Environment, in considering the way forward, has endeavoured to strike a balance between the need to a) remain the UK Bill for those matters which are reserved and where it would be appropriate to do so and b) legislate by means of Northern Ireland legislation for those matters which are devolved or which are reserved but where it would be appropriate to legislate in Northern Ireland legislation, with the consent of the Secretary of State.

On this basis, the Northern Ireland Executive has agreed a twin-track approach to the introduction of new marine legislation. Northern Ireland is included in the draft UK Bill for the marine policy statement and planning offshore and for those aspects of marine licensing relating to the Food and Environment Protection Act 1985 and marine aggregate extraction. This will require the agreement of the Northern Ireland Assembly to a Legislative Consent Motion when the Bill is introduced into Parliament.

The remaining proposals which rest with the Minister of the Environment will be developed in Northern Ireland by means of an Assembly Bill. As a first step, the Department, in liaison with relevant Government Departments and stakeholders, will develop marine policy proposals on which to consult, including marine planning, possible further streamlining of licensing, marine nature conservation and options for delivery. The need for provisions covering freshwater and migratory fisheries will also be considered. However, there are no plans to make provision for coastal access at this time.

The decision to proceed in this way has been influenced largely by the need to respect the devolution settlement, to provide local stakeholders with the opportunity to become fully engaged in the policy development process and to allow some flexibility to tailor legislative provisions to Northern Ireland requirements whilst maintaining overall consistency of approach within the UK.

The exercise of the new functions proposed for introduction in Northern Ireland by the UK Bill will rest with the Department of the Environment pending the outcome of the policy development process.



## Annex D: The Scottish Executive

The Scottish Executive is fully committed to the high level vision for clean, healthy, safe, productive and biologically diverse marine environment which supports the interests of nature and people. The Scottish Executive has devolved powers in relation to the seas adjacent to Scotland from 0-12 nautical miles and also certain matters within the Scottish offshore zone. Scotland's coastal and marine environment provides an important natural resource upon which so many Scottish communities depend. For example:

- most of the seas around Scotland are oceanic and deep
- most of the exceptionally long coast around Scotland is inaccessible and sparsely populated;
- and the environmental status of most seas around Scotland is currently either good or excellent.
- there is much potential in Scotland for marine renewable developments harnessing wave and tidal energy.

Policy development in the marine environment needs to be designed to address the circumstances and challenges of the seas around Scotland.

The Scottish Executive and UK Government will work constructively to discuss the proposals and devolution implications contained within the UK Marine Bill, particularly in the offshore zone where Scotland has devolved responsibility for certain matters. However there are also potentially a number of issues within 0–12nm which need to be considered too.

The Scottish Executive also plans new marine legislation to ensure sustainable management of Scotland's seas and coasts. This will balance competing interests for use and protection of the seas. To take forward this work, the Scottish Executive has established the Sustainable Seas Task Force. The Task Force is considering the arrangements for licensing and enforcement, conservation issues, marine management arrangements, planning and integrated coastal zone management and data and science needs. A Scottish Marine Management Organisation is planned which will lead delivery of the proposals within Scottish territorial waters and where matters are devolved.

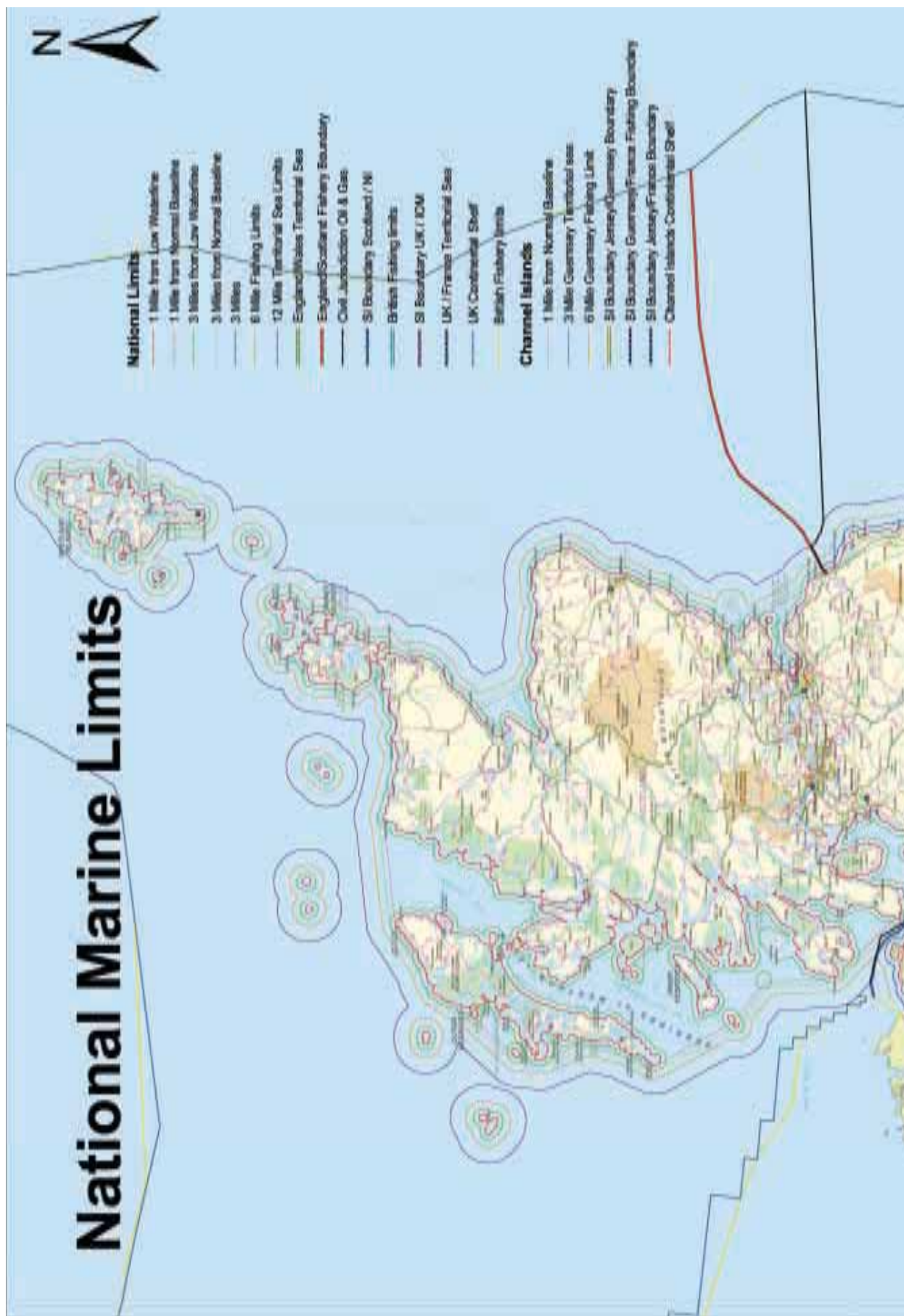
The Task Force is working intensively with a view to developing a set of proposals for Scottish Marine legislation. The Scottish Executive plans to undertake a full consultation with stakeholders on a Scottish Marine Bill shortly thereafter.

The Scottish Executive is committed to working towards coherent marine policies across the EU and beyond and our legislation will also take account of the Marine Strategy Directive. We are committed to playing a full part in meeting global marine challenges such as those posed by climate change induced ocean acidification. However we also

believe many challenges in relation to managing our seas can be best addressed by the development of local solutions, for example the need to address conflicts arising between competing users of the coastal zones and to develop management solutions in relation to distinctively Scottish marine issues. Our proposals will be designed to meet these diverse challenges.



Annex E: Map of UK Marine Area





## Annex F: What will the MMO do?

### Marine planning

Government will agree a marine policy statement. The MMO will **prepare a series of marine plans** to articulate what this policy statement means for different areas of the sea and coast. The MMO will need to work closely with a wide range of existing bodies, and engage communities with an interest.

### Marine licensing

The MMO will be the **Government's regulator of most activities in the marine environment**<sup>17</sup>. It will make decisions on applications, issue licences, and set and monitor conditions on marine development such as wind farms, tidal and wave power projects, jetties, moorings, aggregate extraction and dredging. It will also administer Harbour Orders and license exemptions from nature conservation legislation. It will draw on advice and information from experts such as CEFAS, Natural England, JNCC, Maritime & Coastguard Agency as well as consulting those likely to be affected and the public.

### Nature conservation

Delivering its functions will give the MMO knowledge and understanding of the range of uses of the marine area. It will use this information to **contribute to the selection of sites** for designation as Marine Conservation Zones (MCZs).

In common with other public bodies, the MMO will be under a general duty to exercise its functions in a manner which it considers will **further conservation objectives for MCZs**, and under a further duty not to authorise anything where there is a significant risk of hindering the conservation objectives for a site. It will mainly do this through considering MCZs and conservation objectives in the planning process and through exercising its licensing and fisheries management functions.

The MMO will also have a new power to **make conservation orders (and interim orders where urgent action is needed)** to regulate otherwise unregulated activities when this is necessary to further the conservation objectives for an MCZ (or potential MCZ). We intend that the MMO will undertake a similar role in respect of European marine sites.

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<sup>17</sup> The exceptions to this are (i) oil and gas installations which will be regulated by BERR (ii) renewable energy installations and major ports classified as nationally significant infrastructure, on which decisions will be taken by the Infrastructure Planning Commission (iii) shipping which will be regulated by the Maritime and Coastguard Agency and (iv) land based or associated activities which will be regulated by the Environment Agency and local authorities.

## **Enforcement**

The MMO will appoint marine enforcement officers, with the streamlined enforcement powers set out in the draft Bill to **enforce sea fisheries, nature conservation and licensing legislation in the marine area**. It will work closely with others (such as IFCAs) to co-ordinate enforcement activities.

## **Marine fisheries management**

The MMO will deliver Defra's **marine fisheries management** functions which include managing UK fleet capacity, implementing the EU marketing regime, managing UK fisheries quotas, biological sampling of fish and shellfish, fishing industry grants and UK state aids and managing, recording and providing data on fishing activity and catches.

## **Other functions**

As the Government's principle marine delivery body, we expect the MMO to **provide advice** to Government and others including the public on the sustainable development of the marine area.

The MMO will **appoint members** of local Inshore Fisheries and Conservation Authorities.

It is likely that the MMO will fulfil a **competent authority** role under the Environmental Liability and Marine Strategy Directives. The detail of these roles is being worked out.

The MMO will need large amounts of data to discharge its functions and will require an effective system for **managing data**, information and knowledge across its functions and sharing it with other bodies and the public.

## Annex G: Enforcement responsibility around England (estuaries and the 0 – 6 nautical mile belt)

Enforcement of	Currently	Intended post Marine Act
Environment Agency byelaws	EA & SFCs	EA & IFCA <sup>18</sup>
IFCA (currently SFC) byelaws	SFCs & EA	IFCAs, EA <sup>19</sup> & MMO <sup>19, 20</sup>
Domestic sea fisheries legislation	SFCs, MFA & EA	IFCAs, MMO & EA <sup>21</sup>
European sea fisheries legislation	SFCs & MFA	IFCAs & MMO
MMO conservation orders	N/A	IFCAs, MMO & EA <sup>21</sup>
Marine environmental licensing (currently under the Food and Environment Protection Act (1985) and the Coastal Protection Act (1949)) under the Marine Bill.	MFA	MMO
Offshore renewables licensing under the Electricity Act (1989).	Secretary of State	MMO
Nature conservation species protection legislation (Wildlife & Countryside Act (1981))	Police	IFCAs, MMO, EA <sup>21</sup> & Police
Habitats Regulations (1994)	Police	IFCAs, MMO, EA <sup>21</sup> & Police

**Key:**

SFC – Sea Fisheries Committee

MFA – Marine and Fisheries Agency

MMO – Marine Management Organisation

IFCA – Inshore Fisheries and Conservation Authority

EA – Environment Agency

<sup>18</sup> Cross-warranted by the EA as appropriate.

<sup>19</sup> Cross-warranted by IFCAs as appropriate.

<sup>20</sup> We expect that in practice current arrangements where the MFA may collect evidence of a byelaw offence and pass it to the SFC to prosecute will continue between IFCAs and the MMO.

<sup>21</sup> Cross-warranted by the MMO as appropriate.



## **Annex H: Transitional provisions: Licensing under the Marine Bill**

1. Ministers expect to make use of the powers in the Bill to delegate their functions to the MMO within a couple of years of the Bill receiving Royal Assent. The instrument delegating those functions will also set out in further detail how the licensing regime will work, including arrangements for the progression from the current system to the new.
2. Our thinking is at a fairly early stage. It is clear that once the licensing provisions come into force, Marine Act licences will replace those previously issued under FEPA and consents under the CPA. We also know that we want existing FEPA licences and CPA consents to be treated as Marine Act licences.
3. We think that applications for licences which had been submitted to the licensing authority, but which had not yet been determined when the new regime starts, should be assessed according to the new licensing regime. Such applications would therefore be taken to be applications made under the Marine Act and the Marine Act provisions would apply.

### **Dredging**

4. The Bill would bring all forms of dredging into the scope of licensing. But as we say at paragraph 3.70 above, we anticipate exempting from the need for a licence the majority of maintenance dredging that would be caught by the Bill. It will take time to do that, so we think it would be appropriate that where there has historically been unregulated dredging which would in future need a licence, there should be a transition period during which operators would have to apply for a licence.

### **Interaction of licensing with draft marine plans and proposed MCZs**

5. We want to avoid creating uncertainty for developers while marine plans are being developed, and also to avoid any incentive to “bank land”. Our proposals for handling this are set out in the marine planning section (see paragraph 3.151).

### **Appeals**

6. The draft Bill enables ministers to establish an appeals mechanism. We expect them to give applicants the right to appeal to an independent tribunal against the decision of the licensing authority. We are considering what transitional provisions should apply.
7. Our initial thoughts are that the recourse to appeal should be that set out in the legislation under which the licensing decision was made. We think that where an application has been properly determined and refused under the current system it should be treated in the same way as other historic cases. This means

that licences issued under FEPA would be subject, if necessary, to the process set out in Schedule 3 to FEPA. Those which were decided under the Marine Act process would be subject to the new appeals procedure. Likewise, any appeals that are ongoing at the time of transition to the new regime should be completed under the old regime.

## **Enforcement**

8. Statutory notices and civil sanctions for licensing enforcement will probably come into force at the same time as the new licensing scheme and appeals process are launched. We anticipate the common enforcement powers being available for use on, or shortly after, Royal Assent.
9. Offences should be those that applied at the time the offence was committed, irrespective of whether a licence was issued under the existing or the new regime. Enforcement powers will be those that apply at the time, so an offence committed under the old licensing regime could be investigated using Marine Bill powers if the investigation continued past the commencement date for the common powers. There may be circumstances where offences under the old regime were unenforceable (for example, judged not in the public interest to prosecute) but which, given the new powers, can now be more effectively addressed. We think that in many cases, the licensing authority could signal the change to the new regime by imposition of a compliance notice, which if breached, could trigger a penalty or the use of other new enforcement tools. This should address situations such as where people have not applied for a licence for licensable works.
10. Any enforcement proceedings in progress when the new regime starts should continue as if the Marine Act had not come into force.

## **Other licensing provisions**

11. Our provisions relating to renewable energy and harbour developments do not present the same transitional challenges as the move to a new marine licensing regime. Nevertheless, we will need to make provision for the smooth handover of applications currently in the system at the point of delegation of functions for the Secretary of State to the MMO. We will be working with stakeholders to develop sensible proposals.

## Annex I: Transitional provisions: Inshore Fisheries Management

1. Arrangements will need to be in place to ensure that assets and documentation, such as articles or byelaws, containing any reference to Sea Fisheries Committees will be construed as a reference to Inshore Fisheries and Conservation Authorities once a Marine Act comes into force.
2. New IFC districts and IFC Authorities will be established through secondary legislation and transitional provisions to transfer assets, and liabilities will be put in place. Provision will be made to transfer existing byelaws to reflect the geographical extent of the new Districts.
3. There will be a new byelaw-making process set out through secondary legislation. Byelaws in the process of being made under the existing regime at the time the new regime comes into being will need provision to ensure effective transition. A similar arrangement will be put in place for Several and Regulating Orders (SROs) where Orders being made under the old regime are subject to the new regime when it comes in to force.
4. In addition, the draft Bill provides for the transfer of responsibility for sea fisheries management in estuaries from the EA to IFCAs. Any existing byelaws and those in the process of being made will need to be transferred to the local IFCA.
5. The set up of IFCA budgets in year one before they come into being, for example in relation to funding, cost recovery and travel expenses.
6. For SROs, a transitional provision will be in place to ensure that mechanisms to recover some of the costs associated with applying for an Order will apply to Orders in train before a Marine Act comes into force. The same applies to tolls and royalties.
7. Responsibility for appointing certain members to each IFCA will transfer from the Secretary of State to the MMO. A transitional provision will be put in place to ensure that any appointments in train when a Marine Act comes into force will be subject to the new regime.
8. For SROs, the requirement for the Minister to call a public inquiry in certain circumstances during the application process is removed under draft Bill provisions. Measures will be in place to cover those Orders that are at application stage when the new regime comes into force.
9. The maximum level of fine for certain fisheries offences, including SROs, IFCA byelaws, national and EU offences will increase from £5,000 to £50,000. A transitional provision will be put in place to ensure that the maximum level of fine applicable at the time the offence was committed will be the level available to the courts even if by the time that any case goes to court, the new regime is in being.

10. Specific to SROs, there will be changes to the law in respect of revoking a licence. Under the new regime, the number of convictions before a grantee can consider revoking a licence is reduced from two to one. A transitional provision will be in place to ensure that offenders with one conviction will not be subject to the new provisions. This should also apply to prosecutions in train. Similarly, where an offence is committed by a non-licence holder (i.e. someone fishing on behalf of the licence holder), under the new regime, licence holders can be convicted for a breach of their licence even if they did not directly commit the offence. A provision will be put in place to protect those licence holders being prosecuted under the old regime when the new regime comes into force.



## **Marine Bill**

Details

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# Marine Bill

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## **INTRODUCTION**

1. These explanatory notes relate to the Marine Bill which was published in draft on 3 April 2008. They have been prepared by the Department for Environment Food and Rural Affairs in order to assist the reader of the draft Bill and to help inform debate on it.
2. The notes need to be read in conjunction with the draft Bill. They are not, and are not meant to be, a comprehensive description of the draft Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

## SUMMARY AND BACKGROUND

### *Introduction*

3. There are many uses of the sea, and many different systems for managing activity which occurs on and in it. Historically, different activities in the marine area have been managed separately, with discrete rules for different sectors. For example, licensing of development and other activities are often done under sector and activity specific regimes, for instance the Food and Environment Protection Act 1985, the Coast Protection Act 1949 and the Harbours Act 1964; the UK has fisheries legislation dating back hundreds of years; and conservation and management of marine biodiversity is underpinned both by domestic and EU legislation.

4. In recent years there has been increasing pressure on marine resources, for fishing, energy, development and shipping. The current legislative framework is complex and it is difficult to make comparisons between different uses of the marine environment and to judge what is the most appropriate use of marine resources. The draft Bill's provisions will make changes to some aspects of the legislation and introduce new arrangements that will allow for more strategic use of the marine environment. This will include a new marine planning system, legislation to allow the creation of a network of marine conservation zones, and changes to the system for marine licensing and for the management of marine and migratory and freshwater fisheries. The draft Bill also extends public access to the English coast.

### *Background*

5. Work towards the proposals in this draft Bill has been going on for some time. In 2002, the Government published its Marine Stewardship Report<sup>1</sup> which set out a vision for the marine environment. This was followed by a consultation on how to realise this vision<sup>2,3</sup>. A number of other reports and reviews followed, suggesting that a new approach to managing all marine activities were needed, together with legislation to implement it.

6. In March 2006, the Government published a consultation document on the aims and scope of a Marine Bill.<sup>4</sup> The consultation explored how marine conservation proposals could be taken forward, possible changes to marine licensing regimes, the possible shape of a marine planning regime and whether there was a case for a new Marine Management Organisation (MMO) and, if so, what functions it should undertake. Alongside the consultation and analysis of responses, the Government ran stakeholder forums to explore and allow an exchange of views on proposals. A summary of responses to the consultation (excluding views gathered in the forums) was published in October 2006<sup>5</sup>.

7. In March 2007, the Government published a Marine Bill White Paper<sup>6</sup> putting forward proposals for legislative measures to introduce new arrangements for the sustainable management of activities and protection of resources in the UK's marine area.

8. The White Paper set out proposals covering:

- 
1. <http://www.defra.gov.uk/environment/water/marine/uk/stewardship/index.htm>
  2. Department for Environment, Food and Rural Affairs (2002). Seas of Change: The Government's consultation paper to help deliver our vision for the marine environment. PB 7746. Defra publications, London
  3. Department for Environment, Food and Rural Affairs (2004). The Government's response to its Seas of Change consultation to help deliver our vision for the marine environment. PB 9330. Defra publications, London.
  4. <http://www.defra.gov.uk/marine>
  5. <http://www.defra.gov.uk/marine>
  6. <http://www.defra.gov.uk/marine>

- a new marine planning system
- a streamlined, transparent and consistent system for licensing marine developments
- a flexible mechanism to protect natural resources, including marine conservation zones with clear objectives
- improvements to the management of marine fisheries
- a Marine Management Organisation to discharge these and other marine functions on behalf of UK Government

9. Proposals have also been developed to amend the legislation governing the management of migratory and freshwater fisheries and to enable greater public access to the English coast. The provisions on migratory and freshwater fisheries were developed from recommendations made to Government by the Salmon and Freshwater Review Group in 2000, which received input from a large number of interested individuals and organisations. Provisions to improve access to the coast were consulted on by Government during 2007.<sup>1</sup>

### ***Summary of the draft Bill***

10. The draft Bill contains provisions covering all of the areas set out above.

11. Part 1 establishes an independent body, the Marine Management Organisation (MMO), to discharge marine functions on behalf of UK Government with the purpose of making a contribution to the achievement of sustainable development. As a Non-Departmental Public Body (NDPB), the MMO will report formally to Parliament through the Secretary of State. It is designed to be a suitable body to draw up marine plans for the purposes of the new planning regime. It will also administer marine environmental licensing and harbours regimes, manage marine fisheries, undertake nature conservation functions and use enforcement powers set out in Part 8 of this draft Bill to enforce fisheries, licensing and nature conservation legislation.

12. Part 2 introduces a new system of marine planning. At present, marine policy is developed sector by sector, which makes it difficult for decision-makers and users of the sea to know what the relative priorities are. The planning provisions provide for the preparation of a Marine Policy Statement to articulate the priorities and objectives of the UK Government, the Welsh Assembly Government and the Northern Ireland Assembly in their marine areas. It also provides for the preparation of marine plans which take account of the Marine Policy Statement and which will cover most of the UK marine area.

13. The marine licensing provisions in Part 3 will replace the licensing and consent controls currently exercised under Part 2 of the Food and Environment Protection Act 1985 and Part 2 of the Coast Protection Act 1949. This Part also removes the consent requirements of the electronic communications code set out in Schedule 2 to the Telecommunications Act 1984. The considerations built into these regimes are merged into the new regime, with some modifications. This Part amends the relationship between marine licensing and certain other legislation governing activities in the marine area, including the Petroleum Act 1998 and the Electricity Act 1989. Additionally, it provides for the mechanisms and powers for enforcing the licensing regime.

14. Part 4 of the draft Bill provides a power, across most of UK waters, to designate new Marine Conservation Zones, in place of the current power under the Wildlife and Countryside Act 1981 to designate Marine Nature Reserves. It is proposed to convert existing Marine Nature Reserves into MCZs. The network of MCZs will complement the Natura 2000 network of European sites. This will help us to fulfil the UK's commitment, under the Convention for the Protection of the Marine Environment of the North East Atlantic (OSPAR), to establish a network of marine protected areas. The Bill provides for new duties on public bodies to

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1. <http://www.defra.gov.uk/corporate/consult/coast-access/index.htm>

exercise their functions in ways which that further the conservation objectives set for MCZs, and to not authorise activities or development where it carries a significant risk of hindering those conservation objectives. There will also be powers to make conservation orders, and interim orders, to protect sites, and potential sites, from otherwise unregulated activities which may cause harm.

15. Part 5 amends existing legislation relating to Sites of Special Scientific Interest and National Nature Reserves.

16. Part 6 changes the legislation relating to the establishment, organisation and responsibilities of Sea Fisheries Committees, establishing new bodies called Inshore Fisheries and Conservation Authorities (IFCAs). It imposes on IFCAs duties in relation to fisheries and nature conservation, and the power to make byelaws. The membership and funding arrangements of IFCAs are also set out.

17. Part 7 contains several Chapters amending existing legislation relating to marine fisheries. It amends the Sea Fish (Conservation) Act 1967 in relation to regulating commercial and recreational fishing. It also amends the Sea Fisheries (Shellfish) Act 1967 to modify the way that Several and Regulating Orders, which are used to establish and manage shellfisheries, are made and used. It creates a power to allow the costs of fisheries management to be recouped from the fisheries industry. It also repeals redundant legislation. In addition, this Part amends legislation relating to migratory and freshwater fish. It gives new powers to the Environment Agency to conserve and manage migratory fish, including powers to make emergency byelaws to respond to unforeseen threats to fish stocks and powers to introduce a new regulatory system for the movement of live fish where necessary to protect national and local biodiversity.

18. Part 8 provides for the appointment of enforcement officers and for a set of common enforcement powers for enforcing requirements across licensing, nature conservation and fishing in the marine area. It amends the powers of British Sea Fisheries Officers to enforce fisheries legislation and deal with goods and monies, and confers power to introduce an administrative penalties scheme for fisheries offences.

19. Part 9 introduces new powers to extend recreational access to the English coast and to enable the creation, as far as is possible, of a continuous route around the coast wide enough to allow unconstrained passage on foot and recreational space.

20. Part 10 amends legislation in relation to Natural England and modifies the regime governing harbours set out in the Harbours Act 1964.

21. The final Part of the draft Bill, Part 11, contains supplementary provisions including financial provisions, commencement arrangements and repeals.

### ***Terminology describing marine areas***

22. There are a number of existing terms which are used throughout the draft Bill to describe different parts of the UK marine area. These are set out below, and also shown on the map in the policy paper which accompanies the draft Bill package. The draft Bill also defines additional terms to refer to specific parts of the UK marine area.

### ***Baseline***

23. The marine area around the UK coast is sub-divided into a number of zones. These are measured from a “baseline”. This is usually the low water mark around the coast. But there can be straight baselines across the mouths of bays, and all rocks, reefs etc above the sea at low water but submerged at other times extend the baseline if they are within 12 nautical miles (“nm”) of the mainland or an island. The UK baseline is delineated in the Territorial Waters

Order in Council 1964 (as amended by the Territorial Sea (Amendment) Order 1998, SI 1998/2564).

24. Marine waters to the landward side of the baseline are known as internal waters.

### ***Territorial Seas***

25. The UK territorial sea is defined by the Territorial Sea Act 1987 as the sea extending 12nm from the baseline. For the most part the territorial sea of the UK does not adjoin that of any other state. Where it does do so in the English Channel, the Territorial Sea (Limits) Order 1989 (SI 1989/482) sets out the limits of the territorial sea in the Straits of Dover in accordance with an agreement between the UK and France. In relation to the delineation of the territorial sea between the UK and the Republic of Ireland, the situation is more complex, with no boundary having been agreed between the two states. Instead arrangements have been put in place under the Belfast Agreement for joint management of the Loughs that form the border (the Foyle, Carlingford and Irish Lights Commission's Loughs Agency).

26. Within the territorial sea, the UK has jurisdiction for the sea itself, the seabed subjacent and the air above. This is subject to the right of innocent passage by ships of all other states.

27. Parts of the UK territorial sea form part of Scotland, Northern Ireland and Wales for the purpose of exercising devolved functions. The Scotland Act 1998 defines "Scotland" as including so much of the internal waters and territorial sea of the United Kingdom as are adjacent to Scotland (section 126(1)). Similarly, section 98 of the Northern Ireland Act 1998 (c.47) defines Northern Ireland as including so much of the internal waters and territorial sea of the United Kingdom as are adjacent to Northern Ireland. The Government of Wales Acts 1998 and 2006 provide that "Wales" includes the sea adjacent to Wales out as far as the seaward boundary of the territorial sea (see also section 155(1)). The extent of the "English" territorial sea is only defined for national heritage purposes but is normally assumed to be that part of the territorial sea that has not been assigned to another part of the United Kingdom.

### ***UK Continental Shelf***

28. References to areas of the sea within the UK sector of the continental shelf are always references to the area of sea outside the UK territorial sea but within an area specified in an order having effect under section 1(7) of the Continental Shelf Act 1964 (c. 29). Rights in the continental shelf extend to mineral and other non-living resources of the seabed and subsoil together with living organisms belonging to sedentary species.

### ***British Fishery Limits***

29. British Fishery Limits extend 200 nm from the baseline. Similar to the apportioning of the territorial seas, Scotland and Northern Ireland have their own areas within the British Fishery Limits, known as the Scottish and Northern Ireland Zones. The Northern Ireland Zone is defined as being the sea within British fishery limits which is adjacent to Northern Ireland. This can be thought of as being the area of British Fishery Limits lying between the territorial sea around Northern Ireland and that of the Isle of Man.

30. The Scottish Zone is defined as that part of the sea within the British fishery limits established under the Fishery Limits Act 1976 that is adjacent to Scotland. The boundaries of both the Northern Ireland Zone and the Scottish Zone are defined by Order in Council.

### ***Renewable Energy Zone***

31. The Renewable Energy Zone was claimed under section 84 of the Energy Act 2004. It extends up to a maximum of 200 nautical miles from the baseline. The UK has claimed

exclusive rights in this area with respect to production of energy from water or winds, within an area to be designated by Order in Council. The UK has also claimed rights in relation to a similar area (the UK pollution zone) in relation to the protection and preservation of the marine environment, under the Merchant Shipping (Prevention of Pollution) (Limits) Regulations 1996 and 1997.

***Other terminology***

32. “Inland waters” is a term usually used to refer to freshwater rivers, lakes, streams and groundwaters.



# Marine Bill

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## EXPLANATORY NOTES

### COMMENTARY ON CLAUSES

#### ***Clause 1: The Marine Management Organisation***

33. This clause establishes the Marine Management Organisation (MMO) and introduces *Schedules 1 and 2*.

34. Schedule 1 sets out the constitution of the MMO, and includes provisions about its status, membership, chief executive and other employees, pay and pensions, procedure, accounts and annual reports.

35. Schedule 2 contains minor amendments to existing legislation to include reference in those Acts to the MMO.

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TO

Make provision for and in connection with the establishment and functions of a body to be called the Marine Management Organisation; to identify an area of sea to be known as the UK marine area, and to make provision for and in connection with planning and licensing in relation to functions and activities affecting or otherwise relating to that area; to make provision for and in connection with marine conservation zones; to make further provision in relation to nature conservation; to make provision for and in connection with the establishment and functions of inshore fisheries and conservation authorities; to make provision in relation to fishing and fisheries at sea and within the United Kingdom; to make provision for and in connection with the establishment of an English coastal walking route and of rights of access to land near the English coast; to make further provision in relation to Natural England; to amend the Harbours Act 1964; and for connected purposes. 5 10 15

**B**E IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows: –

## PART 1 20

### THE MARINE MANAGEMENT ORGANISATION

#### CHAPTER 1

##### ESTABLISHMENT

### **1 The Marine Management Organisation**

- (1) There is to be a body known as the Marine Management Organisation (“the MMO”). 25
- (2) The MMO is to have the functions conferred on it by or under this Act or any other enactment.
- (3) Schedule 1 contains further provisions about the MMO.

***Clause 2: General objective***

36. This clause sets out the MMO's purpose which is to contribute to the achievement of sustainable development. So the MMO can understand what contribution government expects it to make to sustainable development and how it is to make it, the Secretary of State will issue it with guidance. When giving guidance the Secretary of State must take into consideration the functions it undertakes and the resources that are, or are likely to be, available to it.

37. This guidance should not be confused with the marine policy statement (clause 40) which will set out what our policies are in relation to sustainable development in the marine area

***Clause 3: Management***

38. We intend the MMO to take a coherent approach to the discharge of its functions. The MMO will be set objectives and performance indicators by the Secretary of State and this clause requires it to do its best to meet them.

39. This clause also encourages the MMO to take a strategic (i.e. across its functions) approach to carrying out its functions.

***Chapter 2: Transfer of functions to the MMO***

40. This Chapter transfers existing sea fisheries and nature conservation functions currently performed by the Secretary of State (including through the Marine and Fisheries Agency) or Natural England to the MMO.

41. Not all functions we intend the MMO to have will be given to it in this way. Other clauses of the draft Bill make new or existing marine functions delegable by direction or by order (clauses 50 and 94 and Schedule 12). This enables Ministers to use these mechanisms to give these functions to the MMO. Where functions that the MMO is to undertake are currently set out in secondary legislation, we will amend that legislation directly, rather than in the draft Bill.

42. Part 4 of the draft Bill gives the MMO the power to make conservation orders (clause 113) and urgent conservation orders (clause 115) in relation to designated marine conservation zones and interim orders (clause 116) in relation to potential new ones.

43. Part 6 of the draft Bill relates to inshore fisheries and conservation districts. The MMO is to be consulted by the appropriate authority before that authority establishes inshore



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- (4) Schedule 2 contains minor and consequential amendments relating to the MMO.

## **2 General objective**

- (1) The MMO is to carry out its functions with the objective of making a contribution to the achievement of sustainable development. 5
- (2) The Secretary of State is to give the MMO guidance as to the manner in which the MMO is to make its contribution to the achievement of sustainable development.
- (3) The Secretary of State must consult the MMO before giving any guidance under subsection (2). 10
- (4) In preparing any such guidance the Secretary of State must take into consideration—
- (a) the functions of the MMO, and
  - (b) the resources available, or likely to be available, to the MMO.
- (5) The MMO must publish, in such manner as it may determine, any guidance given to it under this section. 15
- (6) The MMO must provide any person on request with a copy of the whole or any part of any such guidance.

## **3 Management**

- (1) The MMO is to co-ordinate its activities and act in accordance with such strategies for the discharge of its functions as it may from time to time determine. 20
- (2) The MMO is to use its best endeavours to meet such objectives with regard to the quality and effectiveness of its performance as the Secretary of State may from time to time set for it. 25

## **CHAPTER 2**

### TRANSFER OF FUNCTIONS TO THE MMO

*Sea Fish (Conservation) Act 1967*

fisheries and conservation districts (clause 138) (or changes them). Each district will have an Inshore Fisheries and Conservation authority and the MMO is an appropriate appointment authority to appoint members to such authorities (clause 140) in England.

44. Part 7 of the draft Bill relates to fisheries. An amendment to section 17 of the Sea Fisheries (Shellfish) Act 1967 gives the MMO the powers as a granting authority to grant an exemption from the ban on taking crabs for scientific purposes (clause 182).

45. Chapter 3 of Part 1 provides flexible arrangements to enable other marine functions to be transferred to the MMO from the Secretary of State.

46. This Act and orders made under it deal with the licensing of UK fishing boats and boats used for the purpose of the transshipment of fish.

***Clauses 4 & 5: Licensing of fishing boats; Restrictions on time spent at sea: appeals***

47. These clauses transfer to the MMO the functions of the Secretary of State in granting licences under section 4 of this Act - the administration (grant, variation, revocation, suspension etc) of fishing boat licences. They ensure that licences previously issued by the Secretary of State are treated as though they were issued by the MMO and that the MMO is (like the Secretary of State currently) subject to a requirement to implement appeal tribunal decisions.

#### **4 Licensing of fishing boats**

- (1) The Secretary of State’s function of granting licences under section 4 of the Sea Fish (Conservation) Act 1967 (c. 84) (licensing of fishing boats) is transferred to the MMO.
- (2) In the following provisions of that section – 5  
    (a) subsection (6) (conditions of licence),  
    (b) subsection (7) (powers to require information),  
    (c) subsection (9) (power to vary, revoke or suspend a licence),  
    (d) subsection (10) (power to make refund on variation, revocation or suspension), 10  
any reference to the Minister granting a licence, or to the Minister who granted a licence, is to be read, in the case of licences granted or treated as granted by the Secretary of State or the MMO, as a reference to the MMO.
- (3) The functions of the Secretary of State under subsection (8) of that section (power to issue limited number of licences) are also transferred to the MMO. 15
- (4) In any orders made under that section, any reference which includes a reference to –  
    (a) the Minister of Agriculture, Fisheries and Food, or  
    (b) the Secretary of State,  
is to be read, in relation to England, as including instead a reference to the MMO. 20
- (5) Any licences granted or treated as granted by the Secretary of State under that section before the coming into force of this section are to have effect as from the coming into force of this section as licences granted by the MMO.

#### **5 Restrictions on time spent at sea: appeals** 25

In section 4AA(5) of the Sea Fish (Conservation) Act 1967 (c. 84) (duty to vary licence to give effect to determination of tribunal on appeal) the reference to the Minister who granted the licence is to be read, in the case of licences granted or treated as granted by the Secretary of State or the MMO, as a reference to the MMO. 30

***Clause 6: Trans-shipment licences for vessels***

48. This clause transfers to the MMO the functions of the Secretary of State in licensing vessels involved in the trans-shipment of fish.

***Clause 7: Exemptions for scientific and other purposes***

49. The Sea Fish (Conservation) Act 1967 (s.9) allows exemptions from certain restrictions relating to sea fishing to be granted.

50. This clause transfers to the MMO the functions of the Secretary of State in granting exemptions under section 9 of this Act.

<b>6</b>	<b>Trans-shipment licences for vessels</b>	
(1)	The Secretary of State’s function of granting licences under section 4A of the Sea Fish (Conservation) Act 1967 (licences for the receiving by a vessel of fish trans-shipped from another vessel) is transferred to the MMO.	
(2)	In the following provisions of that section –	5
	(a) subsection (6) (conditions of licence),	
	(b) subsection (7) (powers to require information),	
	(c) subsection (10) (power to vary, revoke or suspend a licence),	
	(d) subsection (11) (power to make refund on variation, revocation or suspension),	10
	any reference to the Minister granting a licence, or to the Minister who granted a licence, is to be read, in the case of licences granted or treated as granted by the Secretary of State or the MMO, as a reference to the MMO.	
(3)	The functions of the Secretary of State under subsection (9) of that section (power to issue limited number of licences) are also transferred to the MMO.	15
(4)	In any orders made under that section, any reference which includes a reference to –	
	(a) the Minister of Agriculture, Fisheries and Food, or	
	(b) the Secretary of State,	
	is to be read, in relation to England, as including instead a reference to the MMO.	20
(5)	Any licences granted or treated as granted by the Secretary of State under that section before the coming into force of this section are to have effect as from the coming into force of this section as licences granted by the MMO.	
<b>7</b>	<b>Exemptions for operations for scientific and other purposes</b>	<b>25</b>
(1)	The functions of the Secretary of State under subsections (1) to (4) of section 9 of the Sea Fish (Conservation) Act 1967 (c. 84) (exemption of certain things done under the authority of one of the Ministers) are transferred to the MMO.	
(2)	In that section, after subsection (6) insert –	
	“(6A) The Secretary of State may make regulations with respect to applications to the Marine Management Organisation for authority under this section.	30
	(6B) The provision that may be made in any such regulations includes provision as to –	
	(a) the manner in which, and time before which, any such application is to be made, and	35
	(b) the charging of a reasonable fee by the Marine Management Organisation for dealing with an application.	
	(6C) The power to make regulations under this section shall be exercisable by statutory instrument.	40
	(6D) A statutory instrument containing regulations under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.”.	

***Clause 8: Licences to kill or take seals***

51. The *Conservation of Seals Act 1970* provides for the protection and conservation of seals in Great Britain and the adjacent territorial waters, and makes it an offence to kill or take seals during the close season or in an area specified in a conservation order without a licence granted by the Secretary of State (currently exercised in England by Natural England). This clause transfers to the MMO the functions of the Secretary of State in granting licences in England and the adjacent territorial waters.

***Clause 9: Wildlife and Countryside Act 1981***

52. This Act applies both terrestrially and at sea (out to 12nm) to protect wild birds, animals and plants. It includes a power under section 16 that enables the Secretary of State and Natural England to issue licences for certain purposes and provide that certain offences do not apply where a licence has been granted and the activity is done in accordance with the terms of the licence.

53. This clause transfers to the MMO the functions of the Secretary of State in granting licences in relation to the English inshore region under sections 16(1), (2), (3) and (4) of this Act.

***Clause 10: Sea Fisheries (Wildlife Conservation) Act 1992***

54. This Act places the Secretary of State under a duty when discharging any sea fisheries functions to “have regard to the conservation of marine flora and fauna” and try to achieve a reasonable balance between this consideration and any other considerations to which it is required to have regard.

55. This clause places the MMO under the same duty.

- (3) Any authority granted or treated as granted by the Secretary of State under that section before the coming into force of this section is to have effect as from the coming into force of this section as an authority granted by the MMO.

*Conservation of Seals Act 1970*

- 8 Licences to kill or take seals** 5
- (1) The Secretary of State’s functions of granting and revoking licences under section 10 of the Conservation of Seals Act 1970 (c. 30) (power to grant licences) are transferred to the MMO.
- (2) Any licences – 10
- (a) granted or treated as granted by the Secretary of State under that section before the coming into force of this section, and
- (b) having effect in relation to the whole or any part of England or the English inshore region,
- are to have effect as from the coming into force of this section as licences granted by the MMO. 15

*Nature conservation*

- 9 Wildlife and Countryside Act 1981**
- (1) Section 16 of the Wildlife and Countryside Act 1981 (c. 69) (power to grant licences) is amended as follows.
- (2) After subsection (8) insert – 20
- “(8A) In this section, in the case of a licence under –
- (a) any of paragraphs (a) to (k) of subsection (1), so far as relating to the English inshore region, or
- (b) subsection (2), (3) or (4), so far as relating to that region,
- “the appropriate authority” means the Marine Management Organisation.”. 25
- (3) In subsection (9) (meaning of “the appropriate authority”) at the beginning insert “Except in the case of a licence for which the Marine Management Organisation is the appropriate authority by virtue of subsection (8A),”.
- (4) At the end of the section insert – 30
- “(12) In this section “the English inshore region” has the meaning given by section 298 of the Marine Act 2009.”.
- 10 Sea Fisheries (Wildlife Conservation) Act 1992**
- In section 1(1) of the Sea Fisheries (Wildlife Conservation) Act 1992 (conservation in the exercise of sea fisheries functions) after “the Minister or Ministers” insert “or the Marine Management Organisation”. 35

***Clause 11: Conservation (Natural Habitats, &c) Regulations 1994***

56. The following clauses (11, 12 and 13) refer to functions currently set out in secondary legislation, so it is unlikely we will use primary legislation to amend them. These are included in this draft Bill to indicate that we intend to transfer the functions to the MMO.

57. These regulations implement a European Council directive on the conservation of natural habitats and wild fauna and flora (the Habitats Directive). Under the Regulations the Secretary of State and Natural England can issue licences for certain restricted purposes and provide that certain offences do not apply where a licence has been granted and the activity is done in accordance with the licence.

58. This clause transfers to the MMO the functions of the Secretary of State and Natural England in granting licences in relation to the English inshore region under Regulation 44.

59. In relation to clauses 9 and 11, we expect the MMO and Natural England to agree a consistent approach to licensing in respect of species that are present at or which cross the marine-terrestrial threshold.

***Clause 12: Offshore Marine Conservation (Natural Habitats, &c) Regulations 2007***

60. These Regulations implement the European Council Directive on the conservation of wild birds (the Birds Directive) and the Habitats Directive in the offshore area. The Regulations allow the Secretary of State to grant licences for certain restricted purposes and to permit the taking or keeping of certain specimens and for the introduction of new species.

61. This clause transfers to the MMO the functions of the Secretary of State in granting, revoking and modifying licences in relation to the UK marine area (except in the Scottish zone) under Part 5 of these Regulations.



**11 Conservation (Natural Habitats, &c) Regulations 1994**

- (1) Regulation 44 of the Conservation (Natural Habitats, &c) Regulations 1994 (S.I. 1994/2716) (licences) is amended as follows.
- (2) After paragraph (3) insert—
  - “(3A) In this regulation, in the case of a licence under any of sub-paragraphs (a) to (g) of paragraph (2) so far as relating to the English inshore region, “the appropriate authority” means the Marine Management Organisation.”. 5
- (3) In paragraph (4) (meaning of “the appropriate authority”) at the beginning insert “Except in the case of a licence for which the Marine Management Organisation is the appropriate authority by virtue of paragraph (3A),”. 10
- (4) At the end of the regulation insert—
  - “(6) In this section “the English inshore region” has the meaning given by section 298 of the Marine Act 2009.”.
- (5) The amendment by this section of an enactment comprised in subordinate legislation is without prejudice to any power to amend that enactment by subordinate legislation. 15

**12 Offshore Marine Conservation (Natural Habitats, &c) Regulations 2007**

- (1) Part 5 of the Offshore Marine Conservation (Natural Habitats, &c) Regulations 2007 (S.I. 2007/1842) (licences) is amended as follows. 20
- (2) In regulation 49 (power to grant licences)—
  - (a) for “Secretary of State”, wherever occurring, substitute “appropriate authority”;
  - (b) for “unless he is satisfied”, wherever occurring, substitute “unless satisfied”; 25
  - (c) in paragraph (13), for “unless he has been advised” substitute “unless advised”;
  - (d) in paragraph (14), for “as he may determine” substitute “as that authority may determine”;
  - (e) at the end of the regulation, insert the paragraph (15) set out in subsection (3) below. 30
- (3) The paragraph is—
  - “(15) In this paragraph—
    - “the appropriate authority” means—
      - (a) as respects any licence under this regulation so far as relating to the whole or any part of the Scottish zone, the Secretary of State; 35
      - (b) as respects a licence under this regulation so far as relating to any area outside the Scottish zone, the Marine Management Organisation; 40
    - “the Scottish zone” has the same meaning as in the Scotland Act 1998 (see section 126(1) and (2) of that Act).”.

***Clause 13: Grants for Fishing and Aquaculture Industries Regulations 2007***

62. These Regulations enable the Secretary of State to give European Community grants within England for the purposes of Title IV of Council Regulation (EC) 1198/2006. This is in order to secure a sustainable European fishing and aquaculture industry.

63. This clause transfers to the MMO the functions of the Secretary of State under these regulations.

***Chapter 3: Flexible Administrative Arrangements Involving the MMO***

***Clause 14: Agreements between the Secretary of State and the MMO***

64. This clause allows the Secretary of State to enter into agreements with the MMO, so that it can perform marine functions currently performed by the Secretary of State. This provides flexibility in relation to functions not given to the MMO directly or made delegable by other clauses – including future functions. The functions that the MMO can be authorised to perform are limited to marine functions because the MMO is intended to be focused on this area.

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- (4) In regulation 50 (licences: supplementary provisions) in paragraph 7 (power to modify or revoke) for “the Secretary of State” substitute “the authority that granted it”.
- (5) To the extent that any licence granted by the Secretary of State before the coming into force of the amendment made by subsection (4) relates to an area outside the Scottish zone, the licence shall, as from the coming into force of that amendment, be treated for the purposes of regulation 50(7) as if it were a licence granted by the Marine Management Organisation. 5
- (6) The amendment by this section of an enactment comprised in subordinate legislation is without prejudice to any power to amend that enactment by subordinate legislation. 10

*EU fisheries grants*

**13 Grants for Fishing and Aquaculture Industries Regulations 2007**

The Secretary of State’s functions under the Grants for Fishing and Aquaculture Industries Regulations 2007 (S.I. 2007/3284) are transferred to the MMO. 15

**CHAPTER 3**

FLEXIBLE ADMINISTRATIVE ARRANGEMENTS INVOLVING THE MMO

*Powers to enter into agreements*

- 14 Agreements between the Secretary of State and the MMO** 20
- (1) The Secretary of State may enter into an agreement with the MMO authorising the MMO to perform any marine function of the Secretary of State –
- (a) either in relation to the UK marine area or in relation to specified parts of that area;
  - (b) subject to paragraph (a), either generally or in specified cases. 25
- “Specified” means specified in the agreement.
- (2) For the purposes of this Chapter, a “marine function” is any function whose exercise is capable of affecting the whole or any part of the UK marine area.
- (3) An agreement under this section –
- (a) may be cancelled by the Secretary of State at any time, and
  - (b) does not prevent the Secretary of State from performing a function to which the agreement relates. 30
- (4) This section is subject to sections 17 and 18 (reserved functions and maximum duration of agreement).

***Clause 15: Agreement between the MMO and designated bodies***

65. This enables the MMO, with the approval of the Secretary of State, to make agreements with bodies listed in clause 16 allowing those bodies to perform functions of the MMO. This is to enable the MMO to make arrangements for the most effective discharge of its functions.

***Clause 16: Designated bodies***

66. This clause lists the bodies that the MMO can make agreements with. The Secretary of State can add a designated body to the list if it has a marine related function or purpose, and can also remove designated bodies.

***Clause 17: Reserved functions***

67. This clause sets out functions that neither the Secretary of State nor the MMO will be able to authorise others to undertake by means of these arrangements.

- 15 Agreement between the MMO and designated bodies**
- (1) The MMO may, with the approval of the Secretary of State, enter into an agreement with a designated body authorising the designated body to perform any function of the MMO –
    - (a) either in relation to the UK marine area or in relation to specified parts of that area; 5
    - (b) subject to paragraph (a), either generally or in specified cases.“Specified” means specified in the agreement.
  - (2) The Secretary of State's approval may be given –
    - (a) in relation to a particular agreement or in relation to a description of agreements; 10
    - (b) unconditionally or subject to conditions specified in the approval.
  - (3) Subject to subsection (5), the Secretary of State –
    - (a) must review an agreement under this section no later than the end of the period of 5 years beginning with the date on which the agreement was entered into or was last reviewed by the Secretary of State, and 15
    - (b) if it appears appropriate to do so in the light of the review, may cancel the agreement.
  - (4) Subject to subsection (5), an agreement under this section may not be varied except –
    - (a) by agreement between the MMO and the designated body, and 20
    - (b) with the approval of the Secretary of State.
  - (5) An approval given under subsection (1) may provide that subsection (3) or (4) does not apply (or that both of them do not apply).
  - (6) This section is subject to sections 17 and 18 (reserved functions and maximum duration of agreement). 25
- 16 Designated bodies**
- (1) In this Chapter “designated body” means any body in the following list –
    - (a) the Environment Agency;
    - (b) any inshore fisheries and conservation authority; 30
    - (c) any harbour authority.
  - (2) The Secretary of State may by order amend subsection (1) so as to –
    - (a) add a body to the list, or
    - (b) remove a body from it.
  - (3) The Secretary of State may not exercise the power conferred by subsection (2)(a) unless satisfied that at least one of the purposes or functions of the body to be added to the list is, or is related to or connected with, a marine function. 35
  - (4) A body to be added to the list need not be a public body.
- 17 Reserved functions**
- (1) An agreement may not authorise a body to which this section applies to perform a reserved function. 40
  - (2) The bodies are –

***Clause 18: Maximum duration of agreement***

68. The maximum amount of time that an agreement can last for is 20 years.

***Clause 19: Particular powers***

69. This clause sets out which functions can be included in agreements – including those conferred on the Secretary of State or the MMO by primary legislation. It also provides for conditions to be attached to an agreement and payments to be made. It also explains under what circumstances a body receiving a function through an agreement under this clause can delegate the function to others.

- (a) the MMO;
  - (b) a designated body.
- (3) The reserved functions are—
- (a) any function whose performance by the body would be incompatible with the purposes for which the body was established; 5
  - (b) any power of a Minister of the Crown to make or terminate appointments, other than appointments under section 218;
  - (c) any power of a Minister of the Crown to lay reports or accounts;
  - (d) any power to make subordinate legislation, give directions or guidance or issue codes of practice (or to vary or revoke any of those things); 10
  - (e) any power to fix fees or charges other than a power prescribed for the purposes of this section by an order made by the Secretary of State;
  - (f) any function of an accounting officer acting in that capacity;
  - (g) except in relation to an agreement authorising a public body to perform functions— 15
    - (i) any power to enter, inspect, take samples or seize anything, and
    - (ii) any other power exercisable in connection with suspected offences;
  - (h) any function of the Secretary of State under the Water Industry Act 1991 (c. 56) or under any subordinate legislation made under that Act. 20

**18 Maximum duration of agreement**

The maximum period for which an agreement may authorise a designated body to perform a marine function is 20 years.

*Supplementary provisions*

- 19 Particular powers** 25
- (1) The fact that a function is conferred by or under this Act or an Act passed after the passing of this Act does not prevent it from being the subject of an agreement.
- (2) In the following provisions of this section—
- “A” means the Secretary of State or the MMO; 30
  - “B” means—
    - (a) the MMO, if A is the Secretary of State;
    - (b) a designated body, if A is the MMO.
- (3) A may, under an agreement, authorise B to perform a function even though under the relevant enactments or subordinate legislation— 35
- (a) the function is conferred on A by reference to specified circumstances or cases and the same type of function is conferred on B in different specified circumstances or cases,
  - (b) the function is exercisable by A and B jointly,
  - (c) B is required to be, or may be, consulted about the function (whether generally or in specified circumstances), or 40
  - (d) B is required to consent to the exercise of the function (whether generally or in specified circumstances).

***Clause 20: Agreements with local authorities***

70. This clause provides certain additional provisions which are necessary where the agreement is made between the MMO and a local authority. Whilst local authorities are not currently listed in clause 16, this clause is included to cover the possibility that local authorities may be added to this list (by order).



- (4) An agreement may provide—
- (a) for the performance of a function to be subject to the fulfilment of conditions;
  - (b) for payments to be made in respect of the performance of the function.
- (5) In the following provisions of this section “relevant body” means— 5
- (a) the MMO;
  - (b) any designated body.
- (6) A relevant body which is authorised under an agreement to perform a function—
- (a) is to be treated as having power to do so; 10
  - (b) may, unless (or except to the extent that) the agreement provides for this paragraph not to apply,—
- (i) authorise a committee, sub-committee, member, officer or employee of the body to perform the function on its behalf;
  - (ii) form a body corporate and authorise that body to perform the function on its behalf. 15
- (7) However, where the designated body is a local authority—
- (a) subsection (6)(a) is subject to section 20(5)(a), and
  - (b) section 20 applies in place of subsection (6)(b).
- (8) Subject to subsection (6)(b) and section 20, a relevant body which is authorised under an agreement to perform a function may not authorise any other body or other person to perform that function. 20
- 20 Agreements with local authorities**
- (1) This section applies where a local authority is authorised under an agreement to perform a function. 25
- (2) Subject to subsection (5), the function that the local authority is authorised to perform is to be treated as a function of the local authority for the purposes of—
- (a) any power of a local authority to arrange for the discharge of the function by any person mentioned in subsection (3), and
  - (b) any power of a person mentioned in subsection (3) to arrange for the discharge of a function by any other person mentioned there. 30
- (3) The persons are any committee, sub-committee, member, officer or employee of the local authority.
- (4) “Committee” does not include a joint committee of two or more local authorities. 35
- (5) If the local authority is operating executive arrangements—
- (a) the function is to be treated as a function of the local authority for the purposes of section 13 of the Local Government Act 2000 (c. 22), and
  - (b) if (or to the extent that) the function is the responsibility of the executive of the local authority— 40
- (i) subsection (2) does not apply, and
  - (ii) sections 14 to 16 of that Act, and any regulations made under sections 17 and 18 of that Act, apply.

***Clause 21: Supplementary provisions with respect to agreements***

71. This clause requires agreements and approvals to be in writing and for the agreement to be published. It also restricts the powers of Ministers to give directions to statutory bodies regarding agreements under this clause.

72. The clause also applies Schedule 15 of the Deregulation and Contracting Out Act 1994 to bodies exercising functions through an agreement under this clause. This Schedule is concerned with the disclosure of information.

***Clause 22: Interpretation***

73. This clause gives a definition for “local authority” and sets out where in the draft Bill the meaning of the terms “agreement”, “designated body”, and “marine function” can be found.

***Chapter 4: Miscellaneous, General and Supplemental Provisions***

74. This Chapter gives the MMO general powers and duties, makes financial provisions in respect of the MMO and sets out how the Secretary of State may give guidance and directions to the MMO. It also provides for the transfer of property, rights and liabilities to the MMO.

- (6) “Executive arrangements” and “executive” have the same meaning as in Part 2 of the Local Government Act 2000.
- (7) An agreement may provide that the provisions of subsection (2) or those mentioned in subsection (5)(b)(ii) do not apply (or do not apply to a specified extent).

5

## **21 Supplementary provisions with respect to agreements**

- (1) An agreement, and any approval given by the Secretary of State under section 15, must be in writing.
- (2) The Secretary of State must arrange for a copy of an agreement to be published in a way that the Secretary of State thinks is suitable for bringing it to the attention of persons likely to be affected by it.
- (3) No power of a Minister of the Crown under any enactment to give directions to a statutory body extends to giving a direction –
- (a) requiring it to enter into an agreement;
  - (b) prohibiting it from entering into an agreement;
  - (c) requiring it to include, or prohibiting it from including, particular terms;
  - (d) requiring it to negotiate, or prohibiting it from negotiating, a variation or termination of an agreement.
- (4) Schedule 15 to the Deregulation and Contracting Out Act 1994 (c. 40) (restrictions on disclosure of information) applies in relation to an authorisation by a designated body under this Chapter as it applies in relation to an authorisation under section 69 of that Act by an office-holder.

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## **22 Interpretation**

- (1) In sections 17 to 21 “agreement” means an agreement under section 14 or 15.
- (2) In this Chapter –
- “designated body” has the meaning given by section 16;
  - “local authority” means –
    - (a) a local authority as defined in section 1(a) of the Local Government Act 2000;
    - (b) the Greater London Authority;
  - “marine function” has the meaning given by section 14.

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## **CHAPTER 4**

### MISCELLANEOUS, GENERAL AND SUPPLEMENTAL PROVISIONS

#### *General powers and duties*

35

***Clause 23: Review and research***

75. This clause requires the MMO to keep abreast of all matters relating to its purpose (general objective) and allows it to research relevant matters, either by itself or in association with others, to commission research (alone or jointly) or fund or otherwise support research undertaken by others. The intention is that the MMO will make the results of this research available.

***Clause 24: Advice, assistance and training facilities***

76. The MMO will be the UK Government's marine delivery body and will build up significant experience and knowledge in that area. This clause requires the MMO to provide advice and assistance related to its work to the Secretary of State, other public bodies and the public – either on request or on its own initiative.

***Clause 25: Provision of information etc***

77. This clause allows the MMO to publish documents and provide information about anything relating to its purpose or any of its functions.

***Clause 26: Power to charge for services***

78. This clause establishes that the MMO can make reasonable charges for services it provides.

- 23 Review and research**
- (1) The MMO must keep under review all matters relating to its general objective.
  - (2) The MMO may (whether alone or with other bodies or persons) –
    - (a) undertake research into any matter relating to its functions or its general objective, or 5
    - (b) commission or support (by financial means or otherwise) research into any such matter.
  - (3) The MMO is to make the results of any such research available to any person on request.
- 24 Advice, assistance and training facilities** 10
- (1) The MMO must provide the Secretary of State with such advice and assistance as the Secretary of State may request.
  - (2) The MMO must, at the request of any public body, provide advice to that body on any matter which –
    - (a) is within the knowledge or experience of the MMO, 15
    - (b) relates to the general objective or any of the functions of the MMO, and
    - (c) affects the performance by the public body of its functions.
  - (3) The MMO may provide advice to any person on any matter relating to its general objective or any of its functions –
    - (a) at the request of that person, or 20
    - (b) if the MMO considers it appropriate to do so, on its own initiative.
  - (4) The MMO may provide any person with –
    - (a) assistance, or
    - (b) the use of training facilities,as respects any matter of which the MMO has knowledge or experience. 25
- 25 Provision of information etc**
- (1) The MMO may –
    - (a) publish documents or provide information about any matter relating to its general objective or any of its functions, or
    - (b) assist in the provision of such publications or information. 30
  - (2) Nothing in any other enactment imposing a duty or conferring a power on the MMO –
    - (a) to publish, or assist in the publication of, documents of a particular kind, or
    - (b) to provide, or assist in the provision of, information of a particular kind, 35is to be read as limiting the power conferred by subsection (1).
- 26 Power to charge for services**
- (1) The MMO may charge such fees in respect of the cost of providing its services as appear to it to be reasonable.
  - (2) For this purpose “services” includes, in particular, anything done under – 40
    - (a) section 2(6) (provision of copy of guidance);

***Clause 27: Provision of information by the MMO to the Secretary of State***

79. The MMO will be accountable to the Secretary of State who will from time to time require information from the MMO relating to the performance of its functions to enable the Secretary of State to monitor the MMO's performance of its responsibilities.

80. This clause requires the MMO to make such information available to the Secretary of State. The request from the Secretary of State for such information must be in writing.

***Clause 28: Power to bring proceedings***

81. The MMO will be responsible for enforcement in the marine area, including bringing prosecutions where appropriate. This clause allows the MMO to pursue criminal or civil proceedings including in relation to civil penalties.

82. The clause also ensures that MMO employees can prosecute any of these legal proceedings in the Magistrates Courts, even though they may not have any legal qualifications. This enables the MMO to have prosecutors on its staff in the same way as do organisations such as the Environment Agency and local authorities.

***Clause 29: Incidental Powers***

83. This clause allows the MMO to take action which will help it to exercise its functions and meet its purpose. The clause sets out some of the particular activities that the MMO may need to undertake.

84. These clauses puts in place the financial arrangements needed to enable the MMO to carry out its responsibilities.

- (b) section 23(3) (making available the results of research);
- (c) section 24(2), (3)(a) or (4) (advice, assistance and training facilities);
- (d) section 25 (information).

**27 Provision of information by the MMO to the Secretary of State**

- (1) The MMO must provide the Secretary of State with all such information as the Secretary of State may reasonably require with respect to any of the following matters – 5
  - (a) the carrying out, or proposed carrying out, of the MMO’s functions;
  - (b) the MMO’s responsibilities generally.
- (2) Information required under this section is to be provided in such form and manner, and be accompanied or supplemented by such explanations, as the Secretary of State may require. 10
- (3) The information which the MMO may be required to provide under this section includes information which, although it is not in the possession of the MMO or would not otherwise come into the possession of the MMO, is information which it is reasonable to require the MMO to obtain. 15
- (4) A requirement for the purposes of this section –
  - (a) must be made in writing;
  - (b) may describe the information to be provided in such manner as the Secretary of State considers appropriate; 20
  - (c) may require the information to be provided on a particular occasion, in particular circumstances or from time to time.

**28 Power to bring proceedings**

- (1) The MMO may institute criminal proceedings.
- (2) The MMO may institute proceedings for the recovery of any civil penalty in respect of a matter where the MMO has the power of enforcement in England or Wales. 25

This is without prejudice to any other powers the MMO may have of instituting proceedings.
- (3) A person who is authorised by the MMO to prosecute on its behalf in proceedings before a magistrates’ court in England or Wales is entitled to prosecute in such proceedings even though not a barrister or solicitor. 30
- (4) A person who is authorised by the MMO to appear on its behalf in civil proceedings before a magistrates’ court in England or Wales for the recovery of any sum of money is entitled to appear in such proceedings even though not a barrister or solicitor. 35

**29 Incidental powers**

- (1) The MMO may do anything which appears to it to be incidental or conducive to the carrying out of its functions or the achievement of its general objective.
- (2) In particular, the MMO may – 40
  - (a) enter into agreements;
  - (b) acquire or dispose of land or other property;

***Clause 30: Grants***

85. This clause enables the Secretary of State to fund the MMO by payment of grants.

***Clause 31: Borrowing powers***

86. This clause allows the MMO to borrow money if needed, to allow it to carry out its functions. This can be from the Secretary of State, or from others with the agreement of the Secretary of State. The Secretary of State may put conditions on his agreement (for example, he may require the MMO to repay the loan by a certain date).

***Clause 32: Limit on borrowing***

87. This clause puts a limit of £20million on what the MMO can borrow, and allows the Secretary of State to increase the amount up to £80 million by order, after approval by the House of Commons.



- (c) subject to the restrictions imposed by sections 31 and 32, borrow money;
- (d) subject to the approval of the Secretary of State, form bodies corporate or acquire or dispose of interests in bodies corporate;
- (e) accept gifts; 5
- (f) invest money.

*Financial provisions*

**30 Grants**

- (1) The Secretary of State may make payments by way of grant to the MMO.
- (2) Any payments under subsection (1) are to be – 10
  - (a) of such amounts,
  - (b) at such times, and
  - (c) subject to such conditions (if any),as the Secretary of State may determine.

**31 Borrowing powers** 15

- (1) The MMO may borrow money, but only –
  - (a) in accordance with the following provisions of this section, and
  - (b) subject to section 32 (limit on borrowing).
- (2) The MMO may borrow such sums as it may require for meeting its obligations and carrying out its functions. 20
- (3) The MMO may borrow any such sums –
  - (a) from the Secretary of State, by way of loan, or
  - (b) from persons other than the Secretary of State, by way of overdraft or otherwise.
- (4) The MMO may borrow by virtue of subsection (3)(b) only if the Secretary of State consents. 25
- (5) Any consent under subsection (4) may be given subject to conditions.

**32 Limit on borrowing**

- (1) The aggregate amount outstanding in respect of the principal of sums borrowed by the MMO must not at any time exceed £20 million. 30
- (2) The Secretary of State may by order amend subsection (1) so as to substitute for the sum for the time being there specified such sum as may be specified in the order.
- (3) The sum specified in an order under subsection (2) must be a sum – 35
  - (a) greater than £20 million, but
  - (b) not greater than £80 million.
- (4) A statutory instrument containing an order under subsection (2) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the House of Commons.

***Clause 33: Government loans***

88. This clause enables the Secretary of State to lend money to the MMO and to attach conditions regarding the repayment of the loan and payment of interest. It requires the Secretary of State to keep an account of the amounts loaned and received, and make those accounts available to the Comptroller and Auditor General for auditing purposes. Both the account and the auditor's report must be made available to Parliament. In accordance with Government financial procedural requirements, the Secretary of State is required to pay any monies repaid by the MMO to the Consolidated Fund.

***Clause 34: Government guarantees***

89. This clause provides that any money borrowed by the MMO (and the resultant interest) may be guaranteed by the Secretary of State. Conditions may be attached to the guarantee by the Secretary of State who must make both Houses of Parliament aware of the guarantee. If the Secretary of State pays out any sums in respect of the guarantee, he must also inform them. He can direct the MMO to make repayments to him in respect of these sums and to pay interest.

**33 Government loans**

- (1) The Secretary of State may lend money to the MMO.
- (2) A loan under this section may be made subject to such conditions as may be determined by, or in accordance with arrangements made by, the Secretary of State. 5
- (3) The conditions must include provision with respect to—
  - (a) repayment of the loan at such times, and by such methods, as the Secretary of State may from time to time determine, and
  - (b) payment of interest on the loan at such rates, and at such times, as the Secretary of State may from time to time determine. 10
- (4) The Treasury may issue to the Secretary of State out of money provided by Parliament such sums as are necessary to enable the Secretary of State to make loans under this section.
- (5) The Secretary of State must, in respect of each financial year,—
  - (a) prepare an account of any sums lent or received in pursuance of this section during the year, and 15
  - (b) send that account to the Comptroller and Auditor General before the end of September in the following financial year.
- (6) The Comptroller and Auditor General must—
  - (a) examine, certify and report on each account sent under subsection (5), and 20
  - (b) send a copy of the certified account and of the report to the Secretary of State as soon as possible;and the Secretary of State must lay before each House of Parliament a copy of the certified statement and of the report. 25
- (7) Any sums received by the Secretary of State under or by virtue of this section must be paid into the Consolidated Fund.

**34 Government guarantees**

- (1) The Secretary of State may guarantee—
  - (a) the repayment of the principal of any sum borrowed by the MMO from a person other than the Secretary of State; 30
  - (b) the payment of interest on any such sum;
  - (c) the discharge of any other financial obligation in connection with any such sum.
- (2) A guarantee under subsection (1) may be given in such manner, and on such conditions, as the Secretary of State may think fit. 35
- (3) If a guarantee is given under subsection (1), the Secretary of State must lay a statement of the guarantee before each House of Parliament.
- (4) Where any sum is paid out for fulfilling a guarantee under this section, the Secretary of State must, as soon as reasonably practicable after the end of each financial year in the relevant period, lay before each House of Parliament a statement relating to that sum. 40
- (5) For the purposes of subsection (4), the relevant period is the period which—
  - (a) begins with the financial year in which the sum is paid out, and

***Clauses 35 & 36: Directions by the Secretary of State; Guidance by the Secretary of State***

90. Whilst the MMO is intended to operate free from Ministerial interference in its day to day affairs, Ministers may need to issue guidance or directions to the MMO if it is discharging its functions in a manner that is inconsistent with its intended purpose.

91. These clauses give the Secretary of State power to give general or specific directions and guidance to the MMO regarding the exercise of its functions, and require the MMO to comply with any direction and to take notice of any guidance issued.

92. Specific reference is made in this clause to the ability to give directions in relation to international agreements to which the United Kingdom or European Union is a party. This is in recognition that several such agreements relate to the marine area, including some which require member states to undertake actions which the Secretary of State is likely to want the MMO to discharge in relation to England.

- (b) ends with the financial year in which all liability in respect of the principal of the sum and in respect of interest on it is finally discharged.
- (6) If any sums are paid out in fulfilment of a guarantee under this section, the MMO must make to the Secretary of State –
  - (a) payments of such amounts as the Secretary of State may from time to time direct in or towards repayment of the sums so paid out, and 5
  - (b) payments of interest, at such rate as the Secretary of State may so direct, on what is outstanding for the time being in respect of sums so paid out.
- (7) Payments under subsection (6) are to be made –
  - (a) at such times, and 10
  - (b) in such manner,as the Secretary of State may from time to time direct.

*Directions and guidance*

**35 Directions by the Secretary of State**

- (1) The Secretary of State may give the MMO general or specific directions with respect to the exercise of any of the MMO’s functions. 15
- (2) The Secretary of State may also give the MMO such general or specific directions as the Secretary of State considers appropriate for the implementation of any obligations of the United Kingdom under –
  - (a) the Community Treaties, or 20
  - (b) any international agreement to which the United Kingdom or the European Union is for the time being a party.
- (3) Before giving directions under this section, the Secretary of State must consult the MMO.
- (4) Consultation under subsection (3) is not required if the Secretary of State considers that there is an emergency. 25
- (5) The MMO must comply with any directions given to it under this section.
- (6) Notice of any directions given under this section must be published in the London Gazette.
- (7) The giving of any directions under this section must be publicised in such manner as the Secretary of State considers appropriate for the purpose of bringing the matters to which the directions relate to the attention of persons likely to be affected by them. 30
- (8) Copies of any directions given under this section are to be made available by the MMO to members of the public on payment of such reasonable fee as the MMO may determine. 35

**36 Guidance by the Secretary of State**

- (1) The MMO must have regard to any guidance given to it by the Secretary of State.
- (2) Before giving any guidance to the MMO, the Secretary of State must consult – 40
  - (a) the MMO, and

***Clause 37: Transfer schemes***

93. This clause enables the Secretary of State to transfer to the MMO property, rights and liabilities of Defra (including the Marine and Fisheries Agency) and other Government Departments. This will be by way of transfer schemes made by the Secretary of State.

94. The MMO will be discharging new functions created by the draft Bill but also taking over existing functions currently discharged by the Marine and Fisheries Agency, Defra, the Department for Business, Enterprise and Regulatory Reform and the Department for Transport. This clause enables resources (including staff) currently being deployed to discharge these functions to be transferred to the MMO.

95. Reference is made to Schedule 3 where further technical provisions relating to transfer schemes are set out (see below).

***Clause 38: Interim arrangements***

96. This clause makes provision for the Secretary of State to require a transferor to make staff, premises, or other facilities available to the MMO (as transferee) on a temporary basis. This is intended to cover any period of transition between the MMO taking on functions previously discharged by that body and the transfer scheme taking effect.

- (b) such other bodies or persons as the Secretary of State considers appropriate.

*Transfer schemes etc*

**37 Transfer schemes**

- (1) The Secretary of State may, in connection with the establishment of, or the transfer of any functions to, the MMO, make one or more schemes for the transfer to the MMO of designated property, rights or liabilities of any of the following— 5
- (a) a Minister of the Crown,
  - (b) a government department, 10
  - (c) a statutory body.
- (2) The Secretary of State may make one or more schemes for the transfer of designated property, rights or liabilities of the MMO to any of the following— 15
- (a) a Minister of the Crown,
  - (b) a government department,
  - (c) a statutory body.
- (3) On the transfer date for any designated property, rights or liabilities, that property and those rights and liabilities are transferred and vest in accordance with the scheme.
- (4) In this section and Schedule 3— 20
- “designated”, in relation to a scheme, means specified or described in, or determined in accordance with, the scheme;
  - “statutory body” means any body or person established by or under any enactment;
  - “transfer date”, in relation to any property, rights or liabilities, means a date specified by a scheme as the date on which the scheme is to have effect in relation to that property or those rights or liabilities. 25
- (5) Schedule 3 makes further provision relating to schemes under this section.

**38 Interim arrangements**

- (1) The Secretary of State may by notice require any of the following— 30
- (a) a Minister of the Crown,
  - (b) a government department,
  - (c) a statutory body,
- to provide to the MMO on a temporary basis such staff, premises or other facilities as may be specified in the notice. 35
- (2) In this section “statutory body” means any body or person established by or under any enactment.

## ***Part 2: Marine planning***

### ***Chapter 1: Marine policy statements***

#### ***The UK marine area***

##### ***Clause 39: The UK marine area***

97. This clause defines what is meant by the ‘UK marine area’, which is referred to in later clauses. It defines the UK marine area as consisting of the amalgamation of the three areas referred to in paragraphs (a) (b) and (c). The outer limits of the area will therefore be the edge of the UK continental shelf or the renewable energy zone, depending on which extends further out to sea.

98. *Subsection (2)* defines the landward extent of the marine area by referring to the area that is submerged at mean high water spring tide. Where the relevant part of the coast consists of an estuary, river or channel, the UK marine area extends as far inland as the tide flows at mean high water spring tide.

##### ***Statements of marine policy for that area***

##### ***Clause 40: Marine policy statements***

99. This clause describes what is meant by a ‘marine policy statement’ (MPS). It defines the MPS as a document that will be prepared and adopted by the policy authorities, in accordance with the process laid down in Schedule 1, and which sets out their policies for contributing to the sustainable development of the UK marine area.

100. The MPS will provide a long term framework for managing sustainable development in the UK marine area by setting out a UK vision and objectives for the marine area and its uses, incorporating economic, social, cultural and environmental priorities.

101. *Subsections (2) and (3)* states that the MPS may also include additional supporting information and statements about the policies it includes. They set out what happens in the event of an apparent conflict between policy and any supporting information or statements, by ensuring that the policy always takes precedence. For example, the MPS may contain a policy to increase extraction of marine minerals by 10%, supported by figures showing that this would represent an increase of 10,000 tonnes per year. If this figure of 10,000 tonnes were wrong or became inaccurate over time, *subsection (4)* provides clarity that the policy of a ‘10% increase’ is the figure which must be applied, not ‘10,000 tonnes’, which was only supporting information.

102. *Subsection (4)* identifies the ‘policy authorities’ who may prepare and adopt an MPS, and *subsection (5)* clarifies what is meant by “adoption”.



**PART 2**

MARINE PLANNING

**CHAPTER 1**

MARINE POLICY STATEMENTS

*The UK marine area* 5

**39 The UK marine area**

- (1) For the purposes of this Act, the “UK marine area” consists of the following—
- (a) the area of sea within the seaward limits of the territorial sea adjacent to the United Kingdom,
  - (b) the area of sea within the limits of the UK sector of the continental shelf, 10
  - (c) any area of sea within the limits of a renewable energy zone (so far as not falling within the area mentioned in paragraph (b)),
- and includes the bed and subsoil of the sea within those areas.
- (2) For the purposes of this Act, other than Part 9 (coastal access), “sea” includes—
- (a) any area submerged at mean high water spring tide, and 15
  - (b) the waters of every estuary, river or channel, so far as the tide flows at mean high water spring tide.

*Statements of marine policy for that area*

**40 Marine policy statements**

- (1) For the purposes of this Act a “marine policy statement” (an “MPS”) is a document— 20
- (a) in which the policy authorities that prepare and adopt it state general policies (however expressed) of theirs for contributing to the achievement of sustainable development in the UK marine area,
  - (b) which has been prepared and adopted by those authorities in accordance with Schedule 4, and 25
  - (c) which states that it has been prepared and adopted for the purposes of this section.
- (2) An MPS may also include statements or information relating to policies contained in the MPS. 30
- (3) If to any extent a policy stated in an MPS conflicts with any other statement or information in the MPS, that conflict must be resolved in favour of the policy.
- (4) In this Part “policy authority” means any of the following—
- (a) the Secretary of State;
  - (b) the Welsh Ministers; 35
  - (c) the Department of the Environment in Northern Ireland.

***Clause 41: Preparation, adoption and coming into force of statement***

103. This clause enables the policy authorities to prepare an MPS by acting jointly. In order to ensure that an MPS can be adopted under any circumstances, *subsection (1)* also provides that an MPS may be adopted by the Secretary of State acting jointly with only one other policy authority, or alone if necessary.

104. *Subsection (2)* ensures that a new MPS will always replace an older one, even if the new one is prepared and adopted by a different group of policy authorities. This ensures that there is only ever one MPS in effect at any time. (See clause 42 for separate provisions on amending an existing MPS without replacing it.)

105. *Subsection (3)* specifies that the MPS comes into effect when it has been adopted by the policy authorities in accordance with the process in Schedule 4. After it has come into effect, the MPS must be considered when preparing plans or taking relevant decisions (see clause 53).

***Clause 42: Amendment of statement***

106. This clause enables an MPS to be amended without replacing it entirely. Only the policy authorities which originally prepared and adopted an MPS may amend it. (Any change to the policy authorities requires a completely new MPS to be prepared – see clause 41.)

107. This clause requires any amendment to an MPS to be prepared and adopted in exactly the same way as the original MPS (i.e. in accordance with Schedule 4). Amendments to an MPS come into effect when they have been published, and from that point, any references to ‘an MPS’ apply to the MPS ‘as amended’.

***Clause 43: Withdrawal of statement***

108. If any one of the policy authorities which originally adopted an MPS comes to the conclusion that there is a problem with the MPS which they do not want to, or cannot, rectify by making an amendment – for instance if they decide that the MPS must cease effect immediately - this clause provides that they may withdraw the MPS. This is done by first notifying the other policy authorities of their intention, and then placing a notice in the London, Belfast and Edinburgh Gazettes. The MPS is withdrawn from the date on which that notice is published.

109. The policy authority withdrawing the MPS must also bring the withdrawal to the attention of “interested persons” (i.e. anyone the policy authority thinks is likely to be interested in, or affected by, the withdrawal - for example the regulators that have been using it in their decision making) as well as the general public).

110. *Subsection (6)* ensures that the withdrawal of an MPS does not change the effect or validity of any marine plans which have been prepared in order to implement the MPS, or the way in which such plans should be construed. This means that even once an MPS has been withdrawn, the plans will continue to have the same effect on decisions and the way public

- (5) Any reference in this Part to an MPS being adopted by any policy authorities is a reference to the final text of the MPS being adopted by those authorities in accordance with Schedule 4.

**41 Preparation, adoption and coming into force of statement**

- (1) An MPS may only be prepared and adopted by – 5  
    (a) all the policy authorities, acting jointly,  
    (b) the Secretary of State and any other policy authority, acting jointly, or  
    (c) the Secretary of State.
- (2) A later MPS replaces an earlier MPS, whether or not the later MPS is prepared and adopted by the same policy authorities that prepared and adopted the earlier MPS. 10
- (3) An MPS comes into effect when it has been published by the authorities that prepared and adopted it in accordance with Schedule 4.

**42 Amendment of statement**

- (1) An MPS may be amended from time to time by the policy authorities which prepared and adopted it. 15
- (2) Any amendment of an MPS must be prepared and adopted in accordance with Schedule 4.
- (3) Any amendment of an MPS comes into effect when it has been published in accordance with that Schedule. 20
- (4) Any reference in this Part to an amendment of an MPS being adopted by any policy authorities is a reference to the final text of the amendment being adopted by those authorities in accordance with that Schedule.
- (5) Any reference in this Act to an MPS includes a reference to an MPS as amended. 25

**43 Withdrawal of statement**

- (1) This section applies if any of the policy authorities that prepared and adopted an MPS comes to the conclusion that it requires the MPS to be withdrawn.
- (2) If, in any such case, the policy authority publishes notice of that conclusion in each of the Gazettes, the MPS is withdrawn as from the date on which the notice has been so published. 30
- (3) Before arranging to publish any such notice, the policy authority must inform each of the other policy authorities that it intends to do so.
- (4) The policy authority must take such further steps as it considers appropriate to secure that the withdrawal of the MPS is brought to the attention of interested persons. 35

authorities carry out their functions (see clause 53). It also means that even if the MPS has been withdrawn, it should not be argued that the content of the plan is undermined as a result, or that it could be ignored.

111. Once it is withdrawn an MPS ceases to have any further effect. Any marine plans prepared after an MPS has been withdrawn, but before a new one is in place therefore do not have to be “in conformity with” any MPS. (See clause 46).

## ***Chapter 2: Marine Plans***

### ***Introductory***

#### ***Clause 44: Marine planning regions***

112. This clause identifies the component ‘regions’ within the UK marine area for the purposes of identifying who will be responsible for planning in that region. The regions are defined in clause 298.

#### ***Clause 45: The marine plan authority for each marine planning region***

113. This clause sets out which marine plan authorities are to have responsibility for the different regions of the UK marine area, as defined in clause 44.

114. The Secretary of State is the marine plan authority for all regions except:

- the Northern Ireland offshore region, where the marine plan authority is the Department of the Environment Northern Ireland and the Secretary of State acting jointly;
- the Welsh inshore region, where the marine plan authority is the Welsh Ministers, and
- the Scottish inshore region and the Northern Ireland inshore region, which do not have marine plan authorities.

- (5) In subsection (4) “interested persons” means –
- (a) any persons appearing to the policy authority to be likely to be interested in, or affected by, policies included in the MPS;
  - (b) members of the general public.
- (6) Where an MPS is withdrawn under this section, the withdrawal does not affect –
- (a) the continuing validity or effect of any marine plan for any marine plan area, or
  - (b) until such time as a new MPS has effect for a marine plan area, the construction of any marine plan for that marine plan area,
- 5  
10
- but, subject to that, the MPS ceases to have effect.
- (7) In this section, “the Gazettes” means the London Gazette, the Edinburgh Gazette and the Belfast Gazette.

## CHAPTER 2

### MARINE PLANS 15

#### *Introductory*

#### **44 Marine planning regions**

- (1) The UK marine area comprises the following marine planning regions –
- (a) the Great Britain offshore region;
  - (b) the English inshore region; 20
  - (c) the Scottish inshore region;
  - (d) the Northern Ireland inshore region;
  - (e) the Northern Ireland offshore region;
  - (f) the Welsh inshore region.
- (2) The definitions of those regions can be found in section 298. 25

#### **45 The marine plan authority for each marine planning region**

- (1) There is to be a marine plan authority for each marine planning region other than –
- (a) the Northern Ireland inshore region;
  - (b) the Scottish inshore region. 30
- (2) The marine plan authority for any region is to be determined in accordance with subsections (4) to (6).
- (3) References to a marine plan authority’s region are to be construed accordingly.
- (4) The Secretary of State is the marine plan authority for –
- (a) the Great Britain offshore region, and
  - (b) the English inshore region. 35
- (5) The marine plan authority for the Northern Ireland offshore region is –
- (a) the Secretary of State, and
  - (b) the Department of the Environment in Northern Ireland,

**Clause 46: Marine plans for marine plan areas**

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

116. *Subsection (1)* enables a marine plan authority to designate the whole or parts of their region as “marine plan areas”, and to prepare plans for those areas.

117. *Subsection (2)* defines a marine plan. Like the definition of an MPS in clause 2 above, marine plans are defined by reference to who creates them, the process they must follow, and the content. *Subsection (2)* requires that marine plans must:

- be prepared and adopted by the marine plan authority for the region in which the marine plan area lies;
- be prepared in accordance with the process set out in Schedule 2; and
- state the marine plan authority’s policies for contributing to the sustainable development of the marine plan area.

118. *Subsection (3)* requires that a marine plan must clearly identify the area to which it applies – this may be through a map or chart, or by other means.

119. *Subsection (4)* specifies that a marine plan must be in conformity with any MPS which has effect for that marine plan area, unless relevant considerations indicate otherwise. Marine plans are intended to set out how the policies and objectives outlined 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 to specific situations in plans, but also that there is flexibility to deal with unexpected circumstances.

120. Since it is still possible to prepare marine plans even if there is no MPS in place, or if there is an MPS but it was not adopted by one or more of the policy authorities, *subsection (5)* determines whether an MPS ‘has effect’ for a particular marine plan area, in other words whether it should be considered by the marine plan authority in the development of plans in that area. In order to have effect for an area, an MPS must have been adopted by the marine plan authority preparing the plan, and must not have been withdrawn.

121. As for an MPS, *subsection (6)* provides that a marine plan may also contain supporting statements and information, and *subsection (7)* provides for any conflict between the policies in the marine plan and any supporting information to be resolved in favour of the plan. See the notes on Clause 40 for further explanation.

122. *Subsection (8)* states that a marine plan comes into effect when it has been adopted and published in accordance with Schedule 5. Once a marine plan comes into effect in this way, it has a legal effect on decisions which affect the UK marine area (see clause 53).

acting jointly.

- (6) The marine plan authority for the Welsh inshore region is the Welsh Ministers.

#### 46 Marine plans for marine plan areas

- (1) The marine plan authority for any marine planning region –
- (a) may designate the whole or any part of that region as a “marine plan area”, and 5
  - (b) may prepare a marine plan for that marine plan area.
- (2) A “marine plan” is a document which –
- (a) has been prepared and adopted for a marine plan area by the appropriate marine plan authority in accordance with Schedule 5, 10
  - (b) states the authority’s policies (however expressed) for and in connection with the sustainable development of the area, and
  - (c) states that it is a marine plan prepared and adopted for the purposes of this section,
- and for the purposes of this section “the appropriate marine plan authority” is 15  
the marine plan authority for the marine planning region in which the marine plan area lies.
- (3) A marine plan must identify (by means of a map or otherwise) the marine plan area for which it is a marine plan.
- (4) A marine plan must be in conformity with any MPS which has effect for the 20  
marine plan area unless relevant considerations indicate otherwise.
- (5) For the purposes of this Part, an MPS has effect for a marine plan area if the MPS –
- (a) has been adopted by the appropriate marine plan authority, and
  - (b) has not been withdrawn (but see also section 43(6) (effect of 25  
withdrawing an MPS)).
- (6) A marine plan may also include statements or information relating to any of the policies contained in the plan.
- (7) If to any extent a policy stated in a marine plan conflicts with any other 30  
statement or information in the plan, that conflict must be resolved in favour of the policy.
- (8) A marine plan comes into effect when it has been published by the marine plan authority that prepared and adopted it in accordance with Schedule 5.

***Clause 47: Duty of marine plan authorities to keep relevant matters under review***

123. This clause requires the marine plan authorities to keep under review matters which may affect their functions of designating and preparing plans for marine plan areas. This is to ensure that marine plan authorities stay up-to-date with what is happening in their region of the marine area, and which they ought to know about in order to plan effectively.

124. *Subsection (2)* sets out a non-exhaustive list of the kinds of things which a marine plan authority ought to keep under review.

125. *Subsection (3)* makes clear that the review should also look at how the things in subsection (2) might be expected to change, and the effect this may have on the area and the sustainable development of it.

***Clause 48: Withdrawal of marine plan***

126. Like an MPS, if the marine plan authority comes to the conclusion that there is a problem with the plan which they do not want to, or cannot, rectify by making an amendment – for instance if they decide that the plan must cease effect immediately – a marine plan may be withdrawn.

127. *Subsections (2) and (3)* enable the Secretary of State or the Department of the Environment in Northern Ireland to act independently in withdrawing a plan which they have jointly adopted for the offshore area adjacent to Northern Ireland. If either decides to withdraw such a plan, they must inform the other.

128. When a plan is withdrawn under this clause, *subsection (4)* requires the marine plan authority to take steps to bring the withdrawal to the attention of interested persons, as defined in *subsection (5)*.



- 47 Duty of marine plan authorities to keep relevant matters under review**
- (1) The marine plan authority for any marine planning region must keep under review the matters which may be expected to affect the exercise by them of their functions relating to –
    - (a) the designation of marine plan areas, and 5
    - (b) the preparation, adoption, review, amendment or withdrawal of marine plans for those areas.
  - (2) These matters include –
    - (a) the physical, environmental, social, cultural and economic characteristics of the authority’s region and of the living resources which the region supports; 10
    - (b) the purposes for which any part of the region is used;
    - (c) the communications, energy and transport systems of the region;
    - (d) any other considerations which may be expected to affect those matters. 15
  - (3) The matters also include –
    - (a) any changes which could reasonably be expected to occur in relation to any such matter;
    - (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. 20

*Withdrawal, amendment and review*

- 48 Withdrawal of marine plan**
- (1) A marine plan may be withdrawn at any time.
  - (2) For the purposes of this Act a marine plan is withdrawn by a marine plan authority –
    - (a) in a case where the marine plan authority is a single policy authority, when that authority has decided to withdraw the plan; 25
    - (b) in any other case, when any of the policy authorities which are constituent members of the marine plan authority has decided to withdraw the plan. 30
  - (3) Where a policy authority which is a constituent member of a marine plan authority decides to withdraw a marine plan, it must inform the other constituent member of that decision.
  - (4) Where a marine plan is withdrawn under this section, the marine plan authority must take such 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 subsection (4) “interested persons” means –
    - (a) any persons appearing to the marine plan authority to be likely to be interested in, or affected by, policies included in the marine plan, and 40
    - (b) members of the general public.

**Clause 49: Amendment of marine plan**

129. This clause enables a marine plan authority to amend a marine plan. As for an MPS, marine plans may be amended using the same process used to prepare the original plan (i.e. the process set out in Schedule 5), and (once amendments are adopted) references to a marine plan include that plan “as amended”.

**Chapter 3: Delegation of Functions Relating to Marine Plans****Clause 50: Delegation of functions relating to marine plans**

130. This clause enables a marine plan authority (or either the Secretary of State or Department of the Environment Northern Ireland individually, in respect of their joint planning function for the Northern Ireland offshore region) to direct another public body (e.g. the Marine Management Organisation) to carry out some of their marine planning functions, by giving it a ‘direction’.

131. *Subsection (3)* requires the marine plan authority to obtain the public body’s consent before making the ‘direction’. Since public bodies may generally only do things that they have specific powers to do, *subsection (4)* compels the public body to comply with the direction and states that it is taken to have any necessary powers to carry out the functions delegated to it.

132. *Subsections (5) to (7)* set out which functions may be delegated in this way. A marine plan authority may delegate any of the functions in Chapter 2, apart from the “excepted functions”. The functions in Chapter 2 which *may* be delegated are:

- designating “marine plan areas” (clause 46(1)(a));
- preparing a marine plan in accordance with the procedure in Schedule 5 (clause 46(1)(b));
- keeping relevant matters under review (clause 47); and
- amending a marine plan (clause 49).

133. The “excepted functions” which must be carried out by the marine plan authority and *may not* be delegated are:

- adopting, or agreeing to the adoption of, a marine plan (paragraph 11 of Schedule 2); and
- withdrawing a marine plans (clause 48).

**49 Amendment of marine plan**

- (1) A marine plan may be amended from time to time by the marine plan authority for the marine planning region in which the marine plan area lies.
- (2) The provisions of this Part that relate to the preparation, adoption, publication and coming into force of a marine plan also apply in relation to amendments of a marine plan. 5
- (3) Any reference in this Act to a marine plan includes a reference to a marine plan as amended.

**CHAPTER 3**

DELEGATION OF FUNCTIONS RELATING TO MARINE PLANS 10

**50 Delegation of functions relating to marine plans**

- (1) Any of the following authorities may give directions under this section—
  - (a) a marine plan authority,
  - (b) a policy authority which is a constituent member of a marine plan authority. 15
- (2) A direction under this section is a direction which—
  - (a) designates any of the delegable marine plan functions which would (apart from directions under this section) be exercisable by or in relation to the authority, and
  - (b) directs that those functions, instead of being so exercisable, are to be exercisable by or in relation to such public body, acting on behalf of the authority, as is designated in the direction. 20
- (3) An authority which gives a direction under this section may do so only with the consent of the public body.
- (4) The public body—
  - (a) must comply with the direction, and
  - (b) is to be taken to have all the powers necessary to do so. 25
- (5) In this section “delegable marine plan functions” means functions under Chapter 2 of this Part, other than excepted functions.
- (6) The excepted functions are—
  - (a) deciding under paragraph 11 of Schedule 5 whether to publish a marine plan or any amendment of a marine plan;
  - (b) deciding under section 48 whether to withdraw a marine plan. 30
- (7) No direction may be given under this section in respect of any function of the Secretary of State of agreeing under paragraph 11 of Schedule 5 to the adoption of a marine plan by the Welsh Ministers. 35

***Clause 51: Directions under section 50: supplementary provisions***

134. This clause contains a number of additional rules about directions issued under clause 50.

135. *Subsection (1)* requires the authority to publish the direction in a way that will bring it to the attention of anyone likely to be affected by it.

136. Unless the marine plan authority has specified otherwise in the direction, *subsection (2)* prevents the authority from exercising the functions it has delegated, for as long as the direction is in force. *Subsection (3)* sets out how the marine plan authority may make exceptions to this rule.

137. *Subsection (4)* enables a marine plan authority to impose terms, conditions, obligations or requirements on the way a public body exercises any marine planning functions delegated to it, and also enables the terms of the delegation to make financial provisions (e.g. to enable the public body to receive funding for carrying out the functions).

138. *Subsection (5)* enables a marine plan authority to delegate its functions differently for different areas, cases or to different bodies.

***Clause 52: Directions to public bodies as regards performance of delegated functions***

139. This clause applies where a marine plan authority has delegated some of its planning functions by directions under clause 50. It enables the marine plan authority to give further directions to a public body to which it has delegated functions, setting out how those functions should be performed. *Subsection (3)* requires the public body to comply with any such directions, which must be published by the marine plan authority in accordance with *subsection (4)*.

***Chapter 4: Implementation and effect***

***Decisions affected by an MPS or marine plan***

***Clause 53: The decisions to be made in accordance with marine policy documents***

140. This clause sets out how an MPS and marine plans (“marine policy documents”) affect decisions.

141. *Subsection (1)* requires public authorities to have regard to the “appropriate marine policy documents” when making any decision about the exercise of any of their functions which is capable of affecting the UK marine area. (The “appropriate marine policy documents” means any MPS and/or marine plans which have been adopted for that part of the UK marine area, as defined in *subsection (6)*.)

142. *Subsection (2)* then requires that public authorities taking certain kinds of decisions must make those decisions “in accordance with” the appropriate marine policy documents, unless relevant considerations indicate otherwise.

**51 Directions under section 50: supplementary provisions**

- (1) An authority which gives a direction under section 50 must publish the direction in a way calculated to bring the direction to the attention of persons likely to be affected by it.
- (2) For so long as a direction given and published under that section remains in force, the designated functions are exercisable by or in relation to the public body acting on behalf of the authority (and are not exercisable by or in relation to the authority). 5
- (3) Subsection (2) is subject to any provision to the contrary which—
  - (a) is made by the direction, or 10
  - (b) is included in a direction under section 52.
- (4) A direction under section 50 may include—
  - (a) such terms or conditions,
  - (b) such obligations or requirements,
  - (c) such financial provisions, 15as the authority giving the direction may determine.
- (5) Directions under section 50 may make different provision for different cases, different areas or different public bodies.

**52 Directions to public bodies as regards performance of delegated functions**

- (1) This section applies where any functions are exercisable by or in relation to a public body by virtue of a direction given under section 50 by an authority. 20
- (2) The authority may from time to time give directions to the public body with respect to the performance of the functions.
- (3) A public body to which directions are given under this section must comply with the directions. 25
- (4) An authority which gives a direction under this section must publish the direction in a manner likely to bring the direction to the attention of persons likely to be affected by it.

**CHAPTER 4**

IMPLEMENTATION AND EFFECT 30

*Decisions affected by an MPS or marine plan*

**53 The decisions to be taken in accordance with marine policy documents**

- (1) A public authority taking any decision in relation to the exercise of any function capable of affecting the whole or any part of the UK marine area must have regard to the appropriate marine policy documents. 35  
This subsection is without prejudice to subsection (2).
- (2) A public authority taking any decision falling within subsection (3) must do so in accordance with the appropriate marine policy documents unless relevant considerations indicate otherwise.

143. *Subsection (3)* sets out the types of decisions which must be taken “in accordance with” the marine policy documents as required by subsection (2). These decisions all relate to the authorisation or licensing of particular activities which affect (or might affect) the whole or part of the UK marine area, the conditions placed on those licences, and subsequent enforcement activity which is carried out to ensure the activity is being carried out within the terms of the licence and conditions.

144. *Subsection (4)* prevents marine policy documents having an effect on decisions by the Scottish Ministers or decisions (other than on reserved matters) relating to the Scottish inshore area.

145. In the event of a conflict between policies in a policy document, or between e.g. a marine plan and an MPS, *subsection (5)* provides that the most recently adopted policy takes precedence.

***Clause 54: Monitoring of, and periodical reporting on, implementation***

146. This clause requires marine plan authorities to monitor and report on the effects of a plan, and the contribution and progress being made to the implementation of the policies and objectives in the MPS.

147. *Subsections (4) to (6)* require the marine plan authority to produce reports under this section every three years after the plan is adopted, and decide after each report whether or not the plan needs to be amended or replaced.

148. *Subsection (7)* makes clear that “replacing” a plan means preparing and adopting a new plan and withdrawing the existing one.

- (3) The decisions are –
- (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 UK marine area; 5
  - (b) decisions relating to any conditions of such an authorisation; 5
  - (c) decisions about extension, replacement, variation, revocation or withdrawal of any such authorisation or any such conditions (whenever granted or imposed); 10
  - (d) decisions relating to the enforcement of any such authorisation or any such conditions; 10
  - (e) decisions 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). 10
- (4) This section does not have effect in relation to –
- (a) decisions of the Scottish Ministers, or 15
  - (b) decisions relating to the Scottish inshore region, other than decisions relating to reserved matters within the meaning of the Scotland Act 1998 (c. 46). 15
- (5) If to any extent any policy contained in the appropriate marine policy documents for any part of the UK marine area conflicts with another policy in those documents, the conflict must be resolved in favour of the last of the policies to have been adopted. 20
- (6) In this section –
- “act” includes omission; 25
  - “the appropriate marine policy documents” means, in the case of any part of the UK marine area, – 25
    - (a) any MPS that has effect for that part of that area, and
    - (b) any marine plans that have effect for that part of that area;
  - “authorisation” means any approval, confirmation, consent, licence, permission or other authorisation (however described), whether special or general. 30

*Monitoring and reporting*

**54 Monitoring of, and periodical reporting on, implementation**

- (1) For so long as a marine plan is in effect, the marine plan authority must keep under review each of the matters in subsection (2). 35
- (2) The matters are –
- (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;
  - (c) the progress being made towards securing those objectives; 40
  - (d) if an MPS has effect in the marine planning region for which the authority is the marine plan authority, the progress being made towards securing that the objectives for which the MPS was prepared and adopted are met in that region.

## ***Chapter 5: Miscellaneous and General Provisions***

### ***Validity of documents under this Part***

#### ***Clause 55: Validity of marine policy statements and marine plans***

149. This clause sets out how people may challenge the content of marine policy documents (or amendments to them) in court. *Subsection (3)* provides that such challenges may only be brought in accordance with this clause.

150. *Subsection (4)* provides that the only grounds for challenge to a ‘relevant document’ are that the document is not within the appropriate powers, or that a procedural requirement has not been complied with (see *subsection (6)*). Only a “person aggrieved by a relevant document” may bring a challenge against it.

151. *Subsection (5)* requires that any such challenges are brought within 6 weeks of the adoption of the relevant document.

152. *Subsection (6)* identifies the “appropriate court” for bringing challenges in different parts of the UK, and defines “appropriate powers” and “procedural requirements”.



- (3) The marine plan authority must from time to time prepare and publish a report on the matters kept under review pursuant to subsection (1).
- (4) After publishing a report under subsection (3), the marine plan authority must decide whether or not to amend or replace the marine plan.
- (5) The first report must be published before the expiration of 3 years beginning with the date on which the marine plan was adopted. 5
- (6) After the publication of the first report, successive reports must be published at intervals of no more than 3 years following the date of publication of the previous report.
- (7) Any reference in this section to the replacement of a marine plan is a reference to— 10
  - (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 marine plan authority has not already done so, withdrawing the marine plan that is to be replaced. 15

## CHAPTER 5

### MISCELLANEOUS AND GENERAL PROVISIONS

#### *Validity of documents under this Part*

- 55 Validity of marine policy statements and marine plans 20**
  - (1) This section applies to—
    - (a) any MPS,
    - (b) any amendment of an MPS,
    - (c) any marine plan,
    - (d) any amendment of a marine plan. 25
  - (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 appropriate court on any of the following grounds— 30
    - (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 6 weeks after the publication of the relevant document. 35
  - (6) In this section—
    - “the appropriate court” means—
      - (a) the High Court, if the relevant document is a marine plan, or an amendment of a marine plan, for an area within the English inshore region or the Welsh inshore region; 40
      - (b) in any other case, any superior court in the United Kingdom;

***Clause 56: Powers of the court on an application under section 55***

153. This clause sets out what the court may do whilst a challenge about a marine policy document is being heard, and what remedies it may offer if it upholds the challenge.

154. *Subsection (2)* enables a court to make an interim order, suspending the operation of all or part of a document until the legal proceedings are over.

155. *Subsection (3)* sets out the conditions which must be satisfied before the court can grant any of the remedies set out in *subsection (4)*. The court must be satisfied either that the marine plan authority (or its delegate) acted outside or beyond the “relevant powers” in relation to the document, or that the applicant has been “substantially prejudiced” by a failure to meet a procedural requirement.

156. If the court is satisfied that one of the conditions in *subsection (3)* has been met, *subsection (4)* enables the court either to quash the document or “remit” it (in effect, send it back) to a person or body involved in its preparation, adoption or publication.

157. *Subsections (5) and (6)* then enable the court to give directions to the person to whom it has remitted the document, instructing them to do, or re-do, certain elements of its preparation, adoption or publication. This enables the court to ensure that whatever was wrong with the document is put right, without necessarily having to start the whole preparation process again from the beginning.

158. *Subsection (7)* states that the court is able to quash or remit only part of a relevant document, or the whole document.

159. *Subsection (8)* refers back to the definitions used in clause 55.

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“the appropriate powers” means –	
(a) in the case of an MPS or an amendment of an MPS, the powers conferred by Chapter 1 of this Part;	
(b) in the case of a marine plan or an amendment of a marine plan –	5
(i) the powers conferred by Chapter 2 or 3 of this Part,	
(ii) any powers conferred by directions under section 50 or 52,	
(iii) any powers conferred under or by virtue of section 57 or guidance issued under that section;	10
“procedural requirement” means any requirement –	
(a) under the appropriate powers, or	
(b) in directions or guidance under those powers,	
which relates to the preparation, adoption or publication of a relevant document;	15
“superior court in the United Kingdom” means any of the following –	
(a) the High Court;	
(b) the Court of Session;	
(c) the High Court of Justice in Northern Ireland.	
<b>56 Powers of the court on an application under section 55</b>	<b>20</b>
(1) This section applies in any case where an application under section 55 is made to a court.	
(2) The court may make an interim order suspending the operation of the relevant document –	
(a) wholly or in part,	25
(b) generally or as it affects a particular area.	
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;	30
(b) that the interests of the applicant have been substantially prejudiced by failure to comply with a procedural requirement.	
(4) The court may –	
(a) quash the relevant document;	
(b) remit the relevant document to a body or person with a function relating to its preparation, adoption or publication.	35
(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.	
(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;	40
(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;	

***Clause 57: Guidance to public authorities by marine plan authorities***

160. This clause enables a marine plan authority to issue guidance to any public authority which:

- has functions relating to marine planning in the marine plan authority's region; or
- is taking decisions which affect the marine planning region (i.e. decisions which will be influenced by an MPS or plans under clause 53).

161. This could include issuing guidance to public bodies to which marine planning functions have been delegated under clauses 50 and 52. Subsection (2) requires that the public authority have regard to the guidance when carrying out those functions in that area.

***Interpretation of this Part***

***Clause 58: Interpretation of this Part***

162. This clause sets out how certain terms used within Part 2 should be interpreted.

- (c) require action to be taken by a body or person with a function relating to the preparation, adoption or publication of the document (whether or not the body or person to whom the document is remitted);
  - (d) require action to be taken by one body or person to depend on what action has been taken by another body or person. 5
- (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 55 have the same meaning in this section as they have in that section.

*Guidance* 10

**57 Guidance to public authorities by marine plan authorities**

- (1) A marine plan authority may issue guidance to any public authority with functions –
- (a) which relate to marine planning in the marine plan authority’s region, or 15
  - (b) which involve taking decisions within section 53(1) or (2) that affect the whole or any part of that region.
- (2) A public authority to which any such guidance is issued must have regard to the guidance in exercising any of those functions in that region.
- (3) This section applies whether or not the public authority has the functions by virtue of a direction under section 50 or 52. 20

*Interpretation of this Part*

**58 Interpretation of this Part**

- (1) In this Part –
- “adopted” is to be read – 25
    - (a) in the case of an MPS, in accordance with section 40 and paragraph 12 of Schedule 4,
    - (b) in the case of a marine plan, in accordance with section 42 and paragraph 11 of Schedule 5,
  - and related expressions are to be construed accordingly; 30
  - “constituent member”, in relation to a marine plan authority, is to be read in accordance with subsection (2);
  - “marine plan” has the meaning given in section 46;
  - “marine plan area” is to be read in accordance with section 46;
  - “marine plan authority” is to be read in accordance with section 45; 35
  - “marine planning region” is to be read in accordance with section 44;
  - “policy authority” has the meaning given in section 40.
- (2) For the purposes of this Part, a policy authority is a “constituent member” of a marine plan authority if –
- (a) the marine plan authority is two or more policy authorities acting jointly, and 40

## ***Chapter 1: Marine Licences***

### ***Clauses 59 & 60: Requirement for licence; Licensable marine activities***

163. Anyone undertaking an activity mentioned in clause 60 will need to obtain a licence from the appropriate licensing authority.

164. The appropriate licensing authority for each part of the UK marine licensing area is specified in clause 102.

165. The list of licensable activities is very similar to that covered by the draft Bill's predecessor, Part 2 of the Food and Environment Protection Act 1985 ("FEPA"). The one difference is dredging. Under FEPA only some forms of dredging were licensable, namely those that involved the removal and dumping of sediment elsewhere at sea. For example, hydrodynamic and plough dredging that involve the use of water jets or ploughs, respectively, to move sediment along the sea-bed were not licensable. Aggregate dredging which involves the removal of sediment but for use on land was also not licensed under FEPA. Item 9 of *subsection (1)*, as read with *subsection (2)(b)* make all forms of dredging licensable under this Part. An exemption from a licence for dredging authorised under a Harbour Order is given in clause 68.

166. The list of licensable activities is self-explanatory. In summary:

- a) All vessels, aircraft or structures, regardless of their country of origin, will need a licence to deposit, scuttle or incinerate any object or substance within the UK marine licensing area (as defined by clause 101).
- b) All vessels, aircraft or structures, regardless of their country of origin, where it is their intention to engage in such an activity anywhere at sea, will need a licence to load or begin towing in the UK marine licensing area.
- c) British vessels, aircraft or structures will need a licence to deposit, scuttle or incinerate any object or substance anywhere at sea. British vessels, aircraft or structures are defined in clause 104.

167. By virtue of clause 76, it is an offence to engage in a licensable activity without the requisite licence or in a way that breaches the conditions outlined in that licence.

- (b) the policy authority is one of those policy authorities.
- (3) For the purposes of this Part, the functions of a policy authority which is a constituent member of a marine plan authority include functions exercisable by the policy authority as such a member acting jointly with the other constituent members of the marine plan authority. 5
- (4) Any reference in this Part to an MPS having effect for an area is to be construed in accordance with section 46(5).

**PART 3**

MARINE LICENSING

**CHAPTER 1**

10

MARINE LICENCES

**59 Requirement for licence**

No person may –

- (a) carry on a licensable marine activity, or  
(b) cause or permit any other person to carry on such an activity, 15  
except in accordance with a marine licence granted by the appropriate licensing authority.

**60 Licensable marine activities**

- (1) For the purposes of this Part, it is a licensable marine activity to do any of the following – 20
1. To deposit any substance or object within the UK marine licensing area, either in the sea or on or under the seabed, from –  
(a) any vehicle, vessel, aircraft or marine structure,  
(b) any container floating in the sea, or  
(c) any structure on land constructed or adapted wholly or 25  
mainly for the purpose of depositing solids in the sea.
2. To deposit any substance or object anywhere in the sea or on or under the seabed from –  
(a) a British vessel, British aircraft, or British marine structure, 30  
or  
(b) a container floating in the sea, if the deposit is controlled from a British vessel, British aircraft, or British marine structure.
3. To deposit any substance or object anywhere in the sea or on or under the seabed from a vehicle, vessel, aircraft, marine structure or floating container which was loaded with the substance or object – 35  
(a) in any part of the United Kingdom except Scotland, or  
(b) in the UK marine licensing area.
4. To scuttle any vessel or floating container in the UK marine licensing area. 40

168. The list of activities that need a licence can be amended by order. Each devolved administration can produce such an order for its territory. This order making power cannot be delegated to another body under the powers given in clause 93.

*Clauses 61 & 62: Applications; Notice of applications*

169. The licensing authority, by virtue of these clauses, can specify in what form an application for a marine licence should be submitted and may charge an application fee. The licensing authority may vary these requirements for different cases. Fees will be set according to regulations laid by the licensing authority.

170. The licensing authority may request any supplementary information or require any investigations it thinks are necessary to be able properly to assess an application. If as part of



5.	To scuttle any vessel or floating container anywhere at sea, if the scuttling is controlled from a British vessel, British aircraft, or British marine structure.	
6.	To scuttle any vessel or floating container anywhere at sea, if the vessel or container has been towed or propelled, for the purpose of that scuttling – (a) from any part of the United Kingdom except Scotland, or (b) except where the towing or propelling began outside the UK marine licensing area, from that area.	5
7.	To construct, alter or improve any works within the UK marine licensing area either in or over the sea or on or under the seabed.	10
8.	To use a vehicle, vessel, aircraft, marine structure or floating container to remove any substance or object from the seabed within the UK marine licensing area.	
9.	To carry out any form of dredging within the UK marine licensing area (whether or not involving the removal of any material from the sea or seabed).	15
10.	To deposit or use any explosive substance or article within the UK marine licensing area either in the sea or on or under the seabed.	
11.	To incinerate any substance or object on any vehicle, vessel, marine structure or floating container in the UK marine licensing area.	20
12.	To incinerate any substance or object anywhere at sea on – (a) a British vessel or British marine structure; (b) a container floating in the sea, if the incineration is controlled from a British vessel or British marine structure.	25
13.	To load a vehicle, vessel, marine structure or floating container in any part of the United Kingdom except Scotland or in the UK marine licensing area with any substance or object for incineration anywhere at sea.	
(2)	In subsection (1) – (a) in item 9, “dredging” includes using any device to move any material (whether or not suspended in water) from one part of the sea or seabed to another part; (b) in items 12 and 13, “incineration” means any combustion of substances or materials for the purpose of their thermal destruction (and in items 11 and 12 “incinerate” is to be read accordingly).	30 35
(3)	The appropriate licensing authority for any area may by order amend subsection (1) so as to add or remove any activity from the list of licensable marine activities as it has effect in that area.	
(4)	This section is subject to any provision made by or under sections 67 to 75.	40

## 61 Applications

- (1) The appropriate licensing authority may require an application for a marine licence –

the assessment of the application the authority undertakes additional investigations or tests, then it will be able to recover the costs from applicant.

171. If an applicant fails to provide any such information, or fails to pay the associated fee, then the licensing authority can refuse to consider, or to continue assessing, an application.

172. On receipt of an application, the licensing authority must, subject to subsection 62(6), secure that any application for a marine licence is advertised in a manner that will bring it to the attention of those likely to be affected by it. It can either advertise the application itself or ask the applicant to do so on its behalf. Clause 62(6) gives the licensing authority the discretion to lift the requirement to advertise if it thinks that a particular application should not be published. This would be the case, for example, in cases of national security or in cases where it was clear to the licensing authority that the operation under consideration would have no impact on others and providing notice would serve no function other than to delay a decision on the application and increase the costs of the project unnecessarily.

173. The licensing authority may not assess an application if it has either not been advertised where it was required to have been or if costs of advertising due to the licensing authority are outstanding.

- 
- (a) to be made in such form as the authority may determine;  
(b) to be accompanied by a fee.
- (2) The fee that may be charged under subsection (1)(b) is to be determined by or in accordance with regulations made by the appropriate licensing authority.
- (3) A licensing authority may – 5  
(a) determine different forms for different descriptions of applications;  
(b) provide for different fees for different descriptions of applications.
- (4) The appropriate licensing authority may require an applicant – 10  
(a) to supply such information,  
(b) to produce such articles, and  
(c) to permit such investigations, examinations and tests,  
as in the opinion of the authority may be necessary or expedient to enable it to determine the application.
- (5) If the appropriate licensing authority carries out any investigation, examination or test (whether or not by virtue of subsection (4)(c)) which in its opinion is necessary or expedient to enable it to determine an application, the authority may require the applicant to pay a fee towards the reasonable expenses of that investigation, examination or test. 15
- (6) If an applicant fails to comply with a requirement made by the appropriate licensing authority under this section, the authority may – 20  
(a) refuse to proceed with the application, or  
(b) refuse to proceed with it until the failure is remedied.
- 62 Notice of applications**
- (1) Having received an application for a marine licence, the appropriate licensing authority must – 25  
(a) publish notice of the application, or  
(b) require the applicant to publish notice of it.
- (2) Publication under subsection (1) must be in such manner as the authority thinks is best calculated to bring the application to the attention of persons likely to be interested in it. 30
- (3) The authority must not proceed with an application unless notice has been published under subsection (1).
- (4) If the authority, in pursuance of subsection (1)(a), publishes notice of an application, the authority may require the applicant to pay a fee towards the reasonable expenses of that publication. 35
- (5) If an applicant fails to comply with a requirement made by the authority under subsection (4), the authority may –  
(a) refuse to proceed with the application, or  
(b) refuse to proceed with it until the failure is remedied.
- (6) This section does not apply if the authority thinks, in the case of any application, that notice should not be published. 40

***Clauses 63 and 64: Determination of applications; Inquiries***

174. When determining an application for a marine licence the licensing authority must have regard to -

- a) the need to protect the environment;
- b) the need to protect human health;
- c) the need to prevent interference with legitimate uses of the sea; and
- d) such other matters as the authority thinks relevant

175. The reference to the “environment” should be given its ordinary meaning. It should include both the local and global environment; the natural environment; and any site of historic or archeological interest. The natural environment includes the physical, chemical and biological state of the sea, the sea-bed and the sea-shore, and the ecosystems within it, or those that are directly affected by an activity, whether within the marine licensing area or otherwise.

176. Legitimate uses of the sea includes but are not limited to: navigation (including considerations of navigational safety); fishing; mineral extraction; and amenity use.

177. During its assessment of an application the licensing authority may actively seek views and comments from expert bodies on matters where they have expertise relevant to the application. It must also take into account any comments it receives from other interested parties. The marine licensing authority may hold an inquiry to determine the application.

178. A licensing authority may set out further details in regulations as regards the procedure for applications and how it grants them.

**63 Determination of applications**

- (1) In determining an application for a marine licence (including the terms on which it is to be granted and what conditions, if any, are to be attached to it), the appropriate licensing authority must have regard to –
  - (a) the need to protect the environment, 5
  - (b) the need to protect human health,
  - (c) the need to prevent interference with legitimate uses of the sea,and such other matters as the authority thinks relevant.
- (2) In the case of an application for a licence to authorise such activities as are mentioned in item 7 in section 60(1), the appropriate licensing authority must have regard (among other things) to the effects of any use intended to be made of the works in question when constructed, altered or improved. 10
- (3) The appropriate licensing authority must have regard to any representations which it receives from any person having an interest in the outcome of the application. 15
- (4) A licensing authority may –
  - (a) from time to time consult any person or body it thinks fit as to the general manner in which the licensing authority proposes to exercise its powers in cases involving any matter in which that person or body has particular expertise; 20
  - (b) in relation to any particular application, consult any person or body which has particular expertise in any matter arising in relation to that application.
- (5) If the appropriate licensing authority consults any person or body under subsection (4)(b), it must give the applicant the opportunity to make representations to the licensing authority about any observations made by the person or body. 25
- (6) A licensing authority may by regulations make further provision as to the procedure to be followed in connection with –
  - (a) applications to it for marine licences, and 30
  - (b) the grant by it of such licences.
- (7) The provision that may be made by virtue of subsection (6) includes (in particular) provision as to –
  - (a) the period within which any function is to be exercised (including when that period is to begin and how it is to be calculated); 35
  - (b) notifying the applicant of any licensing determination.

**64 Inquiries**

- (1) The appropriate licensing authority may cause an inquiry to be held in connection with the determination of an application for a marine licence.
- (2) Subsections (2) to (5) of section 250 of the Local Government Act 1972 (c. 70) apply to any inquiry which the Secretary of State or the Welsh Ministers may cause to be held under subsection (1) as they apply to inquiries under that section. 40
- (3) Schedule A1 to the Interpretation Act (Northern Ireland) 1954 (c. 33) applies to any inquiry which the Department of the Environment may cause to be held 45

***Clause 65: Licences***

179. The marine licensing authority, by virtue of this clause, may impose conditions on any licence it grants. Examples of the sorts of conditions that may be imposed are given in subsection (3); these are very similar in effect to those that could be imposed by the draft Bill's predecessor, FEPA. However, under FEPA, conditions could only be imposed that governed the original carrying out of an activity. Subsection (2)(b) allows the licensing authority to attach conditions that will govern the behaviour of the licensee after the carrying out of the authorised activities. For example, under FEPA a developer would obtain a licence to build a jetty and the conditions attached to the licence would only cover the activity of building that jetty. Under the draft Bill, the same licence could also include conditions governing the use of the jetty once built and also how the jetty should be dismantled and removed from the sea once its active life is over.

180. In the particular case of licensing the construction, alteration or improvement of works, licence conditions can bind persons other than those to whom the licence is given. The persons who may be bound are those that own, occupy or enjoy the use of the works. There is a similar provision in the CPA 1949 though not in FEPA, as the consequences of using the works primarily relate to obstructing navigation. Given that the draft Bill will take into account navigational issues under the interpretation of 'interference with legitimate uses of the sea', the draft Bill also includes this provision. Such persons can commit an offence in failing to comply with the condition in the circumstances outlined in clause 76.

under subsection (1) as it applies to a local inquiry held under an enactment passed or made as mentioned in section 23 of that Act.

- (4) Where—
- (a) an inquiry is caused by a licensing authority to be held under subsection (1), and 5
  - (b) in the case of some other matter required or authorised to be the subject of an inquiry (“the other inquiry”), it appears to the relevant authority or authorities that the matters are so far cognate that they should be considered together,
- the relevant authority or authorities may direct that the two inquiries be held concurrently or combined as one inquiry. 10
- (5) In subsection (4) “the relevant authority or authorities” means the licensing authority or, where causing the other inquiry to be held is the function of some other body or authority, the licensing authority and that other body or authority acting jointly. 15

## 65 Licences

- (1) The appropriate licensing authority, having considered an application for a marine licence, must—
- (a) grant the licence unconditionally,
  - (b) grant the licence subject to such conditions as the authority thinks fit, or 20
  - (c) refuse the application.
- (2) The conditions that may be attached to a licence under subsection (1)(b) may relate to—
- (a) the activities authorised by the licence;
  - (b) precautions to be taken or works to be carried out (whether before, 25
  - during or after the carrying out of the authorised activities) in connection with or in consequence of those activities.
- (3) Those conditions include, in particular, conditions—
- (a) that no activity authorised by the licence be carried out until the 30
  - authority or some other specified person has given such further approval of the activity as the licence may specify;
  - (b) as to the provision, maintenance, testing or operation of equipment for measuring or recording specified matters relating to any activity authorised by the licence;
  - (c) as to the keeping of records or the making of returns or giving of other 35
  - information to the authority;
  - (d) for the removal, at the end of a specified period, of any object or works to which the licence relates;
  - (e) for the carrying out, at the end of a specified period, of such works as 40
  - the licence may specify for the remediation of the site of any object or works to which the licence relates;
  - (f) that any activity authorised by the licence must take place at a specified site, whether or not in the UK marine licensing area.
- (4) A licence may provide—
- (a) that it is to expire unless the activity which it authorises is begun or 45
  - completed within a specified period;

***Clause 66: Variation, suspension, revocation and transfer***

181. The licensing authority may vary, suspend or revoke a licence in certain cases. These can include, for example, where there has been a breach of conditions or where there has been a change in circumstances relating to the environment or human health. A licence will not be suspended for more than 18 months.

182. On receipt of an application from the licensee, the licensing authority can transfer a licence from one named person to another. Licensees themselves cannot transfer their licences.

183. Where a licensing authority has delegated its function to another organisation (see clause 93) any licences issued before the delegation can be varied, revoked or transferred by the new body as if it had issued the original licence.



(b)	that it is to remain in force indefinitely or for a specified period of time (which may be determined by reference to a specified event).	
(5)	A licence authorising such activities as are mentioned in item 7 in section 60(1) may provide that the conditions attached to it are to bind any other person who for the time being owns, occupies or enjoys any use of the works in question (whether or not the licence is transferred to that other person).	5
(6)	A licensing authority must not grant a licence to carry on any activity which is contrary to international law.	
(7)	In this section “specified” means specified in the licence in question.	
<b>66</b>	<b>Variation, suspension, revocation and transfer</b>	<b>10</b>
(1)	A licensing authority may by notice vary, suspend or revoke a licence granted by it if it appears to the authority that there has been a breach of any of its provisions.	
(2)	A licensing authority may by notice vary, suspend or revoke a licence granted by it if it appears to the authority that—	15
(a)	in the course of the application for the licence, any person either supplied information to the authority that was false or misleading or failed to disclose information, and	
(b)	if the correct information had been supplied the authority would have, or is likely to have, refused the application or granted the licence in different terms.	20
(3)	A licensing authority may by notice vary, suspend or revoke a licence granted by it if it appears to the authority that the licence ought to be varied, suspended or revoked—	
(a)	because of a change in circumstances relating to the environment or human health;	25
(b)	because of increased scientific knowledge relating to either of those matters;	
(c)	in the interests of safety of navigation;	
(d)	for any other reason that appears to the authority to be relevant.	30
(4)	A suspension under subsection (1), (2) or (3) is for such period (not exceeding 18 months) as the authority specifies in the notice of suspension.	
(5)	A licensing authority may by further notice extend the period of a suspension; but a licence may not by virtue of this subsection be suspended for an aggregate period exceeding 18 months.	35
(6)	On an application made by the licensee, the licensing authority which granted a licence—	
(a)	may transfer the licence from the licensee to another person, and	
(b)	if it does so, must vary the licence accordingly.	
(7)	A licence may not be transferred except in accordance with subsection (6).	40
(8)	Where an order has been made under section 93 that a person other than the appropriate licensing authority is to grant licences—	
(a)	that other person may (in accordance with subsections (1) to (3) and (6)) vary, suspend, revoke or transfer a licence granted before the making of the order, and	45

***Chapter 2: Exemptions and Special Cases***

***Clauses 67 & 68: Exemptions specified by order; Exemptions for certain local activities***

184. The licensing authority can, by order, either exempt activities from the need for a licence completely, or to specify conditions which, if met, will mean the activity can be exempted from the need for a licence. Examples of the sorts of activity which might be covered by such exemptions are the routine re-distribution of sand along a beach or minor repairs to seawalls. Conditions can include the requirement for approval prior to the activity proceeding, but without the need for a licence. This order-making power cannot be delegated to another body under the powers given in clause 93.

185. Clause 68 exempts any harbour authority which is authorised to undertake a dredging operation either by a Harbour Order made under the Harbours Act 1964 or by a local Act from the need to obtain a marine licence for that dredging. A marine licence is also not required for certain works where the consent of the Admiralty is required.

***Clause 69: Dredging in the Scottish zone***

186. Marine licensing as outlined in this Part does not apply to any dredging done, in the exercise of certain functions, in the Scottish zone for the purpose of extracting minerals.

- (b) any reference in those subsections to a licence granted by a licensing authority includes a reference to a licence granted by that other person.

## CHAPTER 2

### EXEMPTIONS AND SPECIAL CASES

<b>67</b>	<b>Exemptions specified by order</b>	<b>5</b>
(1)	A licensing authority may by order specify, as regards its area, activities –	
(a)	which are not to need a marine licence;	
(b)	which are not to need a marine licence if conditions specified in the order are satisfied.	
(2)	The conditions that may be specified in an order under this section include conditions enabling the authority to require a person to obtain the authority’s approval before the person does anything for which a licence would be needed but for the order.	10
(3)	Approval under subsection (2) may be –	
(a)	without conditions;	15
(b)	subject to such conditions as the authority considers appropriate.	
(4)	A licensing authority must consult such persons as the authority thinks appropriate as to any order the authority contemplates making under this section.	
<b>68</b>	<b>Exemptions for certain local activities</b>	<b>20</b>
(1)	A marine licence is not needed for any dredging operation which is undertaken by or on behalf of a harbour authority and which is authorised by, and carried out in accordance with –	
(a)	any local Act, or	
(b)	any order under section 14 or 16 of the Harbours Act 1964 (c. 40).	25
(2)	The reference in subsection (1) to any dredging operation includes the deposit of dredged materials.	
(3)	A marine licence is not needed for any work to which the consent of the Admiralty, either alone or jointly with any other government department, is required by virtue of –	30
(a)	any local Act, or	
(b)	any such Act and any notice given and published by the Admiralty under section 9 of the Harbours Transfer Act 1862 (c. 69).	
<b>69</b>	<b>Dredging in the Scottish zone</b>	
(1)	Nothing in this Part applies to anything done, in the exercise of a function falling within subsection (2), in relation to the extraction of minerals by dredging in the Scottish zone.	35
(2)	The functions are –	
(a)	any function under Community law (within the meaning given by section 126(9) of the Scotland Act 1998 (c. 46));	40

***Clauses 70 & 71: Petroleum etc and Petroleum: amendment of existing licensing in Scotland***

187. These clauses set out the relationship between licensing under the draft Bill and that under the Petroleum Act 1998. The arrangement is slightly different to that under the draft Bill's predecessor, FEPA. The effect is that anything done for the purposes of construction, protection, maintenance or removal of a controlled pipeline (within the meaning of the Petroleum Act) is to be licensed under that Act.

- (b) any of Her Majesty’s prerogative and other executive functions which is exercisable on behalf of Her Majesty by a Minister of the Crown (within the meaning given by section 126(1) of that Act).

**70 Petroleum etc**

- (1) Nothing in this Part applies to anything done for the purposes of the construction, protection, maintenance or removal of – 5
- (a) a pipeline as respects any part of which an authorisation under section 14(1) of the Petroleum Act 1998 (c. 17) is in force, or
  - (b) any other controlled pipeline within the meaning of Part 3 of that Act.
- (2) Nothing in this Part applies to anything done – 10
- (a) for the purpose of establishing or maintaining an offshore installation within the meaning of Part 4 of the Petroleum Act 1998, or
  - (b) in connection with the operation of such an installation.
- (3) Subsection (2)(b) does not apply in respect of an installation in the Welsh inshore region. 15
- (4) Section 14 of the Petroleum Act 1998 is amended as follows.
- (5) In subsection (1) omit “or” at the end of paragraph (a) and after paragraph (b) insert –
- “(c) carry on any other activity which, apart from section 70(1) of the Marine Act 2009, would be a licensable marine activity for the purposes of Part 3 of that Act; or”. 20

**71 Petroleum: amendment of existing licensing in Scotland**

- (1) For section 7A of the Food and Environment Protection Act 1985 (c. 48) substitute –
- “7A Application of Part 2: further provisions 25**
- (1) Nothing in this Part of this Act shall apply to anything done –
- (a) for the purpose of constructing or maintaining a pipeline as respects any part of which an authorisation (within the meaning of Part 3 of the Petroleum Act 1998) is in force;
  - (b) for the purpose of protecting or removing a pipeline which is used for the conveyance of oil or gas and as respects any part of which such an authorisation is in force; 30
  - (c) for the purpose of constructing, protecting, maintaining or removing any other controlled pipeline (within the meaning of Part 3 of that Act) used for the conveyance of oil or gas. 35
- (2) Nothing in this Part of this Act shall apply to anything done –
- (a) for the purpose of establishing or maintaining an offshore installation within the meaning of Part 4 of that Act;
  - (b) in connection with the operation of such an installation for the purposes of exploration for or exploitation of oil or gas.”. 40
- (2) Section 14 of the Petroleum Act 1998 is amended as follows.
- (3) In subsection (1) after paragraph (c) (inserted by section 70(5)) insert –

***Clause 72: Special procedure for applications relating to harbour works***

188. The Secretary of State may, by order, provide that in cases where an activity requires both a licence under the draft Bill and either a Harbour Revision or Empowerment Order, the procedure under the draft Bill is not to apply to the licence application. Instead that application will be considered under Harbour Act procedures. The same order can amend those Harbour Act procedures for this purpose.

189. This special procedure only applies if the applicant agrees to it. It is only available in England.

***Clause 73: Special procedure for applications relating to certain electricity works***

190. The Secretary of State may, by order, provide that in cases where an activity requires both a licence under the draft Bill and consent under either section 36 or 37 of the Electricity Act 1989, the procedure under the draft Bill is not apply to the licence application. Instead that application will be considered under Electricity Act procedures. The same order can amend those Electricity Act procedures for this purpose.

191. This special procedure only applies if the applicant agrees to it. It is only available in England and the offshore waters adjacent to England and Wales.

- 
- “(d) carry on any other activity which, apart from section 7A(1) of the Food and Environment Protection Act 1985, would require a licence under Part 2 of that Act.”.
- (4) After subsection (1) insert—
- “(1A) Paragraph (d) of subsection (1) does not apply in respect of any part of a pipeline which— 5
- (a) lies in, under or over the territorial sea adjacent to Scotland, and
- (b) is used for the conveyance of any thing other than oil or gas.
- (1B) Any Order in Council made under section 126(2) of the Scotland Act 1998 for the purposes of determining which waters are treated as being adjacent to Scotland applies for the purposes of subsection (1A) as it applies for the purposes of that Act.”. 10
- 72 Special procedure for applications relating to harbour works**
- (1) This section applies in any case where any person—
- (a) makes an application to the Secretary of State for a marine licence to carry on any activity (“the marine licence application”), 15
- (b) also makes an application to the Secretary of State for an order under section 14 or 16 of the Harbours Act in relation to—
- (i) that activity, or
- (ii) other works to be undertaken in connection with that activity, and 20
- (c) requests that the two applications be considered together.
- (2) The Secretary of State may by order provide that, where this section applies,—
- (a) such procedural provisions of this Part as are specified in the order shall not apply to the marine licence application, and 25
- (b) such procedural provisions of the Harbours Act as are so specified shall apply to that application instead.
- (3) An order under subsection (2) may modify the provisions of the Harbours Act in their application by virtue of subsection (2)(b).
- (4) In this section— 30
- “the Harbours Act” means the Harbours Act 1964 (c. 40);
- “procedural provisions” means any provisions for or in connection with the procedure for determining an application.
- 73 Special procedure for applications relating to certain electricity works**
- (1) This section applies in any case where any person— 35
- (a) makes an application to the Secretary of State for a marine licence to carry on any activity (“the marine licence application”),
- (b) also makes an application for a consent under section 36 or 37 of the Electricity Act in relation to—
- (i) that activity, or 40
- (ii) other works to be undertaken in connection with that activity, and
- (c) requests that the two applications be considered together.

***Clause 74: Structures in, over or under a main river***

192. In cases where an activity requires a licence under the draft Bill, and would otherwise also require consent under section 109 of the Water Resources Act 1991, the licensing authority can, with the consent of the Environment Agency, remove the need for separate consent under the Water Resources Act and put any conditions necessary to protect against flooding into the Marine Act licence.

***Clause 75: Electronic communications apparatus***

193. This clause removes the obligation for an operator to apply to the Secretary of State for a licence under the electronic communications code (“the Code”), as set out in Schedule 2 of the Telecommunications Act 1984. The licensing of activities in connection with submarine cable-laying or the removing of any submarine cable is licensable under the marine licensing regime outlined in the draft Bill.

194. The licensing authority is prevented from granting a licence to a submarine cable-laying operation registered under the Code unless it is satisfied that adequate compensation arrangements for loss or damage suffered in consequence of the cable laying or removal have been made. Subsection (3) applies similar provisions to Scotland when granting FEPA licences.

195. This in no other way affects the rights granted to operators by other parts of the Code.



- (2) The Secretary of State may by order provide that, where this section applies, –
- (a) such procedural provisions of this Part as are specified in the order shall not apply to the marine licence application, and
  - (b) such procedural provisions of the Electricity Act as are so specified shall apply to that application instead. 5
- (3) An order under subsection (2) may modify the provisions of the Electricity Act in their application by virtue of subsection (2)(b).
- (4) In this section –
- “the Electricity Act” means the Electricity Act 1989 (c. 29);
  - “procedural provisions” means any provisions for or in connection with the procedure for determining an application. 10

**74 Structures in, over or under a main river**

- (1) Section 109 of the Water Resources Act 1991 (c. 57) (structures in, over or under a main river) is amended as follows.
- (2) After subsection (6) insert – 15
- “(7) Subsections (1) to (3) above shall not apply to any work if –
    - (a) carrying out the work is a licensable marine activity, and
    - (b) the appropriate licensing authority (having received an application for a marine licence in relation to that work) has, with the consent of the Agency, served a notice on the applicant to the effect that those subsections do not apply to that work. 20
- (8) Any expression used in subsection (7) and in the Marine Act 2009 has the meaning given by that Act.”.

**75 Electronic communications apparatus**

- (1) A licensing authority must not grant a marine licence to carry on any activity which amounts to or involves the exercise of a right conferred by paragraph 11 of the Electronic Communications Code unless it is satisfied that adequate compensation arrangements have been made. 25
- (2) For the purposes of subsection (1) “adequate compensation arrangements” are adequate arrangements for compensating any persons – 30
- (a) who appear to that authority to be owners of interests in the tidal water or lands on, under or over which the right is to be exercised,
  - (b) for any loss or damage sustained by those persons in consequence of the activity being carried on.
- (3) After section 8 of the Food and Environment Protection Act 1985 (c. 48) (licences) insert – 35
- “8A Electronic communications apparatus**
- (1) The Scottish Ministers must not issue a licence to carry out any operation which amounts to or involves the exercise of a right conferred by paragraph 11 of the electronic communications code set out in Schedule 2 to the Telecommunications Act 1984 unless they are satisfied that adequate compensation arrangements have been made. 40

### ***Chapter 3: Enforcement***

#### ***Offences***

##### ***Clause 76: Breach of requirement for licence***

196. It is an offence for a person to carry out a licensable activity (as defined in clause 60) without a licence or to do so in a manner that breaches any conditions attached to a licence.

197. With regards the construction, alteration or improvement to any works, anyone who owns, occupies or enjoys the use of the works and is bound by specified conditions in a licence, by virtue of clause 65(5) cannot be considered to have committed an offence unless the enforcement authority has issued notice to that person stating they are in breach of the conditions. The person on whom the notice is issued will have a period of not less than 30 days to comply with the notice before an offence has been committed.

198. *Subsection (4)* gives the penalties for committing any such offence.

##### ***Clause 77: Action taken in an emergency***

199. If a person undertakes a licensable activity without a licence but does so for the purpose of securing the safety of a vessel, aircraft or structure, or for the purpose of saving a life, they have a defence against any charge brought against them. However, this is dependent on the person informing the licensing authority within a reasonable timeframe of the matters given in *subsection (2)*; on the steps taken being reasonable; and on it not being their fault that the emergency occurred.

- |  |    |
|--|----|
| (2) For the purposes of subsection (1) “adequate compensation arrangements” are adequate arrangements for compensating any persons –                 | 5  |
| (a) who appear to the Scottish Ministers to be owners of interests in the tidal water or lands on, under or over which the right is to be exercised, |    |
| (b) for any loss or damage sustained by those persons in consequence of the operation being carried out.”.   |    |
| (4) In paragraph 11 of the Electronic Communications Code omit –   | 10 |
| (a) sub-paragraphs (3) to (10);  |    |
| (b) in sub-paragraph (11), the definition of “remedial works”.   |    |
| (5) In this section “the Electronic Communications Code” means the code set out in Schedule 2 to the Telecommunications Act 1984 (c. 12).            |    |

### CHAPTER 3

#### ENFORCEMENT 15

##### *Offences*

#### 76 Breach of requirement for licence

- |   |    |
|---|----|
| (1) A person who –  | 20 |
| (a) contravenes section 59, or  |    |
| (b) fails to comply with any condition of a marine licence, commits an offence.   |    |
| (2) A person who is bound by a condition of a licence by virtue of section 65(5) is not to be taken as having failed to comply with the condition unless the requirements of subsection (3) are satisfied.  |    |
| (3) The requirements are that –   | 25 |
| (a) the appropriate licensing authority has served the person with a notice requiring compliance with the condition within such period (not being less than 30 days) as may be specified in the notice, and |    |
| (b) the person has failed to comply with the condition within that period.  |    |
| (4) A person guilty of an offence under subsection (1) is liable –  | 30 |
| (a) on summary conviction, to a fine not exceeding £50,000;   |    |
| (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both.  |    |

#### 77 Action taken in an emergency

- |   |    |
|---|----|
| (1) It is a defence for a person charged with an offence under section 76(1) in relation to any activity to prove that –                                  | 35 |
| (a) the activity was carried out for the purpose of securing the safety of a vessel, aircraft or marine structure, or for the purpose of saving life, and |    |
| (b) the person took steps within a reasonable time to inform the appropriate licensing authority of the matters set out in subsection (2).                | 40 |
| (2) The matters are –   |    |

***Clause 78: Activity licensed by another State***

200. There is a further defence to the undertaking of certain activities without a licence. The activities are those mentioned in subsection (2) – namely the depositing or incineration of any substance or object, or the scuttling of a vessel or floating container, from a British vessel, aircraft or structure, in non-UK waters. For the defence to be applicable the vessel, aircraft or structure must have either been loaded (in the case of making a deposit or incineration), or started its journey (in the case of scuttling) in a State that is party to the international Conventions identified in *subsection (5)*, and (2) the activity must have been undertaken in pursuance of, and in accordance with, a licence issued by the appropriate authority in that State.

201. The licensing authority can alter the Conventions listed in subsection (5) by order to reflect changes in international law.

- (a) the fact that the activity was carried out,
  - (b) the locality and circumstances in which it was carried out, and
  - (c) any substances or objects concerned.
- (3) A person does not have the defence provided by subsection (1) if the court is satisfied that the activity was neither – 5
- (a) necessary for any purpose mentioned in subsection (1)(a), nor
  - (b) a reasonable step to take in the circumstances.
- (4) A person does not have the defence provided by subsection (1) if the court is satisfied that – 10
- (a) the activity was necessary for one of those purposes, but
  - (b) the necessity was due to the fault of the defendant or a person acting under the defendant’s direction or control.

**78 Activity licensed by another State**

- (1) It is a defence for a person charged with an offence under section 76(1) in relation to any activity to which subsection (2) applies to prove that subsections (3) and (4) are satisfied in respect of that activity. 15
- (2) This subsection applies to any activity which –
- (a) falls within item 2, 5 or 12 in section 60(1), and
  - (b) is carried on outside the UK marine licensing area.
- (3) This subsection is satisfied if – 20
- (a) in the case of an activity falling within item 2 in section 60(1), the vessel, aircraft, marine structure or floating container (as the case may be) was loaded in a Convention State or the national or territorial waters of a Convention State with the substances or objects deposited; 25
  - (b) in the case of an activity falling within item 5 in that subsection, the vessel scuttled was towed or propelled from a Convention State or the national or territorial waters of a Convention State to the place where the scuttling was carried out; 30
  - (c) in the case of an activity falling within item 12 in that subsection, the vessel or marine structure on which the incineration took place was loaded in a Convention State or the national or territorial waters of a Convention State with the substances or objects incinerated.
- (4) This subsection is satisfied if the activity was carried on – 35
- (a) in pursuance of a licence issued by the responsible authority in the Convention State concerned, and
  - (b) in accordance with the provisions of that licence.
- (5) For the purposes of this section –
- “Convention State” means a state which is a party to the London Convention, the London Protocol or the OSPAR Convention; 40
  - “the London Convention” means the Convention on the Prevention of Maritime Pollution by Dumping of Wastes and Other Matter concluded at London in December 1972;
  - “the London Protocol” means the Protocol to the London Convention agreed at London in November 1996;

**Clause 79: Information**

202. It is an offence for a person who is applying either for a new licence or to vary or transfer an existing licence to supply false or misleading information in that application. Penalties set out in *subsection (3)* apply when an offence has been committed.

203. The penalties for this offence are equivalent to that for breaching a requirement for a licence as outlined in clause 76.

**Clause 80: Compliance notice**

204. A person carrying out a licensed activity in a manner that breaches the conditions of their licence can be issued with a notice requiring compliance. Such a notice is called a compliance notice.

205. The enforcement authority, as defined in clause 103, can issue a compliance notice in all circumstances where licence conditions have been breached, except where serious harm to either the environment or human health has occurred or is likely to occur, or where the activity has seriously interfered, or is likely seriously to interfere with, other legitimate uses of the sea. So a compliance notice may be served where no or little harm or interference has occurred, as could happen for example with a technical breach. The enforcement authority will use other sanctions available to it, such as stop or remediation notices, where the breach has led to serious harm or interference.

“the OSPAR Convention” means the Convention for the Protection of the Marine Environment of the North-East Atlantic concluded at Paris in September 1992.

- (6) The references in subsection (5) to the London Convention, the London Protocol and the OSPAR Convention are to them as they have effect from time to time. 5
- (7) The Secretary of State may by order amend subsections (5) and (6) in such manner as the Secretary of State considers appropriate for the purpose of giving effect to any international agreement which has been ratified by the United Kingdom and which alters the provisions of, or replaces, those Conventions or that Protocol. 10

## 79 Information

- (1) A person who, for any of the purposes set out in subsection (2), –
  - (a) makes a statement which is false or misleading in a material particular, knowing the statement to be false or misleading, 15
  - (b) makes a statement which is false or misleading in a material particular, being reckless as to whether the statement is false or misleading, or
  - (c) intentionally fails to disclose any material particular, commits an offence.
- (2) The purposes are – 20
  - (a) the purpose of procuring the issue, variation or transfer of a licence, or
  - (b) the purpose of complying with, or purporting to comply with, any obligation imposed by the provisions of this Part or the provisions of a licence.
- (3) A person guilty of an offence under subsection (1) is liable – 25
  - (a) on summary conviction, to a fine not exceeding £50,000;
  - (b) on conviction on indictment, to a fine.

### *Enforcement notices*

## 80 Compliance notice

- (1) If it appears to the appropriate enforcement authority that subsections (3) and (4) are satisfied in relation to a person carrying on an activity in its area, it may issue a compliance notice to that person. 30
- (2) A compliance notice is a notice requiring a person to take such steps (falling within subsection (5)(b)) as are specified in it.
- (3) This subsection is satisfied if a person holding a marine licence – 35
  - (a) has carried on, or is carrying on, a licensable marine activity under that licence, and
  - (b) in carrying on that activity has failed, or is failing, to comply with a condition of the licence.
- (4) This subsection is satisfied if the carrying on of the activity has not caused, and is not likely to cause, any of the following – 40
  - (a) serious harm to the environment;
  - (b) serious harm to human health;

***Clause 81: Remediation notice***

206. A person engaging in a licensable activity, either without a licence or in a manner that breaches the conditions of their licence, can be issued with a notice requiring them to put right any damage caused by their activity, pay for another body to put right that damage, or to undertake steps elsewhere in compensation for the damage caused. Such a notice is called a remediation notice.

207. The enforcement authority can issue a remediation notice only in cases where serious harm to the environment or human health has occurred, or is likely to occur, or where the activity has seriously interfered with other legitimate uses of the sea, or is likely to do so.

208. The enforcement authority may only issue a remediation notice after they have consulted the person to whom they intend to issue the notice.

209. The remediation notice serves to remedy any damage done to the environment, human health or other uses of the sea. The remediation notice could be served in addition to a stop notice (see below). This would be the case, for example, where an enforcement authority puts an immediate halt to a damaging activity and then requires the operator to put right the damage already caused.



- 
- (c) serious interference with legitimate uses of the sea.
- (5) A compliance notice must –
- (a) state the enforcement authority’s grounds for believing that subsections (3) and (4) are satisfied;
  - (b) require the person to take such steps as the authority considers appropriate to ensure that the condition in question is complied with; 5
  - (c) state the period before the end of which those steps must be taken.
- 81 Remediation notice**
- (1) If it appears to the appropriate enforcement authority that each of subsections (3) to (5) is satisfied in relation to a person carrying on an activity in its area, it may issue a remediation notice to that person. 10
- (2) A remediation notice is a notice requiring a person to do either or both of the following –
- (a) to take such steps (falling within subsection (7)(b)) as are specified in it;
  - (b) to pay to the enforcement authority such sums (falling within subsection (7)(c)) as are specified in it. 15
- (3) This subsection is satisfied if a person has carried on, or is carrying on, a licensable marine activity.
- (4) This subsection is satisfied if the carrying on of the activity has involved, or involves, the commission of an offence under section 76(1). 20
- (5) This subsection is satisfied if the carrying on of the activity has caused, or is causing or is likely to cause, any of the following –
- (a) serious harm to the environment;
  - (b) serious harm to human health;
  - (c) serious interference with legitimate uses of the sea. 25
- (6) Before issuing a remediation notice, the enforcement authority must consult the person to whom it is proposed to be issued as to the steps or, as the case may be, the sum to be specified in the notice.
- (7) A remediation notice –
- (a) must state the enforcement authority’s grounds for believing that each of subsections (3) to (5) is satisfied; 30
  - (b) may require the person to take such remedial steps as the authority considers appropriate;
  - (c) may require the person to pay a sum representing the reasonable expenses of any remedial steps taken, or to be taken, by the enforcement authority or the appropriate licensing authority (whether or not under section 98); 35
  - (d) state the period before the end of which those steps must be taken or, as the case may be, that sum must be paid.
- (8) In subsection (7)(b) and (c) “remedial steps” means steps taken (or to be taken) – 40
- (a) in consequence of the carrying on of the activity in respect of which the notice is issued,
  - (b) for any of the purposes mentioned in subsection (9).
- (9) The purposes are – 45

***Clause 82: Further provision as to enforcement notices***

210. All compliance and remediation notices must be in writing. They must be served on the person undertaking or in control of the activity in question, and may, if a licence has been granted for that activity and the person is different, also be served on the licensee. Notices can be varied or revoked.

211. It is an offence to fail to comply with a notice.

***Clause 83: Fixed monetary penalties***

212. This clause enables the licensing authority to grant to the appropriate enforcement authority the power to issue a fixed monetary penalty to a person in relation to an offence under this Part.

213. The appropriate enforcement authorities are defined in clause 103.

214. The appropriate enforcement authority may only impose a fixed monetary penalty when it is satisfied beyond reasonable doubt that the person has committed the relevant offence.

215. The amount of a fixed monetary penalty will be specified by the order. Different provision may be made for different cases. For example, the level of the fixed monetary penalty could differ according to whether the person liable is an individual or a body corporate.

- (a) protecting the environment;
- (b) protecting human health;
- (c) preventing interference with legitimate uses of the sea.

**82 Further provision as to enforcement notices**

- (1) A compliance notice or remediation notice – 5
  - (a) must be served on any person carrying on or in control of the activity to which the notice relates, and
  - (b) if a marine licence has been granted in relation to that activity, may also be served on the licensee.
- (2) The appropriate enforcement authority may by a further notice – 10
  - (a) revoke a compliance notice or remediation notice;
  - (b) vary a compliance notice or remediation notice so as to extend the period specified in accordance with section 80(5)(c) or, as the case may be, section 81(7)(d).
- (3) A person who fails to comply with – 15
  - (a) a compliance notice, or
  - (b) a remediation notice,commits an offence.
- (4) A person guilty of an offence under subsection (3) is liable – 20
  - (a) on summary conviction, to a fine not exceeding £50,000;
  - (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both.
- (5) A sum specified in a remediation notice by virtue of section 81(7)(c) is recoverable as a civil debt.

*Civil sanctions* 25

**83 Fixed monetary penalties**

- (1) The appropriate licensing authority for any area may by order make provision to confer on the appropriate enforcement authority for that area the power by notice to impose on a person in relation to an offence under this Part a fixed monetary penalty. 30
- (2) Provision under this section may only confer such a power in relation to a case where the enforcement authority 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 enforcement authority a penalty of a prescribed amount. 35
- (4) The amount of the fixed monetary penalty that may be imposed in relation to an offence may not exceed the maximum amount of the fine that may be imposed on summary conviction for that offence.
- (5) In this section “prescribed” means prescribed in an order made under this section. 40

***Clause 84: Fixed monetary penalties: procedure***

216. This clause specifies certain minimum requirements that the licensing authority must ensure that any fixed monetary penalty regime must include. In particular, when imposing the penalty the enforcing authority must be required to issue a notice of intent to the person setting out the information specified in *subsection (3)* of this clause, and providing the person with an opportunity to discharge their liability by payment of a prescribed sum. Alternatively a person can make representations, in accordance with *subsection (2)(c)(i)*. The authority may decide 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)* sets out the minimum grounds for appeal that must be available.

**84 Fixed monetary penalties: procedure**

- (1) Provision under section 83 must secure the results in subsection (2).
- (2) Those results are that—
  - (a) where an enforcement authority proposes to impose a fixed monetary penalty on a person, the authority must serve on that person a notice of what is proposed (a “notice of intent”) which complies with subsection (3), 5
  - (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), 10
  - (c) if the person does not so discharge liability—
    - (i) the person may make written representations and objections to the enforcement authority in relation to the proposed imposition of the fixed monetary penalty, and 15
    - (ii) the enforcement authority must at the end of the period for making representations and objections decide whether to impose the fixed monetary penalty,
  - (d) where the enforcement authority decides to impose the fixed monetary penalty, the notice imposing it (“the final notice”) complies with subsection (5), and 20
  - (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— 25
  - (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),
  - (c) the right to make representations and objections,
  - (d) the circumstances in which the enforcement authority may not impose the fixed monetary penalty, 30
  - (e) the period within which liability to the fixed monetary penalty may be discharged, which shall not exceed the period of 28 days beginning with the day on which the notice of intent was received, and
  - (f) the period within which representations and objections may be made, which shall not exceed the period of 28 days beginning with the day on which the notice of intent was received. 35
- (4) Provision pursuant to subsection (2)(c)(ii)—
  - (a) must secure that the enforcement authority may not decide to impose a fixed monetary penalty on a person where the authority is satisfied that the person would not, by reason of any defence, be liable to be convicted of the offence in relation to which it was imposed, and 40
  - (b) may include provision for other circumstances in which the enforcement authority 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— 45
  - (a) the grounds for imposing the penalty,
  - (b) how payment may be made,
  - (c) the period within which payment must be made,

***Clause 85: Variable monetary penalties***

217. This clause enables the licensing authority to grant to the appropriate enforcement authority the power to issue a variable monetary penalty to a person in relation to an offence under this Part.

218. The appropriate enforcement authorities are defined in clause 103.

219. The appropriate enforcement authority may only impose a variable monetary penalty when satisfied beyond reasonable doubt that the person has committed the offence.

220. The enforcement authority determines the amount of the variable monetary penalty on a case-by-case basis.

***Clause 86: Variable monetary penalties: procedure***

221. This clause specifies certain minimum requirements that the licensing authority must ensure that any variable monetary penalty regime must include. In particular, when imposing the penalty the enforcing authority must be required to issue a notice of intent to the person setting out the information specified in *subsection (3)* of this clause, and providing the person with an opportunity to discharge their liability by payment of a prescribed sum. Alternatively a person can make representations. The authority may decide to impose a variable monetary penalty (“final notice”) setting out the information specified in *subsection (6)*. A person on whom a final notice is served has a right of appeal. *Subsection (7)* sets out the minimum grounds for appeal that must be available.

222. Anyone served a notice of intent for a variable monetary penalty may offer to undertake certain steps in lieu of receiving the penalty.

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- (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 which a person may appeal against a decision of the enforcement authority include the following— 5
- (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 83. 10
- 85 Variable monetary penalties**
- (1) The appropriate licensing authority for any area may by order make provision to confer on the appropriate enforcement authority for that area the power by notice to impose on a person in relation to an offence under this Part a variable monetary penalty. 15
- (2) Provision under this section may only confer such a power in relation to a case where the enforcement authority is satisfied beyond reasonable doubt that the person has committed the offence.
- (3) For the purposes of this Part a “variable monetary penalty” is a penalty of such amount as the enforcement authority may in each case determine. 20
- 86 Variable monetary penalties: procedure**
- (1) Provision under section 85 must secure the results in subsection (2).
- (2) Those results are that—
- (a) where an enforcement authority proposes to impose a variable monetary penalty on a person, the enforcement authority must serve on that person a notice (a “notice of intent”) which complies with subsection (3), 25
- (b) that person may make written representations and objections to the enforcement authority in relation to the proposed imposition of the penalty, 30
- (c) after the end of the period for making such representations and objections, the enforcement authority must decide whether to impose the penalty,
- (d) where the enforcement authority decides to impose a penalty, the notice imposing it (the “final notice”) complies with subsection (6), and 35
- (e) the person on whom a 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— 40
- (a) the grounds for the proposal to impose the penalty,
- (b) the right to make representations and objections,

***Clause 87: Enforcement undertakings***

223. This clause enables the licensing authority to make an order allowing the appropriate enforcement authority to accept "enforcement undertakings" offered by a person. An enforcement undertaking is an undertaking - that is a promise - by a person to take certain actions. The enforcement authority will not be able to impose enforcement undertakings.

224. The enforcement undertakings will only be capable of being accepted by the enforcement authority when it has reasonable grounds for suspecting that an act or omission of the person constitutes an offence under this Part. Once that enforcement undertaking is accepted, the person may not be prosecuted for the act or omission or have a fixed or variable monetary penalty imposed on them, unless they fail or are deemed to have failed to comply with the undertakings. Where there is such non-compliance, the enforcement authority will be able to prosecute the person for the original offence or impose a fixed or variable monetary penalty.



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(c)	the circumstances in which the enforcement authority may not impose the penalty, and	
(d)	the period within which representations and objections may be made, which may not be less than the period of 28 days beginning with the day on which the notice of intent is received.	5
(4)	Provision pursuant to subsection (2)(c) –	
(a)	must secure that the enforcement authority may not decide to impose a penalty on a person where the enforcement authority is satisfied that the person would not, by reason of any defence raised by that person, be liable to be convicted of the offence in relation to which the penalty is proposed to be imposed, and	10
(b)	may include provision for other circumstances in which the enforcement authority may not decide to impose a penalty.	
(5)	Provision under subsection (2)(c) must also include provision for –	
(a)	the person on whom the notice of intent is served to be able to offer an undertaking as to action to be taken by that person (including the payment of a sum of money) to benefit any person affected by the offence,	15
(b)	the enforcement authority to be able to accept or reject such an undertaking, and	20
(c)	the enforcement authority to take any undertaking so accepted into account in its decision.	
(6)	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,	25
(b)	how payment may be made,	
(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.	30
(7)	Provision pursuant to subsection (2)(e) must secure that the grounds on which a person may appeal against a decision of the enforcement authority include the following –	
(a)	that the decision was based on an error of fact;	
(b)	that the decision was wrong in law;	35
(c)	that the amount of the penalty is unreasonable;	
(d)	that the decision was unreasonable for any other reason.	
<b>87</b>	<b>Enforcement undertakings</b>	
(1)	The appropriate licensing authority for any area may by order make provision –	40
(a)	to enable the appropriate enforcement authority for that area to accept an enforcement undertaking from a person in a case where the enforcement authority has reasonable grounds to suspect that the person has committed an offence under this Part, and	
(b)	for the acceptance of the undertaking to have the consequences set out in subsection (4).	45

225. A person may promise to engage in the following type of action as part of an undertaking:

226. Actions that ensure that the person does not repeat or continue their non-compliant actions. For example, the person may undertake to fix faulty equipment that breaches safety standards

227. Actions that restore the position, as far as possible, to what it would have been had the non-compliant action not taken place. For example, the person may undertake to clean up an area that has been contaminated by its non-compliant actions

228. Actions that benefit any person affected by the non-compliant actions of the person (including payment of money). For example, the person may set up a compensation scheme for victims of its non-compliance

229. Other action that may be prescribed by the order.

226. *Subsection (5)* of this clause enables the inclusion of further provisions in an order enabling the acceptance of enforcement undertakings, such as the procedure for entering into the enforcement undertaking, certification by the enforcement authority that the undertaking has been complied with and the consequences for a person providing misleading or inaccurate information.

227. There is no right of appeal against the enforcement undertaking itself, as the undertaking is volunteered by the person and is not imposed by the enforcement authority. An order may provide for appeal against an enforcement authority's refusal to certify that the undertaking has been completed.

- (2) For the purposes of this Part, an “enforcement undertaking” is an undertaking to take such action as may be specified in the undertaking within such period as may be so specified.
- (3) The action specified in an enforcement undertaking must be –
- (a) action to secure that the offence does not continue or recur, 5
  - (b) action to secure that the position is, so far as possible, restored to what it would have been if the offence had not been committed,
  - (c) action to secure that, where the position cannot be so restored, compensation is made for any harm caused by the commission of the offence, 10
  - (d) action (including the payment of a sum of money) to benefit any person affected by the offence, or
  - (e) action of a prescribed description.
- (4) The consequences in this subsection are that, unless the person from whom the undertaking is accepted has failed to comply with the undertaking or any part of it – 15
- (a) that person may not at any time be convicted of the offence in question in respect of the act or omission to which the undertaking relates,
  - (b) the enforcement authority may not impose on that person any fixed monetary penalty which it would otherwise have power to impose by virtue of section 83 in respect of that act or omission, and 20
  - (c) the enforcement authority may not impose on that person any variable monetary penalty which it would otherwise have power to impose by virtue of section 85 in respect of that act or omission.
- (5) Provision under this section may in particular include provision – 25
- (a) as to the procedure for entering into an undertaking;
  - (b) as to the terms of an undertaking;
  - (c) as to publication of an undertaking by an enforcement authority;
  - (d) as to variation of an undertaking;
  - (e) as to circumstances in which a person may be regarded as having complied with an undertaking; 30
  - (f) as to monitoring by an enforcement authority of compliance with an undertaking;
  - (g) as to certification by an enforcement authority that an undertaking has been complied with; 35
  - (h) for appeals against refusal to give such certification;
  - (i) in a case where a person has given inaccurate, misleading or incomplete information in relation to the undertaking, for that person to be regarded as not having complied with it;
  - (j) in a case where a person has complied partly but not fully with an undertaking, for that part-compliance to be taken into account in the imposition of any criminal or other sanction on the person; 40
  - (k) for the purpose of enabling criminal proceedings to be instituted against a person in respect of the offence to which the undertaking relates in the event of breach of an undertaking or any part of it, to extend any period within which those proceedings may be instituted. 45
- (6) In this section “prescribed” means prescribed in an order made under this section.

***Clause 88: Further provision about civil sanctions***

228. Schedule 6 sets out further provision about the civil sanctions that may be imposed under this Part.

***Clause 89: General defence of due diligence***

229. This clause provides a defence for a person charged with an offence under this Part if that person can demonstrate they took all reasonable precautions and exercised due diligence to avoid committing that offence.

230. *Subsections (2) to (6)* outline some particular circumstances in which the defence is available and sets out procedures which apply to the proving of this defence.

***Clauses 90 & 91: Offences by directors, partners, etc; Partnerships: offences and penalties***

231. These clauses provide for individual liability in some cases where there is also corporate liability and sets out certain procedures to be followed in the case of an offence committed by a partnership.

**88 Further provision about civil sanctions**

Schedule 6 (which makes further provision about civil sanctions) has effect.

*Supplementary*

**89 General defence of due diligence**

- (1) In any proceedings for an offence under this Part, it is a defence for the person charged to prove that that person took all reasonable precautions and exercised all due diligence to avoid the commission of the offence. 5
- (2) The defence provided by subsection (1) is to be taken to be established if the defendant—
- (a) acted under an employer’s instructions, 10
  - (b) did not know and had no reason to suppose that the acts done constituted a contravention of the provision in question, and
  - (c) took all such steps as reasonably could be taken to ensure that no offence would be committed.
- (3) The defence provided by subsection (1) is to be taken to be established if the defendant— 15
- (a) acted in reliance on information supplied by another person,
  - (b) did not know and had no reason to suppose that the information was false or misleading, and
  - (c) took all such steps as reasonably could be taken to ensure that no offence would be committed. 20
- (4) Subsections (2) and (3) do not affect the generality of subsection (1).
- (5) If in any case the defence provided by subsection (1) involves the allegation that the commission of the offence was due to— 25
- (a) an act or default of another person (other than the giving of instructions to the person charged by an employer), or
  - (b) reliance on information supplied by another person,
- the person charged shall not, without leave of the court, be entitled to rely on that defence unless the requirement in subsection (6) is satisfied.
- (6) The requirement is that— 30
- (a) at least seven clear days before the hearing, and
  - (b) where the person has previously appeared before a court in connection with the alleged offence, within one month of the first such appearance,
- the defendant has served on the prosecutor a notice giving such information identifying or assisting in the identification of that other person as was then in the defendant’s possession. 35

**90 Offences by directors, partners, etc**

- (1) Where an offence under this Part has been committed by a body corporate and it is proved that the offence— 40
- (a) has been committed with the consent or connivance of a person falling within subsection (2), or
  - (b) is attributable to any neglect on the part of such a person,

***Clause 92: Further provision about offences***

232. An offence committed under this Part can be treated as having taken place anywhere in the United Kingdom regardless of where the offence actually took place. This ensures that offenders can still be tried when there is uncertainty about in which waters the offence took place.

that person (as well as the body corporate) is guilty of that offence and liable to be proceeded against and punished accordingly.

- (2) The persons are—
  - (a) a director, manager, secretary or similar officer of the body corporate;
  - (b) any person who was purporting to act in such a capacity. 5
- (3) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member, in connection with that management, as if the member were a director of the body corporate.
- (4) Where an offence under this Part has been committed by a partnership and it is proved that the offence—10
  - (a) has been committed with the consent or connivance of a partner or a person purporting to act as a partner, or
  - (b) is attributable to any neglect on the part of such a person,that person (as well as the partnership) is guilty of that offence and liable to be proceeded against and punished accordingly. 15

## **91 Partnerships: offences and penalties**

- (1) Proceedings for an offence under this Part alleged to have been committed by a partnership shall be brought in the name of the partnership (and not in that of any of the partners).
- (2) Rules of court relating to the service of documents shall have effect as if the partnership were a body corporate. 20
- (3) In proceedings for an offence under this Part brought against a partnership, the following provisions apply as they apply in relation to a body corporate—
  - (a) section 33 of the Criminal Justice Act 1925 (c. 86) and Schedule 3 to the Magistrates' Courts Act 1980 (c. 43); 25
  - (b) sections 70 and 143 of the Criminal Procedure (Scotland) Act 1995 (c. 46);
  - (c) section 18 of the Criminal Justice Act (Northern Ireland) 1945 (c. 15) and Schedule 4 to the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)). 30
- (4) Any fine, and any fixed or variable monetary penalty, imposed on a partnership in respect of an offence under this Part is to be paid out of the partnership assets.
- (5) Subsection (1) is not to be read as prejudicing any liability of a partner under section 90(4). 35

## **92 Further provision about offences**

- (1) Proceedings for an offence under this Part may be taken, and the offence may for all incidental purposes be treated as having been committed, in any part of the United Kingdom.
- (2) Section 3 of the Territorial Waters Jurisdiction Act 1878 (c. 73) (consents to prosecutions of offences committed on the open sea by persons who are not British citizens) does not apply to any proceedings for an offence under this Part. 40

#### ***Chapter 4: Delegation***

##### ***Clauses 93 & 94: Delegation of functions relating to marine licensing; Orders under section 93: supplementary provisions***

233. The licensing authority may by order delegate any of its licensing functions listed in this clause to such other body as the licensing authority considers appropriate. This does not include those functions specified in subsection (5) of clause 93, which must remain the preserve of Ministerial authority. This enables Ministers either to retain their powers as the marine licensing authority or to delegate such operational activities to another competent body. In England it is intended that functions will be delegated to the Marine Management Organisation being established under Part 1 of the draft Bill.

234. The body named in an order must agree to accept this responsibility. The licensing authority may not exercise any function it has delegated unless the order explicitly permits it to do so. There is no minimum or maximum period for which the delegation applies. Different functions can be delegated to different bodies, or the same function can be delegated to different bodies in different cases.

235. Clause 94 enables further provision to be made in an order concerning the exercise of any delegated functions. Subsection (4) provides a list of the aspects of the licensing process that the licensing authority may want to specifically regulate in the order.



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CHAPTER 4

DELEGATION

- 93 Delegation of functions relating to marine licensing**
- (1) A licensing authority may make an order which –
    - (a) designates any of the delegable marine licensing functions which would (apart from any order under this section) be exercisable by or in relation to the authority, and 5
    - (b) provides that those functions, instead of being so exercisable, are to be exercisable by or in relation to such person, acting on behalf of the authority, as is designated in the order. 10
  - (2) An authority which makes an order under this section may do so only with the consent of the person designated (“the delegate”).
  - (3) The delegate –
    - (a) must comply with the order, and
    - (b) is to be taken to have all the powers necessary to do so. 15
  - (4) In this section “delegable marine licensing functions” means functions under this Part, other than excepted functions.
  - (5) The excepted functions are functions under –
    - (a) section 60(3) (altering the list of licensable marine activities);
    - (b) section 61(2) (making regulations regarding the fee for an application); 20
    - (c) section 63(6) (making regulations as to the procedure for applications);
    - (d) section 67(1) and (4) (making orders specifying activities which do not require a marine licence and consulting in relation to such orders);
    - (e) sections 83, 85 and 87 (making orders conferring powers to impose civil sanctions); 25
    - (f) this section;
    - (g) section 95(3) and (5)(a) (making regulations regarding the register and determining questions of non-disclosure on the grounds of national security).
- 94 Orders under section 93: supplementary provisions** 30
- (1) For so long as an order made under section 93 remains in force, the designated functions are exercisable by or in relation to the delegate acting on behalf of the authority (and are not exercisable by or in relation to the authority).
  - (2) Subsection (1) is subject to any provision to the contrary which is included in the order. 35
  - (3) An order under section 93 may include –
    - (a) such terms or conditions,
    - (b) such obligations or requirements,
    - (c) such financial provisions,as the authority making the order may determine. 40
  - (4) The provision that may be made under subsection (3) includes, in particular, provision (where appropriate) as to –

*Chapter 5: Supplementary*

*Register*

*Clause 95: Register*

236. Each licensing authority must maintain a register of information relating to applications and licences that it is responsible for. They must make it available to the public. Each licensing authority must also set out in regulations further provision regarding the use and maintenance of its register.

237. Information can be withheld from the register if disclosure would threaten national security or be unduly prejudicial to someone's commercial interest. In the latter case, review of the excluded information must take place after four years. There is a presumption that after this the excluded information will be made public unless both the person to whom the information relates and the licensing authority agree that it should remain confidential, in which case it will be reviewed in a further four years. The existence of commercially sensitive information should be recorded in the register.

- (a) the manner in which the delegate is to exercise any of the functions;
  - (b) the form and manner in which licence applications must be made to the delegate;
  - (c) the persons to whom notice of an application should be published under section 62, and the circumstances in which such notice should not be published; 5
  - (d) matters (in addition to those set out in section 63) to which the delegate must have regard in determining applications for licences;
  - (e) the circumstances in which the delegate must exercise the power to consult under section 63(4), and the persons who must or may be consulted; 10
  - (f) the form and content of any licence granted;
  - (g) appeals from any decision of the delegate (whether to the licensing authority or any other person);
  - (h) any other provision that may be made by virtue of section 63(6). 15
- (5) An order under section 93 may make different provision for different cases, different areas or different public bodies.

## CHAPTER 5

### SUPPLEMENTARY

*Register* 20

#### 95 Register

- (1) Each licensing authority must maintain, as respects activities in relation to which it is the appropriate licensing authority and licences for those activities, a register of licensing information.
- (2) The register must contain prescribed particulars of or relating to— 25
  - (a) applications for licences;
  - (b) licences granted;
  - (c) variations of licences;
  - (d) revocations of licences;
  - (e) information supplied in connection with any licence in pursuance of any provision of this Part; 30
  - (f) convictions for any offence under this Part;
  - (g) any other action taken to enforce any provision of this Part;
  - (h) occasions on which any remedial action has been taken;
  - (i) such other matters relating to licences or the licensable activities as may be prescribed. 35
- (3) The register must be maintained in accordance with regulations made by the appropriate licensing authority.
- (4) Each licensing authority must make arrangements— 40
  - (a) for its register to be available for inspection at all reasonable times by members of the public free of charge;
  - (b) for copies of entries in its register to be supplied, on request, to members of the public on payment of a reasonable charge.

***Clause 96: Notice to stop activity causing serious harm etc***

238. The enforcement authority can issue a notice to a person prohibiting them from carrying on a licensable marine activity if that activity is causing or will imminently cause serious harm to the environment, human health or seriously interfere with legitimate uses of the sea. Such a notice is called a stop notice.

239. The enforcement authority can issue a stop notice regardless of whether the person has a marine licence or not and (if they have a licence) regardless of whether they are operating in accordance with the licence conditions.

240. An initial stop notice can be in effect for up to seven days. The stop notice may be extended but only up to a combined total period of 35 days. This limit does not apply where the activity is carried out without a marine licence. In such cases stop notices can be in effect up until a marine licence is granted for the activity in question.

- 
- (5) Information must not appear in the register if –
- (a) the Secretary of State determines that its disclosure in the register would be contrary to the interests of national security, or
  - (b) the appropriate licensing authority determines that its disclosure in the register would be unduly prejudicial to any person’s commercial interests. 5
- (6) The appropriate licensing authority must review a determination to exclude information under subsection (5)(b) every four years.
- (7) On a review under subsection (6) the authority must include the information in the register unless, on the application of any person to whom the information relates, the authority determines that it should continue to be excluded. 10
- (8) Where information of any description is excluded from a register by virtue of subsection (5)(b), a statement must be entered in the register indicating the existence of information of that description. 15
- (9) In this section “prescribed” means prescribed in regulations made under this section.

*Other powers*

**96 Notice to stop activity causing serious harm etc**

- (1) If it appears to the appropriate enforcement authority that subsections (3) and (4) are satisfied in relation to a person carrying on an activity in its area, it may issue a stop notice to that person. 20
- (2) A stop notice is a notice prohibiting a person from carrying on an activity specified in the notice.
- (3) This subsection is satisfied if a person is carrying on, or is likely to carry on, a licensable marine activity (whether or not in accordance with a marine licence). 25
- (4) This subsection is satisfied if the carrying on of the activity to be specified in the notice –
- (a) is causing or will cause any of the effects in subsection (5), or
  - (b) is creating or will create an imminent risk of any of those effects. 30
- (5) The effects are –
- (a) serious harm to the environment;
  - (b) serious harm to human health;
  - (c) serious interference with legitimate uses of the sea.
- (6) A stop notice (in addition to specifying the activity to which it relates) – 35
- (a) must state the enforcement authority’s grounds for believing that subsections (3) and (4) are satisfied;
  - (b) must state from what date the prohibition is to take effect (which may be the date of the notice);
  - (c) may require the person to take such steps as the authority considers appropriate to ensure that the cessation of the activity takes place safely. 40
- (7) Except in a case falling within subsection (9), a stop notice –

***Clause 97: Further provision as to stop notices***

241. Stop notices must be in writing. They must be served on the person undertaking or in control of the activity in question, and may, if a licence has been granted for that activity and the person is different, also be served on the licensee. A notice can be revoked or varied.

242. It is an offence to fail to comply with a stop notice.

***Clause 98: Power to take remedial action***

243. In circumstances where a licensable activity has been undertaken either without a licence or in a manner that breaches conditions of a licence, the licensing authority, by virtue of this clause, has the power to undertake any works that will protect the environment, human health or prevent interference with legitimate users of the sea.

244. This power is not limited in use to those circumstances where the authority has issued a remediation notice.

***Clause 99: Power to test and to charge for testing***

245. At a person's request, the licensing authority may perform tests on an oil treatment substance for the purpose of determining its effects on the marine environment.

246. The licensing authority can charge for any such tests to cover its expenses.

- 
- (a) ceases to have effect at the end of the period of 7 days (or such shorter period as may be specified in the notice) beginning with the date on which the prohibition takes effect, but
- (b) may be renewed for a period specified in a further notice.
- (8) A stop notice may be renewed more than once under subsection (7)(b), but not so that it has effect for an aggregate period exceeding 35 days. 5
- (9) If a stop notice relating to a licensable marine activity is issued to a person who does not hold a marine licence authorising that activity, the stop notice may remain in force until such time (if any) as such a licence is granted to that person. 10
- 97 Further provision as to stop notices**
- (1) A stop notice –
- (a) must be served on any person carrying on or in control of the activity to which the notice relates, and
- (b) if a marine licence has been granted in relation to that activity, may also be served on the licensee. 15
- (2) The appropriate enforcement authority may by a further notice –
- (a) revoke a stop notice;
- (b) vary a stop notice so as substitute a later date for the date specified in accordance with section 96(6)(b). 20
- (3) A person who fails to comply with a stop notice commits an offence.
- (4) A person guilty of an offence under subsection (3) is liable –
- (a) on summary conviction, to a fine not exceeding £50,000;
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both. 25
- 98 Power to take remedial action**
- (1) This section applies if it appears to the appropriate licensing authority for an area that a licensable marine activity has been carried on in its area otherwise than under a licence and in accordance with its conditions.
- (2) The authority may carry out any works that appear to it to be necessary or expedient for the purpose of – 30
- (a) protecting the environment;
- (b) protecting human health;
- (c) preventing interference with legitimate uses of the sea.
- 99 Power to test and to charge for testing** 35
- (1) A licensing authority may, at the request of any person, conduct tests for the purpose of ascertaining the probable effect on the marine environment of using any oil treatment substance.
- (2) In subsection (1) an “oil treatment substance” is any substance used or intended to be used for the purpose of treating oil on the surface of the sea. 40

***Clause 100: Application to the Crown***

247. This Part of the draft Bill applies to the Crown. While the Crown is not criminally liable for contravening any provision in this Part, the High Court may, on receipt of an application, declare any of its acts or failure to act unlawful.

248. The Secretary of State has the power to certify, in the interests of national security, that any powers of entry granted in this Part of the draft Bill should not be exercised on any Crown land specified in that certificate.

***Clauses 101, 102, 103 & 104: The UK marine licensing area; The appropriate licensing authority; The appropriate enforcement authority; Interpretation of this Part***

249. These clauses provide definitions for the key terms used in this Part of the draft Bill.



- (3) A licensing authority may recover any expenses reasonably incurred in conducting any tests under subsection (1) from any person at whose request those tests were conducted.

*Application to the Crown*

- 100 Application to the Crown** 5
- (1) The provisions of this Part bind the Crown.  
This is subject to the following provisions of this section.
- (2) No contravention by the Crown of any provision of this Part shall make the Crown criminally liable; but the High Court may, on the application of the appropriate licensing authority or any other authority charged with enforcing that provision, declare unlawful any act or omission of the Crown which constitutes such a contravention. 10
- (3) Despite subsection (2), the provisions of this Part apply to persons in the public service of the Crown as they apply to other persons.
- (4) The Secretary of State may certify that it appears to the Secretary of State that, as respects – 15
- (a) any Crown land specified in the certificate, and
  - (b) any powers of entry so specified which are exercisable in relation to that land,
- it is requisite or expedient that, in the interests of national security, the powers should not be exercisable in relation to the land. 20
- (5) If the Secretary of State issues a certificate under subsection (4), the powers specified in the certificate shall not be exercisable in relation to the land so specified.
- (6) For the purposes of subsection (4) “Crown land” means land held or used by or on behalf of the Crown. 25
- (7) Nothing in this section shall be taken as in any way affecting Her Majesty in her private capacity or in right of Her Duchy of Lancaster, or the Duke of Cornwall.

*Interpretation* 30

**101 The UK marine licensing area**

- (1) For the purposes of this Part the “UK marine licensing area” consists of the following – 35
- (a) the area of sea within the seaward limits of the territorial sea adjacent to the United Kingdom,
  - (b) the area of sea within the limits of the UK sector of the continental shelf,
  - (c) any area of sea within the limits of a renewable energy zone (so far as not falling within the area mentioned in paragraph (b)),
- and includes the bed and subsoil of the sea within those areas.
- (2) But the UK marine licensing area does not include the Scottish inshore region. 40



- (3) The area of sea referred to in subsection (1)(a) includes (in addition to the areas included by virtue of the definition in section 298(1)) any area closed, whether permanently or intermittently, by a lock or other artificial means against the regular action of the tide.

**102 The appropriate licensing authority** 5

- (1) This section has effect for determining who is the appropriate licensing authority for any area (and any licensable marine activity carried on in that area).
- (2) In relation to Wales and the Welsh inshore region, the appropriate licensing authority is the Welsh Ministers. 10
- (3) In relation to the offshore area adjacent to Scotland, the appropriate licensing authority is the Scottish Ministers.
- (4) In relation to Northern Ireland and the Northern Ireland inshore region, the appropriate licensing authority is the Department of the Environment in Northern Ireland. 15
- (5) In relation to any other area, the appropriate licensing authority is the Secretary of State.

**103 The appropriate enforcement authority**

- (1) This section has effect for determining who is the appropriate enforcement authority for any area. 20
- (2) For the purposes of sections 80 to 88 and 96 the appropriate enforcement authority for any area is the appropriate licensing authority for that area.
- (3) For the purposes of sections 80, 82 (so far as relating to section 80) and 96 each of the following persons is also an appropriate enforcement authority – 25
- (a) in relation to the relevant enforcement area (within the meaning of section 204), any marine enforcement officer;
  - (b) in relation to Wales (within the meaning of section 208), any Welsh enforcement officer;
  - (c) in relation to the relevant enforcement area (within the meaning of section 211), any person within subsection (2) of that section; 30
  - (d) in relation to Northern Ireland and the Northern Ireland inshore region, any Northern Ireland enforcement officer.

**104 Interpretation of this Part**

- (1) In this Part – 35
- “the appropriate licensing authority” has the meaning given by section 102;
  - “the appropriate enforcement authority” has the meaning given by section 103;
  - “British aircraft” means an aircraft registered in the United Kingdom;
  - “British vessel” means a vessel which – 40
- (a) is a British ship within the meaning of the Merchant Shipping Act 1995 (c. 21), or
  - (b) is exempt from registration under section 294 of that Act,

***Clause 105: Marine conservation zones***

250. This clause provides a power for the appropriate authority (defined as Welsh Ministers in Wales, and the Secretary of State elsewhere, hereafter referred to as ‘Ministers’) to designate areas as marine conservation zones (“MCZs”) by means of local orders.

251. *Subsections (2) and (3)* identify those areas within which an MCZ may be designated. This does not include areas in the territorial waters adjacent to Scotland and Northern Ireland.

252. The statutory nature conservation agencies are developing a programme of work to involve stakeholders in identifying potential MCZs on a region by region basis, with the aim of submitting recommended sites to the Secretary of State by the end of 2011. MCZs will contribute to a UK network of Marine Protected Areas (MPAs), alongside Special Protections Areas (SPAs) and Special Areas of Conservation (SACs) which are designated under the European Habitats and Birds Directives.

- except that it does not include a ship registered under the law of any of the Channel Islands;
- “British marine structure” means a marine structure owned by or leased to an individual residing in, or a body corporate incorporated under the law of, any part of the United Kingdom; 5
- “compliance notice” means a notice issued under section 80;
- “enforcement undertaking” has the meaning given by section 87(2);
- “fixed monetary penalty” has the meaning given by section 83(3);
- “marine licence” means a licence granted under this Part;
- “licensing authority” means – 10
- (a) the Secretary of State;
  - (b) the Welsh Ministers;
  - (c) the Scottish Ministers;
  - (d) the Department of the Environment in Northern Ireland;
- “marine structure” means a platform or other artificial structure at sea, other than a pipeline; 15
- “remediation notice” means a notice issued under section 81;
- “stop notice” means a notice issued under section 96;
- “the UK marine licensing area” has the meaning given by section 101;
- “variable monetary penalty” has the meaning given by section 85(3); 20
- “vessel” includes –
- (a) hovercraft, and
  - (b) any other craft capable of travelling on, in or under water, whether or not self-propelled.
- (2) In this Part any reference to the environment includes a reference to any site (including any site comprising, or comprising the remains of, any vessel, aircraft or marine structure) which is of historic or archeological interest. 25

#### PART 4

##### MARINE CONSERVATION ZONES

##### *Designation of zones* 30

#### 105 Marine conservation zones

- (1) The appropriate authority may by order designate any area falling within subsection (2) as a marine conservation zone (an “MCZ”).  
 Section 106 sets out the grounds on which such an order may be made.
- (2) An area falls within this subsection if – 35
- (a) it is an area of the sea within the seaward limits of the territorial sea adjacent to the United Kingdom;
  - (b) it is an area of the sea within the limits of a renewable energy zone;
  - (c) it is an area of the seabed or subsoil within the limits of the UK sector of the continental shelf (so far as not falling within an area mentioned in paragraph (b)). 40
- (3) But an area does not fall within subsection (2) if it is in –
- (a) the Scottish inshore region, or

**Clause 106: Grounds for designation of MCZs**

253. This clause sets out the circumstances in which Ministers may designate an MCZ. This will be where they think it is desirable to do so for the purposes of conserving the types of nature conservation features listed in *subsection (1)(a) to (c)*.

254. *Subsections (2), (3) and (4)* provide that the term ‘conserving marine flora or fauna or habitat’ covers not only species that are rare or threatened, but also the diversity of flora, fauna and habitat, whether or not any flora, fauna or habitat is considered rare or threatened.

255. *Subsection (5)* allows Ministers to take account of the economic or social consequences of designation - whether positive or negative. This will be especially relevant where there is a choice to be made between alternative sites of similar conservation value.

**Clause 107: Consultation before designation**

256. This clause requires Ministers to carry out public consultation before designating an MCZ. *Subsections (2) and (3)* require notice of a proposed order to be published, and *subsection (4)* requires consultation with prescribed bodies and persons who might be affected by a proposed order.

257. *Subsection (5)* provides for consultation to take place between the relevant designating authority and the appropriate statutory nature conservation bodies where the designating authority considers the designation of a proposed MCZ has cross-boundary implications for activities, or activities have cross-boundary implications for any part of a proposed MCZ. For example, if an MCZ proposed in English waters was likely to impact on activities in Welsh waters (or fishing was likely to impact on the MCZ) these clauses ensure the designating authority will consult the Countryside Council for Wales.

258. *Subsection (6)* ensures the same requirement placed on designating authorities in the preceding subsection is applied to the Secretary of State with respect to Welsh Ministers.

259. *Subsection (7)* requires the Secretary of State to consult Scottish Ministers or the Department of the Environment in Northern Ireland, if any part of a proposed MCZ lies, respectively, in UK offshore waters adjacent to Scotland or Northern Ireland, or if these waters might in some other way be affected by a proposed designation.

- (b) the Northern Ireland inshore region.
- (4) Section 108 makes further provision as to the areas that may be included in an MCZ.
- (5) For the purposes of this Part the appropriate authority is –
  - (a) in respect of an area in Wales, the Welsh Ministers; 5
  - (b) in any other case, the Secretary of State.

**106 Grounds for designation of MCZs**

- (1) The appropriate authority may make an order under section 105 if it thinks that it is desirable to do so for the purpose of conserving –
  - (a) marine flora or fauna; 10
  - (b) marine habitats or types of marine habitat;
  - (c) features of geological or geomorphological interest.
- (2) 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 15
  - (b) the limited number of locations in which that species is present.
- (3) The references in subsections (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. 20
- (4) Any reference to conserving a thing includes references to –
  - (a) assisting in its conservation;
  - (b) enabling or facilitating its recovery or increase.
- (5) In considering whether it is desirable to designate an area as an MCZ, the appropriate authority may have regard to any economic or social consequences of doing so. 25

**107 Consultation before designation**

- (1) Before making an order under section 105, the appropriate authority must comply with subsections (2) to (8).

This does not apply where the appropriate authority thinks that there is an urgent need to protect the area proposed to be designated. 30
- (2) The appropriate authority 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 appropriate authority thinks is most likely to bring the proposal to the attention of all persons who are likely to be affected by the making of the order; 35
  - (b) contain a statement of the terms of the proposed order.
- (4) The appropriate authority must consult –
  - (a) the appropriate statutory conservation body; 40
  - (b) the Crown Estate Commissioners;

260. *Subsection (9)* explains the meaning of various terms used within this section. The term “local authority” excludes parish councils and community councils (the former in England, the latter in Wales), which is different to other clauses in this Part of the draft Bill.



- (c) any other person who appears to the appropriate authority to have any property interest in or rights over any part of the proposed MCZ;
  - (d) any local authority in whose area any part of the proposed MCZ lies, or whose area might otherwise be affected by the making of the order;
  - (e) any local planning authority in whose area any part of the proposed MCZ lies; 5
  - (f) any harbour authority in whose area any part of the proposed MCZ lies, or whose area might otherwise be affected by the making of the order;
  - (g) any general lighthouse authority, and any local lighthouse authority, in whose area any part of the proposed MCZ lies; 10
  - (h) any inshore fisheries and conservation authority in whose district any part of the proposed MCZ lies;
  - (i) if any part of the proposed MCZ lies in England, the MMO;
  - (j) if any part of the proposed MCZ lies in England, the Historic Buildings and Monuments Commission for England; 15
  - (k) if any part of the proposed MCZ lies within six nautical miles of the baseline, the Environment Agency;
- and any other person whom the appropriate authority thinks fit to consult.
- (5) If the appropriate authority considers that – 20
    - (a) the making of the order may affect any activity which is or may be carried on in the area of an appropriate statutory conservation body other than the one consulted under subsection (4)(a), or
    - (b) any activity which is or may be carried on in such an area may affect any part of the proposed MCZ, 25it must consult that other body.
  - (6) If the Secretary of State considers that –
    - (a) the making of the order may affect any activity which is or may be carried on in Wales, or
    - (b) any activity which is or may be carried on in Wales affect any part of the proposed MCZ, 30the Secretary of State must consult the Welsh Ministers.
  - (7) The Secretary of State must –
    - (a) consult the Scottish Ministers if any part of the proposed MCZ lies in the Scottish zone or if the Scottish zone might otherwise be affected by the making of the order; 35
    - (b) consult the Department of the Environment in Northern Ireland if any part of the proposed MCZ lies in the Northern Ireland zone or if the Northern Ireland zone might otherwise be affected by the making of the order. 40
  - (8) The Welsh Ministers must consult the Secretary of State.
  - (9) In this section –
    - “general lighthouse authority” and “local lighthouse authority” have the meaning given by section 193 of the Merchant Shipping Act 1995 (c. 21);
    - “local authority” means, in England, a county council, a district council or a London borough council and, in Wales, a county council or a county borough council; 45

**Clause 108: Further provision as to orders designating MCZs**

261. This clause makes further provision in relation to designation orders. *Subsection (1)* specifies the information to be contained within an order, including the boundaries, the protected feature(s) and the conservation objectives for the MCZ. The level of protection for an individual MCZ will depend on these conservation objectives, which can be drafted to take account of relevant conservation, social and economic considerations. For example, the conservation objectives could be worded to allow benign or sustainable activities to take place, or could be more stringent (for example, excluding all extractive uses or damaging activities). Conservation objectives will be framed so that public authorities are clearly able to understand the implications that arise from the duties placed on them by clauses 109 and 110.

262. *Subsection (2)* allows for the landward boundary of an MCZ to follow the mean high water spring tide, or to be defined by reference to it. *Subsection (3)* provides that an MCZ can include 'land whether or not covered by water' (which includes the sea bed, the foreshore and islands) together with some or all of the water covering it' (which includes the water column at sea, estuarial/transitional waters, pools and lagoons).

263. *Subsection (4)* allows for islands to form part of an MCZ. This will be particularly relevant where there are numerous small islands, transient sand banks or rocky outcrops (which it would be impracticable to individually exclude). Islands which should be excluded from an MCZ can be identified in the designation order.

264. *Subsections (5) and (6)* allow Ministers to extend the boundary of an MCZ to include an additional adjacent area of seashore above mean high water spring tide in limited circumstances.

265. *Subsection (7)* allows Ministers to amend or revoke a designation order by making a further order. This would be necessary when the site boundary, the list of protected features or the conservation objectives need to be changed. A new or amended order would be subject to the notification and consultation requirements which applied to the original order.

**Clause 109: General duty of public authorities in relation to MCZs**

266. This clause places a general duty on public authorities as defined by clause 132. The duty is linked to the conservation objectives set for MCZs by Ministers, so that authorities are required, in carrying out their functions, to do so in a manner which best furthers the conservation objectives, and to avoid or minimise any harm or adverse impacts.

267. *Subsection (1)* places the duty on any public authorities which have functions capable of affecting a protected feature of an MCZ, or any ecological or geomorphological processes on which the conservation of such features are wholly or partly dependent. The duty does not apply where any effect would be insignificant.

268. *Subsection (2)* requires the public authority (so far as is consistent with the proper exercise of its functions) to exercise its functions in the manner which, in the authority's opinion, best furthers the conservation objectives. Where the authority considers that this is not possible, subsection (2)(b) requires it to exercise its functions in a way which least hinders the achievement of the conservation objectives. The duty will not place disproportionate or

and the reference to the area of an appropriate authority is to be construed in accordance with section 105(5).

**108 Further provision as to orders designating MCZs**

- (1) An order under section 105 must –
  - (a) identify the boundaries of the area designated; 5
  - (b) state the protected feature or features;
  - (c) state the conservation objectives for the MCZ.
- (2) The boundary of an MCZ may be determined by, or by reference to, mean high water spring tide.
- (3) An order under section 105 designating an area falling within subsection (2)(a) or (b) of that section must designate – 10
  - (a) an area of land (whether or not covered by water) only, or
  - (b) an area of land together with some or all of the water covering it.
- (4) Subsection (2)(a) and (b) of section 105 include any island, whether or not any part of it lies above mean high water spring tide. 15
- (5) If an MCZ includes an area falling within subsection (2)(a) of section 105 (area A), it may also include an area of the seashore lying above mean high water spring tide (area B) if –
  - (a) area B adjoins area A, and
  - (b) any of the conditions in subsection (6) is satisfied. 20
- (6) The conditions are –
  - (a) that the protected feature or features leading to the designation of area A is or are also present in area B;
  - (b) that area A is designated for the purpose of protecting marine flora or fauna which are dependent (wholly or in part) on anything which takes place in, or is present in, area B; 25
  - (c) that, without the inclusion of area B, 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. 30
- (7) An order under section 105 may be amended or revoked by a further order.

*Duties of public authorities*

**109 General duty of public authorities in relation to MCZs**

- (1) This section applies to any public authority having any function the exercise of which is capable of affecting (other than insignificantly) – 35
  - (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 the proper exercise of its functions) – 40

unreasonable costs on public authorities because carrying out any activity at disproportionate or unreasonable cost, would be inconsistent with the proper exercise of its functions.

269. *Subsections (3) and (4)* require public authorities to inform the appropriate statutory conservation body (Natural England, the Joint Nature Conservation Committee or the Countryside Council for Wales) when they consider that the exercise of any of their functions might, or would, significantly hinder the achievement of the conservation objectives, and requires authorities to have regard to any advice or guidance given by the conservation body.

***Clause 110: Duty of public authorities in relation to certain decisions***

270. This clause places a duty on all public authorities, as defined by clause 132, having responsibility for granting applications for authorisations, not to grant consent for anything that might adversely affect an MCZ except in specific circumstances.

271. *Subsection (1)* places this duty on public authorities having the function of determining any application (whenever made) for authorisation of any development or activity which is capable of affecting a protected feature of an MCZ, or any ecological or geomorphological processes on which the conservation of such features are wholly or partly dependent. The duty does not apply where any effect would be insignificant.

272. The duty applies to all types of consent (how ever described), including licences granted by the MMO under Part 3 of the draft Bill and planning permissions granted by local planning authorities.

273. *Subsections (2) to (4)* require the authority to withhold consent unless the person seeking the consent demonstrates, to the satisfaction of the authority, either (a) that there is no significant risk of the proposed act hindering the achievement of the conservation objectives for the MCZ, or (b) that (i) it is impossible or impracticable to proceed with it in a location, or in a manner, which would not hinder the achievement of the conservation objectives, (ii) the benefit to the public clearly outweighs the likely damage to the environment (and not just to the MCZ), and (iii) compensatory measures of equivalent environmental benefit (to the damage which the act is likely to cause to the MCZ) will be undertaken.

274. In referring to compensatory measures of ‘equivalent environmental benefit’ subsection (4)(c) recognises that it can be difficult to restore or recreate compensatory habitat in the marine environment. The measures might involve habitat restoration and recreation, or marine conservation measures of a broader character. Authorities will be required to take decisions on the balance of best available evidence.

275. *Subsection (6)* requires public authorities to have regard to any advice or guidance given by the appropriate statutory conservation body.

- (a) exercise those functions in the manner which the authority considers best furthers the conservation objectives stated (in accordance with section 108(1)(c)) 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. 5
- (3) If a public authority considers that the exercise of any of its functions would or might significantly hinder the achievement of the objectives for an MCZ, it must inform the appropriate statutory conservation body of that fact.
- (4) In carrying out its duty under this section a public authority must have regard to any advice or guidance given by the appropriate statutory conservation body under section 111. 10
- (5) In this section “public authority” does not include –
- (a) the Scottish Ministers;
  - (b) the Northern Ireland Ministers; 15
  - (c) the Northern Ireland departments.

#### **110 Duty of public authorities in relation to certain decisions**

- (1) This section applies to any public authority having the function of determining any application (whenever made) for authorisation of the doing of any act which is capable of affecting (other than insignificantly) – 20
- (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) The authority must not grant any such authorisation unless either of the conditions in subsections (3) and (4) is met. 25
- (3) The condition in this subsection is that the person seeking the authorisation satisfies the authority that there is no significant risk of the act to be authorised hindering the achievement of the conservation objectives stated (in accordance with section 108(1)(c)) for the MCZ.
- (4) The condition in this subsection is that the person seeking the authorisation satisfies the authority that – 30
- (a) it is impossible or impracticable to proceed with the act at a location, or in a manner, which would not hinder the achievement of the conservation objectives stated for the MCZ,
  - (b) the benefit to the public of proceeding with the act clearly outweighs the damage to the environment which the act is likely to cause, and 35
  - (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 is likely to have in or on the MCZ. 40
- (5) In a case falling within subsection (4), the authority must, if it has power to do so, make it a condition of the authorisation that the measures mentioned in subsection (4)(c) are undertaken.
- (6) In carrying out its duty under this section a public authority must have regard to any advice or guidance given by the appropriate statutory conservation body under section 111. 45

***Clause 111: Advice and guidance by conservation bodies***

276. This clause enables the statutory nature conservation bodies (Natural England, the Joint Nature Conservation Committee and the Countryside Council for Wales) 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 109 and 110. This clause does not limit or restrict the matters on which the conservation bodies can advise (in accordance with their existing functions) but identifies the types of MCZ-related advice and guidance to which other provisions in this part of the draft Bill apply (i.e. the duties on public authorities and clause 112).

277. *Subsections (1) and (2)* specify the issues on which advice or guidance can be given, and allows for it to be issued in respect of one or more sites, and to one or more authorities. Advice and guidance can also be issued more generally.

278. *Subsection (3)* requires conservation bodies to give advice to a public authority when requested to do so. *Subsection (4)* requires consultation to take place between the conservation bodies when one body issues advice or guidance which may affect an MCZ or MCZs in the area of another body.

***Clause 112: Failure to comply with duties etc***

279. This clause enables the statutory nature conservation bodies to obtain an explanation of the reason why a public authority has failed, in the opinion of the conservation body, to comply with either of the duties under clauses 109 and 110, or has failed to act in accordance with advice or guidance given under clause 111. This clause is analogous to section 4(2) to (5) of the Natural Environment and Rural Communities Act 2006 (c. 16), but is not limited to England; It has effect even when the public authority did not initially request the advice or guidance; and allows for the explanation to be published by the conservation body.

- (7) In this section—
- “act” includes omission;
  - “authorisation” means any approval, confirmation, consent, licence, permission or other authorisation (however described), whether special or general; 5
  - “damage” includes the prevention of an improvement;
  - “public authority” does not include—
    - (a) the Scottish Ministers;
    - (b) the Northern Ireland Ministers;
    - (c) the Northern Ireland departments. 10

### 111 Advice and guidance by conservation bodies

- (1) The appropriate statutory conservation body may give advice and guidance as to—
- (a) the matters which are capable of damaging or otherwise affecting any protected feature or features; 15
  - (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;
  - (c) how any conservation objectives may be furthered, or how the furtherance of any such objectives may be hindered; 20
  - (d) how the effect of any activity or activities on an MCZ or MCZs may be mitigated;
  - (e) which activities are, or are not, of equivalent environmental benefit (for the purposes of section 110(4)(c)) to any particular damage to the environment (within the meaning of that provision). 25
- (2) Advice or guidance may be given—
- (a) either in relation to a particular MCZ or MCZs or generally;
  - (b) either to a particular public authority or authorities or generally.
- (3) The appropriate statutory conservation body must give advice to a public authority if the authority requests it. 30
- (4) If an appropriate statutory conservation body exercises its functions under this section in a manner which may affect an MCZ or MCZs in the area of another appropriate statutory conservation body, it must first consult that other body.

### 112 Failure to comply with duties etc

- (1) This section applies if, in the opinion of the appropriate statutory conservation body, a public authority has failed— 35
- (a) to comply with either of the duties imposed by sections 109 and 110;
  - (b) to act in accordance with advice or guidance given by the appropriate statutory conservation body under section 111.
- (2) Where this section applies— 40
- (a) the body may request from the authority an explanation for the failure, and
  - (b) on such a request, the authority must provide such an explanation in writing.

***Clause 113: Conservation orders for protection of MCZs in England***

280. This clause gives the MMO the power to make conservation orders for the purpose of furthering the conservation objectives of an MCZ in England. Orders will be used to control certain activities, and the clause sets out the circumstances in which they may be used. Local authorities have some limited powers to control similar activities, but they are more restricted in their geographical scope and are not usually exercisable for the purposes of nature conservation.

281. *Subsections (3)(a) to (f)* set out the activities which can be controlled through the making of conservation orders. These are primarily activities which are not controlled by other means (e.g. the new licensing regime). Research has shown that unregulated activities can threaten biodiversity, and that those of highest risk are motorised recreation, wildlife watching/ecotourism and land-based recreation. However, depending on the features present, other unregulated activities may threaten a site. The powers in this subsection are therefore drafted relatively widely to allow the MMO and Welsh Ministers to control any of the activities they may need to.

282. *Subsections (3)(e) and (f)*, include deliberate acts of damage. The intention is that conservation orders should control both deliberate acts of damage or disturbance and other identified activities which are considered problematic.

283. The purpose of *subsection (4)* is to allow regulators to control specific activities on the seashore adjacent to an MCZ, where necessary to protect that MCZ (e.g. to control noise disturbance from vehicles or music).

284. *Subsection (9)* provides flexibility to apply orders in different ways to different parts of an MCZ, at different times of year, and to different methods of carrying out an activity. This will enable orders to be focused on controlling particularly damaging methods, whilst avoiding capturing activities which pose less of a risk.



- (3) In this section “public authority” does not include—
  - (a) the Scottish Ministers;
  - (b) the Northern Ireland Ministers;
  - (c) the Northern Ireland departments.

*Orders for protection of zones etc: England*

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**113 Conservation orders for protection of MCZs in England**

- (1) The MMO may make one or more orders for the purpose of furthering the conservation objectives of an MCZ in England.
- (2) In this Part “English conservation order” means an order under subsection (1).
- (3) The provision that may be made by an English conservation order includes, in particular, provision—
  - (a) prohibiting or restricting entry into, or any movement or other activity within, the MCZ by persons or animals; 10
  - (b) prohibiting or restricting entry into, or any movement or other activity within, the MCZ by recreational vessels or (where appropriate) vehicles; 15
  - (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 of the MCZ;
  - (d) prohibiting or restricting the anchoring of any vessel within the MCZ; 20
  - (e) prohibiting or restricting the killing, taking, destruction, molestation or disturbance of animals or plants of any description in the MCZ;
  - (f) prohibiting or restricting the doing of anything in the MCZ which will interfere with the seabed or damage or disturb any object in the MCZ.
- (4) The provision that may be made by an English conservation order 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. 25
- (5) An English conservation order may be made subject to specified exceptions.
- (6) An English conservation order may be made so as to apply to any area within the English inshore region. 30
- (7) An English conservation order may provide for the MMO to issue permits authorising anything which would, apart from such a permit, be unlawful under the order.
- (8) The MMO may attach to a permit under subsection (7) any condition which the MMO thinks appropriate to attach to that permit. 35
- (9) An English conservation order may make different provision for different cases, including (in particular)—
  - (a) different parts of the MCZ;
  - (b) different times of the year; 40
  - (c) different means or methods of carrying out any activity.
- (10) In this section “specified” means specified in the order.

***Clause 114: Consultation etc regarding English conservation orders***

285. This clause requires the MMO to carry out public consultation before making a conservation order. *Subsection (2)* lists those bodies which must be sent a copy of the draft order, and *subsections (3) to (7)* require the draft order to be made available and published, with details of how and when to make representations.

286. *Subsection (8)* prevents a conservation order coming into force unless and until confirmed by the Secretary of State.

287. *Subsection (9)* disapplies the previous subsections of this clause where there is an urgent need for a conservation order to protect an MCZ. This has the affect of allowing a temporary order to be made (in accordance with clause 115) without the need for prior consultation, advertisement, publication or confirmation.

## 114 Consultation etc regarding English conservation orders

- (1) Before making an English conservation order, the MMO must comply with subsections (2) to (7).  
This is subject to subsection (9).
- (2) The MMO must send a copy of a draft of the order to each of the following— 5
- (a) Natural England;
  - (b) if the order would affect any vessel, the Secretary of State;
  - (c) if the order would affect any vehicle likely to be using any highway, the local highway authority (within the meaning of the Highways Act 1980) for that highway; 10
  - (d) if the order would affect any activity within the area of a harbour authority, that authority;
  - (e) if the order would affect any activity within the district of an inshore fisheries and conservation authority, that authority;
  - (f) if the order would affect any activity within the area of a county council, a district council or a London borough council, that council; 15
  - (g) if the order would affect any activity within the area of a local planning authority, that authority;
  - (h) if the order would affect any activity within six nautical miles of the baseline, the Environment Agency; 20
  - (i) if the order would affect any activity in Wales, the Welsh Ministers and the Countryside Council for Wales;
- and any other person who the MMO thinks may have a particular interest in the making of the order.
- (3) The MMO must place a copy of a draft of the order in such place or places as the MMO 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 order. 25
- (4) The MMO must provide a copy of a draft of the order to any person who requests one. 30
- (5) The MMO may charge a fee, not exceeding its costs, for providing a copy under subsection (4).
- (6) The MMO must publish notice of its proposal to make the order.
- (7) The notice under subsection (6) must—
- (a) be published in such manner as the MMO thinks is most likely to bring the proposal to the attention of those persons who are likely to be affected by the making of the order; 35
  - (b) state where the copy or copies of the draft order have been placed by the MMO in accordance with subsection (3);
  - (c) state the time within which representations about the order must be made to the MMO. 40
- (8) An English conservation order does not come into force unless confirmed by the Secretary of State; and an order which is confirmed comes into force—
- (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 it is confirmed. 45

**Clause 115: Urgent conservation orders**

288. This clause enables the MMO to make conservation orders (under clause 113) using an expedited procedure, and without having to comply with the usual consultation and publication requirements. This is only permitted where the MMO considers there is an urgent need to protect an MCZ (i.e. where delay in making an order could result in harm to the site).

289. *Subsection (1)* provides for such urgently-made orders to remain in force for a limited period (unless revoked or extended), which may not exceed 12 months. However, it may be extended beyond this for a maximum of six months, subject to the conditions in *subsection (8)*.

290. *Subsections (3) and (4)* require publication of a notice that an order has been made, to inform those likely to be affected. This is not a consultation, but ensures that relevant persons are informed of the order, and of the fact that representations can be made to the Secretary of State, who has the power to revoke the order. A further safeguard is provided by the requirement for the MMO to keep the need for the order under review under *subsection (6)*.

**Clause 116: English interim orders**

291. This clause enables the MMO to make interim orders to protect features where the MMO considers there may be reasons for the Secretary of State to designate an MCZ and where there is an urgent need to protect the feature of interest. Orders under this section are essentially conservation orders made urgently except they apply to areas which are not yet designated as MCZs.

292. *Subsection (4)* applies the provisions in *subsections (3) to (10)* of clause 122 to interim orders in a similar way as they apply to conservation orders. As with urgent conservation orders, interim orders require no prior consultation or confirmation.

293. *Subsection (5)* provides for an interim order to remain in force for a limited period not exceeding 12 months (unless revoked or extended). Interim orders may be extended in limited circumstances, either by means of a further order made by the MMO under *subsection (10)*, or by means of a further order made by the Secretary of State under *subsection (11)*, thereby allowing for continued protection of the area until its status as an MCZ is settled (at which point a conservation order for long-term protection could be put in place).

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

**115 Urgent conservation orders**

- (1) Where the MMO thinks that there is an urgent need to protect an MCZ it may make an English conservation order which— 5  
    (a) comes into force on a date specified in the order, and  
    (b) remains in force (unless revoked) for such period, not exceeding 12 months, as is specified in the order.
- (2) In this Part “urgent conservation order” means an order made in accordance with this section. 10
- (3) The MMO must publish notice of the making of an urgent conservation order.
- (4) The notice under subsection (3) must— 15  
    (a) be published in such manner as the MMO thinks is most likely to bring the order to the attention of all persons who are likely to be affected by the making of it;  
    (b) state that a copy of the order may be inspected at the offices of the MMO;  
    (c) state that Secretary of State has power to revoke the order and that any person affected by the making of the order may make representations to the Secretary of State. 20
- (5) The Secretary of State may revoke an urgent conservation order.
- (6) The MMO must keep under review the need for an urgent conservation order to remain in force.
- (7) The MMO may, by further order, provide that an urgent conservation order is to remain in force for such period beyond that specified under subsection (1)(b) as is specified in the further order. 25
- (8) The MMO may not make an order under subsection (7) unless— 30  
    (a) it intends to make an English conservation order in respect of the MCZ in accordance with section 114 (“the permanent order”), and  
    (b) it has, in respect of the permanent order, complied with subsection (6) of that section.
- (9) A period specified under subsection (7) may not exceed 6 months.

**116 English interim orders**

- (1) The MMO may make one or more orders for the purpose of protecting any feature in an area in England if the MMO thinks— 35  
    (a) that there are or may be reasons for the Secretary of State to consider whether to designate the area as an MCZ, and  
    (b) that there is an urgent need to protect the feature.
- (2) In this Part “English interim order” means an order under subsection (1).
- (3) An English interim order must contain a description of the boundaries of the area to which it applies (which must be no greater than is necessary for the purpose of protecting the feature in question). 40

***Clause 117: Further provision as to English conservation orders and interim orders***

294. This clause set out administrative and notification requirements in relation to English conservation orders (whether made urgently or not), English interim orders and any subsequent orders to extend the period of an urgent conservation order or interim order.

295. *Subsection (6)* provides for the requirements in *subsections (3) and (4)* to apply to ordinary conservation orders (which require confirmation by the Secretary of State) only after they have been confirmed. *Subsection (7)* allows for orders to be amended or revoked by a further order.

- (4) Subsections (3) to (10) of section 113 apply to an English interim order as they apply to an English conservation order, except that any reference to an MCZ is to be read as a reference to the area to which the interim order applies.
  - (5) An English interim order –
    - (a) comes into force on a date specified in the order, and 5
    - (b) remains in force (unless revoked) for such period, not exceeding 12 months, as is specified in the order.
  - (6) The MMO must publish notice of the making of an English interim order.
  - (7) The notice under subsection (6) must –
    - (a) be published in such manner as the MMO thinks is most likely to bring the order to the attention of all persons who are likely to be affected by the making of it; 10
    - (b) state that a copy of the order may be inspected at the offices of the MMO;
    - (c) state that Secretary of State has power to revoke the order and that any person affected by the making of the order may make representations to the Secretary of State. 15
  - (8) The Secretary of State may revoke an English interim order.
  - (9) The MMO must keep under review the need for an English interim order to remain in force. 20
  - (10) The MMO may by further order extend the period for which an English interim order remains in force; but an English interim order may not by virtue of this subsection remain in force for an aggregate period exceeding 12 months.
  - (11) If, while an English interim order is in force, the Secretary of State gives notice of a proposal to make an order under section 105 designating any part of the area in question as an MCZ, the Secretary of State may direct that the interim order is to remain in force –
    - (a) until the Secretary of State has decided whether to make the order under section 105; 25
    - (b) if the Secretary of State decides to make such an order, until that order comes into effect. 30
  - (12) The Secretary of State must publish a direction under subsection (11) in such manner as the Secretary of State thinks is most likely to bring the direction to the attention of all persons who are likely to be affected by the making of it.
  - (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. 35
- 117 Further provision as to English conservation orders and interim orders**
- (1) This section applies to any order made under section 113, 115 or 116.
  - (2) An order to which this section applies is to be made under the common seal of the MMO. 40
  - (3) The MMO must send a copy of any order to which this section applies to each of the following –
    - (a) Natural England;
    - (b) the Secretary of State;

***Clause 118: Conservation orders for protection of MCZs in Wales***

296. *Subsection (1)* gives Welsh Ministers the power to make conservation orders for the purpose of furthering the conservation objectives of an MCZ in Wales.

297. *Subsection (3)* applies subsections (3) to (5) of clause 113 to conservation orders made by Welsh Ministers so that the activities which can be controlled by means of conservation orders in Wales are the same as those which can be controlled by conservation orders in England.

298. *Subsection (3)* also applies subsections (9) and (10) of clause 113 to conservation orders made by the Welsh Ministers, thereby providing the flexibility to specify exceptions to orders, to apply orders in different ways to different parts of an MCZ, to different times of year, and to different methods of carrying out an activity. This will enable orders to focus on controlling particularly damaging methods, whilst avoiding capturing activities which pose less of a risk.

299. *Subsection (5)* enables the Welsh Ministers to issue permits authorising anything which would otherwise be unlawful under a conservation order and *subsection (6)* enables the Welsh Ministers to attach conditions to any such permit.

300. *Subsection (7)* enables the Welsh Ministers to make one order which relates to two or more MCZs.



- (c) if the order affects any vehicle likely to be using any highway, the local highway authority (within the meaning of the Highways Act 1980) for that highway;
  - (d) if the order affects any activity within the area of a harbour authority, that authority; 5
  - (e) if the order affects any activity within the district of an inshore fisheries and conservation authority, that authority;
  - (f) if the order affects any activity within the area of a local planning authority, that authority;
  - (g) if the order affects any activity within the area of a county council, a district council or a London borough council, that council; 10
  - (h) if the order is made in respect of an MCZ which adjoins Wales, or if the order is for any other reason likely to affect any activity in Wales, the Welsh Ministers and the Countryside Council for Wales.
- (4) The MMO must – 15
- (a) make a copy of any order to which this section applies available for inspection at its offices at all reasonable hours without payment;
  - (b) provide a copy of any such order to any person who requests one.
- (5) The MMO may charge a fee, not exceeding its costs, for providing a copy under subsection (4)(b). 20
- (6) In the case of a conservation order made in accordance with section 114, subsections (3) and (4) above apply only after the order has been confirmed under section 114(8).
- (7) An order to which this section applies may be amended or revoked by a further order. 25

*Orders for protection of zones etc: Wales*

**118 Conservation orders for protection of MCZs in Wales**

- (1) The Welsh Ministers may make one or more orders for the purpose of furthering the conservation objectives of an MCZ in Wales.
- (2) In this Part “Welsh conservation order” means an order under subsection (1). 30
- (3) Subsections (3) to (5), (9) and (10) of section 113 apply in relation to a Welsh conservation order as they apply in relation to an English conservation order.
- (4) A Welsh conservation order may be made so as to apply to any area within the Welsh inshore region.
- (5) A Welsh conservation order may provide for the Welsh Ministers to issue permits authorising anything which would, apart from such a permit, be unlawful under the order. 35
- (6) The Welsh Ministers may attach to a permit under subsection (5) any condition which the Welsh Ministers think appropriate to attach to that permit.
- (7) A Welsh conservation order may be made in respect of more than one MCZ; and in relation to any order so made any reference in this section (or in section 113 as applied by this section) to the MCZ is a reference to any or all of the MCZs in respect of which the order is made. 40

***Clause 119: Consultation etc regarding Welsh conservation orders***

301. *Subsection (1)* requires Welsh Ministers to consult the Secretary of State and, in certain cases, a harbour authority before making a conservation order and enables the Welsh Ministers to consult other persons about the making of conservation orders.

302. *Subsection (3)* disapplies the previous subsections of this clause where there is an urgent need to protect an MCZ. This has the effect of allowing an order to be made urgently without the need for prior consultation.

***Clause 120: Welsh interim orders***

303. This clause enables Welsh Ministers to make interim orders to protect features where there are or may be reasons to designate an MCZ and where there is an urgent need to protect the feature. Orders under this section are essentially conservation orders made urgently except they apply to areas which are not yet designated as MCZs.

304. *Subsection (3)* requires an interim order to identify the boundaries of the area to which the order applies.

305. *Subsection (4)* applies subsections (3) to (6) of clause 118 to interim orders and consequently an interim order will be able to make any provision which could be made in an ordinary conservation order.

306. *Subsection (5)* provides for an interim order to remain in force for a limited period not exceeding 12 months (unless revoked or extended). Interim orders may be extended by means of a further order made by Welsh Ministers under *subsection (9)*, thereby allowing for continued protection of the area until its status as an MCZ is settled (at which point a conservation order for long-term protection could be put in place).

307. Interim orders, being urgent by nature, require no prior consultation, but *subsection (6)* requires the Welsh Ministers to publish notice of the making of an interim order in Wales and *subsection (7)* sets out the matters to be addressed in the notification.

308. *Subsection (8)* requires the Welsh Ministers to keep under review the need for an interim order to remain in force.

## 119 Consultation etc regarding Welsh conservation orders

- (1) Before making a Welsh conservation order, the Welsh Ministers must consult—
  - (a) the Secretary of State,
  - (b) if the order would affect any activity within the area of a harbour authority, that authority,  
and any other person whom they think fit to consult.5
- (2) Where the Welsh Ministers think that there is an urgent need to make a Welsh conservation order in order to protect an MCZ—
  - (a) subsection (1) does not apply, and
  - (b) the Welsh Ministers must comply with subsections (3) to (5).10
- (3) The Welsh Ministers must, after making the Welsh conservation order, send a copy of it to—
  - (a) the Secretary of State,
  - (b) if the order affects any activity within the area of a harbour authority, that authority.15
- (4) The Welsh Ministers must publish notice of the making the order.
- (5) The notice under subsection (4) must—
  - (a) be published in such manner as the Welsh Ministers think is most likely to bring the order to the attention of all persons who are likely to be affected by the making of it;
  - (b) give an address at which a copy of the order may be inspected;
  - (c) state that any person affected by the making of the order may make representations to the Welsh Ministers.20

## 120 Welsh interim orders

- (1) The Welsh Ministers may make one or more orders for the purpose of protecting any feature in an area in Wales if the Ministers think—
  - (a) that there are or may be reasons to consider whether to designate the area as an MCZ, and
  - (b) that there is an urgent need to protect the feature.30
- (2) In this Part “Welsh interim order” means an order under subsection (1).
- (3) A Welsh interim order must contain a description of the boundaries of the area to which it applies (which must be no greater than is necessary for the purpose of protecting the feature in question).
- (4) Subsections (3) to (6) of section 118 apply to a Welsh interim order as they apply to a Welsh conservation order, except that any reference to an MCZ is to be read as a reference to the area to which the interim order applies. 35
- (5) A Welsh interim order—
  - (a) comes into force on a date specified in the order, and
  - (b) remains in force (unless revoked) for such period, not exceeding 12 months, as is specified in the order.40
- (6) The Welsh Ministers must publish notice of the making of a Welsh interim order.

***Clause 121: Further provision as to Welsh conservation orders and interim orders***

309. This clause set out administrative and notification requirements in relation to Welsh conservation orders (whether made urgently or not) and interim orders.

310. *Subsection (2)* sets out those persons to whom the Welsh Ministers must send a copy of orders made by them and *subsection (3)* requires the Welsh Ministers to make copies of conservation and interim orders available for inspection free of charge at all reasonable hours, and to provide copies of such orders to any person who requests one.

311. *Subsection (4)* allows conservation and interim orders to be amended or revoked by a further order.

***Clause 122: Exceptions to requirements in conservation orders and interim orders***

312. This clause lists the activities which are exempt from the requirements of conservation orders and interim orders, either because the potential impacts on the MCZ would be better addressed through other means (e.g. the duties on public authorities) or for reasons of health and safety.

- (7) The notice under subsection (6) must –
  - (a) be published in such manner as the Welsh Ministers think is most likely to bring the order to the attention of all persons who are likely to be affected by the making of it;
  - (b) give an address at which a copy of the order may be inspected; 5
  - (c) state that any person affected by the making of the order may make representations to the Welsh Ministers.
- (8) The Welsh Ministers must keep under review the need for a Welsh interim order to remain in force.
- (9) The Welsh Ministers may by further order extend the period for which a Welsh interim order remains in force. 10
- (10) 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.

### **121 Further provision as to Welsh conservation orders and interim orders**

- (1) This section applies to any order made under section 118 or 120. 15
- (2) The Welsh Ministers must send a copy of any order to which this section applies to each of the following –
  - (a) the Countryside Council for Wales;
  - (b) the Secretary of State;
  - (c) if the order affects any vehicle likely to be using any highway, the local highway authority (within the meaning of the Highways Act 1980) for that highway; 20
  - (d) if the order affects any activity within the area of a harbour authority, that authority;
  - (e) if the order affects any activity within the district of an inshore fisheries and conservation authority, that authority; 25
  - (f) if the order affects any activity within the area of a local planning authority, that authority;
  - (g) if the order affects any activity within the area of a county council or a county borough council, that council; 30
  - (h) if the order is made in respect of an MCZ which adjoins England, or if the order is for any other reason likely to affect any activity in England, Natural England.
- (3) The Welsh Ministers must –
  - (a) make a copy of any order to which this section applies available for inspection at such place as they think fit for that purpose at all reasonable hours without payment; 35
  - (b) provide a copy of any such order to any person who requests one.
- (4) An order to which this section applies may be amended or revoked by a further order. 40

#### *General provisions as to orders and offences*

### **122 Exceptions to requirements in conservation orders and interim orders**

- (1) Nothing in a conservation order or an interim order applies to –

***Clause 123: Offences against orders***

313. This clause sets out the consequences of breaching a conservation order or an interim order made by the MMO or Welsh Ministers under clauses 118 to 121.

314. Under *subsection (2)*, an order may make a breach of any of its provisions a criminal offence. The MMO and Welsh Ministers will therefore have discretion to decide, when making an order, whether a breach of an order, or part of it, should constitute a criminal offence. *Subsections (3) and (4)* provide for an offender to be fined up to £50,000 on summary conviction, or an unlimited amount on indictment.

***Clause 124: Offences by directors, partners, etc; Partnerships: offences and penalties***

315. These clauses explain where individual liability as well as corporate liability occurs and the due process that applies in the case of an offence committed by a partnership.

- (a) anything done in accordance with a permit issued under section 113(7) or 118(5);
- (b) any activity which is expressly authorised by an authorisation granted in accordance with section 110, and anything done which is necessarily incidental to such an activity; 5
- (c) anything done in accordance with section 109(2) by a public authority;
- (d) anything done which is necessary in the interests of the prevention or detection of crime or of national security, or which is necessary for securing public health;
- (e) anything done which is necessary for the purpose of securing the safety of any vessel, or of preventing damage to any vessel or cargo, from any danger which could not have been foreseen or anticipated; 10
- (f) anything done for the purpose of saving life.

### 123 Offences against orders

- (1) This section applies to— 15
  - (a) any conservation order;
  - (b) any interim order.
- (2) Any order to which this section applies may provide, in relation to any provision of the order, that a person contravening the provision— 20
  - (a) is guilty of an offence, and
  - (b) is punishable in accordance with subsection (3) or (4) (as specified in the order).
- (3) A person punishable in accordance with this subsection is liable on summary conviction to a fine not exceeding such amount (not exceeding £50,000) as is specified in the order. 25
- (4) A person punishable in accordance with this subsection is liable—
  - (a) on summary conviction to a fine not exceeding £50,000;
  - (b) on conviction on indictment to a fine.

### 124 Offences by directors, partners, etc

- (1) Where a conservation offence has been committed by a body corporate and it is proved that the offence— 30
  - (a) has been committed with the consent or connivance of a person falling within subsection (2), or
  - (b) is attributable to any neglect on the part of such a person, 35that person (as well as the body corporate) is guilty of that offence and liable to be proceeded against and punished accordingly.
- (2) The persons are—
  - (a) a director, manager, secretary or similar officer of the body corporate;
  - (b) any person who was purporting to act in such a capacity.
- (3) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member, in connection with that management, as if the member were a director of the body corporate. 40
- (4) Where a conservation offence has been committed by a partnership and it is proved that the offence—

***Clause 126: Further provision about offences***

316. *Subsection (1)* ensures that magistrates' courts have jurisdiction over offences that are committed at sea, by treating them as having been committed in England and Wales. The consent of the Secretary of State is not required for proceedings against foreign citizens by virtue of *subsection (2)*.

***Clause 127: Fixed monetary penalties***

317. This clause enables the Secretary of State to make an order which confers on the MMO the power to issue a fixed monetary penalty to a person in relation to an offence under a conservation order or interim order. In Wales, Welsh Ministers will be able to make equivalent provision in relation to offences in conservation orders made by them.

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

319. The amount of a fixed monetary penalty will be specified by the order. Different provision may be made for different cases. For example, the level of the fixed monetary penalty could differ according to whether the person liable is an individual or a body corporate. The enforcement authority will not be able to exercise discretion in determining the amount of the fixed monetary penalty in any individual case.



- (a) has been committed with the consent or connivance of a partner or a person purporting to act as a partner, or
  - (b) is attributable to any neglect on the part of such a person,
- that person (as well as the partnership) is guilty of that offence and liable to be proceeded against and punished accordingly. 5

**125 Partnerships: offences and penalties**

- (1) Proceedings for a conservation offence alleged to have been committed by a partnership shall be brought in the name of the partnership (and not in that of any of the partners). 10
- (2) Rules of court relating to the service of documents shall have effect as if the partnership were a body corporate. 10
- (3) In proceedings for a conservation offence brought against a partnership, section 33 of the Criminal Justice Act 1925 (c. 86) and Schedule 3 to the Magistrates’ Courts Act 1980 (c. 43) apply as they apply in relation to a body corporate. 15
- (4) Any fine, and any fixed monetary penalty, imposed on a partnership in respect of a conservation offence is to be paid out of the partnership assets.
- (5) Subsection (1) is not to be read as prejudicing any liability of a partner under section 124(4).

**126 Further provision about offences** 20

- (1) Proceedings for a conservation offence may be taken, and the offence may for all incidental purposes be treated as having been committed, in any part of England and Wales.
- (2) Section 3 of the Territorial Waters Jurisdiction Act 1878 (c. 73) (consents to prosecutions of offences committed on the open sea by persons who are not British citizens) does not apply to any proceedings for a conservation offence. 25

*Enforcement*

**127 Fixed monetary penalties**

- (1) The appropriate authority for any area may by order make provision to confer on the appropriate enforcement authority for that area the power by notice to impose on a person in relation to a conservation offence a fixed monetary penalty. 30
- (2) Provision under this section may only confer such a power in relation to a case where the enforcement authority is satisfied beyond reasonable doubt that the person has committed the offence. 35
- (3) For the purposes of this Part a “fixed monetary penalty” is a requirement to pay to the enforcement authority a penalty of a prescribed amount.
- (4) The amount of the fixed monetary penalty that may be imposed in relation to an offence may not exceed the maximum amount of the fine that may be imposed on summary conviction for that offence. 40

***Clause 128: Fixed monetary penalties: procedure***

320. Clause 128 specifies certain minimum requirements that the Secretary of State and Welsh Ministers must ensure that any fixed monetary penalty regime will include. In particular, when imposing the penalty the enforcing authority must be required to issue a notice of intent to the person setting out the information specified in *subsection (3)* of this clause, and providing the person with an opportunity to discharge their liability by payment of a prescribed sum. Alternatively a person can make representations to the authority, in accordance with *subsection (2)(c)(i)*. Having considered those representations, the authority may decide 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.

321. *Subsection (6)* sets out the minimum grounds for appeal that must be available.

- (5) In this section “prescribed” means prescribed in an order made under this section.

## 128 Fixed monetary penalties: procedure

- (1) Provision under section 127 must secure the results in subsection (2).
- (2) Those results are that – 5
- (a) where an enforcement authority proposes to impose a fixed monetary penalty on a person, the authority must serve on that person a notice of what is proposed (a “notice of intent”) which complies with subsection (3),
  - (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), 10
  - (c) if the person does not so discharge liability – 15
    - (i) the person may make written representations and objections to the enforcement authority in relation to the proposed imposition of the fixed monetary penalty, and
    - (ii) the enforcement authority must at the end of the period for making representations and objections decide whether to impose the fixed monetary penalty, 20
  - (d) where the enforcement authority decides to impose the fixed monetary penalty, the notice imposing it (“the final notice”) complies with subsection (5), and
  - (e) the person on whom a fixed monetary penalty is imposed may appeal against the decision to impose it. 25
- (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),
  - (c) the right to make representations and objections, 30
  - (d) the circumstances in which the enforcement authority may not impose the fixed monetary penalty,
  - (e) the period within which liability to the fixed monetary penalty may be discharged, which shall not exceed the period of 28 days beginning with the day on which the notice of intent was received, and 35
  - (f) the period within which representations and objections may be made, which shall not exceed the period of 28 days beginning with the day on which the notice of intent was received.
- (4) Provision pursuant to subsection (2)(c)(ii) – 40
- (a) must secure that the enforcement authority may not decide to impose a fixed monetary penalty on a person where the authority is satisfied that the person would not, by reason of any defence, be liable to be convicted of the offence in relation to which it was imposed, and
  - (b) may include provision for other circumstances in which the enforcement authority may not decide to impose a fixed monetary penalty. 45
- (5) To comply with this subsection the final notice referred to in subsection (2)(d) must include information as to –

***Clause 129: Enforcement undertakings***

322. Clause 129 enables the Secretary of State to make an order allowing the MMO to accept "enforcement undertakings" offered by a person. An enforcement undertaking is an undertaking – that is, a promise - by a person to take certain actions. The MMO will not be able to impose enforcement undertakings. Welsh Ministers will be able to make equivalent provision, in relation to offences under conservation orders made by them.

323. The enforcement undertakings will only be capable of being accepted when the regulator has reasonable grounds for suspecting that an act or omission of the person constitutes an offence under a conservation order or interim order. Once that enforcement undertaking is accepted, the person may not be prosecuted for the act or omission or have a fixed monetary penalty or discretionary requirement imposed on them, unless they fail or are deemed to have failed to comply with the undertakings. In that case the enforcement authority will be able to prosecute the person for the original offence or impose a fixed monetary penalty or discretionary requirement.

324. The scope of what actions could be specified in an undertaking includes various compensatory and mitigation measures, and take account of the fact that it may, in the marine environment, be difficult to establish the exact condition which existed before the offence occurred or the precise nature of the harm caused by the offence. Examples of actions which a person might promise to engage in as part of an undertaking include:

- to pay for leaflets, a mail shot or public notices to educate others of the vulnerability of a site (so that they are alerted to the issue, and to give the site an opportunity to recover);
- to participate in a training event;
- to contribute towards the costs of site condition monitoring or survey work undertaken by the MMO or others as a result of the offence; or
- to pay the costs of compensating other people for not undertaking certain activities elsewhere (e.g. the Secretary of State may decide to extend the boundaries of an MCZ to bring in an additional area of habitat to compensate for the harm caused by the offender. This might mean that people carrying out activities in the extension area will be unable to do so in future, and therefore the offender might agree to compensate these third parties).

- (a) the grounds for imposing the penalty,
  - (b) how payment may be made,
  - (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 which a person may appeal against a decision of the enforcement authority 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 127.
- 129 Enforcement undertakings**
- (1) The appropriate authority for any area may by order make provision—
- (a) to enable the appropriate enforcement authority for that area to accept an enforcement undertaking from a person in a case where the enforcement authority has reasonable grounds to suspect that the person has committed a conservation offence, and
  - (b) for the acceptance of the undertaking to have the consequences set out in subsection (4).
- (2) For the purposes of this Part, an “enforcement undertaking” is an undertaking to take such action as may be specified in the undertaking within such period as may be so specified.
- (3) The action specified in an enforcement undertaking must be—
- (a) action to secure that the offence does not continue or recur,
  - (b) action to secure that the position is, so far as possible, restored to what it would have been if the offence had not been committed,
  - (c) action to secure that, where the position cannot be so restored, compensation is made for any harm caused by the commission of the offence,
  - (d) action (including the payment of a sum of money) to benefit any person affected by the offence, or
  - (e) action of a prescribed description.
- (4) The consequences in this subsection are that, unless the person from whom the undertaking is accepted has failed to comply with the undertaking or any part of it—
- (a) that person may not at any time be convicted of the offence in question in respect of the act or omission to which the undertaking relates,
  - (b) the enforcement authority may not impose on that person any fixed monetary penalty which it would otherwise have power to impose by virtue of section 127 in respect of that act or omission.
- (5) Provision under this section may in particular include provision—
- (a) as to the procedure for entering into an undertaking;
  - (b) as to the terms of an undertaking;

325. *Subsection (5)* of this clause enables the inclusion of further provisions in an order enabling the acceptance of enforcement undertakings, such as the procedure for entering into the enforcement undertaking, certification by the enforcement authority that the undertaking has been complied with and the consequences for a person providing misleading or inaccurate information.

326. There is no right of appeal against the enforcement undertaking itself, as the undertaking is a voluntary offering. There is, however, a right of appeal against an enforcement authority's refusal to certify that the undertaking has been completed.

***Clause 130: Further provision about civil sanctions***

327. Schedule 7 sets out further provision about the civil sanctions that may be imposed under this Part.

***Clause 131: Hearings by appropriate authority***

328. This clause makes provision for Ministers to hold hearings before deciding whether to make an order under clause 105 to designate, amend or revoke an MCZ, or in respect of the confirmation or revocation of conservation orders.

329. *Subsection (4)* gives Ministers discretion to give any person the opportunity of being heard by an Inspector or other appointed person, and of submitting written representations. *Subsection (5)* allows Ministers to make regulations setting out the procedures to be followed, including the award of costs (e.g. where one party incurs additional costs as a result of the unreasonable behaviour of another party).

- (c) as to publication of an undertaking by an enforcement authority;
  - (d) as to variation of an undertaking;
  - (e) as to circumstances in which a person may be regarded as having complied with an undertaking;
  - (f) as to monitoring by an enforcement authority of compliance with an undertaking; 5
  - (g) as to certification by an enforcement authority that an undertaking has been complied with;
  - (h) for appeals against refusal to give such certification;
  - (i) in a case where a person has given inaccurate, misleading or incomplete information in relation to the undertaking, for that person to be regarded as not having complied with it; 10
  - (j) in a case where a person has complied partly but not fully with an undertaking, for that part-compliance to be taken into account in the imposition of any criminal or other sanction on the person; 15
  - (k) for the purpose of enabling criminal proceedings to be instituted against a person in respect of the offence to which the undertaking relates in the event of breach of an undertaking or any part of it, to extend any period within which those proceedings may be instituted.
- (6) In this section “prescribed” means prescribed in an order made under this section. 20

### **130 Further provision about civil sanctions**

Schedule 7 (which makes further provision about civil sanctions) has effect.

#### *Hearings by appropriate authority*

- 131 Hearings by appropriate authority** 25
- (1) This section applies where the appropriate authority has the function of deciding whether to make an order under section 105 designating an area as an MCZ.
  - (2) This section also applies where the Secretary of State has the function of –
    - (a) deciding (under section 114(8)) whether to confirm an English conservation order; 30
    - (b) deciding (under section 115(5)) whether to revoke an urgent conservation order;
    - (c) deciding (under section 116(8)) whether to revoke an English interim order. 35
  - (3) This section also applies where the Welsh Ministers have the function of –
    - (a) deciding (under section 118(1)) whether to make a Welsh conservation order;
    - (b) deciding (under section 120(1)) whether to make a Welsh interim order.
  - (4) The Secretary of State or (as the case may be) the Welsh Ministers may, before making that decision, give to any person the opportunity of – 40
    - (a) appearing before and being heard by a person appointed for that purpose;

***Clause 132: Interpretation of this Part***

330. A number of definitions are provided for words or expressions used in this Part.



- (b) providing written representations to such a person.
- (5) The Secretary of State or (as the case may be) the Welsh Ministers may make regulations providing for the procedure to be followed (including decisions as to costs) at hearings held under subsection (4).
- (6) A person appointed under subsection (4) must make a report to the Secretary of State or (as the case may be) the Welsh Ministers of any oral or written representations made under that subsection. 5

*Interpretation*

**132 Interpretation of this Part**

- (1) In this Part – 10
- “appropriate authority” has the meaning given by section 105(5);
- “the appropriate enforcement authority” means, in relation to any area, any authority which has a function (whether or not statutory) of taking any action with a view to or in connection with the imposition of any sanction, criminal or otherwise, in a case where an offence under this Part is committed in that area; 15
- “the appropriate statutory conservation body” means –
- (a) in respect of an area in England, Natural England,
- (b) in respect of an area in Wales, the Countryside Council for Wales, 20
- (c) in respect of an area outside the seaward limits of the territorial sea, the Joint Nature Conservation Committee;
- “conservation order” means an order made under section 113(1) or 118(1);
- “conservation offence” means an offence under a provision of a conservation order or interim order (made by virtue of section 123); 25
- “England” includes the English inshore region;
- “English conservation order” means an order made under section 113(1);
- “English interim order” means an order made under section 116(1);
- “harbour authority” has the meaning given by section 57 of the Harbours Act 1964 (c. 40); 30
- “interim order” means an order made under section 116(1) or 120(1);
- “local planning authority” has the same meaning as in the Town and Country Planning Act 1990 (c. 8);
- “MCZ” means a marine conservation zone designated by an order under section 105; 35
- “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;
- “recreational vessel” means any vessel designed or used for any recreational or sporting purpose (whether or not as part of a commercial enterprise); 40
- “sea” has the meaning given by section 298(1), except that it does not include any waters upstream of the fresh-water limit of estuarial waters;
- “seashore” means – 45
- (a) the foreshore, that is to say, land which is covered and uncovered by the ordinary movement of the tide, and

***Clause 133: Marine boundaries of sites of special scientific interest***

331. This clause amends section 28 of the Wildlife and Countryside Act 1981 (c. 69) in order to define the circumstances in which Sites of Special Scientific Interest (SSSIs) may extend below Mean Low Water Mark.

332. *Subsection (3)* inserts new subsections (1A) to (1D) into section 28, thereby allowing the statutory nature conservation bodies (Natural England and the Countryside Council for Wales) to notify any land (which includes the water column) as an SSSI where it:

- lies above mean low water mark; or
- is covered by estuarial waters; or
- is land defined by new subsection (1B).

333. New subsection (1B) restricts notification of an SSSI below mean low water mark to circumstances where one or more of the conditions in new subsection (1C) are met. Essentially this is where there are conservation or practicable reasons for extending the SSSI into the subtidal area.

334. *Subsection (4)* inserts new subsection (9A) into clause 28, which defines ‘estuarial waters’ by reference to the EU Water Framework Directive.

335. A number of existing SSSIs include land below mean low water mark (e.g. The Wash) and *subsection (5)* safeguards such notifications.

- (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;
  - “urgent conservation order” means an English conservation order made in accordance with section 115; 5
  - “vehicles” includes –
    - (a) bicycles and other non-motorised forms of transport, and
    - (b) hovercraft;
  - “vessels” includes – 10
    - (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;
  - “Wales” includes the Welsh inshore region; 15
  - “Welsh conservation order” means an order made under section 118(1);
  - “Welsh interim order” means an order made under section 120(1).
- (2) In the definition of “sea” in subsection (1) “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). 20

## PART 5

### OTHER CONSERVATION SITES

*Sites of special scientific interest* 25

#### 133 Marine boundaries of sites of special scientific interest

- (1) Section 28 of the Wildlife and Countryside Act 1981 (c. 69) (sites of special scientific interest) is amended as follows.
- (2) In subsection (1)(a) after “the local planning authority” insert “(if any)”.
- (3) After subsection (1) insert – 30
  - “(1A) The reference in subsection (1) to land includes –
    - (a) any land lying above mean low water mark;
    - (b) any land covered by estuarial waters.
  - (1B) If an area of land to which a notification relates includes land falling within subsection (1A)(a) (area A), it may also include land lying below mean low water mark (area B) if – 35
    - (a) area B adjoins area A, and
    - (b) any of the conditions in subsection (1C) is satisfied.
  - (1C) The conditions are – 40
    - (a) that the flora, fauna or features leading to the notification of area A is or are also present in area B;

***Clause 134: Power of Secretary of State to call in subtidal notifications of SSSIs***

336. This clause amends section 28 of the Wildlife and Countryside Act 1981 (c. 69), and inserts a new clause 28ZA, giving Ministers the power to make directions in connection with the notification of SSSIs in the subtidal area. (i.e., where the land lies below mean low water mark and outside estuarial waters).

337. *Subsection (2)* inserts new section 28ZA into the 1981 Act. It prevents the statutory nature conservation bodies confirming a subtidal notification until 21 days after giving notice to the relevant Minister (who can extend the period by giving notice). *Subsection (5)* of the new section 28ZA enables Ministers to direct the conservation body on whether or not any of the area should be included in the notification if confirmed, but Ministers can also leave the decision to the discretion of the conservation body.

- 
- (b) that the notification of area A is by reason of any flora or fauna which are dependent (wholly or in part) on anything which takes place in, or is present in, area B;
- (c) that, without the inclusion of area B, the identification of the boundary of the land notified (either in the notification or on the ground for the purposes of exercising functions in relation to it) would be impossible or impracticable. 5
- (1D) The Secretary of State may issue guidance to Natural England about the exercise of the power under subsection (1B) to include in a notification land lying below mean low water mark.”. 10
- (4) After subsection (9) insert –
- “(9A) For the purposes of this section “estuarial waters” are 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).”.
- (5) No notification under subsection (1) of that section made before the coming into force of this section shall be questioned in legal proceedings on the ground that it includes land lying below mean low water mark. 20
- 134 Power of Secretary of State to call in subtidal notifications of SSSIs**
- (1) In section 28(5) of the Wildlife and Countryside Act 1981 (c. 69) (confirmation of notification of SSSIs) after paragraph (b) insert –
- “In the case of a notification including land falling within subsection (1B), this subsection is subject to section 28ZA(4) and (9).”.
- (2) After section 28 of that Act insert –
- “28ZA Power of Secretary of State to call in subtidal notifications**
- (1) This section applies in relation to any notification under section 28(1) which includes land falling within section 28(1B) (“the subtidal land”).
- (2) Natural England must not give notice under section 28(5)(b) confirming the notification unless, at least 21 days before doing so, they have given notice of their intention to the Secretary of State. 30
- (3) At any time before the notification is confirmed the Secretary of State may give notice to Natural England that the Secretary of State is considering whether to give a direction under subsection (5) regarding the subtidal land. 35
- (4) If the Secretary of State gives notice under subsection (3), Natural England must not give notice under section 28(5) until the Secretary of State has given a direction under subsection (5).
- (5) The Secretary of State may direct – 40
- (a) that the notification (if confirmed) must include all of the subtidal land;
- (b) that the notification (if confirmed) must not include any of the subtidal land;

***Clause 135: Denotification of SSSI on designation of area as MCZ***

338. This clause amends section 28D of the Wildlife and Countryside Act 1981 (c. 69) which allows the statutory nature conservation bodies to denotify areas of land as an SSSI. An area of land can currently be denotified, under clause 28D, only when the conservation body is of the opinion that the land is not of special interest. The amendment made by *subsection (2)* will, in addition, allow the conservation bodies to denotify land where it is of the opinion that the land should no longer be notified because it has instead been designated as (or as part of) an MCZ.

***Clause 136: Marine boundaries of national nature reserves***

339. This clause amends section 35 of the Wildlife and Countryside Act 1981 (c. 69) in order to clarify the circumstances in which national nature reserves (NNRs) may extend beyond mean low water mark or estuarial waters. It clarifies the existing power of declaration.

340. The clause has similar in its effect to clause 133, and inserts new subsections (1A), (1B), (1C) and (1D), and inserts an additional definition into subsection (5) of the Act. *Subsection (4)* safeguards NNR declarations made by the statutory nature conservation bodies before commencement of this section.

- (c) that the notification (if confirmed) must, or must not, include such part of that land as is specified in the direction;
      - (d) that the decision whether the notification (if confirmed) should include the subtidal land is to be taken by Natural England.
    - (6) The Secretary of State may, before deciding whether to give a direction under subsection (5), give to any person the opportunity of –
      - (a) appearing before and being heard by a person appointed by the Secretary of State for that purpose;
      - (b) providing written representations to such a person.
    - (7) The Secretary of State may make regulations providing for the procedure to be followed (including decisions as to costs) at hearings held under subsection (6).
    - (8) A person appointed under subsection (6) must make a report to the Secretary of State of any oral or written representations made under that subsection.
    - (9) If the Secretary of State gives a direction under subsection (5), Natural England must give notice under section 28(5)(a) or (b), in accordance with that direction, within the period of three months beginning with the date on which the direction is received by them.”.
- 135 Denotification of SSSI on designation of area as MCZ**
- (1) Section 28D of the Wildlife and Countryside Act 1981 (c. 69) (denotification) is amended as follows.
  - (2) In subsection (1) before “is not of special interest” insert “(a)” and after “mentioned in section 28(1),” insert “or
    - (b) should no longer be the subject of a notification under section 28(1) because that land has been designated as (or as part of) a marine conservation zone under section 105 of the Marine Act 2008,”.
  - (3) In subsection (2)(a) for “the land which Natural England no longer consider to be of special interest” substitute “the land mentioned in subsection (1)”.
  - (4) In subsection (3) for “that fact” substitute “the fact mentioned in subsection (1)(a) or (b)”.

*National nature reserves*

- 136 Marine boundaries of national nature reserves**
- (1) Section 35 of the Wildlife and Countryside Act 1981 (national nature reserves) is amended as follows.
  - (2) After subsection (1) insert –
    - “(1A) The land which may be declared to be a national nature reserve in England or Wales includes –
      - (a) any land lying above mean low water mark;
      - (b) any land covered by estuarial waters.

***Clause 137: Power of Secretary of State to call in subtidal declarations of NNRs***

341. This clause inserts new section 35A into the Wildlife and Countryside Act 1981 (c. 69) and gives Ministers the power to direct the conservation bodies on whether or not any of the area beyond Mean Low Water Mark or estuarial waters should be included within the NNR if declared. Ministers can also leave the decision to the discretion of the conservation body. This clause is similar in its effect to clause 134.

***Part 6: Inshore fisheries and conservation authorities***

***Inshore fisheries and conservation districts and authorities***

342. This Part provides for the establishment of inshore fisheries and conservation districts (“IFC districts”) and inshore fisheries and conservation authorities (“IFC authorities”) in England and Wales. The main duty of IFC authorities is to manage the exploitation of sea fisheries resources occurring in their districts in a sustainable way. IFC authorities have powers to make and enforce byelaws in pursuance of their main duty. The Sea Fisheries Regulation Act 1966, which relates to the sea fisheries of England and Wales and provides for the establishment of sea fisheries districts and sea fisheries committees, will be repealed.



- (1B) If an area of land to which a notification relates includes land falling within subsection (1A)(a) (area A), it may also include land lying below mean low water mark (area B) if—
- (a) area B adjoins area A, and
  - (b) any of the conditions in subsection (1C) is satisfied. 5
- (1C) The conditions are—
- (a) that the flora, fauna or features leading to the management of area A as a nature reserve is or are also present in area B;
  - (b) that the management of area A as a nature reserve is by reason of any flora or fauna which are dependent (wholly or in part) on anything which takes place in, or is present in, area B; 10
  - (c) that, without the inclusion of area B, the identification of the boundary of the land declared to be a national nature reserve (either in the declaration or on the ground for the purposes of exercising functions in relation to it) would be impossible or impracticable. 15
- (1D) The Secretary of State may issue guidance to the appropriate conservation body about the exercise of the power under subsection (1B) to include in a declaration land lying below mean low water mark.”. 20
- (3) In subsection (5), after the definition of “approved body” insert—
- “estuarial waters” are 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);”. 25
- (4) No declaration under subsection (1) of that section made before the coming into force of this section shall be questioned in legal proceedings on the ground that it includes land lying below mean low water mark.
- 137 Power of Secretary of State to call in subtidal declarations of NNRs 30**
- (1) After section 35 of the Wildlife and Countryside Act 1981 (c. 69) (national nature reserves) insert—
- “35A Power of Secretary of State to call in subtidal declarations**
- (1) This section applies in relation to any declaration under section 35(1) which includes land falling within section 35(1B) (“the subtidal land”). 35
  - (2) The appropriate conservation body must not declare the reserve unless, at least 21 days before doing so, they have given notice of their intention to the Secretary of State.
  - (3) At any time before the reserve is declared the Secretary of State may give notice to the appropriate conservation body that the Secretary of State is considering whether to give a direction under subsection (5) regarding the subtidal land. 40
  - (4) If the Secretary of State gives notice under subsection (3), the appropriate conservation body must not declare the reserve until the Secretary of State has given a direction under subsection (5). 45

***Clause 138: Establishment of inshore fisheries and conservation districts***

343. This clause provides for the appropriate national authority to establish IFC districts. Such districts are to be established by order and will consist of one or more local authority areas that have a seashore. The seaward extent of a district will be determined in the order establishing that district. The terms *appropriate national authority* and *seashore* are defined in clause 169.

344. *Subsection (3)* requires the appropriate national authority to consult certain people and organisations before making an order establishing an IFC district.

***Clause 139: Inshore fisheries and conservation authorities***

345. This clause requires there to be an IFC authority for every IFC district and provides for the IFC authority to comprise a committee, or a joint committee (in the case of more than one local authority), of the local authority or authorities falling within the district.

- (5) The Secretary of State may direct—
- (a) that the reserve (if declared) must include all of the subtidal land;
  - (b) that the reserve (if declared) must not include any of the subtidal land; 5
  - (c) that the reserve (if declared) must, or must not, include such part of that land as is specified in the direction;
  - (d) that the decision whether the reserve (if declared) should include the subtidal land is to be taken by the appropriate conservation body.”. 10

## PART 6

### INSHORE FISHERIES AND CONSERVATION AUTHORITIES

#### *Inshore fisheries and conservation districts and authorities*

#### **138 Establishment of inshore fisheries and conservation districts**

- (1) The appropriate national authority may by order establish inshore fisheries and conservation districts. 15
- (2) An inshore fisheries and conservation district (an “IFC district”) is an area that consists of—
- (a) one or more local authority areas in England or Wales that include part of the seashore, and 20
  - (b) such part of the sea lying seawards from that part of the seashore as is specified in the order establishing the district.
- (3) Before making an order establishing an IFC district the appropriate national authority must consult—
- (a) the council for every local authority area that would, if the order were made, fall within the IFC district established by the order, 25
  - (b) the Environment Agency,
  - (c) the appropriate statutory conservation body,
  - (d) the MMO,
  - (e) the authority for any existing IFC district that would, if the order were made, adjoin the IFC district established by the order, 30
- and any other person likely to be affected by the making of the order.

#### **139 Inshore fisheries and conservation authorities**

- (1) There is to be an inshore fisheries and conservation authority (an “IFC authority”) for every IFC district established under section 138. 35
- (2) Any reference in this Part to the authority for an IFC district is a reference to the IFC authority for that district.
- (3) An authority for an IFC district is—
- (a) a committee of the council for the local authority area falling within the district; 40
  - (b) where there is more than one local authority area falling within the district, a joint committee of the councils for those local authority areas.

***Clause 140: Membership and proceedings of IFC authorities***

346. *Subsection (1)* requires that an order establishing an IFC district must provide for the membership of the IFC authority for that district. The membership must comprise members of constituent local authorities, persons appointed by the “appropriate appointment authority” and other persons.

347. The term *appropriate appointment authority* and other terms used in this section are defined in *subsection (8)*.

348. Persons appointed by the appropriate appointment authority must comprise those described in *subsection (2)*.

349. *Subsection (3)* provides for the appropriate national authority to amend by order the descriptions of persons appointed as members of an IFC authority. Provision is also made for any consequential amendments to be made to this clause as appear to be necessary.

350. *Subsections (4) and (5)* require that the order establishing an IFC district must specify the total number of members of the IFC authority for the district. The order must also specify the number of constituent local authority members and the number of members appointed by the appropriate appointment authority. The order must also set out the number of members that may be other persons and by whom they are to be appointed.

351. An order establishing an IFC district may make other provision as to the membership and procedures of the IFC authority for that district. Other provision may include that listed in *subsection (6)(a) to (l)*.

352. *Subsection (7)* lists certain enactments that concern the proceedings of local authority committees or joint committees. These will apply to an IFC authority subject to any provision made by the order establishing the district.

**140 Membership and proceedings of IFC authorities**

- (1) An order under section 138 establishing an IFC district must provide for the IFC authority for the district to consist of—
- (a) persons who are members of a relevant council,
  - (b) persons appointed by the appropriate appointment authority, and
  - (c) other persons.
- (2) The persons appointed as members of the authority for the district by virtue of subsection (1)(b) must comprise—
- (a) persons acquainted with the needs and opinions of the fishing community of the district, and
  - (b) persons with knowledge of, or expertise in, marine environmental matters.
- (3) The appropriate national authority may by order amend subsection (2) so as to add, vary or remove descriptions of persons who may be appointed by virtue of subsection (1)(b) as members of an authority for an IFC district.
- An order under this subsection may make such other amendments of this section as appear to the authority making the order to be necessary in consequence of the order.
- (4) An order under section 138 establishing an IFC district must specify the number of members of the authority for the district.
- (5) The order must also specify—
- (a) the number of members falling within paragraph (a), and the number of members falling within paragraph (b), of subsection (1);
  - (b) in a case where there is more than one relevant council for the IFC district established by the order, the number of members to be appointed from each council (which may, in the case of any particular council, be none);
  - (c) the number of members falling within paragraph (c) of subsection (1) and the person or persons by whom they are to be appointed.
- (6) An order under section 138 establishing an IFC district may also include provision about—
- (a) how a member of the authority for the district is to be appointed;
  - (b) qualification and disqualification for membership of the authority;
  - (c) the conduct of members of the authority who are not members of a relevant council;
  - (d) the appointment of a member of the authority as the chair of the authority;
  - (e) the holding and vacation of office as a member, or as chair, of the authority (including the circumstances in which a person ceases to hold office or may be removed or suspended from office);
  - (f) re-appointment as a member, or as chair, of the authority;
  - (g) the validity of acts and proceedings of a person appointed as a member of the authority in the event of disqualification or lack of qualification;
  - (h) the validity of proceedings of the authority in the event of a vacancy in membership or of a defect in the appointment of a member;
  - (i) procedure to be followed by the authority;
  - (j) the delegation by the authority of any of its functions to a sub-committee;

***Clause 141: Amendment or revocation of orders under section 138***

353. This clause allows the appropriate national authority that made an order establishing an IFC district to amend or revoke the order. Certain persons and organisations must be consulted before an order is amended or revoked.

- (k) the delegation by the authority of any of its functions to the chair of the authority;
- (l) the payment by the authority of allowances to a member and the reimbursement by it of a member’s expenses.
- (7) The following provisions (which make provision about proceedings of local authority committees and joint committees) have effect in relation to the authority for an IFC district subject to provision made by the order establishing the district— 5
- (a) sections 100A to 100D, 104 and 106 of, and paragraphs 39 to 43 of Schedule 12 to, the Local Government Act 1972 (c. 70); 10
- (b) section 13 of the Local Government and Housing Act 1989 (c. 42);
- (c) Chapter 1 of Part 3 of the Local Government Act 2000 (c. 22).
- (8) In this section—
- “the appropriate appointment authority” means—
- (a) in relation to an IFC district which includes a local authority area in England, the MMO; 15
- (b) in relation to an IFC district which includes a local authority area in Wales, the Welsh Ministers;
- “the fishing community” means all persons with any sort of interest in the exploitation of sea fisheries resources or in fisheries for such resources; 20
- “marine environmental matters” means—
- (a) the conservation or enhancement of the natural beauty or amenity of marine or coastal areas (including their geological or physiographical features) or of any features of archaeological or historic interest in such areas, or 25
- (b) the conservation of flora or fauna which are dependent on, or associated with, a marine or coastal environment.

#### 141 Amendment or revocation of orders under section 138

- (1) An order made under section 138 may be amended or revoked by the appropriate national authority that made it. 30
- (2) Before amending or revoking an order made under section 138 the appropriate national authority must consult—
- (a) the council for every local authority area that falls within the IFC district established by the order,
- (b) the Environment Agency, 35
- (c) the appropriate statutory conservation body,
- (d) the MMO,
- (e) the authority for every IFC district that adjoins the IFC district established by the order,
- and any other person likely to be affected by the amendment or revocation of the order. 40

***Clause 142: Management of inshore fisheries***

354. This clause places a duty on each IFC authority to manage the exploitation of sea fisheries resources in its district. *Subsection (2)* sets out the things that each IFC authority must do when performing this duty.

355. *Subsection (3)* requires that each IFC authority, when performing its duty, must have regard to any guidance issued by the appropriate national authority. Before issuing such guidance, the appropriate national authority must consult IFC authorities and other people and organisations in accordance with *subsection (4)*.

356. The term *sea fisheries resources* is defined at *subsections (5)* and *(6)*. Certain fish are specifically excluded from that term and therefore from IFC authority competence. This is because the Environment Agency is responsible for regulating fisheries for those kinds of fish.

357. The activities to which the main duties and powers of an IFC authority apply are set out at *subsection (7)*.

***Clause 143: Protection of marine conservation zones***

358. Notwithstanding the things that IFC authorities must do when performing their duty set out in clause 142, each IFC authority in England must exercise its powers to ensure that the conservation objectives of any MCZ in the district are furthered.

***Byelaws***



*Main duties*

**142 Management of inshore fisheries**

- (1) The authority for an IFC district must manage the exploitation of sea fisheries resources in that district.
- (2) In performing its duty under subsection (1), the authority must – 5
  - (a) ensure that the exploitation of sea fisheries resources is carried out in a sustainable way,
  - (b) seek to balance the social and economic benefits of exploiting the sea fisheries resources of the district with the need to protect the marine environment from, or promote its recovery from, the effects of such exploitation, and 10
  - (c) seek to balance the different needs of persons engaged in the exploitation of sea fisheries resources in the district.
- (3) In performing its duty under subsection (1), the authority for an IFC district must have regard to any guidance given to it by the appropriate national authority. 15
- (4) Before giving any such guidance, the appropriate national authority must consult –
  - (a) every IFC authority to which it is proposing to give guidance, and
  - (b) such other bodies or persons as the authority proposing to give the guidance considers appropriate. 20
- (5) In this Part “sea fisheries resources” means any living animals or plants, other than fish falling within subsection (6), that habitually live in the sea, including those that are cultivated in the sea.
- (6) The fish referred to in subsection (5) are – 25
  - (a) salmon, trout, eels, lampreys, smelt and shad;
  - (b) any other anadromous or catadromous fish;
  - (c) any freshwater fish.

In this subsection “eels”, “freshwater fish”, “salmon” and “trout” have the same meanings as in the Salmon and Freshwater Fisheries Act 1975 (c. 51) (see section 41 of that Act). 30
- (7) Any reference in this Part to the exploitation of sea fisheries resources is a reference to any activity relating to the exploitation of such resources, including –
  - (a) fishing for, taking, retaining on board, trans-shipping, landing, transporting or storing such resources, and 35
  - (b) selling, displaying, exposing or offering for sale or possessing such resources.

**143 Protection of marine conservation zones**

- (1) The authority for an IFC district that includes a local authority area in England must ensure that the conservation objectives of any MCZ in the district are furthered. 40
- (2) Nothing in section 142(2) is to affect the performance of the duty imposed by this section.

***Clause 144: Power to make byelaws***

359. This clause provides a power for an IFC authority to make byelaws which must be observed in its district. Byelaws, apart from emergency byelaws, do not take effect until confirmed by the appropriate national authority which may, before confirming a byelaw, cause a local inquiry to be held. A byelaw may be confirmed with modifications, which must be agreed with the IFC authority that made it.

***Clause 145: Provision that may be made by byelaw***

360. This clause explains the types of activities in respect of which IFC authorities may make byelaws. The provision that may be made by byelaw (including emergency byelaws) is set out in *subsections (1) to (7)*.

361. *Subsection (3)* allows byelaws to be made prohibiting or restricting the exploitation of fisheries resources. The provision that may be made includes: provision prohibiting or restricting such exploitation in specified areas or periods; provision prohibiting or restricting such exploitation by reference to particular descriptions of fisheries resources or the circumstances of such exploitation; and provision limiting the amount of resources that may be exploited or the amount of time a person or vessel may spend exploiting fisheries resources in a specified period.

362. *Subsection (4)* allows IFC authorities to prohibit the exploitation of fisheries resources without a permit issued by an IFC authority. Provision is also made so that fees may be charged for permits and conditions may be attached to permits.

363. *Subsection (5)* allows IFC authorities to prohibit or restrict: the use of vessels of specified descriptions; methods of fishing for or taking sea fisheries resources; possession, use and transportation of specified items or items of a specified description used in the exploitation of sea fisheries resources. Provision may also be made for determining which items are of a specified description.

364. *Subsection (6)* allows IFC authorities to regulate, protect and develop fisheries for shellfish, including: provision requiring shellfish to be re-deposited in specified localities; the protection of shellfish laid down for breeding purposes and the protection of culch (for example, gravel or crushed shells) and other material to which spat or young shellfish may adhere.

- (3) In this section “MCZ” means a marine conservation zone designated by an order under section 105.

### *Byelaws*

#### **144 Power to make byelaws**

- (1) For the purposes of performing the duty imposed by section 142 or the duty imposed by section 143, the authority for an IFC district may make byelaws for that district. 5
- (2) Byelaws made under this section must be observed within the district for which they are made.
- (3) A byelaw made under this section does not have effect until it is confirmed by the appropriate national authority. 10  
This is subject to section 146 (emergency byelaws).
- (4) The appropriate national authority may confirm a byelaw without modification or with such modifications as are agreed to by the IFC authority that made the byelaw. 15
- (5) Before confirming a byelaw, the appropriate national authority may cause a local inquiry to be held.
- (6) Subsections (2) to (5) of section 250 of the Local Government Act 1972 (c. 70) apply to any inquiry which the appropriate national authority may cause to be held under subsection (5) of this section as they apply to inquiries under that section. 20

#### **145 Provision that may be made by byelaw**

- (1) The provision that may be made by a byelaw under section 144 includes provision falling within any one or more of the Heads set out in – 25
- (a) subsection (3) (prohibition or restriction of exploitation of sea fisheries resources),
- (b) subsection (4) (permits),
- (c) subsection (5) (vessels, methods and gear),
- (d) subsection (6) (shellfish),
- (e) subsection (7) (districts of oyster cultivation etc). 30
- (2) In the following provisions of this section “specified” means specified in the byelaw.
- (3) Head 1 is provision prohibiting or restricting the exploitation of sea fisheries resources, including –
- (a) provision prohibiting or restricting such exploitation in specified areas or during specified periods; 35
- (b) provision limiting the amount of sea fisheries resources a person or vessel may take in a specified period;
- (c) provision limiting the amount of time a person or vessel may spend fishing for or taking sea fisheries resources in a specified period. 40
- (4) Head 2 is provision prohibiting the exploitation of sea fisheries resources without a permit issued by an IFC authority, including –

365. *Subsection (7)* provides for a district of oyster cultivation to be established for the purposes of section 16(2)(c) of the Sea Fisheries (Shellfish) Act 1967. That section concerns the sale of oysters between certain dates. An IFC authority may also disapply the defence in section 17(2) of that Act concerning the taking and sale of certain crabs and lobsters.

***Clause 146: Emergency byelaws***

366. This clause allows an IFC authority to make an emergency byelaw which has effect without first being confirmed by the appropriate national authority. *Subsection (2)* prescribes the circumstances in which an emergency byelaw may be made.

367. *Subsection (3)* provides that an emergency byelaw will come into force on a date specified in the byelaw, and will remain in force for a period not exceeding 12 months, as stated in the emergency byelaw. *Subsections (4) and (5)* allow an IFC authority to extend an emergency byelaw once for a period of up to 6 months with the approval of the appropriate national authority. That approval will only be given in accordance with the terms set out at *subsection (6)*.

368. *Subsection (7)* requires an IFC authority to notify the appropriate national authority of the making of an emergency byelaw within 7 days of so doing.

- (a) provision for the charging of fees for permits;
  - (b) provision enabling conditions to be attached to a permit.
- (5) Head 3 is –
- (a) provision prohibiting or restricting the use of vessels of specified descriptions; 5
  - (b) provision prohibiting or restricting any method of exploiting sea fisheries resources;
  - (c) provision prohibiting or restricting the possession, use, retention on board, storage or transportation of specified items, or items of a specified description, that are used in the exploitation of sea fisheries resources; 10
  - (d) provision for determining whether such items are items of a specified description.
- (6) Head 4 is provision for the regulation, protection and development of fisheries for shellfish, including – 15
- (a) provision requiring shellfish the removal or possession of which is prohibited by or in pursuance of any Act to be re-deposited in specified localities;
  - (b) provision for the protection of culch and other material for the reception of the spat or young of shellfish; 20
  - (c) provision requiring such material to be re-deposited in specified localities.
- (7) Head 5 is –
- (a) provision constituting, within an IFC district, a district of oyster cultivation for the purposes of subsection (2)(c) of section 16 of the Sea Fisheries (Shellfish) Act 1967 (c. 83) (which prohibits the sale of oysters between certain dates); 25
  - (b) provision directing that section 17(2) of that Act (which affords a defence to a person charged with an offence under that section) does not apply. 30

#### 146 Emergency byelaws

- (1) A byelaw that is made by an IFC authority in the circumstances described in subsection (2) has effect without being confirmed by the appropriate national authority.
- (2) The circumstances are that – 35
  - (a) the IFC authority considers that there is an urgent need for the byelaw, and
  - (b) the need to make the byelaw could not have reasonably been foreseen.
- (3) A byelaw that has effect by virtue of this section (an “emergency byelaw”) – 40
  - (a) comes into force on a date specified in the byelaw, and
  - (b) remains in force (unless revoked or extended) for such period, not exceeding 12 months, as is specified in the byelaw.
- (4) An IFC authority may, with the written approval of the appropriate national authority, extend the period for which an emergency byelaw is to remain in force. 45
- (5) But an IFC authority –

***Clause 147: Byelaws: supplementary provisions***

369. *Subsections (1) and (2)* clarify that byelaw-making powers include powers to make byelaws for different cases or circumstances and that a byelaw may cease to have effect after a specified period.

370. *Subsections (3) and (4)* limit byelaw-making powers. An IFC authority is not authorised to make a byelaw that prejudicially affects certain rights without the consent of the person who enjoys those rights.

***Clause 148: Power of appropriate national authority to revoke byelaws***

371. This clause allows the appropriate national authority to revoke or amend any byelaw made by an IFC authority. This power may only be used where it appears to the appropriate national authority that the byelaw is unnecessary, inadequate or disproportionate. Before exercising these powers the appropriate national authority must follow the requirements of *subsection (2)* about notifying the IFC authority and objections. *Subsection (3)* allows the appropriate national authority to call a local inquiry before revoking or amending any byelaw. The power to amend any byelaw may only be used so as to restrict the application of that byelaw.

- (a) may extend that period only once;
  - (b) may not extend that period by more than 6 months.
- (6) The appropriate national authority may not give the approval referred to in subsection (4) unless the authority is satisfied that –
- (a) during the period for which the emergency byelaw has been in force, the IFC authority has used its best endeavours to make a byelaw that will make the emergency byelaw unnecessary, and
  - (b) there would be a significant and adverse effect on the marine environment if the approval was not given.
- (7) An IFC authority must within 7 days of making an emergency byelaw notify the appropriate national authority of it.

#### 147 Byelaws: supplementary provisions

- (1) The power to make byelaws under section 144 includes power to make different provision for different cases or different circumstances, including (in particular) –
- (a) different parts of an IFC district;
  - (b) different times of the year;
  - (c) different descriptions of sea fisheries resources.
- (2) The power to make byelaws under section 144 also includes –
- (a) power to provide for exceptions or conditions;
  - (b) power to provide for a byelaw to cease to have effect after a specified period.
- (3) Nothing in this Act authorises an IFC authority to make any byelaw that prejudicially affects any right to which subsection (4) applies without the consent of the person who enjoys the right.
- (4) This subsection applies to –
- (a) any right of several fishery;
  - (b) any right on, to or over any portion of the seashore that is enjoyed by a person under a local or special Act, a Royal charter, letters patent, or by prescription or immemorial usage.
- (5) In this section “specified” means specified in the byelaw.

#### 148 Power of appropriate national authority to revoke byelaws

- (1) The appropriate national authority may revoke any byelaw made by an IFC authority if it is satisfied that the provision made by the byelaw is unnecessary, inadequate or disproportionate.
- (2) Before revoking a byelaw the appropriate national authority must –
- (a) notify the authority that made the byelaw, and
  - (b) consider any objection made by it.
- (3) Before revoking a byelaw the appropriate national authority may cause a local inquiry to be held.
- (4) Subsections (2) to (5) of section 250 of the Local Government Act 1972 (c. 70) apply to any inquiry which the appropriate national authority may cause to be

***Clause 149: Byelaws: procedure***

372. *Subsection (1)* allows the appropriate national authority to make regulations about the procedure to be followed by an IFC authority when making byelaws (including emergency byelaws). The provision that may be made in regulations includes the sort of provision set out in *subsection (2)*.

***Clause 150: Publication etc of byelaws***

373. This clause requires each IFC authority to clearly display each byelaw made by it so that persons affected by the byelaw may be expected to see it. A copy of a byelaw must be provided to any person who requests one.

***Clause 151: Evidence of byelaws***

374. This clause provides that the production of a signed copy of a byelaw is conclusive evidence of the byelaw. It defines the term *signed* and how a copy of a byelaw purporting to be signed is to be treated.



held under subsection (3) of this section as they apply to inquiries under that section.

- (5) The power conferred by this section to revoke a byelaw includes power to amend the byelaw so as to restrict its application.
- (6) Nothing in this section affects the power of an IFC authority by virtue of section 14 of the Interpretation Act 1978 (c. 30) to amend or revoke any byelaw that it has made. 5

#### 149 Byelaws: procedure

- (1) The appropriate national authority may make regulations about the procedure to be followed by an IFC authority in relation to byelaws. 10
- (2) The provision that may be made in regulations under this section includes –
  - (a) provision about steps to be taken, including consultation with persons or bodies specified, or of a description specified, in the regulations, before a byelaw may be made or revoked;
  - (b) provision about obtaining confirmation of a byelaw; 15
  - (c) provision about any procedure for making or revoking emergency byelaws;
  - (d) provision treating a byelaw that extends the period for which an emergency byelaw is to remain in force as if it were an emergency byelaw; 20
  - (e) provision for and in connection with keeping byelaws under review, including provision for and in connection with the consideration of any representations made in relation to byelaws;
  - (f) provision about steps to be taken by an IFC authority where a byelaw is amended or revoked by the appropriate national authority. 25

#### 150 Publication etc of byelaws

- (1) The authority for an IFC district must ensure that copies of every byelaw made by it under section 144, and for the time being in force, are displayed in a place or places within the district where persons who are likely to be affected by the byelaw may be expected to see it. 30
- (2) An IFC authority must provide a copy of any byelaw made by it under section 144, and for the time being in force, to any person who requests one.

#### 151 Evidence of byelaws

- (1) The production of a signed copy of any byelaw made under section 144 is conclusive evidence of the byelaw and of the fact that it has been made and has effect in accordance with provision made by or under this Part. 35
- (2) In subsection (1) “signed” means –
  - (a) in the case of an emergency byelaw, signed by the clerk of the authority that made it;
  - (b) in the case of any other byelaw, signed by or on behalf of the appropriate national authority. 40
- (3) A copy of a byelaw purporting to be signed as mentioned in subsection (2) is to be treated as having been properly signed unless the contrary is shown.

***Clause 152: Offences***

375. This clause establishes offences and penalties. A person is guilty of an offence if he contravenes any byelaw made by an IFC authority. Where a vessel is used the master, owner and charterer (if any) will be guilty of an offence. A person guilty of an offence is liable upon summary conviction to a maximum fine of £50,000.

***Clause 153: Powers of court following conviction***

376. This clause provides that where a person is convicted of an offence, the court may order forfeiture of any fishing gear used in the commission of an offence or fish (including any receptacle) in respect of which an offence was committed. As an alternative, the court may order that person to pay a sum of money representing the value of the fishing gear or fish. Where there has been a breach of the conditions of a permit granted by an IFC authority, the court may revoke or suspend the permit.

***Clause 154: Offences by bodies corporate***

377. Where an offence has been committed by a body corporate with the consent or involvement of those persons set out in *subsection (2)*, or is attributable to the neglect of such a person, that person as well as the body corporate shall be guilty of an offence.

*Offences*

**152 Offences**

- (1) A person who contravenes any byelaw made under section 144 is guilty of an offence under this section.
- (2) Where any vessel is used in contravention of any byelaw made under section 144, the master, the owner and the charterer (if any) are each guilty of an offence under this section. 5
- (3) A person who is guilty of an offence under this section is liable on summary conviction to a fine not exceeding £50,000.
- (4) In this section “contravention” includes failure to comply; and “contravene” is to be read accordingly. 10

**153 Powers of court following conviction**

- (1) This section applies where a person is convicted of an offence under section 152.
- (2) The court by which the person is convicted may order the forfeiture of— 15
  - (a) any fishing gear used in the commission of the offence;
  - (b) any sea fisheries resources in respect of which the offence was committed.
- (3) The power conferred by subsection (2) to order the forfeiture of any sea fisheries resources includes power to order the forfeiture of any container in which the resources are being kept. 20
- (4) The court may, instead of ordering the forfeiture of any fishing gear or any sea fisheries resources, order the person to pay a sum of money representing the value of the fishing gear or resources.
- (5) In a case where the offence involved the breach of a condition of a permit granted by an IFC authority, the court may— 25
  - (a) revoke the permit, or
  - (b) suspend the permit for such period as the court thinks fit.

**154 Offences by bodies corporate**

- (1) Where an offence under section 152 has been committed by a body corporate and it is proved that the offence— 30
  - (a) has been committed with the consent or connivance of a person falling within subsection (2), or
  - (b) is attributable to any neglect on the part of such a person, that person (as well as the body corporate) is guilty of that offence and liable to be proceeded against and punished accordingly. 35
- (2) The persons are—
  - (a) a director, manager, secretary or similar officer of the body corporate;
  - (b) any person who was purporting to act in such a capacity.

***Clause 155: Further provision about offences***

378. *Subsection (1)* ensures that magistrates' courts have jurisdiction over offences that are committed at sea, by treating them as having been committed in England and Wales. The consent of the Secretary of State is not required for proceedings against foreign citizens by virtue of *subsection (2)*.

***Clause 156: Inshore fisheries and conservation officers***

379. This clause provides that inshore fisheries and conservation officers ("IFC officers") may be appointed by IFC authorities. Such appointments may be subject to any limitations specified by the IFC authority making that appointment.

***Clause 157: Powers of IFC officers***

380. Enforcement powers are listed in Part 8 of the draft Bill. This clause sets out the powers from that list which are available to an IFC officer and the legislation in respect of which they may be exercised. The geographical area in relation to which an IFC officer may exercise his enforcement powers is set out at *subsection (3)*.

381. *Subsection (4)* allows the appropriate national authority to amend *subsection (1)* of this clause (the list of legislation in respect of which enforcement powers may be exercised).

- (3) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member, in connection with that management, as if the member were a director of the body corporate.

### 155 Further provision about offences

- (1) Proceedings for an offence under section 152 may be taken, and the offence may for all incidental purposes be treated as having been committed, in any part of England and Wales. 5
- (2) Section 3 of the Territorial Waters Jurisdiction Act 1878 (c. 73) (consents to prosecutions of offences committed on the open sea by persons who are not British citizens) does not apply to any proceedings for an offence under section 152. 10

### *Enforcement*

### 156 Inshore fisheries and conservation officers

- (1) An IFC authority may appoint persons to be inshore fisheries and conservation officers (“IFC officers”). 15
- (2) The carrying out of any functions of an IFC officer by a person appointed by an IFC authority under this section is subject to any limitations specified by the authority in relation to that person.
- (3) In this Part any reference to the IFC district for which an officer has been appointed is a reference to the district of the IFC authority that appointed the officer. 20

### 157 Powers of IFC officers

- (1) An IFC officer appointed for an IFC district has the powers referred to in subsection (2) for the purposes of enforcing—
- (a) any byelaws made by the authority for the district; 25
  - (b) sections 1 to 3, 5 and 6 of the Sea Fish (Conservation) Act 1967 (c. 84) and any orders made under any of those sections;
  - (c) any provision made by or under an order under section 1 of the Sea Fisheries (Shellfish) Act 1967 (c. 83) conferring a right of regulating a fishery; 30
  - (d) any provision of, or any rights conferred by, section 7 of that Act;
  - (e) any orders made under section 113, 115, 116, 118 or 120 of this Act.
- (2) The powers are—
- (a) the common enforcement powers conferred by this Act;
  - (b) the powers conferred by sections 236, 240, 241 and 256. 35
- (3) The powers which an IFC officer has for the purposes referred to in subsection (1) may be exercised—
- (a) in the IFC district for which the officer has been appointed;
  - (b) in any IFC district adjoining that district;
  - (c) in any other place in England and Wales, in relation to an offence which the officer reasonably believes has been committed within the IFC district for which the officer has been appointed; 40

***Clause 158: Power to stock or restock fisheries***

382. This clause allows an IFC authority to stock or re-stock a public fishery with any sea fisheries resources. This power is subject to any requirements in other legislation.

***Clause 159: Information***

383. *Subsections (1) and (2)* require IFC authorities to collect certain information and to provide certain information to the appropriate national authority. *Subsection (3)* allows each IFC authority to require anyone involved in the exploitation of sea fisheries resources in its district to provide the authority with certain information.

***Clause 160: Duty of co-operation***

384. This clause requires an IFC authority to take such steps as it considers appropriate to co-operate with certain other public organisations, e.g. the MMO.

***Clause 161: Miscellaneous powers***

385. This clause sets out miscellaneous powers of IFC authorities. It includes powers for an IFC authority to provide assistance to another person or body and a power to charge for providing assistance. An IFC authority may enter into arrangements with other IFC authorities for the establishment of a body to co-ordinate the activities of those authorities which are party to the arrangements.

- (d) in relation to any vessel in waters within British fishery limits, excluding the Scottish zone and the Northern Ireland zone, which the officer reasonably believes has committed an offence within the IFC district for which the officer has been appointed.
- (4) The appropriate national authority may by order amend subsection (1). 5

*Other powers and duties of IFC authorities*

**158 Power to stock or restock fisheries**

An IFC authority may, subject to any provision made by or under any Act, stock or restock a public fishery for any sea fisheries resources.

**159 Information** 10

- (1) Every IFC authority must collect such statistics relating to the exploitation of sea fisheries resources within its district as it considers necessary for the purposes of performing its duty under section 142.
- (2) Every IFC authority must provide the appropriate national authority with such information as the appropriate national authority may reasonably require about— 15
  - (a) proceedings of the IFC authority;
  - (b) sea fisheries within the authority’s district;
  - (c) the effect of the exploitation of sea fisheries resources in that district on the marine environment. 20
- (3) An IFC authority may require any person involved in the exploitation of sea fisheries resources in its district to provide the authority with such information as it may reasonably require.

**160 Duty of co-operation**

The authority for an IFC district must take such steps as it considers appropriate to co-operate with— 25

- (a) the authority for every IFC district adjoining that district, and
- (b) any other public authority that exercises functions relating to— 30
  - (i) the regulation of activities carried on in any part of the sea lying within that district, or
  - (ii) enforcement in that part of the sea.

**161 Miscellaneous powers**

- (1) An IFC authority may do anything which appears to it to be necessary or expedient for the purpose of or in connection with the exercise of any of its other functions. 35
- (2) In particular it may—
  - (a) acquire and dispose of land and other property;
  - (b) borrow money;

***Clause 162: Expenses of IFC authorities***

386. This clause establishes the funding arrangements for IFC authorities. The constituent council or councils must pay the expenses of the IFC authority for their area. *Subsection (4)* acts as a safeguard against an IFC authority setting an unreasonable budget. It allows a majority of the local authority members to block the setting of the total annual budget for that IFC authority.

387. *Subsection (2)* explains that where there is more than one council for a district, each council must fund the IFC authority in accordance with the order establishing that district. The order may provide for the portion of funding falling to each council to be calculated by reference to any circumstances whatsoever (for example, according to the length of coastline of each council).

388. *Subsection (3)* provides that section 103 of the Local Government Act 1972 concerning expenses of joint committees does not apply in relation to an IFC authority since the matter is dealt with at subsection (2).

***Clause 163: Accounts***

389. IFC authorities must keep proper accounts and proper records in relation to those accounts. The accounts of an IFC authority comprising more than one constituent council must be made up yearly to 31<sup>st</sup> March.



- (c) enter into arrangements with other IFC authorities for the establishment of a body to co-ordinate the activities of those authorities which are party to the arrangements.
- (3) An IFC authority may enter into arrangements with another person or body for the provision by the authority of services that are required by the person or body in connection with the exercise of the person's or body's functions. 5
- (4) The power conferred by subsection (3) includes –
- (a) power to enter into arrangements with any person who is entitled to a right of regulating a fishery conferred by an order under section 1 of the Sea Fisheries (Shellfish) Act 1967 (c. 83) for the provision of services that are required by the person in connection with the enforcement of any provision made by or under the order; 10
- (b) power to enter into arrangements with –
- (i) any person who is entitled to a right of several fishery conferred by an order under that section, or 15
- (ii) any person who owns a private shellfish bed (within the meaning of that Act),  
for the provision of services that are required by the person in connection with the enforcement of any provision of, or any rights conferred by, section 7 of that Act. 20
- (5) The terms and conditions upon which arrangements under subsection (3) are made may include provision for the making of payments to the authority by the person or body to whom the services are provided.

*Miscellaneous and supplemental*

- 162 Expenses of IFC authorities** 25
- (1) The expenses incurred by the authority for an IFC district are to be defrayed by the relevant council or councils.
- (2) Where there is more than one relevant council for an IFC district, each council must pay such portion of the expenses incurred by the authority for the district as is specified in, or determined in accordance with, the order establishing the district. 30  
The order may provide for the portion of the expenses payable by a relevant council to be calculated by reference to any circumstances whatsoever.
- (3) Accordingly, section 103 of the Local Government Act 1972 (c. 70) (expenses of joint committees) does not apply in relation to an IFC authority. 35
- (4) The total amount of an IFC authority's expenses to be defrayed under subsection (1) in any particular financial year may be vetoed by a vote of those members of the IFC authority who are members of a relevant council.
- 163 Accounts**
- (1) An IFC authority must keep proper accounts and proper records in relation to the accounts. 40

***Clause 164: Annual plan***

390. This clause requires every IFC authority to make and publish a plan setting out the authority's main objectives and priorities for the year. The plan must be published before the beginning of each calendar year. An IFC authority must send a copy of its plan to the appropriate national authority.

***Clause 165: Annual report***

391. This clause requires every IFC authority, as soon as is reasonably practicable after the end of each calendar year, to publish a report on its activities in that year. *Subsections (2) to (4)* concern the form, contents and distribution of the report.

***Clause 166: Report***

392. This clause requires the appropriate national authority to report on the conduct and operation of IFC authorities every four years. The report must be laid before Parliament in respect of IFC authorities in England and before the National Assembly for Wales in respect of IFC authorities in Wales.

***Clause 167: Exemption from liability***

393. This clause provides that no member, officer or employee of an IFC authority shall be liable for anything done in connection with the discharge of the authority's functions. The exemption from liability does not apply if the act or omission is shown to have been in bad faith.

- (2) The accounts of an IFC authority that by virtue of section 139(3) is a joint committee of councils must be made up yearly to 31st March.

#### **164 Annual plan**

- (1) Before the beginning of each calendar year every IFC authority must make and publish a plan setting out the authority’s main objectives and priorities for the year. 5
- (2) The authority for an IFC district must send a copy of its plan to the appropriate national authority.

#### **165 Annual report**

- (1) As soon as is reasonably practicable after the end of each calendar year, every IFC authority must prepare a report on its activities in that year. 10
- (2) A report under this section must be in such form and contain such information as the appropriate national authority may require.
- (3) A report under this section must be published in such manner as the appropriate national authority may require. 15
- (4) The IFC authority must send a copy of the report to the appropriate national authority.

#### **166 Report**

- (1) As soon as is reasonably practicable after the end of every relevant four-year period, the appropriate national authority must lay before the appropriate national legislature a report about the conduct and operation of the authorities for any IFC districts in existence during the whole or part of that period. 20
- (2) In this section—
- “the appropriate national legislature” means—
- (a) where the appropriate national authority is the Secretary of State, Parliament; 25
- (b) where the appropriate national authority is the Welsh Ministers, the National Assembly for Wales;
- “relevant four-year period” means—
- (a) the period of four years beginning with the day on which the appropriate national authority first made an order under section 138; 30
- (b) each subsequent period of four years.

#### **167 Exemption from liability**

- (1) No person who is a member or employee of an IFC authority is to be liable for anything done (or omitted to be done) in, or in connection with, the discharge or purported discharge of the authority’s functions. 35
- (2) Subsection (1) does not apply if the act or omission is shown to have been in bad faith.
- (3) The reference in subsection (1) to an employee of an IFC authority does not include any IFC officer acting as such an officer. 40

***Clause 168: Minor and consequential amendments***

394. This clause provides that Schedule 8 has effect. Schedule 8 contains minor and consequential amendments relating to IFC authorities.

***Clause 169: Interpretation of this Part***

395. This clause defines certain terms used in this Part of the draft Bill.

(For provision exempting such officers from liability, see section 266.)

## 168 Minor and consequential amendments

Schedule 8 (which contains minor and consequential amendments relating to IFC authorities) has effect.

## 169 Interpretation of this Part

5

### (1) In this Part –

“appropriate national authority” means –

- (a) in relation to a local authority area in England, or an IFC district that includes such an area, the Secretary of State;
- (b) in relation to a local authority area in Wales, or an IFC district that includes such an area, the Welsh Ministers;

10

“appropriate statutory conservation body” means –

- (a) in relation to a local authority area in England, or an IFC district that includes such an area, Natural England;
- (b) in relation to a local authority area in Wales, or an IFC district that includes such an area, the Countryside Council for Wales;

15

“authority for an IFC district” is to be read in accordance with section 139(2);

“IFC authority” means an inshore fisheries and conservation authority (see section 139);

20

“IFC district” means an inshore fisheries and conservation district (see section 138);

“IFC officer” means an inshore fisheries and conservation officer (see section 156);

“local authority area” means –

25

- (a) in relation to England –
  - (i) a county, a London borough or a metropolitan district,
  - (ii) a non-metropolitan district comprised in an area for which there is no county council,
  - (iii) the City of London, or
  - (iv) the Isles of Scilly;

30

- (b) in relation to Wales, a county or county borough;

“the marine environment” includes –

- (a) geological or physiographical features of marine or coastal areas;
- (b) features of archaeological or historic interest in such areas;
- (c) flora and fauna which are dependent on, or associated with, a marine or coastal environment;

35

“master” includes, in relation to any vessel, the person for the time being in command or charge of the vessel;

40

“relevant council”, in relation to an IFC district, means the council for a local authority area falling within the district;

“sea” means the sea within the seaward limits of the territorial sea adjacent to England and Wales, including –

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

45

***Chapter 1: The Sea Fish (Conservation) Act 1967***

***Clause 170: Size limits for Sea Fish***

396. Section 1 of the Sea Fish (Conservation) Act 1967 enables the Ministers (now the Secretary of State and the devolved administrations) to make an order to set minimum size limits for sea fish. Orders under this section may prohibit any person from landing sea fish below a specified size; prohibit the sale of sea fish below a specified size; and prohibit the carriage by a relevant British fishing boat of sea fish below the specified size. Orders under this section may set different limits for different areas, for fish of different sexes and may restrict the landing by any person of parts of fish below the size limit set for that species.

397. Section 1 does not currently allow for a maximum size limit or for a size range to be set by an order or for the carriage restrictions to apply to a vessel not covered by the definition of a relevant British fishing boat. Clause 170 provides for all the current powers available under orders made under section 1 to apply to any requirements as to size, rather than minimum size limits only, and for the prohibition on carriage to apply to all relevant British vessels. The effect of these amendments is to allow Ministers to make an order setting a minimum or a maximum size limit for sea fish or a size range outside which no fish may be landed, sold or carried.

398. The amendments made by this clause extend to England and Wales only and the powers to make orders on the basis of these amendments would be exercisable by the Secretary of State as regards England and Welsh Ministers as regards Wales. Since this clause does not extend to Northern Ireland, amendments have been made to remove Northern Ireland fishing boats from the coverage of certain of the measures.

- (b) the waters of any estuary, river or channel, so far as the tide flows at mean high water spring tide,  
and any reference to the seashore is to be construed accordingly;  
“sea fisheries resources” has the meaning given by section 142;  
“vessel” includes any ship or boat or any other description of vessel used in navigation. 5
- (2) Any reference in this Part to the exploitation of sea fisheries resources is to be read in accordance with section 142(7).

## PART 7

### FISHERIES 10

#### CHAPTER 1

#### THE SEA FISH (CONSERVATION) ACT 1967

#### 170 Size limits for sea fish

- (1) Section 1 of the Sea Fish (Conservation) Act 1967 (c. 84) (size limits, etc for fish) is amended as follows. 15
- (2) In subsection (1), for the words from “, being a fish” to “prescribed” substitute “which does not meet such requirements as to size as may be prescribed”.
- (3) In subsection (2), for the words from “, being a fish” to “prescribed” substitute “which does not meet such requirements as to size as may be prescribed”.
- (4) For subsection (3) substitute— 20
- “(3) Sea fish of any description which do not meet the requirements as to size prescribed in relation to sea fish of that description by an order of the appropriate national authority shall not be carried, whether within or outside relevant British fishery limits, on a relevant British vessel; and an order under this subsection may prohibit the carrying by a Scottish or Northern Ireland fishing boat or a foreign vessel in waters to which subsection (3A) applies of sea fish of any description prescribed by the order which do not meet the requirements as to size so prescribed in relation to sea fish of that description. 25
- (3A) This subsection applies to the sea within British fishery limits, other than the Scottish zone and the Northern Ireland zone. 30  
“Northern Ireland zone” has the meaning given by the Northern Ireland Act 1998 (see section 98 of that Act).”
- (5) In subsection (4)— 35
- (a) for “Different sizes” substitute “Different requirements as to size”;
- (b) for “different sizes” substitute “different requirements as to size”.
- (6) In subsection (5)—
- (a) for “a size” substitute “requirements as to size”;
- (b) for the words from “if the part” to the end substitute “if the part does not meet the requirements as to size so prescribed.” 40
- (7) In subsection (8)—

***Clause 171: Regulation of nets and other fishing gear***

399. Section 3 of the Sea Fish (Conservation) Act 1967 enables the Ministers (now the Secretary of State and the devolved administrations) to make an order in relation to relevant British fishing boats registered in the UK applying restrictions to nets and other fishing gear in respect of their construction, design, material and size. An order under this section may be made so as to apply only in relation to fishing for specified descriptions of sea fish, specified methods of fishing, and specified areas or periods.

400. Section 3(2) provides that an order may be made to extend to nets and fishing gear carried within British fishery limits (excluding the Scottish zone) by Scottish fishing boats, fishing boats registered outside the UK and unregistered boats. In addition to other matters, section 3(3) and (4) provide for exemptions from the restrictions imposed by orders under this section to be made in relation to fishing boats. Section 3(5) creates offences for fishing in contravention of any orders made under this section.

401. Section 3 does not allow restrictions to apply equally to persons fishing from the shore as to persons fishing from a boat. Clause 171 amends section 3 so that restrictions of this type can be made by order in respect of persons fishing from the shore of England and Wales. This clause also creates new offences for any person fishing from the shore in contravention of any such restrictions and allows for orders to exempt persons from the restrictions imposed. The power to make orders using the new provisions would be exercisable by the Secretary of State as regards England and the Welsh Ministers as regards Wales.



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- (a) for “a relevant British fishing boat or a Scottish fishing boat” substitute “a relevant British vessel, a Scottish fishing boat or a Northern Ireland fishing boat”;
- (b) for “foreign fishing boat” substitute “foreign vessel”.
- (8) For subsection (9) substitute – 5
- “(9) In this section –
- “the appropriate national authority” means –
- (a) in relation to Wales (within the meaning of the Government of Wales Act 2006), the Welsh Ministers;
- (b) in any other case, the Secretary of State; 10
- “foreign vessel” means any vessel other than a relevant British vessel, a Scottish fishing boat or a Northern Ireland fishing boat;
- “Northern Ireland fishing boat” means a fishing boat which is registered in the United Kingdom under Part 2 of the Merchant Shipping Act 1995 and whose entry in the register specifies a port in Northern Ireland as the port to which the boat is to be treated as belonging; 15
- “relevant British vessel” means a vessel, other than a Scottish fishing boat or a Northern Ireland fishing boat, which –
- (a) is registered in the United Kingdom under Part 2 of the Merchant Shipping Act 1995, or 20
- (b) is owned wholly by persons qualified to own British ships for the purposes of that Part of that Act.”
- 171 Regulation of nets and other fishing gear**
- (1) Section 3 of the Sea Fish (Conservation) Act 1967 (c. 84) (regulation of nets and other fishing gear) is amended as follows. 25
- (2) After subsection (2) insert –
- “(2A) An order under this section may be made by the appropriate national authority so as to extend to nets or other fishing gear used by any person, otherwise than from a fishing boat, for fishing for or taking sea fish in the sea within the seaward limits of the territorial sea adjacent to England and Wales. 30
- (2B) In subsection (2A) above “the appropriate national authority” means –
- (a) in relation to England, the Secretary of State;
- (b) in relation to Wales, the Welsh Ministers.” 35
- (3) In subsection (3)(c), after “classes of fishing boats,” insert “or particular persons or persons of a particular description,”.
- (4) After subsection (5) insert –
- “(5A) A person who contravenes an order made under this section by virtue of subsection (2A) above shall be guilty of an offence under this section.” 40
- (5) In subsection (7), after “carrying” (in each place where it occurs) insert “or use”.

***Clause 172: Charging for commercial fishing licences***

402. This clause adds a new subsection (4A) to section 4 of the Sea Fish (Conservation) Act 1967. Section 4 gives powers to charge for commercial sea fishing vessel licences. Subsection (4A) enables the Ministers to specify the amount of the charge in the order, to make provision in the order as to how the charge should be determined or to provide that in specified circumstances no charge will be payable. The new subsection clarifies the existing power for the Ministers to vary the amount of charge for different classes of licence. An amendment to section 22 of the Act provides that “class” is to be given a very broad meaning and may relate to any circumstances whatsoever, including for example, vessel length, vessel tonnage or gear type. The amendments made by this clause extend to England and Wales only.

***Clause 173: Power to restrict fishing for sea fish***

403. Section 5 of the Sea Fish (Conservation) Act 1967 enables the Ministers (now the Secretary of State and the devolved administrations) to make an order restricting fishing for sea fish of any description and by any method specified for any period and creates an offence where any fishing boat is used in contravention of such an order. The order applies to any fishing boat within relevant British fishery limits. Outside those limits, the order can apply only to a relevant British fishing boat registered in the UK, or where an order relates to fishing for salmon or migratory trout, to any fishing boat which is British-owned but not registered under the Merchant Shipping Act 1995. Any fish caught in contravention of a restriction of an order made under this section must be returned immediately to the sea.

404. Orders made under this section apply only to fishing boats and not to persons fishing from the shore. Clause 173 amends section 5 powers so that orders may be made in relation to such persons. Offences are also created in respect of persons fishing in contravention of an order.

405. The amendments also provide for restrictions to be made in an order to place limits on how much fish a person or a fishing boat may take in any given period. Any fish caught in excess of this limit must be returned immediately to the sea. The order may provide that any sea fish caught during the relevant period but subsequently returned to the sea do not count towards the limit imposed by the order in question.

406. The powers to make orders using the new provisions would be exercisable by the Secretary of State as regards England and the Welsh Ministers as regards Wales. Since this clause does not extend to Northern Ireland, amendments have been made to remove Northern Ireland fishing boats from the coverage of certain of the measures.

**172 Charging for commercial fishing licences**

- (1) In section 4 of the Sea Fish (Conservation) Act 1967 (licensing of fishing boats) after subsection (4) (power to authorise charges for licences) insert –

“(4A) The provision that may be made in an order by virtue of subsection (4) above includes – 5

- (a) provision for the amount of any charge to be specified in, or determined in accordance with provision made by, the order;
- (b) different provision in relation to different classes of licence;
- (c) provision for no charge to be payable in such circumstances as may be specified in the order.” 10

- (2) In section 22 of that Act (interpretation) after subsection (3) insert –

“(3A) Any reference in this Act to a class is a reference to a class defined or described by reference to any circumstances whatsoever (whether or not relating to fishing or vessels).”

**173 Power to restrict fishing for sea fish 15**

- (1) Section 5 of the Sea Fish (Conservation) Act 1967 (c. 84) (power to restrict fishing for sea fish) is amended as follows.

- (2) For subsection (1) substitute –

“(1) Subject to the provisions of this section, the appropriate national authority may make an order – 20

- (a) prohibiting, in any area specified in the order and either for a period so specified or without limitation of time – 25
  - (i) all fishing for sea fish;
  - (ii) fishing for any description of sea fish specified in the order;
  - (iii) fishing for sea fish, or for any description of sea fish specified in the order, by any method so specified;
- (b) restricting, in any area specified in the order and either for a period so specified or without limitation of time, the amount of sea fish, or sea fish of a description specified in the order, that may, in any period so specified, be taken by – 30
  - (i) any person;
  - (ii) any fishing boat.

A person who contravenes any prohibition or restriction imposed by an order under this section shall be guilty of an offence under this subsection. 35

(1A) Where any fishing boat is used in contravention of any prohibition or restriction imposed by an order under section 1 of this Act, the master, the owner and the charterer (if any) shall each be guilty of an offence under subsection (1) above. 40

(1B) An order restricting the amount of sea fish of any description that may be caught in a period specified in the order may provide that, for the purposes of paragraph (b) of subsection (1) above, any sea fish of that description that, after being caught in that period, has been returned to the sea is not to be treated as having been caught in contravention of the restriction imposed by the order.” 45

*Chapter 2: The Sea Fisheries (Shellfish) Act 1967*

407. For the purpose of establishing or improving shellfisheries, the Secretary of State and the National Assembly for Wales may make several and regulating orders under the Sea Fisheries (Shellfish) Act 1967 (“the Act”). The Act allows for orders to be made, in the name of a person or body of persons whether corporated or unincorporated, to restrict the right of fishing in a defined area of the sea to that person. An order will relate to a named species of shellfish and will be granted for a set period up to 60 years.

408. Several orders grant exclusive rights to deposit, propagate, dredge, fish for or take specified shellfish. In return, grantees must cultivate and manage the fishery by preparing the ground often by bringing in new seed stocks to grow on the fishery.

409. Regulating orders grant powers to enable grantees to better manage and conserve specified shellfish stocks in a designated area. Specifically, the grantee will be able to

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- (3) In subsection (2), for the words after “different provision” substitute “for different cases”.
- (4) In subsection (5), after “prohibition” insert “or restriction”.
- (5) In subsection (6) –
- (a) after “is made” insert “by virtue of paragraph (a) of subsection (1) above”;
  - (b) for “any fishing operations conducted” substitute “fishing”;
  - (c) for the words from “are taken” to “applies” substitute “are caught by a person, or taken on board a fishing boat, in contravention of the prohibition”.
- (6) After subsection (6) insert –
- “(6A) A person who does not comply with subsection (6) above shall be guilty of an offence under that subsection.”
- (7) For subsection (8) substitute –
- “(8) The only provision that may be made by an order under this section in relation to an area outside British fishery limits, or an area within the Scottish zone or the Northern Ireland zone, is provision applying to –
- (a) a British fishing boat, other than a Scottish fishing boat or a Northern Ireland fishing boat, that is registered in the United Kingdom; or
  - (b) in so far as the order relates to fishing for salmon or migratory trout, a fishing boat which is British-owned but not registered under the Merchant Shipping Act 1995.
- (9) In this section –
- “the appropriate national authority” means –
    - (a) in relation to Wales (within the meaning of the Government of Wales Act 2006), the Welsh Ministers;
    - (b) in any other case, the Secretary of State;
  - “Northern Ireland fishing boat” means a fishing boat which is registered in the United Kingdom under Part 2 of the Merchant Shipping Act 1995 and whose entry in the register specifies a port in Northern Ireland as the port to which the boat is to be treated as belonging;
  - “Northern Ireland zone” has the meaning given by the Northern Ireland Act 1998 (see section 98 of that Act).”

## CHAPTER 2

### THE SEA FISHERIES (SHELLFISH) ACT 1967

introduce quotas for shellfish stocks and a system of licensing to restrict the number of persons authorised to exploit the fishery.

410. Hybrid orders may also be made which combine several and regulating provisions. Where such an order is made, it sets up a regulated fishery that has within its boundaries one or more areas designated as several fisheries.

411. Parts of the Act extend to private shellfisheries which have been established under Acts of Parliament. Such shellfisheries are normally in respect of oyster fisheries and establish private rights in much the same way as with several orders.

***Clause 174: Power to make orders as to fisheries for shellfish***

412. Section 1(1) is amended to allow for orders to be made in relation to all types of shellfish including those not already listed in subsection (1) of that section, without the present requirement for regulations to be made each time the Secretary of State (or as the case may be the National Assembly for Wales) wishes to add a new type of shellfish to the list.

***Clause 175: Application of tolls etc for purposes related to regulation of fishery***

413. Section 3 is amended by clause 175 to set out the powers of grantees of regulating orders who have the right to regulate the fishery. The amendment establishes that grantees may spend monies collected by way of tolls and royalties for purposes connected with the regulation of the fishery, not just for the improvement of the fishery as currently set out in section 3 of the Act. The amendments extend to England and Wales only.

***Clause 176: Increase in penalties for certain offences relating to fisheries for shellfish***

414. Sections 3 and 7 are amended by clause 176 so that the maximum fine that may be imposed by a court is increased to £50,000 in line with that for other fisheries legislation. The maximum fine that may be imposed by a magistrates court at present is £5,000. The amendment extends to England and Wales only.

***Clause 177: Liability of a master, etc where a vessel used in commission of offence***

415. Section 3 is amended by clause 177 to require the master, owner and charterer (if any) of a vessel to each be guilty of an offence under section 3(3) of the Act where a fishing boat is used. Section 22 is also amended also by this clause to introduce a definition for the term “master” in line with that of the Sea Fish Conservation Act 1967 and the Fisheries Act 1981.

416. The amendments establish that masters, etc. of vessels who are licence holders may be found guilty of offences which take place from their vessels, with the possibility that their licence is cancelled. The amendment extends to England and Wales only.

**174 Power to make orders as to fisheries for shellfish**

In section 1 of the Sea Fisheries (Shellfish) Act 1967 (c. 83) (power to make orders as to fisheries for shellfish), in subsection (1), for the words from “shellfish” to “Minister” substitute “shellfish of any kind specified in the order”.

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**175 Application of tolls etc for purposes related to regulation of fishery**

- (1) Section 3 of the Sea Fisheries (Shellfish) Act 1967 (effect of grant of right of regulating a fishery) is amended as follows.
- (2) In subsection (1)(c), for “improving and cultivating” substitute “regulating”.
- (3) In subsection (2), for “in the improvement and cultivation of” substitute “for purposes relating to the regulation of”.
- (4) In subsection (4), for “for the improvement and cultivation of” substitute “for purposes relating to the regulation of”.

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**176 Increase in penalties for certain offences relating to fisheries for shellfish**

- (1) The Sea Fisheries (Shellfish) Act 1967 (c. 83) is amended as follows.
- (2) In section 3(3) (offence of dredging, fishing for or taking shellfish in contravention of any restriction or regulation, etc.), for “level 5 on the standard scale” substitute “£50,000”.
- (3) In section 7(4) (offences in relation to certain fisheries), for “level 5 on the standard scale” substitute “£50,000”.

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**177 Liability of master, etc where vessel used in commission of offence**

- (1) In section 3 of the Sea Fisheries (Shellfish) Act 1967 (effect of grant of right of regulating a fishery), after subsection (4) insert—
  - “(5) Where any sea fishing boat is used in the commission of an offence under subsection (3) of this section, the master, the owner and the charterer (if any) shall each be guilty of an offence and liable on summary conviction to a fine not exceeding £50,000.”
- (2) In section 22(2) of that Act (interpretation), after the definition of “land” insert—

““master” includes, in relation to any sea fishing boat, the person for the time being in command or charge of the boat;”

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***Clause 178: Cancellation of licence after single relevant conviction***

417. Section 4 of the Act is amended to allow for the removal of licences from a holder after a single conviction for a breach of licence or of the provisions of the regulating order. This mirrors an amendment that was made in Scotland by section 32 of the Aquaculture and Fisheries (Scotland) Act 2007. The amendment extends to England and Wales only.

***Clause 179: Register of licences***

418. New section 4ZA inserted by clause 179 requires grantees of regulated fisheries to hold a register of current licence-holders' names and addresses and make it available for inspection free of charge. Copies may be issued and a charge may be made for doing so.

419. This new requirement for a register of licence holders is intended to assist the Gangmasters Licensing Authority in their duties under the Gangmasters Licensing Act 2004 and will also allow anyone to see who is currently benefiting from a licence. The clause extends to England and Wales only.

***Clause 180: Protection of private shellfish beds***

420. Section 7 is amended to extend the protection afforded to private oyster beds under section 7 to all privately owned shellfish beds for the particular type of shellfish to which their rights of ownership relate. The clause extends to England and Wales only.



**178 Cancellation of licence after single relevant conviction**

In section 4(7) of the Sea Fisheries (Shellfish) Act 1967 (which enables a licence granted in respect of a regulated fishery to be cancelled if the holder is convicted of two relevant offences) –

- (a) for “, having been convicted” substitute “is convicted”; 5
- (b) omit “, is subsequently convicted of another such offence”.

**179 Register of licences**

After section 4 of the Sea Fisheries (Shellfish) Act 1967 (licensing powers in case of regulated fishery) insert –

**“4ZA Register of licences** 10

- (1) This section applies where the grantees of an order to which section 4 of this Act applies issue one or more licences in pursuance of the order.
- (2) The grantees shall establish and maintain a register containing the names and addresses of all persons who for the time being hold licences issued by the grantees. 15
- (3) The register shall be available for inspection free of charge by any person at such place or places, and during such hours, as are determined by the grantees.
- (4) The grantees shall make arrangements for the provision of a copy of an entry in the register to any person on request. 20
- (5) The arrangements that may be made under subsection (4) of this section include arrangements for the payment of a reasonable fee by the person making the request.”

**180 Protection of private shellfish beds**

- (1) Section 7 of the Sea Fisheries (Shellfish) Act 1967 (c. 83) (protection of fisheries) is amended as follows. 25
- (2) In subsection (1)(b), for “private oyster bed” substitute “private shellfish bed”.
- (3) In subsections (2) and (3) –
  - (a) for “oysters” substitute “relevant shellfish”;
  - (b) for “private oyster bed” substitute “private shellfish bed”. 30
- (4) In subsections (4) and (5)(b), for “private oyster bed” substitute “private shellfish bed”.
- (5) For subsection (6) substitute –
  - “(6) In this section –
    - “the grantees” means the persons for the time being entitled to the right of several fishery conferred by the order under section 1 of this Act; 35
    - “relevant shellfish”, in relation to a private shellfish bed, means the shellfish in respect of which the owner of the bed has private rights independently of this Act.” 40

***Clause 181: Use of implements of fishing***

421. Section 7(4) of the Act currently provides that it is an offence to use any implement of fishing, apart from a line and hook or a net for catching floating fish, in any area where there is a right of several fishery or in a private oyster bed.

422. The amendments made by clause 181 enable the Secretary of State (or, as the case may be, the National Assembly for Wales) to specify by or under an order other implements of fishing that may be used in areas where there is a right of several fishery. The use of such implements may be restricted to particular times or particular areas of the fishery.

***Clause 182: Taking of crabs and lobsters for scientific purposes***

423. The amendments to section 17 made by clause 182 provide for an exemption for the taking of edible crab and lobsters for scientific purposes from offences committed under section 17 by way of an authorisation granted by the MMO for the taking of such shellfish from within British fishery limits not including the Scottish zone, Northern Ireland zone nor Welsh inshore region or by Welsh Ministers for such shellfish falling within Wales. The ban on taking crabs covers are those carrying spawn attached to their tail or other exterior part and those which have recently cast their shell. Should an order covering lobsters be made, this will also allow the MMO to grant authorisations in respect of taking lobsters for scientific purposes.

424. The new subsections require that the taking of crabs and lobsters for scientific purposes to be exempt from section 17(1) as an offence and brings the Act in line with both Community and domestic legislation.

**181 Use of implements of fishing**

- (1) Section 7 of the Sea Fisheries (Shellfish) Act 1967 (protection of fisheries) is amended as follows.
- (2) In subsection (4), at the end of paragraph (a)(ii) insert “or  
(iii) in the case of several fishery, an implement of a type specified by or under the order and so used as not to disturb or injure in any manner shellfish of the description in question or any bed for such shellfish or the fishery for such shellfish;”. 5
- (3) After subsection (4) insert – 10
  - “(4A) The power to specify a type of implement for the purposes of subsection (4)(a)(iii) of this section includes power to specify –
    - (a) periods during which implements of that type may or may not be used;
    - (b) parts of the area of the fishery with respect to which the right of several fishery is conferred in which implements of that type may or may not be used. 15

The exception in subsection (4)(a)(iii) of this section does not apply in a case of a person who uses an implement otherwise than in accordance with provision made by virtue of this subsection.” 20

**182 Taking of crabs and lobsters for scientific purposes**

- (1) Section 17 of the Sea Fisheries (Shellfish) Act 1967 (c. 83) (taking and sale of certain crabs and lobsters prohibited) is amended as follows.
- (2) In subsection (1), for “subsection (2)” substitute “subsections (2) and (2A)”.
- (3) After subsection (2) insert – 25
  - “(2A) Any person who takes or has in his possession any edible crab falling within paragraph (a) or (b) of subsection (1) of this section shall not be guilty of an offence under that subsection if –
    - (a) he has been granted authority by the appropriate body to take such crabs for the purpose of scientific investigation, and 30
    - (b) the crabs were taken for that purpose and in accordance with such authority.”
- (4) In subsection (3), for “and any person” substitute “and, subject to subsection (3B) of this section, any person”.
- (5) After subsection (3A) insert – 35
  - “(3B) Any person who lands any lobster falling within subsection (3) of this section shall not be guilty of an offence under that subsection if –
    - (a) he has been granted authority by the appropriate body to take such lobsters for the purpose of scientific investigation, and
    - (b) the lobsters were taken for that purpose and in accordance with such authority.” 40
- (6) After subsection (5) insert –
  - “(6) In this section –

***Clause 183: Orders prohibiting the taking and sale of certain lobsters***

425. The amendments allow the Secretary of State (or, as the case may be, the Welsh Ministers) to make an order to introduce protection for lobsters under section 17(3) independently of any other devolved administration. Each administration will be able to act alone. At present Scottish Ministers can act alone to make an order for Scotland. However the Secretary of State and Welsh Ministers must act jointly with Scottish Ministers to make orders for England and Wales. This difference in procedure between the administrations is a consequence of devolution and of subsequent amendments to section 17.

***Clause 184: Power to appoint an inspector before making orders as to fisheries for shellfish***

426. These amendments provide the Secretary of State (or, as the case may be the Welsh Ministers) with greater discretionary powers in making decisions on the calling of public inquiries and the appointment of an inspector for the inquiry hearings.

- “the appropriate body” means –
- (a) the Marine Management Organisation, in the case of crabs and lobsters taken from that part of the sea that is within British fishery limits and does not include –
    - (i) the Scottish zone, 5
    - (ii) the Northern Ireland zone, or
    - (iii) the Welsh inshore region;
  - (b) the Welsh Ministers, in the case of crabs and lobsters taken from the Welsh inshore region;
- “British fishery limits” has the meaning given by section 1 of the Fishery Limits Act 1976; 10
- “Northern Ireland zone” has the same meaning as in the Northern Ireland Act 1998;
- “the Welsh inshore region” has the meaning given by section 298 of the Marine Act 2009.” 15

### **183 Orders prohibiting the taking and sale of certain lobsters**

- (1) Section 17 of the Sea Fisheries (Shellfish) Act 1967 (taking and sale of certain crabs and lobsters prohibited) is amended as set out in subsections (2) and (3) below.
- (2) In subsection (3) (orders prohibiting the taking and sale of certain lobsters), for the words from “If the Minister” to “England and Wales,” substitute “If the appropriate national authority by order so directs, no person shall, in the part of the United Kingdom to which the order relates,”. 20
- (3) For subsection (3A) substitute –
  - “(3ZA) In subsection (3) of this section “the appropriate national authority” means – 25
    - (a) in relation to England, the Secretary of State;
    - (b) in relation to Wales, the Welsh Ministers.
  - (3A) Subsection (3) of this section has effect in relation to Scotland, with the modifications that – 30
    - (a) for “appropriate national authority by order so directs” there is substituted “Scottish Ministers by order so direct”; and
    - (b) for “the part of the United Kingdom to which the order relates” there is substituted “Scotland”.”
- (4) In section 20(3) (procedure for orders made under section 17(3)), for the words from “shall be laid before Parliament” to the end substitute “shall – 35
  - (a) in the case of an order in relation to England, be laid before Parliament;
  - (b) in the case of an order in relation to Wales, be laid before the National Assembly for Wales; 40
  - (c) in the case of an order in relation to Scotland, be laid before the Scottish Parliament.”

### **184 Power to appoint inspector before making orders as to fisheries for shellfish**

- (1) Schedule 1 to the Sea Fisheries (Shellfish) Act 1967 (c. 83) (provisions with respect to making of orders under section 1) is amended as follows. 45

**Chapter 3: Migratory and Freshwater Fish**

427. This Chapter widens the powers available to the Environment Agency in its role as a fisheries manager. It also gives powers to the appropriate national authority to make regulations in respect of the keeping of live fish and their introduction into and removal from inland waters.

428. The Salmon and Freshwater Fisheries Act 1975, the Water Resources Act 1991 and the Environment Act 1995 apply a regulatory framework (a licensing system, byelaw making powers, enforcement powers and certain other restrictions) to fisheries of salmon, trout, eels and freshwater fish. The clauses in this Chapter amend these three Acts and related enactments to extend the regulatory framework to smelt, lampreys, and (in respect of byelaw-making powers) shad, and to empower the appropriate national authority to add any other kinds of fish to the regulatory framework. There are also a number of other miscellaneous changes.

429. These three Acts apply to England and Wales, including the adjacent territorial sea, and to those parts of the (Border) River Esk and its tributaries which are in Scotland. It does not apply to those parts of the River Tweed and its tributaries which are in England. The clauses in this Chapter have the same application, with the exception of clause 200, which applies to the whole catchment area of the Border River Esk.

430. “Appropriate national authority” has the meaning stated in the draft Bill and in these Explanatory Notes; it means the Secretary of State, except in relation to Wales and the territorial sea adjacent to it, where it means the Welsh Ministers.

**Clause 185: Prohibited implements**

431. This clause amends section 1 of the Salmon and Freshwater Fisheries Act 1975. Section 1 creates offences in relation to certain instruments etc. used for taking fish; in particular section 1(1)(a) lists instruments the use of which is prohibited.

432. *Subsection (2)(a)* adds tailers to the list in section 1(1)(a). A tailer is a pole with a retractable loop of wire at the end, which is looped around the body of the fish to help remove it from the water.

433. *Subsections (2)(b), (3) and (4)* extend the list of kinds of fish to which section 1 applies, to include also eels, lampreys, smelt and any fish specified in an order made under new section 40A of the Salmon and Freshwater Fisheries Act 1975 (inserted by clause 191).

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- (2) In paragraph 4 (appointment of inspector) –
- (a) omit sub-paragraph (1);
  - (b) in sub-paragraph (2), for “The appropriate Minister shall” substitute “Where he considers it appropriate to do so, the appropriate Minister may”.
- (3) Omit paragraph 5.
- (4) In paragraph 6, after “in paragraph 3 above or” insert “, in a case where an inspector has been appointed under paragraph 4 above,”.

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### CHAPTER 3

#### MIGRATORY AND FRESHWATER FISH

10

#### *Taking fish etc*

#### **185 Prohibited implements**

- (1) In the Salmon and Freshwater Fisheries Act 1975 (c. 51), section 1 (prohibited implements) is amended as follows.
- (2) In subsection (1), in paragraph (a) –
- (a) in sub-paragraph (iv) after “gaff,” insert “tailer,”;
  - (b) for “salmon, trout or freshwater fish” substitute “salmon, trout, eels, lampreys, smelt, freshwater fish and any specified fish in any waters”.

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434. *Subsection (5)* inserts new sections 1(1A) and (1B), which give the appropriate national authority power by order to add or remove instruments from the list in section 1(1)(a).

435. *Subsection (6)* inserts new section 1(3A), by virtue of which references in section 1 to waters include waters adjoining the coast of England and Wales to a distance of six nautical miles from baselines. This corresponds to the area of sea in which the Environment Agency carries out its functions.

436. Section 1(4) of the Salmon and Freshwater Fisheries Act 1975 permits the use of a gaff or tailer when fishing with a rod and line. A gaff is a pole with a steel hook mounted on the end, used to snag the fish, and subsequently to remove it from the water. *Subsection (7)* omits this subsection, with the effect that the use of these instruments is no longer permitted.

#### ***Clause 186: Roe etc***

437. This clause amends section 2 of the Salmon and Freshwater Fisheries Act 1975.

438. Section 2(1) prohibits the use of roe (fish eggs), and the buying, sale or possession of salmon or trout, for the purpose of fishing for salmon, trout or freshwater fish. Roe has strong attracting properties to fish and therefore is an especially effective type of bait. The aim of section 2(1) is both to protect fish from being targeted for the removal of their roe, and to prevent over-fishing.

439. This clause amends section 2(1)(a) to apply to the use of roe for the purpose of fishing also for lampreys, smelt, and for any other specified fish (by order under new section 40A). In addition it amends section 2(1)(b) to cover the buying, selling, exposing for sale or possession of any roe for that purpose.

440. The clause also amends section 2(2), to extend the prohibition on taking, killing or injuring and buying, selling or possession of any unclean or immature fish to lampreys and smelt.

441. An unclean fish is one which is about to spawn, or has recently spawned and has not yet recovered from spawning. An immature salmon is one which is of a length less than 12 inches. Immature fish other than salmon are fish of a length less than such length (if any) as prescribed in byelaws applicable to the water in which the fish is taken. These definitions are set out in section 41(1) of the Salmon and Freshwater Fisheries Act 1975.



- 
- (3) In that subsection, in paragraph (b), for “salmon, trout or freshwater fish” substitute “any such fish in any waters”.
- (4) In that subsection, in paragraph (c), for “any salmon, trout or freshwater fish” substitute “any such fish in any waters”.
- (5) After that subsection insert – 5
- “(1A) In this section “specified fish” means fish of such description as may be specified for the purposes of this section by order under section 40A below.
- (1B) The appropriate national authority may by order amend subsection (1)(a) above so as to – 10
- (a) add any instrument to it; or
- (b) remove any instrument for the time being specified in it.”
- (6) After subsection (3) insert –
- “(3A) References in this section to any waters include waters adjoining the coast of England and Wales to a distance of six nautical miles measured from the baselines from which the breadth of the territorial sea is measured.” 15
- (7) Subsection (4) is omitted.

**186 Roe etc**

- (1) Section 2 of the Salmon and Freshwater Fisheries Act 1975 (c. 51) (roe, spawning and unclean fish, etc) is amended as follows. 20
- (2) In subsection (1) –
- (a) for “salmon, trout or freshwater fish” substitute “salmon, trout, eels, lampreys, smelt, freshwater fish or any specified fish in any waters”;
- (b) in paragraph (b), for “any roe of salmon or trout” substitute “any fish roe”. 25
- (3) In subsection (2) –
- (a) in paragraph (a), for “salmon, trout, or freshwater fish” substitute “salmon, trout, lamprey, smelt, freshwater fish or specified fish in any waters”;
- (b) in paragraph (b), for “any salmon, trout, or freshwater fish” substitute “any such fish”. 30
- (4) In subsection (5), for “salmon, trout or freshwater fish” substitute “fish of any description”.
- (5) After that subsection insert – 35
- “(6) In this section “specified fish” means fish of such description as may be specified for the purposes of this section by order under section 40A below.
- (7) Subsection (3A) of section 1 above applies for the purposes of this section.” 40

**Clause 187: Licences to fish**

442. This clause amends section 25 of the Salmon and Freshwater Fisheries Act 1975.
443. Section 25(1) requires the Environment Agency to regulate fishing for salmon, trout, eels and freshwater fish by means of a system of licensing.
444. *Subsection (1)* amends the scope of the licensing system by extending the list of kinds of fish to which the licensing system applies to include also lampreys, smelt and any fish specified in an order made under new section 40A of the Salmon and Freshwater Fisheries Act 1975. New section 25(1A) is inserted, which restricts the licensing system to licensable means of fishing. These are rod and line, historic installations and such other means of fishing as the appropriate national authority may specify by order.
445. The term “historic installation” means certain fixed nets and traps which were certified under old legislation, or were in use by virtue of a grant or charter or immemorial usage in 1861.
446. A person who fishes otherwise than by a licensable means of fishing is required to have an authorisation under clause 189.
447. The Environment Agency already has the power to introduce licences for different areas. *Subsection (2)* clarifies that it may introduce licences in relation to different descriptions of waters. For example, this power might be used to introduce different licences for canals as opposed to rivers.
448. *Subsection (3)* omits section 25(4), which entitled a person to use a gaff or tailer when fishing with rod and line. This flows from the addition of tailers to the list of prohibited instruments in section 1.
449. *Subsection (4)* omits previous provisions which, first, deemed a licence for fishing for salmon also to allow fishing for trout, and, second, deemed a licence for fishing for salmon or trout to allow fishing also for freshwater fish and eels. The effect of this repeal is to allow the Environment Agency more flexibility in the varieties of licences it issues.
450. *Subsection (5)* inserts new section 25(10) and (11), empowering the Environment Agency to allow people to fish by licensable means of fishing without a licence. For example, the Environment Agency may allow those who need to remove excess fish from a particular water for management reasons, to do so without a licence.
451. The current privileged status of historic installations means that existing legislation may not be used to control effort in these fisheries, and therefore precludes the Environment Agency from taking coherent action to control fishing pressure. *Subsection (6)* empowers the Environment Agency to impose conditions (by way of notice) on a licence to use historic installations. The Environment Agency could use these powers, for instance, to limit the number of fish which may be taken, specify the times at which they may be taken or the gear which may be used. A breach of such a licence condition is an offence under section 27 of the Salmon and Freshwater Fisheries Act 1975.

**187 Licences to fish**

- (1) In section 25 of the Salmon and Freshwater Fisheries Act 1975 (c. 51) (licences to fish), for subsection (1) substitute—
- “(1) The Agency shall by means of a system of licensing regulate fishing by licensable means of fishing for— 5
- (a) salmon, trout, eels, lampreys, smelt and freshwater fish; and
- (b) fish of such other description as may be specified for the purposes of this section by order under section 40A below.
- (1A) In this Act “licensable means of fishing” means any of the following— 10
- (a) rod and line;
- (b) an historic installation;
- (c) such other means of fishing as the appropriate national authority may by order specify.
- (1B) In this Act “historic installation” means any of the following— 15
- (a) a fixed engine certified in pursuance of the Salmon Fishery Act 1865 to be a privileged fixed engine;
- (b) a fixed engine which was in use for taking salmon or migratory trout during the open season of 1861, in pursuance of an ancient right or mode of fishing as lawfully exercised during that open season, by virtue of any grant or charter or immemorial usage; 20
- (c) a fishing weir or fishing mill dam which was lawfully in use on 6th August 1861 by virtue of a grant or charter or immemorial usage.”
- (2) In that section, in subsection (2), after “area or areas” insert “(or in waters of such description or descriptions)”. 25
- (3) In that section, in subsection (4), the words from “gaff” to “tailer or” are omitted.
- (4) In that section, subsections (5) and (6) are omitted.
- (5) In that section, at the end insert—
- “(10) For the purposes of this Part, the Agency may permit a person to take fish of any description in circumstances where he would for those purposes otherwise require a fishing licence. 30
- (11) Permission under subsection (10) above—
- (a) must be in writing;
- (b) may be given generally or specifically; 35
- (c) may be given subject to conditions.”
- (6) In Schedule 2 to that Act (licences), after paragraph 14 insert—
- “Historic installations*
- 14A (1) Where a fishing licence is granted in respect of an historic installation, the Agency may at any time, subject to this paragraph, impose conditions on its use pursuant to the licence. 40
- (2) Conditions under sub-paragraph (1) above are to be imposed by notice in writing to the person holding the licence.

**Clause 188: Limitation of licences**

452. This clause amends section 26 of the Salmon and Freshwater Fisheries Act 1975. Section 26 enables the Environment Agency, by order confirmed by the Minister, to limit the number of licences which it may issue for fishing for salmon or trout other than rainbow trout with any specified instrument other than rod and line. The reference to “the Minister” in this section means the Secretary of State, except in relation to Wales, and the territorial sea adjacent to it, where it means the Welsh Ministers. References to “the Minister” are replaced by references to the appropriate national authority throughout this section.

453. The amendments made by *subsection (2)* allow orders under section 26 to be made in respect of any kind of licence issued under section 25. Exceptions to this are provided by *subsection (3)*, which inserts new section 26(1A) and (1B), excluding fishing by rod and line or historic installation. By implication, *subsection (2)* therefore extends the list of kinds of fish in respect of which an order may be made, to include those subject to the system of licensing under section 25(1).

454. The Minister is currently required to hold a local inquiry before confirming an order if the number of licences proposed to be issued is less than the number of licences issued in any of the three preceding years, or if an objection is made by any person who has held a relevant licence during each of the two preceding years. *Subsection (4)* amends section 26(3) to remove the obligation to hold a local inquiry, and replaces it with a power to do so.

455. Sections 26(4) and (5) prohibit Ministers from confirming an order if it fails to secure that any person who is dependent on fishing for his livelihood may obtain a licence under it. *Subsection (5)* removes this requirement. However, it gives the Environment Agency a power to pay compensation.

**Clause 189: Authorisation to fish**

456. This clause inserts new sections 27A and 27B into the Salmon and Freshwater Fisheries Act 1975. Clause 187 limits the system of licensing to licensable means of fishing. Use of other means of fishing is only permissible under an authorisation granted under new section 27A.

457. New section 27A gives the Environment Agency power to authorise a person to use any means other than a licensable means of fishing to fish for salmon, trout, eels, lampreys, smelt and freshwater fish, and those fish added by order under section 40A. Among other things the Environment Agency may refuse or revoke authorisations, subject them to conditions, charge for them and grant them for limited periods of time.

458. New section 27A(7) makes provision about the grant of authorisations to bodies corporate. The Environment Agency will be able to grant an authorisation to a business or organisation or to a named individual within that organisation.

- (3) A notice under sub-paragraph (1) above may be varied or revoked by a further such notice.
- (4) The Agency may only impose conditions under sub-paragraph (1) above where it considers that it is necessary to do so for the protection of any fishery in the waters where the historic installation is situated.” 5

**188 Limitation of licences**

- (1) Section 26 of the Salmon and Freshwater Fisheries Act 1975 (c. 51) (limitation of fishing licences) is amended as follows.
- (2) In subsection (1) – 10
  - (a) at the beginning insert “Subject to this section”;
  - (b) in paragraph (a), for the words from “to be issued” to “rod and line” substitute “of any description to be issued pursuant to section 25 above in any year in relation to that area or those areas”.
- (3) After that subsection insert – 15
  - “(1A) The Agency may only make an order under subsection (1) above in relation to licences for fishing for fish of any description if it is satisfied that it is necessary to do so for the purposes of maintaining, improving or developing fisheries of any fish referred to in section 25(1) above.
  - (1B) The Agency may not make an order under subsection (1) above in relation to licences for fishing for fish by – 20
    - (a) rod and line, or
    - (b) an historic installation.”
- (4) In subsection (3), for “shall cause” substitute “may cause”.
- (5) For subsections (4) and (5) substitute – 25
  - “(4) If it appears to the Agency that an order under this section would prevent a person from fishing in circumstances where that person is wholly dependent on the fishing for his livelihood, the Agency may pay that person such amount by way of compensation as it considers appropriate.” 30

**189 Authorisation to fish**

- (1) In the Salmon and Freshwater Fisheries Act 1975, in the heading to Part 4, after “Fishing licences” insert “and authorisations”.
- (2) After section 27 of that Act insert – 35
  - “27A Authorisation of fishing otherwise than by licensable means** 35
  - (1) The Agency may authorise a person to use any means, other than a licensable means of fishing, to fish for –
    - (a) salmon, trout, eels, lampreys, smelt and freshwater fish; and
    - (b) fish of such other description as may be specified for the purposes of this section by order under section 40A below. 40
  - (2) An application for an authorisation under this section must be in such form as the Agency may specify.

459. New section 27B makes it an offence to fish for or take fish without an authorisation using any means of fishing for which an authorisation is required. This offence is similar to that under section 27 of fishing for or taking fish without a licence.

- 
- (3) An authorisation under this section must be in writing, but subject to that may be in such form as the Agency may determine.
  - (4) An authorisation under this section –
    - (a) must be granted for a specified period of time;
    - (b) may be granted to more than one person; 5
    - (c) may be limited as to the waters in respect of which it is granted;
    - (d) may be subject to conditions.
  - (5) The Agency may at any time, on application or on its own initiative –
    - (a) amend an authorisation under this section;
    - (b) revoke an authorisation under this section. 10
  - (6) In determining whether to grant, amend or revoke an authorisation the Agency must consider the effect of doing so on –
    - (a) fisheries in the area to which the authorisation relates; and
    - (b) the aquatic or marine environment in that area.
  - (7) An authorisation under this section granted to a body corporate – 15
    - (a) may, if the authorisation so specifies, apply in relation to any individual acting on behalf of that body (as well as to the body corporate); or
    - (b) may, if the authorisation so specifies, apply only in relation to individuals named in the authorisation when acting on behalf of the body (as well as to the body corporate). 20
  - (8) The Agency may charge a fee for the grant of an authorisation under this section.
  - (9) Where the Agency determines standard fees for the grant of authorisations of particular descriptions, it must publish them. 25
  - (10) Where –
    - (a) the Agency has determined a standard fee for the grant of an authorisation of a particular description, but
    - (b) the Agency considers, in any case, that special circumstances apply to the grant of an authorisation of that description, 30
 it may charge a fee of another amount.

**27B Unauthorised fishing etc**

- (1) A person is guilty of an offence if, by any means other than a licensable means of fishing, he fishes for or takes any fish in circumstances where – 35
  - (a) the fishing or taking may be authorised under section 27A above, but
  - (b) he is not authorised to fish for or take the fish under that section (or is so authorised but the fishing or taking is in breach of any condition of his authorisation). 40
- (2) A person is guilty of an offence if he has an instrument in his possession, other than an instrument which is a licensable means of fishing, with intent to use it to fish for or take fish in circumstances where –
  - (a) the fishing or taking may be authorised under section 27A above, but 45

**Clause 190: Enforcement**

460. This clause amends provisions in Part 5 of the Salmon and Freshwater Fisheries Act 1975.

461. *Subsection (2)* amends section 31. Section 31 gives water bailiffs (enforcement officers of the Environment Agency) powers of search and seizure. The amendment makes it clear that water bailiffs may seize a sample of any fish.

462. *Subsection (3)* amends section 32. Section 32 gives water bailiffs the power to enter, remain upon and traverse any lands adjoining or near to any waters, subject to exceptions. The amendment removes the exception for decoys or lands used exclusively for the preservation of wild fowl. This amendment means, for instance, that water bailiffs may enter on such decoys or lands to take action against poaching.

463. *Subsection (4)* amends section 34. Section 34 enables enforcement officers to seize without warrant any person who has illegally taken or killed fish, or is found on or near any waters with the intent so to do, but is restricted to night-time. *Subsection (4)* removes these references to the time of day, with the effect that the Environment Agency may use its power at all times.

464. *Subsections (5) and (6)* amend section 35. Section 35 empowers water bailiffs and other enforcement officers to demand from a person fishing etc. the production of his fishing licence or other authority to fish.

465. *Subsection (5)(a)* empowers water bailiffs to demand the production of a fishing licence from a person who is intending to fish.

466. *Subsection (5)(b)* extends the power to circumstances in which a water bailiff has suspicion that the person has fished “recently” rather than, as currently, “within the preceding half hour.”

467. Certain species of fish are specified in Schedule 5 to the Wildlife and Countryside Act 1981 and are therefore protected from intentional harm. Whilst it is an offence to take or kill, say, allis shad, under certain circumstances these activities can be licensed under that Act. *Subsection (5)(c)* makes it express that water bailiffs and other enforcement officers may require production of a licence issued under that Act, but restricts the current power, which arguably permits the water bailiff to require production of any fishing licence.

468. *Subsection (6)* omits section 35(2), whereby any person fishing may demand to see another person’s fishing licence.



- (b) he is not authorised to fish for or take the fish under that section (or is so authorised but the fishing or taking would be in breach of any condition of an authorisation under that section).”
- (3) In Schedule 4 to that Act (offences), in the table in paragraph 1(2), at the end insert— 5

“Section 27B	Unauthorised fishing etc	(a) Summarily	A fine not exceeding £50,000	
		(b) On indictment	A fine”	10

**190 Enforcement**

- (1) Part 5 of the Salmon and Freshwater Fisheries Act 1975 (c. 51) (administration and enforcement) is amended as follows.
- (2) In section 31 (powers of search), in subsection (1)(d) after “fish” insert “(or a sample of any fish)”. 15
- (3) In section 32 (power to enter lands), subsection (1)(ii) and the preceding “or” are omitted.
- (4) In section 34, the words from “between the end” to “following morning” are omitted.
- (5) In section 35 (power to require production of fishing licences), in subsection (1)— 20
- (a) for “being about to” substitute “intending to”;
  - (b) for “to have within the preceding half hour” substitute “of having recently”;
  - (c) after “in any area,” insert “in circumstances where the fishing would require a licence or authorisation under this Act or a licence under section 16 of the Wildlife and Countryside Act 1981,”. 25
- (6) In that section, subsection (2) is omitted.

***Clause 191: Power to specify fish***

469. This clause inserts a new section 40A into the Salmon and Freshwater Fisheries Act 1975, and is referred to in various places in these notes.

470. New section 40A empowers the appropriate national authority to add fish of any description for the purposes of:

- a) fishing with prohibited instruments (section 1 of the Salmon and Freshwater Fisheries Act 1975)
- b) use of roe (section 2 of the Salmon and Freshwater Fisheries Act 1975)
- c) licensing and authorisation of fishing activities (sections 25 and 27A of the Salmon and Freshwater Fisheries Act 1975),
- d) the offence of handling fish in suspicious circumstances (section 32 of the Salmon Act 1986),
- e) byelaw making powers (paragraph 6 of Schedule 25 to the Water Resources Act 1991), and
- f) the duties of the Environment Agency (section 6(6) of the Environment Act 1995).

471. *Subsection (2)* defines “appropriate national authority” as meaning the Secretary of State, except in relation to Wales (and the territorial sea adjacent to Wales). In relation to Wales, and the territorial sea adjacent to Wales, it means the Welsh Ministers.

***Clause 192: Order-making powers: supplementary***

472. This clause inserts a new section 40B into the Salmon and Freshwater Fisheries Act 1975. The clause sets out that an order under section 1, 25 or 40A is to be made using the negative resolution procedure.

***Clause 193: Definitions relating to fish***

473. This clause amends section 41 of the Salmon and Freshwater Fisheries Act 1975.

474. *Subsection (2)* substitutes a definition of “eels” which makes it clear that “eels” means migratory eels (*Anguilla anguilla*).

475. *Subsection (3)* defines that, for the purposes of that Act, fish shall be considered to include crustaceans and molluscs.

**191 Power to specify fish**

- (1) After section 40 of the Salmon and Freshwater Fisheries Act 1975 insert –

**“40A Power to specify fish**

The appropriate national authority may by order specify fish of any description for the purposes of any or all of the following – 5

- (a) section 1, 2, 25 or 27A above;
- (b) section 32 of the Salmon Act 1986;
- (c) paragraph 6 of Schedule 25 to the Water Resources Act 1991;
- (d) section 6(6) of the Environment Act 1995.”

- (2) In section 41 of that Act (definitions), in subsection (1), after the definition of “the Agency” insert – 10

““the appropriate national authority” means –

- (a) the Secretary of State, except in relation to Wales (within the meaning of the Government of Wales Act 2006);
- (b) in relation to Wales (within that meaning), the Welsh Ministers.” 15

**192 Order-making powers: supplementary**

After section 40A of the Salmon and Freshwater Fisheries Act 1975 (c. 51) (as inserted by section 191 above) insert –

**“40B Orders: supplementary 20**

- (1) An order under section 1, 25 or 40A above may make different provision for different purposes (and, in particular, different provision in relation to different areas or waters).
- (2) Such an order is to be made by statutory instrument.
- (3) A statutory instrument containing such an order under is subject to annulment in pursuance of a resolution of – 25
  - (a) either House of Parliament, in the case of an order made by the Secretary of State;
  - (b) the National Assembly for Wales, in the case of an order made by the Welsh Ministers.” 30

**193 Definitions relating to fish**

- (1) In section 41 of the Salmon and Freshwater Fisheries Act 1975 (interpretation), subsection (1) is amended as follows.
- (2) For the definition of “eels” substitute –

476. *Subsection (4)* defines which specific families of decapod crustacean are to be considered to be freshwater crayfish for the purposes of that Act.

477. *Subsection (5)* defines the term “freshwater fish” as those fish which are habitually in freshwater. The definition includes freshwater crayfish and Chinese mitten crabs, but excludes all other crustaceans and molluscs, as well as salmon, trout, eels, lampreys and smelt, and any diadromous fish. Diadromous fish are migratory fish, including marine fish, which may be able to survive in freshwater, and therefore may be said habitually to be there.

#### ***Clause 194: Byelaws***

478. This clause amends paragraph 6 of Schedule 25 to the Water Resources Act 1991. Paragraph 6 sets out the powers of the Environment Agency to make fisheries byelaws.

479. *Subsections (2) and (3)* extend and standardise the kinds of fish in respect of which the Environment Agency may make byelaws, to include (in addition to salmon, trout, eels and freshwater fish) lampreys, shad and smelt, and those kinds of fish specified in an order under section 40A of the Salmon and Freshwater Fisheries Act 1975.

480. *Subsection (4)* inserts new paragraph 6(2)(aa), giving the Environment Agency the power to set close seasons and close times. This power replaces the powers in Schedule 1 to the Salmon and Freshwater Fisheries Act 1975, which is repealed. By way of note, section 19 of that Act, which created criminal offences in relation to close season and close time byelaws, is also repealed. By virtue of section 211 of the Water Resources Act 1991 it is an offence to breach a byelaw, which will include one made under paragraph 6(2)(aa) of Schedule 25.

481. *Subsection (5)* amends paragraph 6(2)(b)(i) to empower the Environment Agency to introduce byelaws prohibiting the taking of fish greater than a specified size. The Environment Agency may already make byelaws to prevent the taking of or fishing for fish smaller than a specified size.

482. Section 20 of the Salmon and Freshwater Fisheries Act 1975, which is repealed by the draft Bill, requires that fixed engines and any other fishing instrument capable of catching fish or obstructing the passage of fish, be removed or disabled during a close season or weekly close time. *Subsection (6)* amends paragraph 6(2)(e) to allow the Environment Agency to make byelaws for purposes which reflect the provisions of section 20.

483. *Subsection (7)* omits paragraph 6(3) of Schedule 25, which empowers the Environment Agency to make byelaws imposing further restrictions on fishing activity during close times. It is replaced by the proposed general close season and close time byelaw making power inserted by clause 194(4) (see above).

484. *Subsection (8)* omits paragraph 6(4) of Schedule 25, which enables the Environment Agency to make byelaws regarding the deposit or discharge of liquid or solids detrimental to

- 
- ““eels” means any fish of the species *Anguilla anguilla*, and includes elvers and the fry of eels;”.
- (3) After that definition insert –  
    ““fish” includes crustaceans and molluscs;”.
- (4) After the definition of “foreshore” insert – 5  
    ““freshwater crayfish” means any freshwater decapod crustacean of the Families Astacidae, Cambaridae or Parastacidae;”.
- (5) For the definition of “freshwater fish” substitute –  
    ““freshwater fish” means any fish habitually living in fresh water, exclusive of – 10
- (a) salmon, trout, eels, lampreys, smelt and other kinds of diadromous fish;
- (b) any kind of crustacean other than freshwater crayfish and Chinese mitten crabs (*Eriocheir sinensis*); and
- (c) any kind of mollusc.” 15

*Byelaws*

**194 Byelaws**

- (1) In Schedule 25 to the Water Resources Act 1991 (c. 57) (byelaw-making powers of the Agency), paragraph 6 (byelaws for purposes of fisheries functions) is amended as follows. 20
- (2) In sub-paragraph (1), in paragraph (b), for the words from “salmon fisheries” to the end substitute “fisheries of fish to which this paragraph applies.”
- (3) After that sub-paragraph insert –  
    “(1A) This paragraph applies to – 25
- (a) salmon, trout, eels, lampreys, smelt, shad and freshwater fish; and
- (b) fish of such other description as may be specified for the purposes of this paragraph by order under section 40A of the Salmon and Freshwater Fisheries Act 1975.”
- (4) In sub-paragraph (2), after paragraph (a) insert – 30  
    “(aa) specifying close seasons or times for the taking of any fish to which this paragraph applies by such means as may be prescribed by the byelaws;”.
- (5) In that sub-paragraph, in paragraph (b)(i), after “size” insert “greater or”. 35
- (6) In that sub-paragraph, in paragraph (e) at the end insert “(including requiring fixed engines during close seasons or times to be removed or made incapable of taking or obstructing the passage of fish)”.
- (7) Sub-paragraph (3) is omitted.
- (8) Sub-paragraph (4) is omitted. 40
- (9) After sub-paragraph (5) insert –

fish. The reason for this repeal is that section 4 of the Salmon and Freshwater Fisheries Act 1975 provides for specific control of these activities. The power is therefore not necessary.

485. *Subsection (9)* inserts new paragraph 6(5A) and (5B). Sub-paragraph (5A) enables the Environment Agency to authorise a person to act in breach of a byelaw. For example, authorisation may be given where action is needed to ensure the good management of a fishery, or for scientific research which would be in breach of a byelaw, but where a general exception would undermine the Environment Agency's effective management of fisheries across the board.

486. Sub-paragraph (5B) clarifies that the Environment Agency byelaws may apply to historic installations.

487. *Subsection (10)* ensures that extant byelaws made under paragraph 6(3) may be taken as having been made under the new power.

***Clause 195: Byelaws: conservation objectives of MCZs***

488. This clause amends paragraph 6A of Schedule 25 to the Water Resources Act 1991.

489. Schedule 6A enables the Environment Agency to use its fisheries byelaw-making powers (under paragraph 6 of the Schedule) for marine or aquatic environmental purposes. *Subsection (2)* inserts a new sub-paragraph (3)(c) which additionally enables the Environment Agency to make byelaws which further the conservation objectives of any Marine Conservation Zone within its area where those objectives do not already fall within the definition of "marine or aquatic environmental purposes". This power only applies to Marine Conservation Zones in England (which for these purposes includes the territorial sea adjacent to England).

***Clause 196: Byelaws: emergency procedures***

490. This clause inserts a new Schedule 27 into the Water Resources Act 1991.

491. New Schedule 27 creates a specific procedure for the Environment Agency to make byelaws in response to an emergency. There is no requirement for statutory public consultation (which is a condition of making ordinary fisheries byelaws). Nor are emergency byelaws subject to confirmation by the appropriate national authority. However, the appropriate national authority has a duty to repeal an emergency byelaw where it appears that the criteria for making it no longer apply, or to amend it where it considers that to be appropriate. This clause sets out the procedure for making such byelaws.

492. The Environment Agency will be able to make emergency byelaws only where fish, their spawn, gametes or food are being harmed or likely to be harmed, where such a byelaw would prevent or limit that harm, where the byelaw is needed urgently, and where the event or the likelihood of the event could not reasonably have been foreseen.

- “(5A) A byelaw under this paragraph does not apply to a person (including an employee or agent of the Agency) to the extent that he is acting –
- (a) with the written authority of the Agency; and
  - (b) in accordance with any conditions imposed by the Agency in relation to that authority.
- 5
- (5B) For the avoidance of doubt, a byelaw under this paragraph may apply to an historic installation as to any other fixed engine.”
- (10) Any byelaw made by the Environment Agency under paragraph 6(3) of that Schedule and in force immediately before the coming into force of subsection (7) above shall in relation to any period after the coming into force of that subsection be regarded as having been made under paragraph 6(2) of that Schedule, as amended by this section.
- 10

### **195 Byelaws: conservation objectives of MCZs**

- (1) In Schedule 25 to the Water Resources Act 1991 (byelaw-making powers of the Agency), paragraph 6A (fisheries byelaws for marine or aquatic environmental purposes) is amended as follows.
- 15
- (2) In sub-paragraph (3), at the end there is inserted “or
- (c) in relation to any marine conservation zone in England, any purpose (not falling within paragraph (a) or (b) above) which is a conservation objective for that zone.”
- 20
- (3) After that sub-paragraph insert –
- “(4) In sub-paragraph (3)(c) above –
- “marine conservation zone” means a marine conservation zone designated in an order under section 105 of the Marine Act 2009;
- “England” has the same meaning as in Part 4 of that Act.”
- 25

### **196 Byelaws: emergency procedures**

- (1) In the Water Resources Act 1991 (c. 57), in section 210 (byelaw-making powers of the Agency) at the end insert –
- “(3) Schedule 27 to this Act (emergency fisheries byelaws) shall have effect.”
- 30
- (2) In that Act, after Schedule 26 insert –

“SCHEDULE 27

Section 210(3)

EMERGENCY FISHERIES BYELAWS

*Emergency fisheries byelaws*

- 1 (1) In this Schedule, “emergency fisheries byelaw” means a byelaw made under paragraph 6 of Schedule 25 to this Act (fisheries) in the circumstances in sub-paragraph (2) below.
- 35
- (2) The circumstances are that –
- (a) the Agency considers that, because of any event or likely event, harm is occurring or is likely to occur to any fish to
- 40





- 
- which that paragraph applies or to the spawn, gametes or food of any such fish,
- (b) the Agency considers that the byelaw would prevent or limit that harm, or would be reasonably likely to do so,
  - (c) the Agency considers that for that purpose there is a need for the byelaw to come into force as a matter of urgency, and
  - (d) the event or the likelihood of the event could not reasonably have been foreseen.
- (3) Schedule 26 to this Act (procedure relating to byelaws made by the Agency) does not apply in relation to an emergency fisheries byelaw.

*Commencement*

- 2 An emergency fisheries byelaw comes into force –
- (a) on the date specified in the byelaw, or
  - (b) if no date is so specified, on the day after that on which it is made.

*Notification of the appropriate national authority*

- 3 The Agency must, within 24 hours of making an emergency fisheries byelaw –
- (a) send a copy of the byelaw to the appropriate national authority, and
  - (b) explain to the appropriate national authority why the byelaw is being made as an emergency fisheries byelaw.

*Publication*

- 4 (1) The Agency must publish notice of the making of an emergency fisheries byelaw (including a copy of the byelaw) –
- (a) in the London Gazette;
  - (b) where the byelaw has effect in Wales, in the Welsh language in such manner as the Agency thinks appropriate;
  - (c) in such other manner as it thinks appropriate for the purpose of bringing the byelaw to the attention of persons likely to be affected by it.

*Amendment and revocation*

- 5 (1) If at any time the appropriate national authority is satisfied that an emergency fisheries byelaw would better serve to prevent or limit the harm referred to in paragraph 1(2)(a) above if it were amended, the authority must amend it accordingly.
- (2) If at any time the appropriate national authority is satisfied that an emergency fisheries byelaw is no longer needed in order to prevent or limit the harm referred to in paragraph 1(2)(a) above, the authority must revoke it.
- (3) The Agency must publish notice of an amendment or revocation under this paragraph as specified in paragraph 4(a) to (c) above.



*Expiry and extension*

- 6 (1) Subject to paragraph 7 below, an emergency fisheries byelaw expires (unless earlier revoked) –
- (a) in accordance with provision made by the byelaw, or
  - (b) if the byelaw does not contain provision for its expiry, at the end of the period of twelve months beginning with the day on which it comes into force. 5
- (2) A byelaw may not under sub-paragraph (1)(a) above remain in force for longer than the period of twelve months beginning with the day on which it comes into force. 10
- 7 (1) The Agency may, at any time before an emergency fisheries byelaw expires, apply to the appropriate national authority for it to be extended.
- (2) On such an application, the appropriate national authority may extend the byelaw at any time before its expiry, provided the authority is satisfied that –
- (a) the byelaw is still needed to prevent or limit the harm referred to in paragraph 1(2)(a) above, and
  - (b) the need for the extension could not reasonably have been avoided by the Agency. 15
- (3) Subject to sub-paragraph (5) below, a byelaw may be extended under sub-paragraph (2) above for such period as the appropriate national authority may specify.
- (4) Subject to sub-paragraph (5) below, a byelaw may be extended under sub-paragraph (2) above on more than one occasion. 20
- (5) A byelaw may not be extended under sub-paragraph (2) above so as to remain in force for longer than the period of 18 months beginning with the day on which it came into force. 25

*Availability*

- 8 (1) Every emergency fisheries byelaw shall be printed and deposited at one or more of the offices of the Agency, including (if there is one) at an office in the area to which the byelaw applies; and copies of the byelaw shall be available at those offices, at all reasonable times, for inspection by the public free of charge. 30
- (2) Every person shall be entitled, on application to the Agency and on payment of such reasonable sum as the Agency may determine, to be furnished with a copy of any emergency fisheries byelaw so deposited by the Agency. 35

*Proof*

- 9 The production of a printed copy of an emergency fisheries byelaw purporting to be made by the Agency upon which is indorsed a certificate, purporting to be signed on its behalf, stating – 40
- (a) that the byelaw was made by the Agency, and
  - (b) that the copy is a true copy of the byelaw,

***Clause 197: Handling fish***

493. Section 32 of the Salmon Act 1986 makes it an offence to handle salmon or sea trout in suspicious circumstances. A person is guilty of the offence if, at a time when he believes or it would be reasonable for him to suspect that an offence involving taking, killing or landing a salmon or sea trout has been committed, he receives the salmon or sea trout, or undertakes or assists in its retention, removal or disposal by or for the benefit of another person, or if he arranges to do so.

494. *Subsection (3)(c)* removes the requirement that the undertaking or assisting in respect of the fish must be “for the benefit of another person”. The amendment has the effect, for instance, that a person commits an offence if he undertakes the disposal of fish for his own benefit and knows or suspects that the fish was unlawfully taken.

495. The clause extends the offence to include also eels, lampreys, smelt and freshwater fish, and those fish specified by order under section 40A of the Salmon and Freshwater Fisheries Act 1975. It provides that salmon, trout, eel, fish and freshwater fish have the same meaning as in section 41(1) of that Act.

***Clause 198: Duties of the Environment Agency***

496. Section 6(6) of the Environment Act 1995 provides that “it shall be the duty of the [Environment] Agency to maintain, improve and develop salmon fisheries, trout fisheries, freshwater fisheries and eel fisheries.”

497. This clause extends this duty to include also fisheries for lampreys and smelt, and those fish specified by order under section 40A of the Salmon and Freshwater Fisheries Act 1975.

shall be prima facie evidence of the facts stated in the certificate, and without proof of the handwriting or official position of any person purporting to sign the certificate.

*“Appropriate national authority”*

- 10        In this Schedule “appropriate national authority” has the same meaning as in the Salmon and Freshwater Fisheries Act 1975.”        5

*Supplementary*

**197 Handling fish**

- (1) Section 32 of the Salmon Act 1986 (c. 62) (handling salmon in suspicious circumstances) is amended as follows.        10
- (2) In the heading, for “salmon” substitute “fish”.
- (3) In subsection (1)–
- (a) for “any salmon” substitute “any fish to which this section applies”;
  - (b) for “the salmon” substitute “that fish”;
  - (c) the words “by or for the benefit of another person” are omitted.        15
- (4) After that subsection insert –
- “(1A) This section applies to –
- (a) salmon, trout, eels, lampreys, smelt and freshwater fish,
  - (b) fish of such other description as may be specified for the purposes of this section by order under section 40A of the Salmon and Freshwater Fisheries Act 1975.”        20
- (5) In subsection (2)–
- (a) for “a salmon” substitute “a fish to which this section applies”;
  - (b) in paragraph (a), for “that salmon” substitute “that fish”.
- (6) In subsection (3), for “salmon” substitute “fish”.        25
- (7) In subsection (4), for “salmon” substitute “fish to which this section applies”.
- (8) In subsection (6)(a), for “salmon” substitute “fish to which this section applies”.
- (9) In subsection (7)–
- (a) for “a salmon” substitute “a fish to which this section applies”;
  - (b) for “the salmon” substitute “the fish”.        30
- (10) At the end insert –
- “(8) In this section “salmon”, “trout”, “eel”, “fish” and “freshwater fish” have the same meanings as in the Salmon and Freshwater Fisheries Act 1975.”

**198 Duties of the Environment Agency**        35

- (1) Section 6 of the Environment Act 1995 (c. 25) (general duties of the Agency) is amended as follows.

***Clause 199: Tweed and Esk fisheries***

498. Historically, English legislation on salmon and freshwater fisheries has applied to the Scottish as well as the English River Esk and its tributaries. Conversely, Scottish legislation has applied to the English as well as the Scottish Tweed.

499. Section 111 of the Scotland Act 1998 allows an Order in Council to be made for, or in connection with, the conservation, management and exploitation of fish in the border rivers (the Tweed and (Border) Esk). However, such an Order may only relate to salmon, trout, eels and freshwater fish.

500. *Subsection (2)* amends section 111 to extend the scope of the power to include also eels, lampreys and smelt.

501. *Subsection (4)* provides that an Order may amend section 111(1) to add any kind of fish to or remove any kind of fish from the list of fish to which the Order-making power applies.

***Clause 200: Keeping, introduction and removal of fish***

502. This clause empowers the appropriate national authority to make regulations to prohibit persons from keeping any fish, introducing any fish into inland waters and/or removing any fish from inland waters. In particular *subsection (4)* sets out what provisions those regulations may include.

503. Under current legislation the introduction of fish into inland waters is prohibited unless the person introducing the fish has the prior consent in writing of the Agency (section 30 of the Salmon and Freshwater Fisheries Act 1975). It is to be noted that regulations made under clause 200 may make consequential amendments to legislation, and it is envisaged that section 30 will be replaced by the regulations.

- (2) In subsection (6), for the words from “salmon” to the end substitute “fisheries of—
- (a) salmon, trout, eels, lampreys, smelt and freshwater fish, and
  - (b) fish of such other description as may be specified for the purposes of this subsection by order under section 40A of the Salmon and Freshwater Fisheries Act 1975”. 5
- (3) In subsection (8), at the end insert—
- ““salmon”, “trout”, “eels”, “fish” and “freshwater fish” have the same meanings as in the Salmon and Freshwater Fisheries Act 1975”. 10

**199 Tweed and Esk fisheries**

- (1) Section 111 of the Scotland Act 1998 (regulation of Tweed and Esk fisheries) is amended as follows.
- (2) In subsection (1), for “salmon, trout, eels and freshwater fish” substitute “salmon, trout, eels, lampreys, smelt, shad and freshwater fish”. 15
- (3) In subsection (4), in the definition of “eels”, “freshwater fish”, “salmon” and “trout”—
- (a) after “eels,” insert “fish,”;
  - (b) after “Salmon and Freshwater Fisheries Act 1975” insert “(as amended by the Marine Act 2009)”. 20
- (4) At the end insert—
- “(6) An Order under subsection (1) may amend that subsection so as to—
- (a) add any description of fish to it, or
  - (b) remove any description of fish from it.”

**200 Keeping, introduction and removal of fish** 25

- (1) The appropriate national authority may by regulations make provision for the purpose of prohibiting persons, in such cases as may be specified in the regulations, from carrying on any of the activities specified in subsection (2) otherwise than under and in accordance with a permit issued by the Environment Agency. 30
- (2) The activities referred to in subsection (1) are—
- (a) keeping any fish in the area to which this section applies;
  - (b) introducing any fish into any inland waters in that area;
  - (c) removing any fish from any inland waters in that area.
- (3) The area to which this section applies is the area consisting of— 35
- (a) England,
  - (b) Wales, and
  - (c) so much of the catchment area of the River Esk as is in Scotland.
- (4) Regulations made under this section may in particular— 40
- (a) make provision as to the descriptions of permits to be issued;





(b)	specify the manner and form of an application for a permit from the Environment Agency to carry out any activity specified in subsection (2) and the sum, or maximum sum, to be paid on the making of such an application;	
(c)	specify the circumstances in which such an application is to be granted or refused and any considerations which the Environment Agency may or must take into account when determining whether or not to issue such a permit;	5
(d)	specify the conditions that may be incorporated into such a permit;	
(e)	make provision for the amendment, suspension or revocation of such a permit;	10
(f)	make provision authorising the Environment Agency to exempt persons from any requirement under the regulations to obtain such a permit;	
(g)	make provision as to the effect of a prohibition under regulations made under this section on fishing pursuant to any licence, authorisation, permission, or right to fish;	15
(h)	make provision enabling the Environment Agency to require a person in breach of any requirement under regulations made under this section, or in breach of any condition of a permit under such regulations—	20
	(i) to take steps to ensure that the position is, so far as possible, restored to what it would have been had there been no such breach;	
	(ii) to allow the Environment Agency to take such steps;	25
	(iii) to pay to the Environment Agency a sum representing reasonable expenses of any such steps taken or to be taken by the Agency;	
(i)	make provision creating criminal offences for the purpose of securing compliance with regulations made under this section or of any requirements under paragraph (h).	30
(5)	Provision under subsection (4)(a) may specify that a permit may be issued—	
	(a) in respect of one or more of the activities specified in subsection (2);	
	(b) in relation to the carrying on of any one or more of those activities on one occasion or more than one occasion;	35
	(c) for periods of limited or unlimited duration.	
(6)	Provision under subsection (4)(i) must provide that where a person is guilty of an offence created under that subsection, the person is liable—	
	(a) on summary conviction to a fine not exceeding £50,000;	
	(b) on conviction on indictment to a fine.	40
(7)	In this section—	
	“appropriate national authority” means—	
	(a) the Secretary of State, otherwise than in relation to Wales;	
	(b) the Welsh Ministers, in relation to Wales;	
	“inland waters” has the same meaning as in the Water Resources Act 1991 (c. 57).	45

**Clause 201: Consequential amendments etc**

504. *Subsection (2)* omits a number of provisions of the Salmon and Freshwater Fisheries Act 1975.

505. Section 4 of the Salmon and Freshwater Fisheries Act 1975 makes it an offence to cause or knowingly permit to flow or to put any liquid or solid matter into waters such as to cause the waters to be poisonous or injurious to fish, spawning grounds, spawn or food of fish. Section 4(2) disapplies this offence to those exercising any lawful rights, or continuing a method in use in connection with the same premises before 18 July 1923.

506. Water pollution legislation from Rivers Prevention of Pollution Act 1951 through to Water Resources Act 1991 has removed any right to pollute. Therefore anybody who intends to discharge poisonous or injurious matter needs prior consent from the Environment Agency; otherwise that person commits an offence. The disapplication under section 4 therefore no longer applies and is omitted by *subsection (2)(a)*.

507. Section 23 of the Salmon and Freshwater Fisheries Act 1975 prohibits the export of any unclean salmon or trout or any salmon or trout caught during a period when the sale of salmon or trout is prohibited. In addition it sets certain conditions for the export of salmon or trout between 31 August and the following 1<sup>st</sup> May. These provisions serve no useful purpose and are therefore omitted by *subsection (2)(b)*.

508. Section 24 of the Salmon and Freshwater Fisheries Act 1975 requires consignments or packages containing salmon and trout to be so marked. Council Regulation (EC) 1/2005 on the Protection of Animals During Transport and Related Operations requires the carrying of consignment notes. This section is therefore redundant, and it is omitted by *subsection (2)(c)*.

**Chapter 4: Obsolete Fisheries Enactments****Clause 202: Repeal of spent or obsolete enactments**

509. This clause repeals six redundant Acts of Parliament relating to sea fisheries and part of one further such Act. All of this legislation is approximately 100 years or more old. These Acts are repealed as part of a wider Government commitment to reduce regulatory burdens on the private, public and voluntary sectors through the Davidson Review<sup>1</sup>. The Davidson Review identified a series of fisheries Acts to consider for repeal. At the present time we have been able to identify six Acts and part of a seventh as suitable for immediate repeal.

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1. Further information on the *Davidson Review: Implementation of EU legislation* can be found on <http://www.berr.gov.uk/files/file44583.pdf> or ISBN-10: 0-11-840484-9 and ISBN-13: 978-0-11-840484-6

**201 Consequential amendments etc**

- (1) Schedule 9 (which contains consequential amendments relating to this Chapter) has effect.
- (2) The following provisions of the Salmon and Freshwater Fisheries Act 1975 (c. 51) (which are obsolete or no longer of practical utility) are omitted –
  - (a) in section 4 (poisonous matter etc), subsection (2);
  - (b) section 23 (export of salmon and trout);
  - (c) section 24 (consignment of salmon and trout).

5

**CHAPTER 4**

OBSOLETE FISHERIES ENACTMENTS

10

**202 Repeal of spent or obsolete enactments**

The following enactments are repealed –

- (a) the White Herring Fisheries Act 1771 (c. 31);
- (b) the Seal Fishery Act 1875 (c. 18);
- (c) section 13 of the Fisheries Act 1891 (c. 37);
- (d) the North Sea Fisheries Act 1893 (c. 17);
- (e) the Behring Sea Award Act 1894 (c. 2);
- (f) the Seal Fisheries (North Pacific) Act 1895 (c. 21);
- (g) the Seal Fisheries (North Pacific) Act 1912 (c. 10).

15

## ***Part 8: Enforcement***

### ***Chapter 1: Enforcement Officers***

#### ***Marine enforcement officers***

510. These clauses enable the MMO to appoint enforcement officers for the purpose of enforcing marine licensing, nature conservation and sea fisheries legislation. Such officers are called marine enforcement officers, or MEOs. On appointment, an MEO is automatically a British Sea Fisheries Officer (see clauses 217-219). For areas where the new enforcement officer powers do not apply, existing enforcement powers will remain in place.

511. Where the MMO takes on responsibility for enforcement of regulations which are not otherwise covered by the draft Bill, the regulations will be amended to enable enforcement officers to exercise Chapter 2 powers (common powers) and Chapter 3 powers (other powers) e.g. the Environmental Impact Assessment and Natural Habitats (Extraction of Minerals by Marine Dredging) (England and Northern Ireland) Regulations 2007, the Fisheries and Aquaculture Structures (Grants) (England) Regulations 2001 and the Grants for Fishing and Aquaculture Industries Regulations 2007.

#### ***Clause 203: Marine enforcement officers***

512. This clause allows the Marine Management Organisation (MMO) to appoint MEOs. The appointment of officers can be limited, so that they do not have the ability to use all the power such officers would otherwise have on appointment. For example, the range of powers they may use or where they can use them may be limited.

#### ***Clause 204: Enforcement of marine licensing regime***

513. This clause sets out where and in relation to what vessels and installations an MEO may use enforcement powers for the purposes of enforcing the marine licensing regime set out in Part 3 of the draft Bill. The enforcement powers that can be exercised by an MEO are both the common enforcement powers in Chapter 2 and the specific powers relating to requirements for information about certain substances and objects (clause 261) in Chapter 3.

514. Inside the UK marine licensing area, there are some restrictions as to where the powers can be used in the UK marine area. MEOs cannot use their powers in the territorial waters around Northern Ireland, Scotland and Wales and in the offshore area adjacent to Scotland. Outside the UK marine licensing area, the powers can be used against any British vessel, aircraft or marine structure.

**PART 8**

ENFORCEMENT

**CHAPTER 1**

ENFORCEMENT OFFICERS

*Marine enforcement officers* 5

**203 Marine enforcement officers**

- (1) The MMO may appoint persons to be marine enforcement officers.
- (2) The carrying out of any functions of a marine enforcement officer by a person appointed under this section is subject to any limitations specified by the MMO in relation to that person. 10

**204 Enforcement of marine licensing regime**

- (1) For the purposes of enforcing Part 3 of this Act, a marine enforcement officer has –
  - (a) the common enforcement powers conferred by this Act;
  - (b) the power conferred by section 261. 15
- (2) The powers which a marine enforcement officer has for the purposes of enforcing Part 3 of this Act may be exercised –
  - (a) in England;
  - (b) in relation to any vessel, aircraft or marine structure in the relevant enforcement area; 20
  - (c) in relation to any vessel or marine structure outside the UK marine area which was loaded within the relevant enforcement area;
  - (d) in relation to any British vessel, British aircraft or British marine structure outside the UK marine area.
- (3) In this section “the relevant enforcement area” means the UK marine licensing area, excluding –
  - (a) the Welsh inshore region, 25

***Clause 205: Enforcement of nature conservation legislation***

515. This clause sets out where and in relation to what vessels and installations an MEO may use his enforcement powers when enforcing certain legislation relating to nature conservation, and sets out that legislation. The enforcement powers that can be exercised are both the common enforcement powers in Chapter 2 and specific powers relating to sound recordings (clause 262) in Chapter 3.

516. There are some restrictions as to where the powers can be used in the UK marine area. MEOs cannot use their powers in the territorial waters around Northern Ireland, Scotland and Wales and in the offshore area adjacent to Scotland.

- 
- (b) the offshore area adjacent to Scotland, and
  - (c) the Northern Ireland inshore region.
- (4) Any term used in this section and in Part 3 of this Act has the same meaning in this section as it has in that Part.
- 205 Enforcement of nature conservation legislation** 5
- (1) For the purposes of enforcing the nature conservation legislation, a marine enforcement officer has –
- (a) the common enforcement powers conferred by this Act;
  - (b) the power conferred by section 262.
- (2) In this section “the nature conservation legislation” means – 10
- (a) sections 1 and 2 of the Conservation of Seals Act 1970 (c. 30), and any orders made under section 3 of that Act;
  - (b) sections 1, 5 to 7, 9, 11, 13, 14 and 14ZA of the Wildlife and Countryside Act 1981 (c. 69);
  - (c) regulations 37C, 39, 41 and 43 of the Conservation (Natural Habitats, &c) Regulations 1994 (S.I. 1994/2716); 15
  - (d) any byelaws made by virtue of regulation 28 or 36 of those Regulations;
  - (e) the Offshore Marine Conservation (Natural Habitats, &c) Regulations 2007 (S.I. 2007/1842);
  - (f) any orders made by the MMO under section 113, 115 or 116 of this Act. 20
- (3) Subject to subsection (4), the powers which a marine enforcement officer has for the purposes of enforcing the nature conservation legislation may be exercised –
- (a) in England;
  - (b) in relation to any vessel, aircraft or marine installation in the relevant enforcement area; 25
  - (c) in relation to any British vessel or British marine installation outside the UK marine area.
- (4) The powers which a marine enforcement officer has for the purposes of enforcing the nature conservation legislation may not be exercised in relation to any vessel within subsection (5) unless – 30
- (a) 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, or 35
  - (b) the Commissioners have given authority to exercise those powers.
- (5) 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; 40
  - (c) any other vessel that is being used by such a government for any non-commercial purpose.
- (6) The Commissioners may give authority under subsection (4)(b) only if the flag state has consented to the United Kingdom exercising those powers (whether generally or in relation to the vessel in question). 45

***Clause 206: Enforcement of fisheries legislation***

517. This clause sets out where and in relation to what vessels and installations an MEO may use his enforcement powers to enforce the sea fisheries legislation. The enforcement powers that can be exercised are both the common enforcement powers in Chapter 2 and specific powers relating to the inspection and seizure of objects at sea (clause 239); seizing fish or fishing gear for the purpose of forfeiture (clauses 240 and 241); detention of vessels in connection with court proceedings (clause 251) and production of certain equipment (clause 256) in Chapter 3.

518. There are some restrictions as to where the enforcement powers can be used within British Fishery Limits. MEOs cannot use their powers in the territorial sea adjacent to Wales, the Scottish zone and Northern Ireland zone. Outside British Fishery Limits, they can exercise their powers in relation to any British vessel or marine installation other than a Scottish or Northern Irish fishing boat.



- (7) In giving such authority, the Commissioners must impose such conditions or limitations on the exercise of the powers as are necessary to give effect to any conditions or limitations imposed by the flag state.
- (8) In this section—
- “British vessel” means any vessel which— 5
    - (a) is registered in the United Kingdom under Part 2 of the Merchant Shipping Act 1995 (c. 21),
    - (b) falls within section 1(1)(d) of that Act (small ships),
    - (c) is exempt from registration under section 294 of that Act, or
    - (d) is registered under the law of Gibraltar; 10
  - “the relevant enforcement area” means the UK marine area, excluding—
    - (a) the Welsh inshore region,
    - (b) the Scottish inshore region,
    - (c) the offshore area adjacent to Scotland, and
    - (d) the Northern Ireland inshore region. 15

## **206 Enforcement of fisheries legislation**

- (1) For the purposes of enforcing the fisheries legislation, a marine enforcement officer has—
- (a) the common enforcement powers conferred by this Act;
  - (b) the powers conferred by sections 236, 240, 241, 251 and 256. 20
- (2) In this section “the fisheries legislation” means—
- (a) any enactments relating to sea fishing, including any enactment relating to fishing for shellfish, salmon or migratory trout;
  - (b) any enforceable Community restrictions and enforceable Community obligations relating to sea fishing. 25
- (3) The powers which a marine enforcement officer has for the purposes of enforcing the fisheries legislation may be exercised—
- (a) in England;
  - (b) in relation to any vessel, aircraft or marine installation in the relevant enforcement area; 30
  - (c) in relation to any British vessel or British marine installation outside British fishery limits, other than a Scottish or Northern Ireland fishing boat.
- (4) In this section—
- “British vessel” means any vessel which— 35
    - (a) is registered in the United Kingdom under Part 2 of the Merchant Shipping Act 1995 (c. 21),
    - (b) falls within section 1(1)(d) of that Act (small ships),
    - (c) is exempt from registration under section 294 of that Act, or
    - (d) is registered under the law of Gibraltar; 40
  - “the relevant enforcement area” means the sea within British fishery limits, excluding—
    - (a) the Welsh inshore region,
    - (b) the Scottish zone, and
    - (c) the Northern Ireland zone. 45

***Clause 207: Welsh enforcement officers***

519. This clause enables Welsh ministers to appoint enforcement officers who can use the enforcement powers set out in the draft Bill. Such officers are termed “Welsh enforcement officers”. The Welsh Ministers can limit the powers available to any officer. On appointment, Welsh enforcement officers are automatically BSFOs (see clause 215).

***Clause 208: Enforcement of marine licensing regime in Wales***

520. This clause sets out where and in relation to what vessels and installations a Welsh enforcement officer may exercise their enforcement powers for the purposes of enforcing the licensing regime set out in Part 3. The enforcement powers that can be exercised are both the common enforcement powers in Chapter 2 and the specific powers relating to requirements for information about certain substances and objects (clause 261) in Chapter 3.

521. A Welsh enforcement officer can exercise these powers in Wales in relation to any vessel, marine structure or aircraft.

***Clause 209: Enforcement of nature conservation legislation in Wales***

522. This clause sets out where and in relation to what vessels and installations a Welsh enforcement officer may exercise their enforcement powers for the purposes of enforcing certain nature conservation legislation and sets out that legislation. The enforcement powers that can be exercised are both the common enforcement powers in Chapter 2 and the specific power relating to sound recordings (clause 262) in Chapter 3.

523. A Welsh enforcement officer can exercise these powers in Wales in relation to any vessel, marine installation or aircraft.

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*Welsh enforcement officers*

**207 Welsh enforcement officers**

- (1) The Welsh Ministers may appoint persons to be Welsh enforcement officers.
- (2) The carrying out of any functions of a Welsh enforcement officer by a person appointed under this section is subject to any limitations specified by the Welsh Ministers in relation to that person. 5

**208 Enforcement of marine licensing regime in Wales**

- (1) For the purposes of enforcing Part 3 of this Act, a Welsh enforcement officer has –
  - (a) the common enforcement powers conferred by this Act; 10
  - (b) the power conferred by section 261.
- (2) The powers which a Welsh enforcement officer has for the purposes of enforcing Part 3 of this Act may be exercised –
  - (a) in Wales;
  - (b) in relation to any vessel, aircraft or marine structure in Wales. 15
- (3) Any term used in this section and in Part 3 of this Act (other than “Wales”) has the same meaning in this section as it has in that Part.

**209 Enforcement of nature conservation legislation in Wales**

- (1) For the purposes of enforcing the nature conservation legislation, a Welsh enforcement officer has – 20
  - (a) the common enforcement powers conferred by this Act;
  - (b) the power conferred by section 262.
- (2) In this section “the nature conservation legislation” means –
  - (a) sections 1 and 2 of the Conservation of Seals Act 1970 (c. 30), and any orders made under section 3 of that Act; 25
  - (b) sections 1, 5 to 7, 9, 11, 13, 14 and 14ZA of the Wildlife and Countryside Act 1981 (c. 69);
  - (c) regulations 37C, 39, 41 and 43 of the Conservation (Natural Habitats, &c) Regulations 1994 (S.I. 1994/2716);
  - (d) any byelaws made by virtue of regulation 28 or 36 of those Regulations; 30
  - (e) the Offshore Marine Conservation (Natural Habitats, &c) Regulations 2007 (S.I. 2007/1842);
  - (f) any orders made by the Welsh Ministers under section 118 or 120 of this Act.
- (3) Subject to subsection (4), the powers which a Welsh enforcement officer has for the purposes of enforcing the nature conservation legislation may be exercised – 35
  - (a) in Wales;
  - (b) in relation to any vessel, aircraft or marine installation in Wales.
- (4) The powers which a Welsh enforcement officer has for the purposes of enforcing the nature conservation legislation may not be exercised in relation to any vessel within subsection (5) unless – 40

***Clause 210: Enforcement of fisheries legislation in Wales***

524. This clause sets out where and in relation to what vessels and installations a Welsh enforcement officer may exercise their enforcement powers for the purposes of enforcing the sea fisheries legislation and sets out that legislation. The enforcement powers that can be exercised are both the common enforcement powers in Chapter 2 and specific powers relating to the inspection and seizure of objects at sea (clause 239); seizing fish or fishing gear for the purpose of forfeiture (clause 240 and 241); detention of vessels in connection with court proceedings (clause 251) and production of certain equipment (clause 256) in Chapter 3.

525. A Welsh enforcement officer can exercise these powers in Wales in relation to any vessel, marine installation or aircraft.

***Clauses 211, 212 & 213: Enforcement of marine licensing regime; Enforcement of nature conservation legislation; Enforcement of fisheries legislation***

526. These clauses makes commissioned officers of the Royal Navy and commanders of aircraft or hovercraft in the armed services automatically services enforcement officers. They are also able to exercise the enforcement powers set out in Chapters 2 and 3 of this Part of the draft Bill. Currently, such officers are automatically British Sea Fisheries Officers and they will continue to be BSFOs. The powers of SEOs under each regime (marine licensing, nature conservation and sea fisheries) are exercisable to the same extent as MEOs and Welsh EOs combined. For licensing, they apply to any vessel, aircraft or marine structure in the UK marine licensing area except the offshore area adjacent to Scotland and Northern Irish territorial waters. For nature conservation, the powers apply to any vessel, marine installation or aircraft in the UK marine area apart from the Scottish inshore region, the offshore area adjacent to Scotland and Northern Irish territorial waters. For fisheries, the powers apply to any vessel, aircraft or marine installation within British Fishery Limits apart from the Scottish zone and the Northern Ireland zone.

- 
- (a) 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, or
  - (b) the Commissioners have given authority to exercise those powers. 5
- (5) 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;
  - (c) any other vessel that is being used by such a government for any non-commercial purpose. 10
- (6) The Commissioners may give authority under subsection (4)(b) only if the flag state has consented to the United Kingdom exercising those powers (whether generally or in relation to the vessel in question).
- (7) In giving such authority, the Commissioners must impose such conditions or limitations on the exercise of the powers as are necessary to give effect to any conditions or limitations imposed by the flag state. 15

## **210 Enforcement of fisheries legislation in Wales**

- (1) For the purposes of enforcing the fisheries legislation, a Welsh enforcement officer has – 20
- (a) the common enforcement powers conferred by this Act;
  - (b) the powers conferred by sections 236, 240, 241, 251 and 256.
- (2) In this section “the fisheries legislation” means –
- (a) any enactments relating to sea fishing, including any enactment relating to fishing for shellfish, salmon or migratory trout; 25
  - (b) any enforceable Community restrictions and enforceable Community obligations relating to sea fishing.
- (3) The powers which a Welsh enforcement officer has for the purposes of enforcing the fisheries legislation may be exercised – 30
- (a) in Wales;
  - (b) in relation to any vessel, aircraft or marine installation in Wales.

### *Enforcement officers in Royal Navy, etc*

## **211 Enforcement of marine licensing regime**

- (1) For the purposes of enforcing Part 3 of this Act, a person within subsection (2) has – 35
- (a) the common enforcement powers conferred by this Act;
  - (b) the power conferred by section 261.
- (2) The persons are –
- (a) commissioned officers of any of Her Majesty’s ships;
  - (b) persons in command or charge of any aircraft or hovercraft of the Royal Navy, the Army or the Royal Air Force. 40



- (3) The powers which a person within subsection (2) has for the purposes of enforcing Part 3 of this Act may be exercised –
- (a) in England and Wales;
  - (b) in relation to any vessel, aircraft or marine structure in the relevant enforcement area; 5
  - (c) in relation to any vessel or marine structure outside the UK marine area which was loaded within the relevant enforcement area;
  - (d) in relation to any British vessel, British aircraft or British marine structure outside the UK marine area.
- (4) In this section “the relevant enforcement area” means the UK marine licensing area, excluding – 10
- (a) the offshore area adjacent to Scotland, and
  - (b) the Northern Ireland inshore region.
- (5) Any term used in this section and in Part 3 of this Act (other than “Wales”) has the same meaning in this section as it has in that Part. 15

**212 Enforcement of nature conservation legislation**

- (1) For the purposes of enforcing the nature conservation legislation, a person within subsection (2) has –
- (a) the common enforcement powers conferred by this Act;
  - (b) the power conferred by section 262. 20
- (2) The persons are –
- (a) commissioned officers of any of Her Majesty’s ships;
  - (b) persons in command or charge of any aircraft or hovercraft of the Royal Navy, the Army or the Royal Air Force.
- (3) In this section “the nature conservation legislation” means – 25
- (a) sections 1 and 2 of the Conservation of Seals Act 1970 (c. 30), and any orders made under section 3 of that Act;
  - (b) sections 1, 5 to 7, 9, 11, 13, 14 and 14ZA of the Wildlife and Countryside Act 1981 (c. 69);
  - (c) regulations 37C, 39, 41 and 43 of the Conservation (Natural Habitats, &c) Regulations 1994 (S.I. 1994/2716); 30
  - (d) any byelaws made by virtue of regulation 28 or 36 of those Regulations;
  - (e) the Offshore Marine Conservation (Natural Habitats, &c) Regulations 2007 (S.I. 2007/1842);
  - (f) any orders made under section 113, 115, 116, 118 or 120 of this Act. 35
- (4) Subject to subsection (5), the powers which a person within subsection (2) has for the purposes of enforcing the nature conservation legislation may be exercised –
- (a) in England and Wales;
  - (b) in relation to any vessel, aircraft or marine installation in the relevant enforcement area; 40
  - (c) in relation to any British vessel or British marine installation outside the UK marine area.
- (5) The powers which a person within subsection (2) has for the purposes of enforcing the nature conservation legislation may not be exercised in relation to any vessel within subsection (6) unless – 45





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- (a) 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, or
- (b) the Commissioners have given authority to exercise those powers. 5
- (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;
- (c) any other vessel that is being used by such a government for any non-commercial purpose. 10
- (7) The Commissioners may give authority under subsection (5)(b) only if the flag state has consented to the United Kingdom exercising those powers (whether generally or in relation to the vessel in question).
- (8) In giving such authority, the Commissioners must impose such conditions or limitations on the exercise of the powers as are necessary to give effect to any conditions or limitations imposed by the flag state. 15
- (9) In this section –
- “British vessel” means any vessel which –
- (a) is registered in the United Kingdom under Part 2 of the Merchant Shipping Act 1995 (c. 21), 20
- (b) falls within section 1(1)(d) of that Act (small ships),
- (c) is exempt from registration under section 294 of that Act, or
- (d) is registered under the law of Gibraltar;
- “the relevant enforcement area” means the UK marine area, excluding – 25
- (a) the Scottish inshore region,
- (b) the offshore area adjacent to Scotland, and
- (c) the Northern Ireland inshore region.

### **213 Enforcement of fisheries legislation**

- (1) For the purposes of enforcing the fisheries legislation, a person within subsection (2) has – 30
- (a) the common enforcement powers conferred by this Act;
- (b) the powers conferred by sections 236, 240, 241, 251 and 256.
- (2) The persons are –
- (a) commissioned officers of any of Her Majesty’s ships; 35
- (b) persons in command or charge of any aircraft or hovercraft of the Royal Navy, the Army or the Royal Air Force.
- (3) In this section “the fisheries legislation” means –
- (a) any enactments relating to sea fishing, including any enactment relating to fishing for shellfish, salmon or migratory trout; 40
- (b) any enforceable Community restrictions and enforceable Community obligations relating to sea fishing.
- (4) The powers which a person within subsection (2) has for the purposes of enforcing the fisheries legislation may be exercised –
- (a) in England and Wales; 45

***Clauses 214 & 215: Power of MMO to appoint sea-fishery officers; Power of Welsh Ministers to appoint sea-fishery officers***

527. These clauses give power to the MMO and the Welsh Ministers to appoint British Sea-Fishery Officers (BSFOs). This power is independent of the power to appoint MEOs and WEOs, who are automatically BSFOs.

***Clause 216: Amendment of section 7 of the Sea Fisheries Act 1968***

528. Section 7 of the Sea Fisheries Act provides for British Sea-Fishery Officers. This amendment makes MEOs and Welsh EOs automatically BSFOs on appointment. It also provides that where MEOs and Welsh EOs are able to exercise powers under the draft Bill, they cannot use their BSFO powers.

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(b) in relation to any vessel, aircraft or marine installation in the relevant enforcement area;	
(c) in relation to any British vessel or British marine installation outside British fishery limits, other than a Scottish or Northern Ireland fishing boat.	5
(5) In this section – “British vessel” means any vessel which – (a) is registered in the United Kingdom under Part 2 of the Merchant Shipping Act 1995, (b) falls within section 1(1)(d) of that Act (small ships), (c) is exempt from registration under section 294 of that Act, or (d) is registered under the law of Gibraltar; “the relevant enforcement area” means the sea within British fishery limits, excluding the Scottish zone and the Northern Ireland zone.	10
<i>British sea-fishery officers</i>	
	15
<b>214 Power of MMO to appoint sea-fishery officers</b>	
(1) The MMO may appoint persons to be British sea-fishery officers (“BSFOs”).	
(2) For the purposes of the Sea Fisheries Acts, the carrying out of any functions of a BSFO by a person appointed under this section is subject to any limitations specified by the MMO in relation to that person.	20
(3) In this section “Sea Fisheries Acts” has the meaning given by section 19 of the Sea Fisheries Act 1968 (c. 77).	
<b>215 Power of Welsh Ministers to appoint sea-fishery officers</b>	
(1) The Welsh Ministers may appoint persons to be British sea-fishery officers (“BSFOs”).	25
(2) For the purposes of the Sea Fisheries Acts, the carrying out of any functions of a BSFO by a person appointed under this section is subject to any limitations specified by the Welsh Ministers in relation to that person.	
(3) In this section “Sea Fisheries Acts” has the meaning given by section 19 of the Sea Fisheries Act 1968.	30
<b>216 Amendment of section 7 of the Sea Fisheries Act 1968</b>	
(1) Section 7 of the Sea Fisheries Act 1968 (sea-fishery officers) is amended as follows.	
(2) In subsection (1) – (a) after paragraph (c) insert –	35
“(ca) persons appointed as marine enforcement officers under section 203 of the Marine Act 2009;	
“(cb) persons appointed as Welsh enforcement officers under section 207 of that Act;	



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- (cc) persons appointed as British sea-fishery officers by the Marine Management Organisation under section 214 of that Act;
- (cd) persons appointed as British sea-fishery officers by the Welsh Ministers under section 216 of that Act;”;
- (b) in paragraph (d), omit “of the Secretary of State or”.
- (3) After subsection (1) insert –
- “(1A) A person falling within paragraph (b) or (c) of subsection (1) above may not exercise the powers or perform the duties of a British sea-fishery officer –
- (a) in England and Wales;
- (b) in any waters within British fishery limits but outside the Scottish zone and the Northern Ireland zone; or
- (c) in waters outside British fishery limits, apart from in relation to Scottish and Northern Ireland fishing boats.
- (1B) A person falling within paragraph (ca) or (cc) of subsection (1) above may not exercise the powers or perform the duties of a British sea-fishery officer –
- (a) in England;
- (b) in the MMO fisheries enforcement area; or
- (c) in waters outside British fishery limits, apart from in relation to Scottish and Northern Ireland fishing boats.
- (1C) A person falling within paragraph (cb) or (cd) of subsection (1) above may not exercise the powers or perform the duties of a British sea-fishery officer in Wales.
- (1D) Any reference in subsections (1A) to (1C) above to the powers of a British sea-fishery officer does not include a reference to the powers conferred by section 8(5) and (6) below.”
- (4) In subsection (5) (definition of “the appropriate Minister”), omit paragraph (a).
- (5) After subsection (5) insert –
- “(6) In this section –
- “the MMO fisheries enforcement area” means the sea within British fishery limits, excluding –
- (a) any area of sea in Wales,
- (b) the Scottish zone, and
- (c) the Northern Ireland zone.
- “Northern Ireland fishing boat” means a fishing boat which is registered in the United Kingdom under Part 2 of the Merchant Shipping Act 1995 and whose entry in the register specifies a port in Northern Ireland as the port to which the boat is to be treated as belonging;
- “Northern Ireland zone” has the meaning given by the Northern Ireland Act 1998 (see section 98 of that Act);
- “Wales” has the same meaning as in the Government of Wales Act 2006.”

***Clause 217: Marine licensing in Northern Ireland***

529. This clause allows the Department of the Environment in Northern Ireland to appoint people for the purpose of enforcing marine licensing legislation. Such an enforcement officer can exercise their powers in relation to any vessel, aircraft or marine installation within the territorial sea around Northern Ireland.

***Clause 218: Offshore Marine Conservation (Natural Habitats, &c) Regulations 2007***

530. This clause enables the Secretary of State to appoint enforcement officers for the purpose of enforcing these regulations in the Scottish offshore area. Such officers are able to exercise the common powers in Chapter 2 and the specific power relating to sound recordings (clause 262) in Chapter 3.

***Clause 219: Interpretation of this Chapter***

531. This clause provides definition for the key terms used in this Chapter of the draft Bill.

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*Miscellaneous*

**217 Marine licensing in Northern Ireland**

- (1) The Department of the Environment in Northern Ireland may appoint persons for the purposes of enforcing Part 3 of this Act.
- (2) For the purposes of enforcing Part 3 of this Act, a person appointed under this section has – 5
  - (a) the common enforcement powers conferred by this Act;
  - (b) the power conferred by section 261.
- (3) The powers which a person appointed under this section has for the purposes of enforcing Part 3 of this Act may be exercised – 10
  - (a) in Northern Ireland;
  - (b) in relation to any vessel, aircraft or marine structure in the Northern Ireland inshore region.
- (4) Any term used in this section and in Part 3 of this Act has the same meaning in this section as it has in that Part. 15

**218 Offshore Marine Conservation (Natural Habitats, &c) Regulations 2007**

- (1) The Secretary of State may appoint persons for the purposes of enforcing the Offshore Marine Conservation (Natural Habitats, &c) Regulations 2007 (S.I. 2007/1842) (“the 2007 Regulations”).
- (2) For the purposes of enforcing the 2007 Regulations, a person appointed under this section has – 20
  - (a) the common enforcement powers conferred by this Act;
  - (b) the power conferred by section 262.
- (3) The powers which a person appointed under this section has for the purposes of enforcing the 2007 Regulations may be exercised in the offshore area adjacent to Scotland. 25

*Interpretation*

**219 Interpretation of this Chapter**

- (1) In this Chapter –
  - “British marine installation” means a marine installation owned by or leased to an individual residing in, or a body corporate incorporated under the law of, any part of the United Kingdom; 30
  - “the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs;
  - “enforceable Community obligation” means an obligation to which section 2(1) of the European Communities Act 1972 (c. 68) applies; 35
  - “enforceable Community restriction” means a restriction to which section 2(1) of that Act applies;
  - “flag state”, in relation to a vessel, means the State whose flag the vessel is flying or is entitled to fly; 40
  - “marine installation” means any artificial island, installation or structure (other than a vessel);

## ***Chapter 2: Common Enforcement Powers***

### ***Introductory***

532. This chapter sets out various enforcement powers that are considered to be the core set of powers necessary for officers to carry out their enforcement functions effectively. The powers are based on a number of pieces of existing legislation across the existing marine regulatory regimes and are effectively consolidated here.

### ***Clause 220: Common enforcement powers***

533. *Subsection (1)* sets out the functions which may be exercised by enforcement officers. *Subsection (2)* explains some of the terminology used through clauses 220 to 269. By virtue of *subsection (3)*, the powers available to enforcement officers under this Chapter do not limit their ability to act under other legislation.



- “Northern Ireland fishing boat” means a fishing boat which is registered in the United Kingdom under Part 2 of the Merchant Shipping Act 1995 (c. 21) and whose entry in the register specifies a port in Northern Ireland as the port to which the boat is to be treated as belonging;
- “Scottish fishing boat” means a fishing boat which is registered in the United Kingdom under Part 2 of the Merchant Shipping Act 1995 and whose entry in the register specifies a port in Scotland as the port to which the boat is to be treated as belonging; 5
- “third country vessel” means a vessel which –
- (a) is flying the flag of, or is registered in, any State or territory (other than Gibraltar) which is not a member State, and 10
  - (b) is not registered in a member State;
- “Wales” has the same meaning as in the Government of Wales Act 2006 (c. 32).
- (2) In this Chapter, except where otherwise provided, any reference to a vessel includes a reference to – 15
- (a) any ship or boat or any other description of vessel used in navigation, and
  - (b) any hovercraft, submersible craft or other floating craft,
- but does not include a reference to anything that permanently rests on, or is permanently attached to, the seabed. 20

## CHAPTER 2

### COMMON ENFORCEMENT POWERS

#### *Introductory*

- 220 Common enforcement powers** 25
- (1) This Chapter sets out the powers that may be exercised by a person who has the common enforcement powers conferred by this Act.
- (2) In this Chapter –
- “enforcement officer” means any person who has the common enforcement powers conferred by this Act; 30
  - “relevant function”, in relation to an enforcement officer, means any function of that officer;
  - “relevant offence”, in relation to an enforcement officer, means any offence in respect of which the officer has functions.
- (3) The powers conferred on an enforcement officer by any section in this Chapter are without prejudice to any powers exercisable by the officer apart from that section. 35

***Clause 221: Power to board and inspect vessels and marine installations***

534. The powers in this clause enable enforcement officers to board and inspect any vessels and marine installations to carry out their functions. Enforcement officers may require the vessel or marine installation to stop or do anything else that would assist them in boarding or disembarking and in carrying out their enforcement duties. The power extends to things which may be under the control of someone on the vessel or installation, such as a vessel under tow. Marine installations that can move under their own power include jack-up rigs and work platforms. The powers also allow officers to require assistance from someone present who has some control over the situation.

***Clause 222: Power to enter and inspect premises***

535. The powers in this clause enable enforcement officers to enter and inspect any premises at a reasonable time if the officer suspects or believes that an offence may have taken place. Premises includes land. The officer also has the power to request assistance from people who have some control in the situation. This may be needed for instance in unlocking a door or opening a container. Where the premises is a dwelling, a warrant is needed before the power of entry may be exercised. This is dealt with in clause 224.

***Clause 223: Power to enter and inspect vehicles***

536. This clause enables enforcement officers to enter and inspect any vehicle at any time. An officer can also ask for the vehicle to be taken to an appropriate place to be inspected. The power also enables them to ask for assistance as necessary from people in the vehicle or the registered keeper to help.

537. The powers conferred by this clause may be exercised wherever and whenever it is necessary, although subject to a warrant if it was necessary to enter a dwelling. For this clause only, the term 'vehicle' does not include vehicles at sea i.e. vessels and marine installations (which are covered under clause 221).

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*Entry, search and seizure*

**221 Power to board and inspect vessels and marine installations**

- (1) For the purposes of carrying out any relevant functions, an enforcement officer may at any time board and inspect a vessel or marine installation.  
This is subject to section 224 (which provides that a warrant is necessary to enter a dwelling). 5
- (2) For the purposes of exercising the power conferred by subsection (1), the officer may require a vessel or marine installation –
  - (a) to stop, or
  - (b) to do anything else that will facilitate the boarding of that or any other vessel or marine installation. 10
- (3) An enforcement officer who has boarded a vessel or marine installation may, for the purposes of disembarking from the vessel or installation, require that or any other vessel or marine installation –
  - (a) to stop, or 15
  - (b) to do anything else that will enable the officer, and any person accompanying the officer, to disembark from the vessel or installation.
- (4) An enforcement officer may require any person on board a vessel or marine installation to afford such facilities and assistance with respect to matters under that person’s control as the officer considers would facilitate the exercise of any power conferred by this section. 20

**222 Power to enter and inspect premises**

- (1) For the purposes of carrying out any relevant functions, an enforcement officer may enter and inspect any premises.  
This is subject to section 224 (which provides that a warrant is necessary to enter a dwelling). 25
- (2) The officer may only exercise the power conferred by this section at a reasonable time, unless it appears to the officer that there are grounds for suspecting that the purpose of entering the premises may be frustrated if the officer seeks to enter at a reasonable time. 30
- (3) An enforcement officer may require any person in or on the premises to afford such facilities and assistance with respect to matters under that person’s control as the officer considers would facilitate the exercise of the power conferred by this section.
- (4) In this Chapter “premises” includes land, but does not include any vehicle, vessel or marine installation. 35

**223 Power to enter and inspect vehicles**

- (1) For the purposes of carrying out any relevant functions, an enforcement officer may at any time –
  - (a) enter and inspect any vehicle; 40
  - (b) stop and detain any vehicle for the purposes of entering and inspecting it.

***Clause 224: Entry and inspection of dwellings***

538. This clause gives enforcement officers the power to seek a warrant from a justice of the peace or magistrate to enter dwellings in order to exercise their other enforcement powers in Chapters 2 and 3. It sets out the matters that must be satisfied before a warrant may be granted. The clause allows for a warrant to cover more than one dwelling or allow for multiple entries to a dwelling. It also introduces Schedule 10 which sets out further provisions relating to warrants (how to obtain one and matters regarding the execution of the warrant).

This is subject to section 224 (which provides that a warrant is necessary to enter a dwelling).

- (2) Where—
  - (a) an enforcement officer has stopped a vehicle under this section, and
  - (b) the officer considers that it would be impracticable to inspect the vehicle in the place where it has stopped,
 the officer may require the vehicle to be taken to such place as the officer directs to enable the vehicle to be inspected. 5
- (3) An enforcement officer may require—
  - (a) any person travelling in a vehicle, or
  - (b) the registered keeper of a vehicle,
 to afford such facilities and assistance with respect to matters under that person’s control as the officer considers would facilitate the exercise of any power conferred by this section. 10
- (4) The powers conferred by this section may be exercised in any place (whether or not it is a place to which the public has access). 15
- (5) In this section “vehicle” does not include any vessel.

#### **224 Entry and inspection of dwellings**

- (1) An enforcement officer may not enter and inspect any dwelling unless a justice has issued a warrant authorising the officer to enter and inspect the dwelling. 20
- (2) A justice may only issue such a warrant if, on an application by the officer, the justice is satisfied—
  - (a) that the officer has reasonable grounds for believing that there is material in the dwelling which for the purposes of carrying out any relevant functions the officer wishes to inspect, examine or seize, and
  - (b) that there is good reason to believe that the officer will not be able to enter the dwelling and inspect, examine or seize that material without a warrant.25
- (3) A warrant issued under this section may authorise an enforcement officer to enter and inspect—
  - (a) one or more dwellings specified in the application (a “specific premises warrant”), or
  - (b) any dwelling occupied or controlled by a person specified in the application, including such dwellings as are so specified (an “all premises warrant”).30  
35
- (4) If the application is for an all premises warrant, the justice must also be satisfied—
  - (a) that the officer has reasonable grounds for believing that it is necessary to enter dwellings occupied or controlled by the person in question which are not specified in the application in order to inspect, examine or seize the material referred to in subsection (2)(a), and
  - (b) that it is not reasonably practicable to specify in the application every dwelling which the person occupies or controls and which might need to be entered.40
- (5) A warrant issued under this section may authorise the entry and inspection of a dwelling on more than one occasion if, on the application, the justice is 45

***Clause 225: Powers of search, examination, etc***

539. The powers in this clause allow an enforcement officer to search a vessel, marine installation, premises or vehicle (“relevant premises”) as part of an inspection. *Subsections (3) to (7)* enable the officer to examine anything that is in or on the relevant premises, attached to or is part of it including anything that is controlled from it. Where appropriate, the officer can also test or measure any object found on the premises, which includes animals or plants. However, samples may only be taken from a live animal or plant with the purpose to find out its identity or ancestry, re-enacting the power available in the Wildlife and Countryside Act 1981. If necessary, an enforcement officer may break and/or open any container or things that have been locked. They could also require assistance from anyone within the premises or connected to the premises to help them.

satisfied that it is necessary to authorise multiple entries in order to achieve the purpose for which the warrant is issued.

If the warrant authorises multiple entries, the number of entries authorised may be unlimited, or limited to a maximum.

- (6) Schedule 10 contains further provision about warrants issued under this section. 5
- (7) In this Chapter “justice” means –
  - (a) in relation to England and Wales, a justice of the peace;
  - (b) in relation to Northern Ireland, a lay magistrate;
  - (c) in relation to Scotland, a sheriff, stipendiary magistrate or justice of the peace. 10

**225 Powers of search, examination, etc**

- (1) This section applies where an enforcement officer is exercising a power of inspection conferred by section 221, 222 or 223.
- (2) The officer may search the relevant premises for any item. 15
- (3) The officer may examine –
  - (a) anything that is in or on the relevant premises;
  - (b) anything that is attached to or otherwise forms part of the relevant premises;
  - (c) anything that is controlled from the relevant premises. 20
- (4) The officer may carry out any measurement or test of anything falling within subsection (3).
- (5) The power conferred by subsection (4) includes power to take a sample from any live animal or plant found in or on the relevant premises. 25  
 But no sample may be taken by virtue of this subsection from a live animal or plant except for the purpose of establishing its identity or ancestry.
- (6) For the purpose of exercising any power conferred by this section, the officer may, so far as is reasonably necessary for that purpose, break open any container or other locked thing.
- (7) The officer may require any person in or on the relevant premises to afford such facilities and assistance with respect to matters under that person’s control as the officer considers would facilitate the exercise of any power conferred by this section. 30
- (8) In this section –
  - “animal” includes any egg, larva, pupa, or other immature stage of an animal; 35
  - “item” includes –
    - (a) any document or record (in whatever form it is held);
    - (b) any animal or plant;
  - “the relevant premises” means the vessel, marine installation, premises or vehicle in relation to which the power of inspection is being exercised; 40
  - “sample” means a sample of blood, tissue or other biological material.

***Clause 226: Power to require production of documents, etc***

540. This clause gives enforcement officers the power to require a person on or in the relevant premises being inspected to produce documents or records that they have. A document includes information which is recorded on paper, in an electronic format, and pictorial and related images.

***Clause 227: Powers of seizure, etc***

541. This clause enables an enforcement officer to seize and remove (and detain) anything found on the premises. The officer can also take copies of or extracts from any document/material or record found on the relevant premises. *Subsection (3)* specifies that the powers conferred by this clause can only be exercised in situations where the enforcement officer has reason to believe that an offence has been committed. *Subsection (4)* limits the power so that it does not allow an officer to remove any document/material that is required by law to be kept on the premises, such as vessel registration papers. However, *subsection (5)* allows such items to be seized when a vessel is in port.

542. *Subsections (6) and (7)* give officers powers to seize and remove things which are kept in a container. This includes the ability to require evidence to be put into a container so that it can be removed, such as might be necessary for undersized fish.

543. *Subsection (8)* enables officers to require that documents or materials are kept on the premises for safekeeping pending removal and seizure.

544. *Subsection (9)* allows the officer to require someone who has some control in the situation to assist them, for instance by putting fish into a container.

545. *Subsection (10)* prevents an officer seizing an item which is subject to legal privilege.



**226 Power to require production of documents, etc**

- (1) This section applies where an enforcement officer is exercising a power of inspection conferred by section 221, 222 or 223.
- (2) The officer may require any person in or on the relevant premises to produce any document or record that is in the person’s possession or control. 5
- (3) A reference in this section to the production of a document includes a reference to the production of –
  - (a) a hard copy of information recorded otherwise than in hard copy form, or
  - (b) information in a form from which a hard copy can be readily obtained. 10
- (4) For the purposes of this section –
  - (a) information is recorded in hard copy form if it is recorded in a paper copy or similar form capable of being read (and references to hard copy have a corresponding meaning);
  - (b) information can be read only if – 15
    - (i) it can be read with the naked eye, or
    - (ii) to the extent that it consists of images (for example photographs, pictures, maps, plans or drawings), it can be seen with the naked eye.
- (5) In this section “the relevant premises” means the vessel, marine installation, premises or vehicle in relation to which the power of inspection is being exercised. 20

**227 Powers of seizure, etc**

- (1) An enforcement officer who is exercising a power of inspection conferred by section 221, 222 or 223 may – 25
  - (a) seize and detain or remove any item found on the relevant premises;
  - (b) take copies of or extracts from any document or record found on the relevant premises.
- (2) An enforcement officer to whom any document or record has been produced in accordance with a requirement imposed under section 226 may – 30
  - (a) seize and detain or remove that document or record;
  - (b) take copies of or extracts from that document or record.

In this subsection “document” includes anything falling within paragraph (a) or (b) of section 226(3).
- (3) The powers conferred by this section may only be exercised – 35
  - (a) for the purposes of determining whether a relevant offence has taken place, or
  - (b) in relation to an item which an enforcement officer reasonably believes to be evidence of the commission of a relevant offence.
- (4) Subject to subsection (5), an enforcement officer may not remove from the relevant premises any item which is required by law to be kept on the relevant premises. 40
- (5) An enforcement officer may remove such an item from a vessel while it is being detained in a port.

***Clause 228: Retention of seized items***

546. This clause allows items seized during an investigation to be kept for as long as is necessary for the investigation and any trial proceedings, unless a photograph or copy would provide sufficient evidence.

***Clause 229: Amendment of the Criminal Justice and Police Act 2001***

547. This clause amends the definition of premises in section 66 of the Criminal Justice and Police Act 2001 to include ‘marine installation’ and adds the Marine Bill to the list of legislation containing powers of seizure in relation to which the powers in section 50 of that Act (powers to seize and sift) can also be used. It enables officers to remove items that otherwise they would not have the power to seize in order that they can sift through things to find evidence. Without this power, officers would have to remain on the premises when sifting.

- 
- (6) Where—
- (a) any items which an enforcement officer wishes to seize and remove are in a container, and
  - (b) the officer reasonably considers that it would facilitate the seizure and removal of the items if they remained in the container for that purpose, any power to seize and remove the items includes power to seize and remove the container. 5
- (7) Where—
- (a) any items which an enforcement officer wishes to seize and remove are not in a container, and 10
  - (b) the officer reasonably considers that it would facilitate the seizure and removal of the items if they were placed in a container suitable for that purpose, the officer may require the items to be placed into such a container.
- (8) If, in the opinion of an enforcement officer, it is not for the time being practicable for the officer to seize and remove any item, the officer may require any person in or on the relevant premises to secure that the item is not removed or otherwise interfered with until such time as the officer may seize and remove it. 15
- (9) The officer may require any person in or on the relevant premises to afford such facilities and assistance with respect to matters under that person’s control as the officer considers would facilitate the exercise of any power conferred by this section. 20
- (10) Nothing in this section confers power on an enforcement officer to seize an item which the officer has reasonable grounds for believing to be subject to legal privilege (within the meaning of the Police and Criminal Evidence Act 1984 (c. 60)). 25
- (11) In this section “the relevant premises” means the vessel, marine installation, premises or vehicle in relation to which the power of inspection is being exercised. 30
- 228 Retention of seized items**
- (1) This section applies to any item seized in the exercise of a power conferred by section 227.
- (2) The item may be retained so long as is necessary in all the circumstances and in particular— 35
- (a) for use as evidence at a trial for a relevant offence, or
  - (b) for forensic examination or for investigation in connection with a relevant offence.
- (3) No item may be retained for either of the purposes mentioned in subsection (2) if a photograph or a copy would be sufficient for that purpose. 40
- 229 Amendment of the Criminal Justice and Police Act 2001**
- (1) The Criminal Justice and Police Act 2001 (c. 16) is amended as follows.
- (2) In section 66 of that Act (general interpretation of Part 2) in subsection (1)—
- (a) before the definition of “premises” insert—

***Clause 230: Power to record evidence of offences***

548. This clause provides enforcement officers with powers to use any device to take images of anything connected with the relevant premises for evidence in the investigation of a suspected offence. *Subsection (2)* describes how the power can be used and *subsection (3)* enables the officer to require a person who has some control in that situation to help them.

***Clause 231: Power to require attendance of certain persons***

549. This clause applies when an officer has boarded a vessel, marine structure or entered any premises and needs to assemble those on the premises, for instance so that the officer can check identities of people present.

***Clause 232: Power to direct vessel or marine installation to port***

550. This clause gives enforcement officers the power to direct a vessel or marine installation to the port they consider to be the nearest convenient port and detain it there. A convenient port may not be the nearest in terms just of distance, but may be, for example, the nearest one able to take the size of vessel, provide a berth or suitable storage facilities. The clause only applies in situations where an officer believes that an offence has been committed and it would not be practical to carry out their duties without first taking the vessel or marine installation to port and detaining it there.

- 
- ““marine installation” has the meaning given by section 235 of the Marine Act 2009;”;
- (b) in the definition of “premises”, after “offshore installation” insert “or other marine installation”.
- (3) In Part 1 of Schedule 1 to that Act (powers of seizure to which section 50 applies), after paragraph 73K insert – 5
- “Marine Act 2009 (c. 00)*
- 73L Each of the powers of seizure conferred by section 227(1) and (2) of the Marine Act 2009.”
- 230 Power to record evidence of offences** 10
- (1) An enforcement officer may use any device for the purpose of taking visual images of anything which the officer believes is evidence of the commission of a relevant offence.
- (2) The power conferred by this section is exercisable in relation to – 15
- (a) anything that is in or on,
- (b) anything that is attached to or otherwise forms part of, or
- (c) anything that is controlled from,
- any vessel, marine installation, premises or vehicle.
- (3) The officer may require any person in or on the relevant premises to afford such facilities and assistance with respect to matters under that person’s control as the officer considers would facilitate the exercise of the power conferred by this section. 20
- In this subsection “the relevant premises” means the vessel, marine installation, premises or vehicle in relation to which the power is being exercised. 25

*Ancillary powers*

- 231 Power to require attendance of certain persons**
- (1) This section applies where an enforcement officer has – 30
- (a) boarded a vessel or marine installation, or
- (b) entered any premises.
- (2) For the purpose of carrying out any relevant functions, the officer may require the attendance of – 35
- (a) the person who is for the time being in charge of the vessel or marine installation;
- (b) any other person who is on board the vessel or marine installation;
- (c) the owner or occupier of the premises;
- (d) any person who is on the premises.
- 232 Power to direct vessel or marine installation to port**
- (1) This section applies where –

551. *Subsections (2) and (3)* set out powers which enable an officer to get the vessel or movable marine installation (such as a jack-up rig) to the nearest suitable port. Once in port, the officer may detain it or require the person in charge to do so.

552. *Subsections (4) – (7)* explain that enforcement officers are obliged to issue a written notice of detention to the person in charge of the vessel or marine installation. The notice must state that the vessel or marine installation will be detained until such time as the notice is withdrawn. The notice served under this subsection may be withdrawn by another written notice signed by an enforcement officer of the same authority as that of the enforcement officer who originally detained the vessel.

***Clause 233: Assistance etc***

553. This clause enables enforcement officers to take other people and anything necessary (including equipment and materials) to assist them in their duties. These powers apply wherever the enforcement officer may be. Their assistants could include specialists, for example a vet if the officer was inspecting wildlife legislation. Anybody brought by the enforcement officer to assist will be supervised or directed by the officer.

***Clause 234: Power to use reasonable force***

554. This clause allows enforcement officers and their assistants to use reasonable force wherever necessary to carry out their functions under the draft Bill. Reasonable force might be needed to prevent documents being thrown overboard, for example.

- 
- (a) an enforcement officer considers that it would not be reasonably practicable for the officer to exercise a power which the officer wishes to exercise in relation to a vessel or marine installation without detaining the vessel or marine installation in a port, or
- (b) an enforcement officer reasonably believes that – 5
- (i) a vessel or marine installation is itself evidence of the commission of a relevant offence, and
- (ii) the only reasonably practicable way to preserve that evidence is to detain the vessel or marine installation in a port.
- (2) The officer may – 10
- (a) take, or arrange for another person to take, the vessel or marine installation and its crew to the port which appears to the officer to be the nearest convenient port, or
- (b) require the person who is for the time being in charge of the vessel or marine installation to take it and its crew to that port. 15
- (3) When the vessel or marine installation has been taken to a port, the officer may –
- (a) detain it there, or
- (b) require the person for the time being in charge of it to do so.
- (4) An enforcement officer who detains any vessel or marine installation under this section must serve a notice on the person who is for the time being in charge of it. 20
- (5) The notice must state that the vessel or marine installation is to be detained until the notice is withdrawn.
- (6) A notice served under subsection (4) may be withdrawn by service of a further notice signed by an appropriate enforcement officer. 25
- (7) In subsection (6) the reference to an appropriate enforcement officer is a reference to any enforcement officer acting on behalf of the same relevant authority as the enforcement officer who served the notice under subsection (4), and includes a reference to that officer. 30
- “Relevant authority” means the person or body on whose behalf the officer who detained the vessel or marine installation was acting.

### **233 Assistance etc**

- (1) To assist in carrying out any relevant functions, an enforcement officer may bring – 35
- (a) any other person;
- (b) any equipment or materials.
- (2) A person who is brought by an enforcement officer to provide assistance may carry out any relevant functions, but only under the supervision or direction of the officer. 40

### **234 Power to use reasonable force**

- (1) An enforcement officer may use reasonable force, if necessary, in the exercise of any power conferred by this Act.

***Clause 235: Interpretation of this Chapter***

555. A number of definitions are provided for words or expressions used in this Chapter. Please see relevant clause for definitions.

***Chapter 3: Fisheries Enforcement Powers***

***Inspection and seizure of objects at sea***

***Clause 236: Power to inspect and seize objects at sea***

556. This clause provides enforcement officers with powers to inspect any object found in the sea which is believed to have been or is being used for fishing. This includes powers to lift the object out of the sea for inspection. If the officer believes that an offence has been committed using the object in question then it may be seized. The power to seize an object includes power to seize anything attached to or contained within the object (e.g. fish).

557. If the officer decides not to seize the object (for instance if the object is not connected to fishing or no offence has been detected) he must, where it is reasonably practicable to do so, replace the object where it was found. If it is not practicable to return the object to where it was found, the officer may seize it until the object is collected by its owner.

558. When an object is seized because it is impracticable to return it to the sea, the enforcement officer must take reasonable steps to identify and contact the owner. If the owner cannot be identified a public notice must be issued to advertise that an object has been seized and requires collection and that if not collected it will be destroyed.



- (2) A person assisting an enforcement officer under section 233 may use reasonable force, if necessary, in the exercise of any power conferred by this Act.

*Interpretation*

<b>235 Interpretation of this Chapter</b>	<b>5</b>
(1) In this Chapter –	
“common enforcement power” means any power conferred by sections 221 to 234;	
“enforcement officer” has the meaning given by section 220;	
“item” has the meaning given by section 225(8);	10
“justice” has the meaning given by section 224(7);	
“marine installation” means any artificial island, installation or structure (other than a vessel);	
“premises” has the meaning given by section 222(4);	
“relevant function” and “relevant offence” have the meaning given by section 220.	15
(2) In this Chapter any reference to a vessel includes a reference to –	
(a) any ship or boat or any other description of vessel used in navigation,	
(b) any hovercraft, submersible craft or other floating craft, and	
(c) any aircraft,	20
but does not include a reference to anything that permanently rests on, or is permanently attached to, the seabed.	

**CHAPTER 3**

FISHERIES ENFORCEMENT POWERS

<i>Inspection and seizure of objects at sea</i>	25
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**236 Power to inspect and seize objects at sea**

- (1) For the purposes of carrying out any relevant functions, an enforcement officer who has the power conferred by this section may inspect any object in the sea which the officer believes has been or is being used for the purposes of fishing. The officer may lift an object out of the sea for the purposes of inspecting it under this section. 30
- (2) An enforcement officer who has inspected an object under this section may seize the object.
- (3) The power conferred by subsection (2) may only be exercised – 35
- (a) for the purposes of determining whether a relevant offence has taken place, or
- (b) in relation to an object which an enforcement officer reasonably believes to be evidence of the commission of a relevant offence.

***Clause 237: Reports of inspections under section 236***

559. This clause contains reporting requirements that an enforcement officer must follow after inspecting objects under clause 236. The report must state the date and time of the inspection, the identity of the officer in charge of the inspection and how the officer may be contacted. Wherever it is reasonably practicable to do so, a copy of the report must be attached to the object.

560. Where anything has been seized the report must also state what has been seized, the reason for its seizure, and any further action to be taken in respect of the object .

- 
- (4) If, having inspected an object under this section, the officer decides not to seize it under subsection (2), the officer must, where it is reasonably practicable to do so, replace the object in the location where it was found.
- (5) Where it is not reasonably practicable to replace the object in accordance with subsection (4), the officer may seize the object until such time as it may be collected by the appropriate person. 5  
For the meaning of “the appropriate person”, see section 257.
- (6) Any power conferred by this section to seize an object includes power to seize— 10  
(a) anything that is attached to the object;  
(b) anything that is contained within the object.
- (7) Any reference in this section to replacing an object includes, in the case of fishing gear, a reference to re-setting the gear in the same way in which it was placed in the sea.
- (8) The powers conferred on an enforcement officer by this section are without prejudice to any powers exercisable by the officer apart from this section. 15
- 237 Reports of inspections under section 236**
- (1) This section applies where an enforcement officer inspects any object under section 236.
- (2) The officer must prepare a report in relation to the inspection. 20
- (3) The report must state—  
(a) the date and time of the inspection;  
(b) the identity of the officer who carried out the inspection;  
(c) how the officer may be contacted.
- (4) In the case of an object seized under section 236(2) or (5), the report must also state— 25  
(a) what has been seized;  
(b) the reasons for its seizure;  
(c) any further action that it is proposed will be taken in relation to the object. 30
- (5) Where the object has not been seized under section 236(2) or (5), the officer must, if it is reasonably practicable to do so, attach a copy of the report to the object.
- (6) Where— 35  
(a) the object has been seized under section 236(2), and  
(b) either of the conditions in subsection (7) is satisfied,  
the relevant authority must, if it has not already done so, serve a copy of the report on the appropriate person.
- (7) The conditions are— 40  
(a) that the relevant authority has decided not to take proceedings in respect of any offence in relation to which the object was seized;  
(b) that any proceedings taken in respect of such an offence have concluded.

***Clause 238: Retention of objects seized under section 236(2)***

561. This clause provides for the retention by the relevant authority of any objects seized under clause 236. Where such objects have been seized they must be made available for collection by an appropriate person where either a decision is made not to initiate a prosecution or where proceedings are completed without an order for forfeiture being made. The object does not however have to be made available if it is gear or fish liable for forfeiture under clauses 247 or 248.

***Clause 239: Disposal of objects seized under section 236***

562. This clause sets out arrangements for the disposal of objects seized under clause 236 where the relevant authority no longer wishes to retain the object or the relevant authority is required to make the object available for collection.

563. The relevant authority must send a notice to the owner or, where the owner is not known, place a notice in an appropriate port office, stating that the object must be collected within 3 months or it will be disposed of.

- (8) Where the object has been seized under section 236(5), the relevant authority must serve a copy of the report on the appropriate person at the same time as it serves a notice of collection on that person under section 239.

**238 Retention of objects seized under section 236(2)**

- (1) Any object seized by an enforcement officer under section 236(2) may be retained by the relevant authority. 5
- (2) If either of the grounds of release in subsection (3) applies, the relevant authority must, as soon as is reasonably practicable, make the object available for collection by the appropriate person.
- (3) The grounds of release referred to in subsection (2) are – 10
- (a) that the relevant authority has decided not to take proceedings in respect of any offence in relation to which the object was seized;
  - (b) that any proceedings taken in respect of such an offence have concluded without any order for forfeiture having been made.
- (4) But subsection (2) does not apply if the object is liable to forfeiture under section 247 or 248. 15
- (5) Any reference to an object seized under subsection (2) of section 236 includes a reference to anything seized by virtue of subsection (6) of that section.

**239 Disposal of objects seized under section 236**

- (1) This section applies to – 20
- (a) any object seized under section 236(2) which the relevant authority –
    - (i) no longer wishes to retain for any purpose, or
    - (ii) is required to make available for collection by virtue of section 238;
  - (b) any object seized under section 236(5). 25
- (2) In this section a “notice of collection” is a notice stating that –
- (a) the object specified in the notice is available to be collected from the location so specified, and
  - (b) if the object is not collected before the end of the period of three months beginning with the date specified in the notice, the relevant authority will dispose of the object. 30
- (3) The relevant authority must serve a notice of collection on the appropriate person.
- (4) The relevant authority may take any other steps it considers appropriate to notify the appropriate person that the object is available to be collected. 35
- (5) If the relevant authority is unable to identify who the appropriate person is, the relevant authority must –
- (a) place a notice of collection in such harbour office or offices as it thinks fit, and
  - (b) take such other steps as it thinks fit to bring the information contained in the notice of collection to the attention of persons likely to be interested in it. 40

***Clause 240: Power to seize fish for purposes of forfeiture***

564. Clause 240 provides the power for an enforcement officer to seize any fish in respect of which he believes a relevant offence has been committed. Use of this power is limited to those instances where the court may use its powers to order forfeiture of the fish in respect of the offence committed. The power of seizure extends to any container that the fish are in, and where not in such a container, allows the enforcement officer to ask for the fish to be placed in a container if he considers that this would facilitate seizure of the fish.

565. Where it is not for the time being practical to seize the fish, an enforcement officer is given the power to require anybody (e.g. crew, skipper etc) in or on the relevant premises to keep the fish secure and not to tamper with it whilst the investigation is ongoing and until the fish is seized and removed. This includes the power to request assistance from anybody in or on the premises (crew, skipper etc) whilst the enforcement officer is carrying out his duties.

- (6) If the relevant authority complies with subsection (3) or subsection (5), as the case may be, the relevant authority may, at the end of the period mentioned in subsection (2)(b), dispose of the object in whatever way it thinks fit.
- (7) Any reference to an object seized under subsection (2) or (5) of section 236 includes a reference to anything seized by virtue of subsection (6) of that section. 5

*Seizure for purposes of forfeiture*

**240 Power to seize fish for purposes of forfeiture**

- (1) An enforcement officer who has the power conferred by this section may seize and detain or remove any fish in respect of which the officer reasonably believes a relevant offence has been committed. 10
- (2) The power conferred by this section may only be exercised for the purposes of securing that, in the event of a conviction for a relevant offence, the court may exercise any relevant power of forfeiture in relation to fish in respect of which the offence was committed. 15
- (3) Where –
- (a) any fish which an enforcement officer wishes to seize and remove are in a container, and
  - (b) the officer reasonably considers that it would facilitate the seizure and removal of the fish if they remained in the container for that purpose, 20
- any power to seize and remove the fish includes power to seize and remove the container.
- (4) Where –
- (a) any fish which an enforcement officer wishes to seize and remove are not in a container, and 25
  - (b) the officer reasonably considers that it would facilitate the seizure and removal of the fish if they were placed in a container suitable for that purpose,
- the officer may require the fish to be placed into such a container.
- (5) If, in the opinion of an enforcement officer, it is not for the time being practicable for the officer to seize and remove any fish, the officer may require any person in or on the relevant premises to secure that the fish are not removed or otherwise interfered with until such time as the officer may seize and remove them. 30
- (6) The officer may require any person in or on the relevant premises to afford such facilities and assistance with respect to matters under that person’s control as the officer considers would facilitate the exercise of any power conferred by this section. 35
- (7) In this section –
- “relevant power of forfeiture” means any power of a court to order the forfeiture of any fish in respect of which an offence has been committed; 40
  - “relevant premises” means any vessel, marine installation, premises or vehicle in relation to which the power of seizure conferred by this section is being exercised. 45

***Clause 241: Power to seize fishing gear for purposes of forfeiture***

566. This clause provides very similar powers to clause 240 for the seizure of fishing gear for the purpose of forfeiture.

***Clause 242: Procedure in relation to seizure under section 240 or 241***

567. This clause requires enforcement officers to send a written notice to the appropriate person in respect of clause 240 (seized fish) and clause 241 (seized gear).

568. The written notice must state: the reason for seizure; the offence that has been committed; any further actions proposed to be taken in respect of the object (fish or gear); and that unless the fish or gear are liable to forfeiture under clauses 247 and 248 the fish or gear will be detained pending their release or forfeiture by the court.

***Clause 243: Retention of property seized under section 240 or 241***

569. This clause provides for the retention by the relevant authority of any property seized under clauses 240 or 241. Where such property has been seized it must be made available for collection by an appropriate person where either a decision is made not to initiate a prosecution or where proceedings are completed without an order for forfeiture being made. The property does not however have to be made available if it is gear or fish liable for forfeiture under clauses 247 or 248.

570. This clause does not apply where the fish or gear is liable to forfeiture under clause 247 or 248.



**241 Power to seize fishing gear for purposes of forfeiture**

- (1) An enforcement officer who has the power conferred by this section may seize and detain or remove any fishing gear which the officer reasonably believes has been used in the commission of a relevant offence.
- (2) The power conferred by this section may only be exercised for the purposes of securing that, in the event of a conviction for a relevant offence, the court may exercise any relevant power of forfeiture in relation to fishing gear used in the commission of the offence. 5
- (3) If, in the opinion of an enforcement officer, it is not for the time being practicable for the officer to seize and remove any fishing gear, the officer may require any person in or on the relevant premises to secure that the fishing gear is not removed or otherwise interfered with until such time as the officer may seize and remove it. 10
- (4) The officer may require any person in or on the relevant premises to afford such facilities and assistance with respect to matters under that person’s control as the officer considers would facilitate the exercise of any power conferred by this section. 15
- (5) In this section—
  - “relevant power of forfeiture” means any power of a court to order the forfeiture of any fishing gear used in the commission of an offence; 20
  - “relevant premises” means any vessel, marine installation, premises or vehicle in relation to which the power of seizure is being exercised.

**242 Procedure in relation to seizure under section 240 or 241**

- (1) An enforcement officer who seizes any property under section 240 or section 241 must serve a notice on the appropriate person. 25  
For the meaning of “the appropriate person”, see section 257.
- (2) The notice must state—
  - (a) what has been seized;
  - (b) the reason for its seizure;
  - (c) the offence which the officer believes has been committed; 30
  - (d) any further action that it is proposed will be taken;
  - (e) that, unless the property is liable to forfeiture under section 247 or 248, it is to be detained until such time as it is released or its forfeiture is ordered by the court.
- (3) Where the property was seized following an inspection carried out in exercise of the power conferred by section 236, the officer must serve a copy of the report referred to in section 237 on the appropriate person at the same time as the officer serves a notice on that person under this section. 35

**243 Retention of property seized under section 240 or 241**

- (1) Any property seized by an enforcement officer under section 240 or 241 may be retained by the relevant authority. 40
- (2) If either of the grounds for release in subsection (3) applies, the relevant authority must, as soon as is reasonably practicable, make the property available for collection by the appropriate person.

***Clause 244: Bonds for release of seized fish or gear***

571. This clause sets out the arrangements for the release by way of security of fish or fishing gear retained by the relevant authority under clause 243. The relevant authority may enter into an agreement for security with the appropriate person as a way of securing its release. The relevant authority may set conditions for the release and will agree with the owner the amount of money given as the security.

572. If the relevant authority has decided not to take proceedings or proceedings have concluded with no order for forfeiture having been made then the relevant authority must return the security as soon as possible. The powers exercised by the court to order the forfeiture of fish or fishing gear similarly apply in respect of security given as a means of securing the release of seized fish or fishing gear.

***Clause 245: Power to sell fish in possession of relevant authority***

573. Clause 245 gives the relevant authority the power to sell any fish it has seized or retained. This power is needed as relevant authorities will have only limited facilities to keep seized fish. Any power the court has to order the forfeiture of the fish may be exercised in relation to the proceeds of the sale of the fish.

574. The relevant authority has the power to hold on to the proceeds of sale until; the court has ordered that the money be forfeited, the relevant authority has decided not to take proceedings or proceedings have concluded with no order for forfeiture having been made.

575. If the relevant authority has decided not to take proceedings or proceedings have concluded with no order for forfeiture having been made then the relevant authority must release the proceeds of the sale as soon as possible to the owner of the fish.

576. Provision is made as to how the fish are to be sold, including a right for the owner of the fish to make representations, and the relevant authority are permitted to deduct their reasonable expenses from the proceeds of sale.

- (3) The grounds for release referred to in subsection (2) are –
- (a) that the relevant authority has decided not to take proceedings in respect of any offence in relation to which the property was seized;
  - (b) that any proceedings taken in respect of such an offence have concluded without any order for forfeiture having been made. 5
- (4) But subsection (2) does not apply if the property is liable to forfeiture under section 247 or 248.

**244 Bonds for release of seized fish or gear**

- (1) This section applies to any property which is being retained by the relevant authority under section 243. 10
- (2) The relevant authority may enter into an agreement with the appropriate person for security for the property to be given to the relevant authority by way of bond in return for the release of the property.
- (3) Any bond given under this section is to be –
- (a) for such amount as may be agreed, or
  - (b) in the event of a failure to agree an amount, for such amount as may be determined by the court. 15
- “The court” means a magistrates’ court in England and Wales.
- (4) A person who gives a bond under this section must comply with such conditions as to the giving of the bond as the relevant authority may determine. 20
- (5) If either of the grounds for release mentioned in subsection (6) applies, then any bond given under this section must be returned as soon as possible.
- (6) The grounds for release referred to in subsection (5) are –
- (a) that the relevant authority has decided not to take proceedings in respect of any offence in relation to which the property was seized;
  - (b) that any proceedings taken in respect of such an offence have concluded without any order for forfeiture having been made. 25
- (7) Any power which a court has to order the forfeiture of any fish or any fishing gear may instead be exercised in relation to any bond given under this section as security for that fish or fishing gear. 30

**245 Power to sell fish in possession of relevant authority**

- (1) Any fish which are being retained by the relevant authority under section 243 may be sold by the authority.
- (2) Any power which a court has to order the forfeiture of any fish may instead be exercised in relation to the proceeds of any sale of the fish under this section. 35
- (3) The proceeds of any sale under this section may be retained by the relevant authority until such time as –
- (a) a court exercises any power it has to order the forfeiture of the proceeds, or
  - (b) either of the grounds for release mentioned in subsection (4) applies. 40
- (4) The grounds for release referred to in subsection (3) are –

***Clause 246: Disposal of property seized under section 240 or 241***

577. This clause applies to any fish or gear seized by the relevant authority under clauses 240 and 241 which it no longer wishes to retain or must make available for collection. Fish or gear liable to forfeiture under clause 247 or 248 are not covered by this clause.

578. Where property was seized from a fishing vessel a notice of collection must be given to the appropriate person that the property is available for collection at a specified location. Where property was seized at sea the notice must be given to its owner or, if the owner is not known, displayed in a port office. The specified location for collection will usually be a port office.

579. The relevant authority may also take any other steps it thinks is appropriate (such as an advert) to notify the owner that the property is available for collection. If after 3 months the property (i.e. the fish or gear) is not collected from the port office, the relevant authority may dispose of the property.

- 
- (a) that the relevant authority has decided not to take proceedings in respect of any offence in relation to which the fish was seized;
- (b) that any proceedings taken in respect of such an offence have concluded without any order for forfeiture having been made.
- (5) If either of the grounds for release mentioned in subsection (4) applies, the relevant authority must, as soon as is reasonably practicable, release the proceeds of sale to the appropriate person. 5
- (6) Subject to subsection (8), any fish sold under this section must be sold at auction.
- (7) Before selling the fish, the relevant authority must give the appropriate person a reasonable opportunity to make representations as to the method of sale. 10
- (8) If—
- (a) the appropriate person requests that the fish be sold otherwise than by auction, and
- (b) the relevant authority does not consider that the method of sale requested by the person is an unreasonable one, 15  
the relevant authority must sell the fish by that method.
- (9) The relevant authority may deduct any reasonable expenses it has incurred in selling any fish under this section from the proceeds of the sale.
- 246 Disposal of property seized under section 240 or 241** 20
- (1) This section applies to any property seized under section 240 or 241 which the relevant authority—
- (a) no longer wishes to retain for any purpose, or
- (b) is required to make available for collection by virtue of section 243.
- (2) In this section a “notice of collection” is a notice stating that— 25
- (a) the property specified in the notice is available to be collected from the location so specified, and
- (b) if the property is not collected before the end of the period of three months beginning with the date specified in the notice, the relevant authority will dispose of the property. 30
- (3) The relevant authority must serve a notice of collection on the appropriate person.
- (4) The relevant authority may take any other steps it considers appropriate to notify the appropriate person that the property is available to be collected.
- (5) If the relevant authority is unable to identify who the appropriate person is, the relevant authority must— 35
- (a) place a notice of collection in such harbour office or offices as it thinks fit, and
- (b) take such other steps as it thinks fit to bring the information contained in the notice of collection to the attention of persons likely to be interested in it. 40
- (6) If the relevant authority complies with subsection (3) or subsection (5), as the case may be, the relevant authority may, at the end of the period mentioned in subsection (2)(b), dispose of the property in whatever way it thinks fit.

***Clause 247: Forfeiture etc of prohibited items***

580. Clause 247 provides a power for certain fishing gear seized by an enforcement officer to be forfeited to the relevant authority for disposal. The forfeiture power applies to any fishing gear seized on board a vessel or from the sea which when seized by the enforcement officer could not have been used for any form of fishing without committing an offence under the law of England and Wales. Examples of such gear include 'French Dredges', Gill and other types of nets with mesh sizes between 71-89mm. It does not apply to gear found on land or being used by an angler from the shore.

***Clause 248: Forfeiture etc of under-sized fish***

581. This clause provides a corresponding forfeiture power as respects under-sized fish to that of fishing gear in clause 247.

***Clause 249: Further provision about forfeiture under section 247 or 248***

582. Clause 249 gives effect to Schedule 11.

583. Schedule 11 makes detailed provision in respect of the forfeiture of gear or under-sized fish under clauses 247 and 248. A notice of intended forfeiture must be given to certain people, including the owner of the property, and must set out the reason for the intended forfeiture action together with the details of how a notice of claim may be made. Provision is made covering delivery of the notice of intended forfeiture.

584. A notice of claim may be submitted disputing that the property is liable to forfeiture. Provision is made as to the time limits for submitting such a notice and the details that it must include. If no notice of claim is made then the property is automatically forfeited. If a valid notice is submitted then the property must either be returned or the relevant authority must bring forfeiture proceedings in a court. In forfeiture proceedings the court may order forfeiture or that the property be returned if it is not satisfied that the property is forfeitable.

585. Further provision is made concerning the detail of the forfeiture proceedings (including matters as to proof), the effect of forfeiture, how property is to be disposed of if not to be returned and for certain claimants, e.g. where the property is owned by a body corporate or a partnership.

***Clause 250: Forfeiture by court following conviction***

586. This clause applies where after a successful prosecution under fisheries legislation, the court orders that the fish or gear be forfeited in respect of the offence committed. The relevant authority will be ordered to take possession of the property and to dispose of it as it sees fit. The proceeds of any sale may be retained by the relevant authority and the court may order the defendant to pay the costs of the relevant authority in storing the property.

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*Forfeiture*

**247 Forfeiture etc of prohibited items**

- (1) Any item to which this section applies is liable to forfeiture under this section if the use of that item for sea fishing would in any circumstances constitute an offence under the law of England and Wales. 5
- (2) This section applies to any item seized on board a vessel or from the sea by an enforcement officer in the exercise of any power conferred by this Act.
- (3) Any item forfeited under this section is to be forfeited to the relevant authority and may be disposed of by that authority in any manner it thinks fit.

**248 Forfeiture etc of under-sized fish** 10

- (1) Any fish to which this section applies are liable to forfeiture under this section if, by virtue of the fish being smaller than a particular size, an offence under the law of England and Wales has been committed in respect of the fish.
- (2) This section applies to fish seized by an enforcement officer in the exercise of any power conferred by this Act. 15
- (3) Any fish forfeited under this section are to be forfeited to the relevant authority and may be disposed of by that authority in any manner it thinks fit.

**249 Further provision about forfeiture under section 247 or 248**

Schedule 11 (which makes provision in relation to the forfeiture of property liable to forfeiture under section 247 or 248) has effect. 20

**250 Forfeiture by court following conviction**

- (1) This section applies where a court by or before which a person is convicted of an offence under the fisheries legislation orders the forfeiture of any fish or any fishing gear in respect of that offence.

***Clause 251: Power to detain vessels in connection with court proceedings***

587. Clause 251 contains powers which allow an enforcement officer to detain a vessel to ensure the attendance of the alleged offenders in court and the payment of any fine on conviction. In this section, the power to detain means the power to direct the vessel to port and a power to hold the vessel in port.

588. The clause applies in circumstances where an enforcement officer has reasonable grounds to suspect that an offence has been committed by the owner, master or charterer of a fishing vessel. The power to detain may be used where the enforcement officer anticipates that court proceedings will be commenced in respect of the offence committed and there is a real risk that the alleged offenders will not attend court unless the vessel is detained – e.g. Non-UK domiciled registered owners, masters, charterers etc not coming back to the UK to face court proceedings. The power to detain may also be used where the enforcement officer suspects that following a conviction and imposition by the court of a fine, the court is likely to use its detention powers until all fines have been paid.

589. This clause gives an enforcement officer powers to take the vessel and its crew to the nearest convenient port and detain the vessel there. A convenient port may not be the nearest in terms of distance, but it may be, for example, the nearest one able to take the size of the vessel, provide a berth or suitable storage.

590. An enforcement officer is required to issue a written notice to the person in charge of the vessel stating why the vessel has been detained and the circumstances in which it would be released.



- (2) The court must order that the property to be forfeited is to be taken into the possession of the person or body by whom proceedings for the offence were brought.
- (3) The property may be disposed of as that person or body thinks fit.
- (4) Any proceeds arising from the disposal of the property may be retained by the person or body. 5
- (5) The court may order any person convicted of the offence to pay any costs reasonably incurred by any person or body in storing the property that is to be forfeited.
- (6) In this section “the fisheries legislation” has the meaning given by section 206. 10

*Detention of vessels in connection with court proceedings*

**251 Power to detain vessels in connection with court proceedings**

- (1) This section applies where—
  - (a) an enforcement officer has reasonable grounds for suspecting that a relevant offence has been committed by the master, owner or charterer of a vessel, and 15
  - (b) the officer reasonably believes that—
    - (i) if proceedings are taken against the person for the offence, there is a real risk that the person will not attend court unless the vessel is detained under this section, or 20
    - (ii) if the person is convicted of the offence and the court by or before which the person is convicted imposes a fine on that person, it is likely that the court will order the vessel to be detained.
- (2) Where this section applies, an enforcement officer who has the power conferred by this section may—
  - (a) take, or arrange for another person to take, the vessel and its crew to the port which appears to the officer to be the nearest convenient port, or
  - (b) require any person who is for the time being in charge of the vessel to take it and its crew to that port. 30
- (3) When a vessel has been taken to a port in pursuance of this section, the officer may—
  - (a) detain it there, or
  - (b) require the person for the time being in charge of it to do so.
- (4) An enforcement officer who detains any vessel under this section must serve a notice on—
  - (a) the owner of the vessel, and
  - (b) the person who is for the time being in charge of it. 35
- (5) The notice must state—
  - (a) the reasons for detaining the vessel; 40
  - (b) the circumstances in which the vessel may be released.

***Clause 252: Release of vessels detained under section 251***

591. Clause 252 makes provision for the release of a vessel which is being detained under clause 251. The vessel ceases to be detained if: the notice for detention is withdrawn; the vessel is released by order of the court; proceedings associated with the vessel's detention have concluded; or the court exercises its power to detain the vessel. In addition, an enforcement officer can withdraw a notice of detention at any time.

592. A notice of detention must be withdrawn if any of the grounds for release are met. These grounds are where the relevant authority has decided to take no proceedings in respect of the vessel or if there is no longer reason to believe either that the person in question would fail to attend court or that a court would order detention of the vessel.

***Clause 253: Power of court to order release of vessels***

593. Where proceedings have been commenced in respect of a vessel, clause 253 provides a power for the courts to order the release of the vessel. An order can be made if the court is satisfied that its continued detention under clause 251 is no longer necessary either to secure any person's attendance at court or because following conviction the court would not order the vessel to be detained.

***Clause 254: Bonds for release of vessels***

594. Clause 254 gives the relevant authority power to enter into an agreement with the, owner of the vessel so that a vessel being detained under clause 251 can be released on receipt of security. The amount of the security will be settled by the two parties to the agreement. The relevant authority may impose conditions on the person who provides security.

595. The security must be returned if any of the grounds for release are met. These grounds are where: (i) the relevant authority has decided to take no proceedings in respect of the vessel, (ii) there are no grounds for believing that any relevant persons will fail to attend court, (iii) had the bond not been placed, the court would not have ordered the detention of the vessel or (iv) any proceedings have concluded without any fine being imposed.

**252 Release of vessels detained under section 251**

- (1) This section applies where a vessel is being detained under section 251.
- (2) The vessel ceases to be detained under that section if one of the following things occurs –
  - (a) the notice of detention is withdrawn; 5
  - (b) the court orders the release of the vessel under section 253;
  - (c) any proceedings taken against the master, owner or charterer of the vessel have concluded;
  - (d) the court exercises any power it has to order the vessel to be detained.
- (3) A notice of detention may be withdrawn by service of a further notice signed by an appropriate enforcement officer. 10
- (4) In subsection (3) the reference to an appropriate enforcement officer is a reference to any enforcement officer acting on behalf of the same relevant authority as the enforcement officer who served the notice of detention, and includes a reference to that officer. 15
- (5) If any of the grounds for release mentioned in subsection (6) applies, then any notice of detention must be withdrawn as soon as possible.
- (6) The grounds for release referred to in subsection (5) are –
  - (a) that the relevant authority has decided not to take proceedings against the master, owner or charterer of the vessel; 20
  - (b) that there are no grounds for believing that any person referred to in paragraph (a) against whom proceedings have been, or may be, taken will fail to attend court;
  - (c) that there are no grounds for believing that the court will order the vessel to be detained. 25
- (7) In this section “notice of detention” means a notice served under section 251(4).

**253 Power of court to order release of vessels**

- (1) This section applies where a vessel is being detained under section 251.
- (2) If, on an application by the owner of the vessel to a magistrates’ court in England and Wales, the court is satisfied that –
  - (a) the continued detention of the vessel under section 251 is not necessary to secure that the master, owner or charterer of the vessel will attend court, or
  - (b) there are no grounds for believing that, if the master, owner or charterer of the vessel is convicted, the court will order the vessel to be detained, 30the court may order that the vessel be released. 35

**254 Bonds for release of vessels**

- (1) Where a vessel is being detained under section 251, the relevant authority may enter into an agreement with the owner of the vessel for security for the vessel to be given to the relevant authority by way of bond in return for the withdrawal of the notice of detention. 40
- (2) Any bond given under this section is to be –
  - (a) for such amount as may be agreed, or

***Clause 255: Power of court to order repayment of bonds***

596. Where a notice of detention issued under clause 255(4) has been withdrawn upon payment of a bond under clause 254, clause 255 provides a power for the courts, upon application by the vessel owner, to order repayment of the bond. In order to do so the court must be satisfied either that the continuation of the bond is not necessary to ensure the attendance in court of the master, owner or charterer, or that, had the bond not been placed, the court would not have ordered the detention of the vessel.

***Clause 256: Power to require production of certain equipment***

597. An enforcement officer can request anybody on board a fishing boat to produce any automatic recording or transmitting equipment they have used in relation to their licence conditions, in accordance with section 4(6) or 4A(6) of the Sea Fish (Conservation) Act 1967 (c.84). This could apply, for example, to a transmitter which sends location information to regulators via satellite.

- (b) in the event of a failure to agree an amount, for such amount as may be determined by the court.  
“The court” means a magistrates’ court in England and Wales.
- (3) A person who gives a bond under this section must comply with such conditions as to the giving of the bond as the relevant authority may determine. 5
- (4) If any of the grounds for release mentioned in subsection (5) applies, then any bond given under this section must be returned as soon as possible.
- (5) The grounds for release referred to in subsection (4) are –
- (a) that the relevant authority has decided not to take proceedings against the master, owner or charterer of the vessel; 10
  - (b) that there are no grounds for believing that any person referred to in paragraph (a) against whom proceedings have been, or may be, taken will fail to attend court;
  - (c) that there are no grounds for believing that the court would, in the absence of the bond, have ordered the vessel to be detained; 15
  - (d) that any proceedings taken against the master, owner or charterer of the vessel have concluded without any fine having been imposed.
- (6) Where a court imposes a fine on the master, owner or charterer of the vessel, the court may order any sum of money given as a bond under this section to be used towards the payment of the fine. 20  
If the fine is less than the amount of the bond, any sum not required to be used in payment of the fine must be returned to the person who gave the bond as soon as possible.
- (7) In this section “notice of detention” means a notice served under section 251(4). 25

## **255 Power of court to order repayment of bonds**

- (1) This section applies where a notice of detention served under section 251(4) in respect of a vessel has been withdrawn in return for a bond given as security for the vessel under section 254.
- (2) If, on an application by the owner of the vessel to a magistrates’ court in England and Wales, the court is satisfied that – 30
- (a) the continued detention of the bond under section 254 is not necessary to secure that the master, owner or charterer of the vessel will attend court, or
  - (b) that there are no grounds for believing that the court would, in the absence of the bond, have ordered the vessel to be detained, 35
- the court may order that the bond be returned to the person who gave it.

### *Production of equipment*

## **256 Power to require production of certain equipment**

An enforcement officer who has the power conferred by this section may require any person on board a vessel to produce any automatic recording equipment or transmitting equipment used in accordance with a condition included in a licence by virtue of section 4(6) or 4A(6) of the Sea Fish (Conservation) Act 1967 (c. 84). 40

***Clause 257: “The appropriate person”***

598. Where objects or property are seized under the powers contained in this Chapter, an appropriate person is identified for the purpose of serving notices. That person is, in the case of property seized from a vessel, the owner of the vessel; in the case of any object or property seized at sea, the owner of the vessel believed to have placed the object or property in the sea; and in any other case the owner of the property or, if the owner cannot be identified, the person from whom it was seized.

***Clause 258: Service of notices, etc***

599. This clause specifies the means by which notices required to be served under this Chapter must be served. Such notices are to be delivered in person, left at an appropriate address or sent by post. In relation to the owner of a vessel the appropriate address is further defined by reference to the address given in the appropriate register. In relation to any other person the appropriate address is also further defined.

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*Supplementary*

**257 “The appropriate person”**

- (1) This section applies for determining who the appropriate person is for the purposes of this Chapter.
- (2) In a case where property is seized from a vessel, the appropriate person is the owner of the vessel. 5
- (3) In a case where –
  - (a) any object or property is seized at sea, and
  - (b) the enforcement officer who seized it reasonably believes that it was placed in the sea by a vessel, or, in the case of fish seized at sea, that the gear used to catch the fish was so placed, 10the appropriate person is the owner of that vessel.
- (4) In any other case where property is seized, the appropriate person is –
  - (a) the owner of the property, or
  - (b) if, after reasonable steps have been taken to do so, it is not possible to identify the owner of the property, the person (if any) from whom the property was seized. 15

**258 Service of notices, etc**

- (1) Any notice or other thing that is required to be served on or given to a person under any provision of this Chapter may be served on or given to the person only by one of the following methods – 20
  - (a) personal delivery;
  - (b) addressing it to the person and leaving it at the appropriate address;
  - (c) addressing it to the person and sending it to that address by post.
- (2) “The appropriate address”, in relation to the owner of a vessel that is registered in any country or territory, means the address given by that register as the address of the owner of the vessel. 25
- (3) In relation to any other person “the appropriate address” means –
  - (a) in the case of a body corporate, its registered or principal office in the United Kingdom; 30
  - (b) in the case of a firm, the principal office of the partnership;
  - (c) in the case of an unincorporated body or association, the principal office of the body or association;
  - (d) in any other case, the person’s usual or last known place of residence in the United Kingdom or last known place of business in the United Kingdom. 35
- (4) In the case of –
  - (a) a company registered outside the United Kingdom,
  - (b) a firm carrying on business outside the United Kingdom, or
  - (c) an unincorporated body or association with offices outside the United Kingdom, 40the references in subsection (3) to its principal office include references to its principal office within the United Kingdom (if any).

***Clause 259: Conclusion of proceedings***

600. Clause 259 provides a means of determining when proceedings have concluded. Provision is made for the process of appeals so that proceedings are not considered to be concluded until that process has finished. This is significant for various purposes in this Chapter, for example in triggering the release of a vessel that had been detained.

***Clause 260: Interpretation of this Chapter***

601. A number of definitions are provided for words or expressions used in this Chapter. Please see relevant clause for definitions.

***Chapter 4: Other Enforcement Powers***

***Marine licensing***

***Clause 261: Power to require information relating to certain substances and objects***

602. This clause enables enforcement officers to require a person to give details of any substance or objects on board their vehicle, vessel, aircraft or marine structure (following the definition as in clause 104). People on board can also be required to declare information about substances or objects lost or missing from their vehicle, vessel, aircraft or marine structure. This re-enacts the power in the Food and Environment Protection Act 1985 and relates to information about substances which might be harmful to human health or the environment. *Subsection (2)* prevents this information being used as evidence in a criminal prosecution (save for the offence of making a false statement, if the information given is found to be false).



**259 Conclusion of proceedings**

- (1) This section applies for determining when any proceedings have concluded for the purposes of this Chapter.
- (2) Where proceedings are terminated by an appealable decision, they are not to be regarded as concluded – 5
  - (a) until the end of the ordinary time for appeal against the decision, if no appeal in respect of the decision is brought within that time, or
  - (b) if an appeal in respect of the decision is brought within that time, until the conclusion of the appeal.
- (3) Subsection (2) applies for determining, for the purposes of paragraph (b) of that subsection, when proceedings on an appeal are concluded as it applies for determining when the original proceedings are concluded. 10
- (4) Any reference in subsection (2) to a decision which terminates proceedings includes a reference to a verdict, sentence, finding or order that puts an end to the proceedings. 15
- (5) An appealable decision is a decision of a description against which an appeal will lie, whether by way of case stated or otherwise and whether with or without permission.
- (6) Any reference in this section to an appeal includes a reference to an application for permission to appeal. 20

**260 Interpretation of this Chapter**

In this Chapter –

“fish” includes shellfish;

“relevant authority” means –

- (a) in relation to the seizure of any object or property by an enforcement officer, the person or body on whose behalf the officer who seized it was acting; 25
- (b) in relation to the detention of a vessel by an enforcement officer, the person or body on whose behalf the officer who detained the vessel was acting; 30

“relevant function”, in relation to an enforcement officer, means any function of that officer;

“relevant offence”, in relation to an enforcement officer, means any offence in respect of which the officer has functions;

“shellfish” includes crustaceans and molluscs of any kind. 35

**CHAPTER 4**

OTHER ENFORCEMENT POWERS

*Marine licensing*

**261 Power to require information relating to certain substances and objects**

- (1) A person who has the power conferred by this section may require any person – 40

***Clause 262: Power to take sound recordings***

603. This clause allows enforcement officers to use any device to take sound recordings of anything which may be used as evidence in the commission of an offence. This mirrors a power contained in the Offshore Marine Conservation Regulations 2007 and the Wildlife and Countryside Act 1981.

***Chapter 5: Common Enforcement Provisions***

***Introductory***

***Clause 263: Meaning of “enforcement officer”***

604. This clause defines enforcement officer as someone who has any powers under this Part of the draft Bill.

***Duties of enforcement officers***

***Clause 264: Duty to provide evidence of authority***

605. This clause obliges enforcement officers, including their assistants (in accordance with clause 233), who are exercising the common enforcement powers or carrying out their relevant functions (where these are specific to a regime, such as fisheries) to show evidence that they have the authority to carry out their enforcement functions, when asked to do so. The duty does not apply to Services Enforcement Officers.

606. If the officer thinks that to comply with the request immediately would create problems, such as putting the officer in personal danger or allowing evidence of an offence to be destroyed, they may defer complying with the request until it is convenient to do provide evidence of authority.

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- (a) to give details of any substances or objects on board a vehicle, vessel, aircraft or marine structure;
- (b) to give information concerning any substances or objects lost from a vehicle, vessel, aircraft or marine structure.
- (2) A statement made by a person in response to a requirement made under this section may not be used against the person in criminal proceedings. 5
- (3) In this section “marine structure” and “vessel” have the meaning given by section 104.

*Nature conservation*

- 262 Power to take sound recordings** 10
- (1) A person who has the power conferred by this section may use any device for the purpose of taking sound recordings of anything which the person believes is evidence of the commission of a relevant offence.
- (2) In this section “relevant offence” means any of the following—
- (a) an offence under section 1, 5, 9(1), (2) or (4), 11, 13(1) or 14ZA of the Wildlife and Countryside Act 1981 (c. 69) (Group 1 offences); 15
- (b) an offence under section 6, 7, 9(5), 13(2) or 14 of that Act (Group 2 offences);
- (c) an offence under the Offshore Marine Conservation (Natural Habitats, &c) Regulations 2007 (S.I. 2007/1842). 20

**CHAPTER 5**

COMMON ENFORCEMENT PROVISIONS

*Introductory*

- 263 Meaning of “enforcement officer”**
- In this Chapter “enforcement officer” means a person who has any powers conferred by this Part. 25

*Duties of enforcement officers*

- 264 Duty to provide evidence of authority**
- (1) Before exercising any power conferred by this Part, a person within subsection (2) must, if requested to do so, produce evidence that the person is authorised to exercise that power. 30
- (2) The persons are—
- (a) any enforcement officer, other than a person falling within section 211(2);
- (b) any person assisting an enforcement officer by virtue of section 233. 35
- (3) A person may exercise a power conferred by this Part only if the person complies with the duty imposed by subsection (1).

***Clause 265: Duty to state name and purpose, etc***

607. In conjunction with clause 264 enforcement officers are also obliged to state their name, powers, functions and the duties they are carrying out wherever they are requested to do so, although the officer can defer complying with the request if the immediate situation requires it (e.g. if they think that the request is a delaying tactic to avoid the officer discovering an offence being committed at that moment in time). Someone assisting the enforcement officer need not give their name, but would need to say what power and why they intended to use that power, if so requested.

***Clause 266: Liability of enforcement officers etc***

608. As with clauses 264 and 265, and in conjunction with relevant powers and relevant functions, enforcement officers will be protected from being liable in any civil or criminal proceedings for any thing done or not done as a result of carrying out their duties. This exemption from liability does not apply when an enforcement officer acts in bad faith, if there were no reasonable grounds for him or her to act in such manner or if it was unlawful in relation to the Human Rights Act. This immunity similarly covers any person assisting an enforcement officer.

***Clause 267: Offences in relation to enforcement officers***

609. This clause introduces sanctions for anyone who fails to comply with a requirement made by an enforcement officer or who intentionally obstructs an enforcement officer when the officer is carrying out his duties. It is an offence for anyone knowingly to provide false or misleading information in any particular form or material to an enforcement officer. This includes intentionally failing to disclose any information or materials requested for by the enforcement officer. Anyone who pretends to be an enforcement officer is also guilty of an offence. Offences against enforcement officers also apply to their assistants.

- (4) If, at the time the request is made, the person does not consider it practicable to produce the evidence referred to in subsection (1), that subsection does not apply until such time as the person considers it practicable to comply with the request.

**265 Duty to state name and purpose, etc** 5

- (1) Before exercising any power conferred by this Part, an enforcement officer must, if requested to do so, give the information in subsection (3). 5
- (2) Before exercising any power conferred by this Part, any person assisting an enforcement officer by virtue of section 233 must, if requested to do so, give the information in paragraphs (b) and (c) of subsection (3). 10
- (3) The information is –
- (a) the person’s name;
  - (b) the power the person is proposing to exercise;
  - (c) the grounds for proposing to do so.
- (4) A person may exercise a power conferred by this Part only if the person complies with the duty imposed by subsection (1) or the duty imposed by subsection (2) (as the case may be). 15
- (5) If, at the time the request is made, the person does not consider it practicable to give the information referred to in subsection (1) or the information referred to in subsection (2) (as the case may be), that subsection does not apply until such time as the person considers it practicable to comply with the request. 20

*Liability of enforcement officers*

**266 Liability of enforcement officers etc**

- (1) A person within subsection (2) is not to be liable in any civil or criminal proceedings for anything done (or omitted to be done) in, or in connection with, the discharge or purported discharge of the person’s functions under this Act. 25
- (2) The persons are –
- (a) any enforcement officer;
  - (b) any person assisting an enforcement officer by virtue of section 233. 30
- (3) Subsection (1) does not apply –
- (a) if the act or omission is shown to have been in bad faith,
  - (b) if there were no reasonable grounds for the act or omission, or
  - (c) so as to prevent an award of damages in respect of the act or omission on the ground that it was unlawful as a result of section 6(1) of the Human Rights Act 1998 (c. 42) (acts of public authorities incompatible with Convention rights). 35

*Offences in relation to enforcement officers*

**267 Offences in relation to enforcement officers**

- (1) A person is guilty of an offence if – 40

***Clause 268: Offences by bodies corporate***

610. This clause makes corporate bodies and their senior managers liable if their actions cause an offence to be committed.

***Clause 269: Further provision about offences***

611. This clause allows prosecutions to be taken anywhere within the UK. It also disapplies section 3 of the Territorial Waters Jurisdiction Act 1878 (which requires consent before instituting a prosecution against a foreign national).

- 
- (a) the person fails without reasonable excuse to comply with a requirement reasonably made, or a direction reasonably given, by an enforcement officer in the exercise of any power conferred by this Act, or
- (b) the person prevents any other person from complying with any such requirement or direction. 5
- (2) A person who provides information in pursuance of a requirement reasonably made by an enforcement officer in the exercise of the power conferred by section 261 is guilty of an offence if –
- (a) the information is false in a material particular, and the person knows that it is or is reckless as to whether it is, or 10
- (b) the person intentionally fails to disclose any material particular.
- (3) A person who intentionally obstructs an enforcement officer in the performance of any of the officer’s functions under this Act is guilty of an offence. 15
- (4) A person who, with intent to deceive, falsely pretends to be an enforcement officer is guilty of an offence.
- (5) A person who is guilty of an offence under subsection (1), (2) or (4) is liable –
- (a) on summary conviction, to a fine not exceeding level 5 on the standard scale; 20
- (b) on conviction on indictment, to a fine.
- (6) A person who is guilty of an offence under subsection (3) is liable on summary conviction to a fine not exceeding £50,000.
- (7) In this section any reference to an enforcement officer includes a reference to a person assisting an enforcement officer by virtue of section 233. 25
- 268 Offences by bodies corporate**
- (1) Where an offence under section 267 has been committed by a body corporate and it is proved that the offence –
- (a) has been committed with the consent or connivance of a person falling within subsection (2), or 30
- (b) is attributable to any neglect on the part of such a person, that person (as well as the body corporate) is guilty of that offence and liable to be proceeded against and punished accordingly.
- (2) The persons are –
- (a) a director, manager, secretary or similar officer of the body corporate; 35
- (b) any person who was purporting to act in such a capacity.
- (3) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member, in connection with that management, as if the member were a director of the body corporate.
- 269 Further provision about offences** 40
- (1) Proceedings for an offence under section 267 may be taken, and the offence may for all incidental purposes be treated as having been committed, in any part of the United Kingdom.

***Chapter 6: Miscellaneous***

***Enforcement of Community rules***

***Clause 270: Enforcement of Community rules***

612. This clause amends section 30 of the Fisheries Act 1981.

613. The general power in section 30(2) to make by order provision to enforce Community obligations and restrictions is extended to English and Welsh fishing boats anywhere in the world and to persons of a specified description on board fishing boats anywhere in the world. Persons on board Scottish or Northern Ireland fishing boats are excluded.

614. The general power in section 30(2) to make by Order provision to enforce Community obligations and restrictions is extended to English and Welsh fishing boats anywhere in the world and to British citizens on board fishing boats anywhere in the world. British citizens on Scottish or Northern Irish fishing boats are excluded.

615. Section 30 is further amended so that an Order in Council may be made extending the application of section 30(1) and (2) to any Isle of Man or Channel Islands fishing boat anywhere in the world except in the territorial waters of the Isle of Man and the Channel Islands. This power could be used where these boats are fishing adjacent to British Fishery Limits in the Southwest ICES Area VIIIE and VIIIF, where the Isle of Man Authorities and the Channel Islands Authorities do not patrol.



- (2) Section 3 of the Territorial Waters Jurisdiction Act 1878 (c. 73) (consents to prosecutions of offences committed on the open sea by persons who are not British citizens) does not apply to any proceedings for an offence under section 267.

## CHAPTER 6

5

### MISCELLANEOUS

#### *Enforcement of Community rules*

#### **270 Enforcement of Community rules**

- (1) Section 30 of the Fisheries Act 1981 (c. 29) (enforcement of Community rules) is amended as follows. 10
- (2) In subsection (1) –
- (a) after “enforceable Community restrictions” insert “, and enforceable Community obligations,”;
  - (b) for paragraph (a) substitute – 15
    - “(a) if any fishing boat within British fishery limits –
      - (i) fishes in contravention of any such restriction, or
      - (ii) fails to comply with any such obligation,the master, the owner and the charterer (if any) are each guilty of an offence;”;
  - (c) after paragraph (a) insert – 20
    - “(aa) if any English or Welsh fishing boat outside British fishery limits –
      - (i) fishes in contravention of any such restriction, or
      - (ii) fails to comply with any such obligation,the master, the owner and the charterer (if any) are each guilty of an offence;”;
  - (d) in paragraph (b), for “such offences” substitute “offences under paragraph (a) or (aa) of this subsection”;
  - (e) in paragraph (c), after “restrictions” insert “and obligations”.
- (3) After subsection (2) insert – 30
- “(2ZA) The provision that may be made by an order under subsection (2) includes –
- (a) provision applying to English or Welsh fishing boats outside British fishery limits;
  - (b) provision applying to persons of a specified description on board any fishing boat, other than a Scottish or Northern Ireland fishing boat, outside British fishery limits. 35
- In this subsection “specified” means specified in the order.”
- (4) After subsection (2A) insert – 40
- “(2B) Her Majesty may by Order in Council provide for subsection (1) or (2) above to apply, with or without modifications, to any fishing boat within subsection (2C) below that is outside British fishery limits as it applies to any English or Welsh fishing boat outside those limits.

***Clause 271: Administrative penalty schemes***

616. This clause introduces powers to apply Fixed Administrative Penalties (FAPs) to domestic fisheries offences, i.e. offences which do not originate in Community law. The vast majority of fisheries offences are breaches of Community law for which we can already introduce FAPs using existing powers under section 30(2) of the Fisheries Act 1981.

617. The FAP scheme will complement the existing criminal system rather than replace it, as a person will be under no obligation to pay the penalty if he wishes to have the matter dealt with in court in the usual way. The scheme will be used to address fisheries offences such as offences under the Sea Fisheries Act 1868, the Sea Fish (Conservation) Act 1967, the Sea Fisheries Act 1968, the Fishery Limits Act 1976 and the British Fishing Boats Act 1983, including any offences in any of the orders made under these Acts.

618. The appropriate national authority, the Welsh Ministers for Wales and the Defra Secretary of State in all other cases, is given the power to make provision by order for the issuing of penalty notices for domestic fisheries offences. The clause sets out detail of the provision which may be made in the order, including the content of the penalty notice, who may issue a notice, the minimum and maximum amount of the penalty and matters as to payment.

- (2C) A fishing boat is within this subsection if –
- (a) it is registered under the law of the Isle of Man or any of the Channel Islands; or
  - (b) it is eligible to be so registered.”
- (5) In subsection (3), insert at the appropriate places the following definitions – 5
- ““English fishing boat” means –
- (a) a fishing boat which is registered in the United Kingdom under Part 2 of the Merchant Shipping Act 1995 and whose entry in the register specifies a port in England as the port to which the boat is to be treated as belonging; or 10
  - (b) a fishing boat, other than –
    - (i) a Welsh, Scottish or Northern Ireland fishing boat, or
    - (ii) a fishing boat registered in any country or territory other than the United Kingdom, which is wholly owned by persons qualified to own British ships for the purposes of that Part;”;
- ““Northern Ireland fishing boat” means a fishing boat which is registered in the United Kingdom under Part 2 of the Merchant Shipping Act 1995 and whose entry in the register specifies a port in Northern Ireland as the port to which the boat is to be treated as belonging;”;
- ““Scottish fishing boat” means a fishing boat which is registered in the United Kingdom under Part 2 of that Act and whose entry in the register specifies a port in Scotland as the port to which the boat is to be treated as belonging;”;
- ““Welsh fishing boat” means a fishing boat which is registered in the United Kingdom under Part 2 of that Act and whose entry in the register specifies a port in Wales as the port to which the boat is to be treated as belonging.” 30

*Administrative penalty schemes*

**271 Administrative penalty schemes**

- (1) The appropriate national authority may by order make provision for and in connection with the issuing of penalty notices for offences relating to sea fishing, other than – 35
- (a) an offence under section 30 of the Fisheries Act 1981 (c. 29) or any order made under that section;
  - (b) an offence under regulations made under section 2(2) of the European Communities Act 1972 (c. 68). 40
- (2) A penalty notice is a notice offering the opportunity, by payment of a specified sum of money, to discharge any liability to be convicted of the offence to which the notice relates.
- (3) The provision that may be made by an order under subsection (1) includes – 45
- (a) provision prescribing the offences in relation to which penalty notices may be issued;



- (b) provision as to persons by whom, and circumstances in which, penalty notices may be issued;
  - (c) provision as to the content and form of penalty notices;
  - (d) provision as to how the amount of any penalty that may be specified in a penalty notice is to be determined; 5
  - (e) provision for the issuing of guidance by the appropriate national authority as to matters to be taken into account when making such a determination;
  - (f) provision prescribing the minimum or maximum amount of any penalty; 10
  - (g) provision about the payment of penalties, including provision as to the period within which any penalty must be paid;
  - (h) provision for and in connection with the withdrawal of penalty notices;
  - (i) provision as to circumstances in which proceedings for an offence may be commenced after the payment of a penalty in relation to that offence. 15
- (4) An order under subsection (1) may apply in relation to –
- (a) England;
  - (b) Wales;
  - (c) any vessels in waters within British fishery limits, other than – 20
    - (i) the Scottish zone,
    - (ii) the Northern Ireland zone, and
    - (iii) the territorial sea adjacent to the Isle of Man, Jersey and Guernsey;
  - (d) any English or Welsh fishing boats, wherever they may be.
- (5) Her Majesty may by Order in Council provide for this section to apply, with or without modifications, to any fishing boat within subsection (6) that is outside British fishery limits as it applies to any English or Welsh fishing boat outside those limits. 25
- (6) A fishing boat is within this subsection if –
- (a) it is registered under the law of the Isle of Man or any of the Channel Islands, or 30
  - (b) it is eligible to be so registered.
- (7) In this section –
- “appropriate national authority” means – 35
    - (a) in relation to Wales, the Welsh Ministers;
    - (b) in any other case, the Secretary of State;
  - “England” includes the English inshore region;
  - “English fishing boat” means – 40
    - (a) a fishing boat which is registered in the United Kingdom under Part 2 of the Merchant Shipping Act 1995 (c. 21) and whose entry in the register specifies a port in England as the port to which the boat is to be treated as belonging, or 40
    - (b) a fishing boat, other than – 45
      - (i) a Welsh, Scottish or Northern Ireland fishing boat, or
      - (ii) a fishing boat registered in any country or territory other than the United Kingdom,
- which is wholly owned by persons qualified to own British ships for the purposes of that Part;

**Clause 272: The coastal access duty**

619. This clause imposes a duty (described by *subsection (4)(a)* as the “coastal access duty”) on the Secretary of State and Natural England. *Subsections (2) and (3)* describe the duty by reference to two objectives.

620. *Subsection (2)* contains the first objective which is that there is a route around the whole of the English coast consisting of one or more long-distance routes and available to the public for recreational journeys on foot or by ferry (“the English coastal route”).

621. *Subsection (3)* contains the second objective which is that there is a margin of land along the length of the coast which the public can enjoy. It requires a margin to exist “in association with” the route, and provides that, subject to the exception mentioned below, the margin of land is to be “accessible to the public for the purposes of its enjoyment by them in conjunction with that route or otherwise”. This makes it clear that the route and the margin are linked objectives, but also makes it clear that the margin does not have to be accessed directly from the route. It may be accessed from another part of the margin (e.g. by walking along the foreshore to reach an isolated beach) or using a right of access under other legislation, such as a public right of way, or by other means. The exception to the requirement for the margin to be accessible to the public is the case where the land falls within any category of “excepted land” listed in Schedule 1 to the CROW Act, other than a category of land which is accessible to the public by virtue of any enactment or rule of law (as to which see the note to *subsection (5)(c)*).

622. *Subsection (4)(b)* allows Natural England and the Secretary of State to fulfil the duty in stages over a number of years. This means that the duty can be fulfilled on certain parts of the coast before other parts, and there is no time limit for completion of the duty.

623. *Subsection (5)* establishes that land will only be considered accessible to the public (as specified in the objectives) if it is accessible in certain ways. *Subsection (5)(a)* says that one way in which it will be considered accessible to the public is if it is accessible by virtue of

- “Northern Ireland fishing boat” means a fishing boat which is registered in the United Kingdom under Part 2 of the Merchant Shipping Act 1995 and whose entry in the register specifies a port in Northern Ireland as the port to which the boat is to be treated as belonging;
- “Scottish fishing boat” means a fishing boat which is registered in the United Kingdom under Part 2 of the Merchant Shipping Act 1995 and whose entry in the register specifies a port in Scotland as the port to which the boat is to be treated as belonging; 5
- “sea fishing” includes fishing for or taking shellfish;
- “shellfish” includes crustaceans and molluscs of any kind; 10
- “vessel” includes any ship or boat or any description of vessel used in navigation;
- “Wales” has the same meaning as in the Government of Wales Act 2006 (c. 32);
- “Welsh fishing boat” means a fishing boat which is registered in the United Kingdom under Part 2 of the Merchant Shipping Act 1995 and whose entry in the register specifies a port in Wales as the port to which the boat is to be treated as belonging. 15

## PART 9

### COASTAL ACCESS 20

#### *The coastal access duty*

#### 272 The coastal access duty

- (1) Natural England and the Secretary of State must exercise the relevant functions in order to secure the following objectives.
- (2) The first objective is that there is a route for the whole of the English coast which— 25
  - (a) consists of one or more long-distance routes along which the public are enabled to make recreational journeys on foot or by ferry, and
  - (b) (except to the extent that it is completed by ferry) passes over land which is accessible to the public. 30
- (3) The second objective is that, in association with that route (“the English coastal route”), a margin of land along the length of the English coast is accessible to the public for the purposes of its enjoyment by them in conjunction with that route or otherwise, except to the extent that the margin of land is relevant excepted land. 35
- (4) The duty imposed on Natural England and the Secretary of State by subsection (1)—
  - (a) is referred to in this Part as the coastal access duty, and
  - (b) is to be discharged by them in such stages and within such period as appear to them to be appropriate. 40
- (5) For the purposes of this section land is accessible to the public if it is—
  - (a) land which is available to the public for the purposes of open-air recreation, by virtue of provision made under section 3A of the CROW Act and subject to any exclusions or restrictions imposed by or under Part 1 of that Act (access to the countryside), 45

section 3A of the Countryside and Rights of Way Act 2000 (“the CROW Act”). This means that, for land to be accessible to the public under subsection (5)(a), access must be available under the right of access conferred by section 2(1) of the CROW Act, and this must be by virtue of it being coastal margin as defined in the new section 3A of the CROW Act (see clause 278). So land which is accessible under the CROW Act but which is not coastal margin will not fulfil the duty. The reason for this distinction is that certain aspects of the management regime for access land under the CROW Act may differ according to whether the land is coastal margin or other access land. Subsection (5)(a) goes on to say that this is subject to any exclusions or restrictions imposed by or under Part 1 of the CROW Act. Part 1 of the CROW Act deals with access to the countryside, and allows relevant authorities to make directions excluding the right of access or restricting it in certain ways (for instance the right might be exercisable only along certain routes). Part 1 of the CROW Act also makes the right of access under section 2(1) of the CROW Act subject to exceptions where land falls within a category of “excepted land” specified in Schedule 1 to the CROW Act, and where it is land which is treated by section 15 of the CROW Act as accessible to the public apart from the CROW Act; and it makes the right of access subject to certain general restrictions specified in Schedule 2 to the CROW Act. So subsection (5)(a) makes it clear that such exclusions or restrictions can be disregarded for the purpose of deciding whether there is a margin of land which is accessible to the public.

624. *Subsection (5)(b)* is another category of land which is considered accessible to the public for the purposes of this section. This is land which falls under any of the enactments or instruments specified in section 15 of the CROW Act. These enactments and instruments all provide for public access on foot and in some cases provide higher rights of access, e.g. on horseback.

625. *Subsection (5)(c)* provides that land will be considered accessible to the public where it is excepted land under the CROW Act (certain types of land set out in Schedule 1 to that Act), but only where it is accessible to the public by virtue of any other enactment or rule of law. The most common situation where this may apply is where the coastal route goes along a public highway. In order to avoid having two different access regimes applying to public highways, it is expected that the public highways will become a category of excepted land under the CROW Act as far as the coastal margin is concerned. Subsection(5)(c) therefore allows the English coastal route to follow a public highway, for example through built-up areas, and allows the margin to include such highways.

626. *Subsection (6)* makes it clear that the duty of Natural England and the Secretary of State to exercise their relevant functions regarding the second objective (making available a margin of land along the length of the English coast) refers to making land accessible to the public by means of section 3A of the CROW Act, as described in subsection (5)(a). Land within the margin may be accessible to the public under the mechanisms described in subsections (5)(b) and (c). However, if land is not accessible to the public, the only mechanism which Natural England and the Secretary of State are required to use to make it so accessible is the mechanism described in subsection (5)(a), i.e. provision under section 3A of the CROW Act, although they may decide to use other mechanisms. This reflects the fact that the legislation envisages that so far as any new right of access needs to be created to provide the coastal margin, the principal means of creating it is by way of an order under section 3A of the CROW Act.

627. *Subsection (7)* sets out what constitutes a journey by ferry for the purposes of the first objective, and makes it clear that the ferry does not have to be operating at all times of the day or year.



- 
- (b) land in England which, for the purposes of section 1(1) of that Act, is treated by section 15(1) of that Act as being accessible to the public apart from that Act, or
- (c) excepted land in England which is accessible to the public by virtue of any enactment or rule of law. 5
- (6) Nothing in this section requires Natural England or the Secretary of State, in discharging the coastal access duty so far as it relates to the objective in subsection (3), to exercise functions so as to secure that any land becomes land within subsection (5)(b) or (c).
- (7) For the purposes of the coastal access duty, a person is to be regarded as enabled to make a journey by ferry even if that journey can be made at certain times, or during certain periods, only. 10
- (8) In this section—
- “the 1949 Act” means the National Parks and Access to the Countryside Act 1949 (c. 97); 15
- “the CROW Act” means the Countryside and Rights of Way Act 2000 (c. 37);
- “excepted land” has the same meaning as in Part 1 of the CROW Act;
- “relevant excepted land” means excepted land other than land within subsection (5)(c); 20
- “the relevant functions” means—
- (a) in relation to Natural England—
- (i) its functions under this Part, Part 4 of the 1949 Act (long-distance routes) and Part 1 of the CROW Act (access to the countryside), and 25
- (ii) such of its other functions as it considers it appropriate to exercise for the purpose of securing the objectives in subsections (2) and (3), and
- (b) in relation to the Secretary of State—
- (i) the Secretary of State’s functions under this Part, Part 4 of the 1949 Act and Part 1 of the CROW Act, and 30
- (ii) such of the Secretary of State’s other functions as the Secretary of State considers it appropriate to exercise for the purpose of securing the objectives in subsections (2) and (3). 35

***Clause 273: General provisions about the coastal access duty***

628. This clause sets out the requirements imposed on Natural England and the Secretary of State as regards considerations that they have to take into account in discharging the coastal access duty. *Subsections (2) and (3)* set out these considerations.

629. *Subsection (4)* sets out which people are treated as having a “relevant interest in the land” for the purposes of subsection (3) (with the intention of striking a fair balance between the interests of the public and those with a relevant interest in land).

***Clause 274: The coastal access scheme***

630. This clause requires Natural England to draw up a scheme setting out the approach it will take when discharging its coastal access duty, and makes provision regarding this scheme, including provision for its approval by the Secretary of State. *Subsection (7)* provides that Natural England must act in accordance with an approved scheme in discharging its coastal access duty. *Subsection (8)* provides that Natural England cannot prepare or submit proposals for a long-distance route pursuant to the coastal access duty until there is an approved scheme. These two subsections taken together provide that any such proposals must be in accordance with an approved scheme. This does not prevent Natural England from carrying out preparatory work such as surveying land in preparation for preparing a report.

**273 General provision about the coastal access duty**

- (1) In discharging the coastal access duty, Natural England and the Secretary of State must comply with the requirements of this section.
- (2) They must—
  - (a) consider the safety and convenience of those using the English coastal route, and
  - (b) have regard to the desirability of that route adhering to the periphery of the coast and providing views of the sea.
- (3) They must aim to strike a fair balance between the interests of the public in having rights of access over land and the interests of any person with a relevant interest in the land.
- (4) For this purpose a person has a relevant interest in land if the person—
  - (a) holds an estate in fee simple absolute in possession in the land,
  - (b) holds a term of years absolute in the land, or
  - (c) is in lawful occupation of the land.

**274 The coastal access scheme**

- (1) Natural England must—
  - (a) prepare a scheme setting out the approach which it will take when discharging the coastal access duty, and
  - (b) submit the scheme to the Secretary of State.
- (2) The Secretary of State may—
  - (a) approve the scheme, with or without modifications, or
  - (b) reject the scheme and give Natural England a notice requiring it to prepare and submit a new scheme under subsection (1).
- (3) The scheme must be submitted to the Secretary of State within the period of 12 months beginning with the day on which this section comes into force or, in a case within subsection (2)(b), within the period specified in the notice.
- (4) Natural England may, with the approval of the Secretary of State, revise a scheme approved under this section.
- (5) Before preparing or revising a scheme under this section, Natural England must consult such persons as it considers appropriate.
- (6) Natural England must as soon as reasonably practicable publish—
  - (a) the scheme approved by the Secretary of State, and
  - (b) where that scheme is revised, the revised scheme.
- (7) In discharging the coastal access duty, Natural England must act in accordance with the scheme approved under this section (or, where that scheme has been revised, the revised scheme).
- (8) Until such time as there is an approved scheme under this section, Natural England may not prepare or submit proposals under section 51 or 55 of the 1949 Act (proposals for long-distance routes) pursuant to the coastal access duty.

**Clause 275: The English coast**

631. The coastal access duty (clause 272) relates to the English coast. This clause defines the English coast, for the purposes of this Part of the draft Bill, by reference to its adjacency to the sea. It provides that the coast includes the coast of islands unless they are excluded.

632. *Subsection (2)* explains what an excluded island is. It says that islands are excluded unless they are “accessible islands” or they are specified by the Secretary of State by order. *Subsection (3)* sets out what constitutes an “accessible island”. This is an island to which it is possible to walk from the mainland of England or from another island (other than an excluded island) across the foreshore or by means of a bridge, tunnel or causeway. *Subsection (4)* provides that, for this purpose, it is possible to walk to an island even if it is possible at certain times, or during certain periods, only. *Subsection (5)* puts a condition on the Secretary of State’s power to specify an island by order. This is that the coast of the island must be sufficiently long to enable the public to make an extensive journey on foot (the language used in relation to long-distance routes by section 51 of the National Parks and Access to the Countryside Act 1949).

633. *Subsection (6)* says that the means of access to an accessible island (e.g. a bridge, tunnel or a causeway or the foreshore) is to be considered to be part of the English coast for the purposes of the first objective (the duty to secure the English coastal route). This is so that the English coastal route includes the means of access.

634. *Subsection (7)* says that this section is subject to clause 289 which makes provision about the application of this Part to the Isles of Scilly.

**Clause 276: River estuaries**

635. *Subsection (1)* provides that this clause applies where the coast is interrupted by a river.

636. *Subsection (2)* says that, for the purposes of ensuring the continuity of the route, Natural England may treat the relevant upstream waters of any river as if they were the sea. Clause 291 says that “the sea”, in this Part of the draft Bill, does not include any part of a river which is upstream of the seaward limit of the river’s estuarial waters. *Subsection (3)* defines the relevant upstream waters (which Natural England may treat as if they were the sea) as estuarial waters of the river upstream of the seaward limit of estuarial waters to the first bridge or tunnel by means of which the public may cross the river on foot, or to the first ferry, if it appears to Natural England that the ferry provides a more direct and convenient means of crossing.

637. *Subsection (4)* confirms that the requirements of clause 273(2) and (3) apply to Natural England when it is deciding whether to exercise the power conferred by subsection (2). It relates this requirement to a decision “in relation to a particular river”, which makes it clear that Natural England may come to different conclusions on different rivers. Anything done by Natural England in the exercise of its functions on the basis that the “the sea” includes the relevant upstream waters of a river is deemed to be done under the coastal access duty (*subsection (5)*).

638. *Subsection (6)* gives the Secretary of State a power corresponding to that given to Natural England by subsection (2).

639. *Subsection (7)* makes it clear that the Secretary of State’s decisions under subsection (2), and compliance with the requirements in clause 273(2) and (3), are independent of any

## 275 The English coast

- (1) In this Part “the English coast” means the coast of England adjacent to the sea, including the coast of any island in the sea comprised in England (other than an excluded island).
- (2) An island is “excluded” if it is neither – 5
  - (a) an accessible island, nor
  - (b) an island specified by the Secretary of State by order for the purposes of this paragraph.
- (3) An island is “accessible” if it is possible to walk to the island from the mainland of England, or from another island within subsection (2)(a) or (b), across the foreshore or by means of a bridge, tunnel or causeway. 10
- (4) For the purposes of subsection (3), it is possible to walk to an island even if it is possible to do so at certain times, or during certain periods, only.
- (5) An island may be specified by an order under subsection (2)(b) only if the Secretary of State is satisfied that the coast of the island is of sufficient length to enable the establishment of one or more long-distance routes along its length capable of affording the public an extensive journey on foot. 15
- (6) For the purposes of the objective in section 272(2) (the English coastal route), the means of access to an accessible island is (to the extent that it would not otherwise be the case) to be regarded as part of the English coast. 20
- (7) This section is subject to section 289 (Isles of Scilly).

## 276 River estuaries

- (1) This section applies in a case where the continuity of any part of the English coast is interrupted by a river.
- (2) Natural England may, for the purpose of ensuring the continuity of the route which is required to be secured under clause 272, exercise its functions as if the references in the coastal access provisions to the sea included the relevant upstream waters of the river. 25
- (3) In subsection (2) – 30
  - “coastal access provisions” means –
    - (a) this Part (other than this section), and
    - (b) sections 55A to 55H of the 1949 Act;
  - “relevant upstream waters”, in relation to a river, means the waters from the seaward limit of the estuarial waters of the river upstream to –
    - (a) the first bridge or tunnel by means of which the public may cross the river on foot, or 35
    - (b) if it appears to Natural England that a ferry provides a more direct and convenient means by which the public may cross the river than that first bridge or tunnel, the place at which the ferry crosses the river. 40
- (4) In deciding whether to exercise the power conferred by subsection (2) in relation to a particular river, Natural England must comply with the requirements of section 273(2) and (3).

decision taken by Natural England. This means that the Secretary of State may make a different decision about whether waters of a river are to be treated as part of the sea.

### ***Clause 277: Long-distance routes***

640. This clause inserts new sections into the National Parks and Access to the Countryside Act 1949 (“the 1949 Act”).

641. *Section 55A Proposals relating to the English coastal route.* *Subsection (1)* provides that Natural England may prepare a report proposing a coastal long-distance route, whether or not the requirements of section 51(1) of the 1949 Act are satisfied. This means that proposals may be made even though they relate to a route which does not enable an “extensive” journey, or when the greater part of the length of the route passes along roads used by vehicles. *Subsection (2)* makes it clear that it is immaterial that the public are already able to make journeys as described in section 51(1) of the 1949 Act by virtue of proposals for a long-distance route that have already been approved under that Act. This is because such existing routes may not be sufficient to discharge the coastal access duty.

642. *Subsections (4) and (5)* make provision for eroding coastlines or encroachment by the sea. *Subsection (4)(a)* provides that in these situations the report may set out proposals for the route to be determined in accordance with provision in the proposals rather than as shown on a map. This would allow Natural England to describe the route, for instance, by reference to distance from a cliff edge, so that the route would move inland as the coast eroded. *Subsection (4)(b)* says that where Natural England makes use of this flexibility, the map of the proposed route contained in the report (as required by section 51 of the 1949 Act) must show the position of the route at the time the map is drawn up. *Subsection (5)* makes it clear that Natural England may describe the route by reference to a cliff edge or a field boundary, “as it exists from time to time”. That is to say, as the cliff edge or field boundary exists at the relevant time (the time at which the method for determining the route set out in the proposals falls to be applied).

643. *Subsections (6) and (7)* deal with alternative routes. *Subsection (6)* says that the report may include alternative routes which will come into effect at certain times of the year (for instance to avoid disturbing nesting birds) or at times when the normal route needs to be closed by direction under Chapter 2 of Part 1 of the CROW Act (for example for land management purposes or for reasons of danger to the public). *Subsection (7)*, taken together with *subsection (6)*, allows this alternative route to operate flexibly, by enabling specified periods of closure to be determined in accordance with the proposal or by a person specified in it, or determined by a person who is in turn determined in accordance with the proposal. For instance it may be that an alternative route should come into operation when a particular breed of bird starts to nest; the time may vary each year and so the alternative route may come into operation on the date that a warden determines that the birds are starting to nest and following the warden putting up a sign to say that the alternative route is in operation.

- (5) Anything done pursuant to subsection (2) is to be regarded as done pursuant to, and for the purpose of discharging, the coastal access duty.
- (6) Subsections (1) to (5) apply in relation to the Secretary of State as they apply in relation to Natural England.
- (7) A decision by Natural England to exercise the power conferred by subsection (2) in relation to a river – 5
  - (a) is without prejudice to any decision by the Secretary of State (by virtue of subsection (6)) as to whether or not to exercise the power conferred by subsection (2) in relation to the river, and
  - (b) does not affect the requirements of section 273(2) and (3) as they apply, 10  
by virtue of subsection (4), in relation to such a decision by the Secretary of State.

*Implementation of the coastal access duty*

**277 Long-distance routes**

After section 55 of the 1949 Act insert – 15

**“55A Proposals relating to the English coastal route**

- (1) Pursuant to the coastal access duty, Natural England may prepare and submit a report under section 51 containing proposals for a route (whether or not the requirements of section 51(1) are satisfied).
- (2) For the purposes of subsection (1) it is immaterial whether the route or any part of it is already a route in approved proposals relating to a long-distance route. 20
- (3) Subsections (4) to (6) apply in relation to a report under section 51 prepared pursuant to the coastal access duty.
- (4) Where Natural England considers that the area through which the route passes is or may be subject to significant coastal erosion or encroachment by the sea – 25
  - (a) the report may set out proposals for the route, or any part of it, to be determined at any time in accordance with provision made in the proposals (rather than as shown on a map), and 30
  - (b) if the report does so, the map included in the report in accordance with section 51(2) must show the route as determined in accordance with that provision at the time the report is prepared.
- (5) The provision made by virtue of subsection (4)(a) may, in particular, provide for the route to be determined by reference to the edge of a cliff or boundary of a field (as it exists from time to time). 35
- (6) The report may include, in relation to the route (“the ordinary route”) or any part of it, a proposal for an alternative route which is to operate as a diversion from the ordinary route or part during – 40
  - (a) any specified period (or periods) of each year, and
  - (b) any period during which access to the ordinary route or part is excluded by reason of a direction under Chapter 2 of Part 1 of the CROW Act (exclusion or restriction of access).

644. *Subsection (8)* clarifies that section 51(2) (which sets out what must be contained in a report proposing a long-distance route), and subsections (4) and (5) of this section, apply equally to any alternative route.

645. *Subsection (9)* makes it clear that the coastal access duty referred to in this section of the 1949 Act is the coastal access duty imposed under section 272(1) of the draft Bill.

646. *Section 55B Coastal margin.* This section deals with those aspects of a report under section 51 pursuant to the coastal access duty which relate to coastal margin. Clause 278 allows the coastal margin to be defined by reference to a long-distance route.

647. *Subsection (2)(a)* provides that the report under section 51 pursuant to the coastal access duty may provide for the landward boundary of the coastal margin to be drawn either wider or narrower than follows from the normal application of the new section 3A of the CROW Act, in order to make it coincide with a physical feature (as described in section 3A(2)(d) of the CROW Act). This can be used, for instance, to make the boundary of access land clearer on the ground or to bring additional land to the landward into the coastal margin. *Subsection (2)(b)* allows the same flexibility with regard to any alternative route. *Subsection (2)(c)* allows the same flexibility with regard to any land which is made an exception to land of a type to which the right of access does not apply (that is, land which is made an exception to excepted land as set out in Schedule 1 to the CROW Act).

648. *Subsection (3)* requires Natural England to include details in the report of any restrictions to, or exclusion of, the right of access that it intends to put in place if the proposals are approved, which will have effect when any right of access under the CROW Act comes into force. It makes clear that Natural England does not have to include such details if it does not believe that any restrictions or exclusions are appropriate. This will help the reader of the report fully to understand the implications of the proposals.

649. *Subsection (4)* sets out who Natural England is required to consult before the report is prepared. These requirements are in addition to requirements under section 51(4) of the 1949 Act. The subsection makes reference to “a relevant interest in affected land”. For this purpose, “relevant interest” and “affected land” are defined in section 55H.

650. *Subsection (5)* requires the bodies mentioned in section 51(4) of 1949 Act, London borough councils and local access forums to provide certain information to Natural England when consulted under subsection (4). *Subsection (6)* requires the Secretary of State, when consulted by Natural England under subsection (4), to provide Natural England with information relating to any exclusion or restriction for the purposes of defence and national security which the Secretary of State proposes to make, and to notify Natural England if any information provided in this respect should not be made public, on the grounds of defence and national security. *Subsection (7)* requires Natural England to include information which it considers relevant on defence and national security exclusions or restrictions in the report. This is so that the report contains all of the information relevant to the proposals made in it. *Subsection (8)* prohibits Natural England from including information which the Secretary of State has specified should not be included on the grounds of defence and national security.

651. *Section 55C Consideration of reports made pursuant to the coastal access duty.* This section deals with procedures for inviting representations in relation to the report submitted by Natural England, and a decision on the report by the Secretary of State. *Subsection (1)* says that such a report is referred to in this section as a “coastal access report”.

652. *Subsections (2) and (3)* enable the Secretary of State to make regulations about such matters as how the access proposals are advertised and how representations are made. *Subsection (4)* says that these representations must be considered by Natural England, and sent by it to the Secretary of State together with Natural England’s comments. *Subsection (5)* provides that Natural England must send the Secretary of State a summary of any other



- (7) In subsection (6)(a) “specified” means –
- (a) specified in, or determined in accordance with, the proposal, or
  - (b) determined in accordance with the proposal by –
    - (i) a person specified in the proposal, or
    - (ii) a person determined in accordance with the proposal, details of whom are notified to Natural England in accordance with the proposal. 5
- (8) Section 51(2) and subsections (4) and (5) of this section apply in relation to an alternative route as they apply in relation to the ordinary route.
- (9) In this section “the coastal access duty” means the duty imposed on Natural England and the Secretary of State by section 272(1) of the Marine Act 2008. 10

### 55B Coastal margin

- (1) This section applies in relation to a report prepared under section 51 pursuant to the coastal access duty. 15
- (2) The proposals set out in the report may include –
- (a) a proposal for any part of the landward boundary of the relevant coastal margin to coincide with a physical feature identified in the proposal,
  - (b) where those proposals include an alternative route, a proposal for any part of the landward or seaward boundary of the alternative route strip to coincide with a physical feature so identified, or 20
  - (c) a proposal for the landward or seaward boundary of any area excluded from any description of excepted land to coincide with a physical feature so identified. 25
- (3) The report must set out such proposals (if any) as Natural England considers appropriate as to the directions to be made by it under Chapter 2 of Part 1 of the CROW Act for the exclusion or restriction of the right of access that would arise under section 2(1) of that Act in relation to any land, if the proposals in the report were to be approved. 30
- (4) Before preparing the report, Natural England must (in addition to complying with section 51(4)) –
- (a) take reasonable steps to consult persons with a relevant interest in affected land, 35
  - (b) consult any body of a kind mentioned in section 51(4) in whose Park or area affected land is situated (but which is not required to be consulted under section 51(4)),
  - (c) consult each London borough council for an area in which affected land is situated, 40
  - (d) consult each local access forum for an area in which affected land is situated,
  - (e) consult the Secretary of State in relation to any interests of defence or national security which may be affected by the proposals which Natural England is minded to include in the report, 45
  - (f) consult the Historic Buildings and Monuments Commission for England in relation to any interests in the preservation of any

representations made to it. *Subsection (6)* says that the representations, the comments on them and the summary of other representations must be considered by the Secretary of State before he makes a decision on the coastal access report. *Subsection (7)* refers to the power under section 52 for the Secretary of State to approve, or approve with modifications, or reject proposals for a long-distance route, and says that this can be done for one or more parts of the route only. This means that if, for instance, proposals for a long-distance route are submitted in relation to a fifty-mile stretch of coastline, the Secretary of State could approve two ten-mile sections, reject a twenty-mile section and approve the remaining ten miles subject to certain modifications. *Subsection (8)* provides that the Secretary of State must take reasonable steps to notify those with a relevant interest (defined in section 55H(2)) in affected land (defined in section 55H(1)) of his decision on a coastal access report, as soon as practicable after making it. The Secretary of State may alternatively publish the information in a manner he considers will bring it to the attention of those with a relevant interest in affected land (such as on a website, perhaps). The Secretary of State must also notify each relevant interested body (defined in section 55C(9)).

653. *Section 55D Directions under Part 1 of the CROW Act.* This section provides that if approved proposals relating to a long-distance route provide that certain restrictions and exclusions on the right of access are to be put in place by Natural England under Chapter 2 of Part 1 of the CROW Act, it must put them in place. *Subsection (3)* makes it clear that Natural England can subsequently revoke or vary these in the usual way under the CROW Act.

654. *Section 55E Ferries for the purposes of the English coastal route.* This section should be read in conjunction with section 53 of the 1949 Act. Section 53 relates to ferries on long-distance routes and provides that they may be provided and operated (or provision may be made for them to be provided and operated) by the highway authority (or either or both of the authorities) for the highways that the ferry will connect – e.g. the highways on either side of a river crossing. As the English coastal route will not be confined to highways, a ferry for the purposes of the route might not connect two highways, but might instead connect two areas of access land. Section 55E provides that in this case the power lies with the highway authority responsible for the area in which the approach route to the ferry along the English coastal route lies.

655. *Section 55F Variation pursuant to the coastal access duty.* This section makes provision to ensure that the “procedural requirements” specified in section 55F(4) apply equally to any reports dealing with variations of the coastal route. With respect to any variation made to the coastal route by direction under section 55(2) (which deals with situations where the Secretary of State considers that a variation should be made but Natural England has not made a proposal), *subsection (2)* provides that the Secretary of State may make regulations for the procedural requirements specified in section 55F(4) to apply (with suitable modifications), and *subsection (3)* provides that the Secretary of State may only make a direction for such a variation if regulations mentioned under subsection (2) are in force.

656. *Section 55G Temporary diversions.* This section allows Natural England to establish a temporary route if the English coastal route or an official alternative route is closed by a direction under Chapter 2 of Part 1 of the CROW Act. *Subsection (2)* says that Natural England cannot do this if the direction is permanent; this is because in this case Natural England would be expected to establish a new route using a variation order under section 55. *Subsection (3)* enables Natural England to give a direction specifying a temporary route. *Subsection (4)* specifies that the temporary route can only be created over access land as defined by Part 1 of the CROW Act, land which is treated by section 15 of that Act as accessible to the public apart from that Act, a highway or other land the owner of which has agreed to the route insofar as it passes over the land which he owns. *Subsection (5)* provides that such a direction must be in writing and enables it to be revoked or varied subsequently.

- monument, structure or other thing, mentioned in section 26(3)(b) of the CROW Act which may be affected by those proposals, and
- (g) consult the Environment Agency in relation to any interests in flood defence which may be affected by those proposals. 5
- (5) A body within subsection (4)(b), (c) or (d) must provide Natural England with such information as it may reasonably require for the purposes of the report.
- (6) Where the Secretary of State is consulted under subsection (4)(e), the Secretary of State must – 10
- (a) provide Natural England with such information as it may reasonably require as to any exclusion or restriction of the right of access to affected land under section 2(1) of the CROW Act which the Secretary of State proposes to make provision for under section 28 of that Act (defence and national security), and 15
- (b) notify Natural England if the Secretary of State is of the opinion that this information, or any part of it, ought not to be disclosed by it on the grounds of the public interest in defence and national security.
- (7) Subject to subsection (8), the report must contain such of the information provided under subsection (6)(a) as Natural England considers relevant for the purposes of the report. 20
- (8) The report may not contain information which Natural England has been notified under subsection (6)(b) ought not to be disclosed by it.
- 55C Consideration of reports made pursuant to the coastal access duty 25**
- (1) In this section “coastal access report” means a report submitted under section 51 pursuant to the coastal access duty.
- (2) The Secretary of State may by regulations –
- (a) require Natural England to advertise coastal access reports;
- (b) require Natural England to give notice of coastal access reports to such persons as may be specified in the regulations or to take reasonable steps to give such notice; 30
- (c) make provision for –
- (i) persons who have a relevant interest in affected land,
- (ii) each local access forum for an area in which affected land is situated, 35
- (iii) the Historic Buildings and Monuments Commission for England, and
- (iv) the Environment Agency,
- to be given an opportunity to make representations to Natural England about matters which relate to coastal access reports and are of a kind specified in the regulations. 40
- (3) Regulations under subsection (2) may include provision about –
- (a) the form and manner in which coastal access reports are to be advertised or notice of coastal access reports is to be given; 45
- (b) the timing of any advertisement or the giving of any notice;



- (c) the form and manner in which, and period within which, representations may be made.
- (4) Where, in relation to a coastal access report, representations are made in accordance with regulations under subsection (2)(c), Natural England must— 5
  - (a) consider the representations, and
  - (b) send a copy of the representations, together with its comments on them, to the Secretary of State.
- (5) Natural England must also submit to the Secretary of State a report summarising any other representations made to it in respect of a coastal access report after it is advertised in accordance with subsection (2)(a). 10
- (6) Before making a determination under section 52 in respect of a coastal access report, the Secretary of State must consider— 15
  - (a) any representations and comments received in relation to the report in accordance with subsection (4)(b), and
  - (b) any report received in relation to the coastal access report in accordance with subsection (5).
- (7) The power under section 52 to approve proposals contained in a coastal access report includes a power to approve those proposals (with or without modifications) so far as they relate to one or more parts of the route only, and reject the remaining proposals. 20
- (8) As soon as reasonably practicable after making a determination under section 52 in respect of a coastal access report, the Secretary of State (in addition to complying with section 52(2))— 25
  - (a) must—
    - (i) take reasonable steps to notify persons with a relevant interest in affected land, or
    - (ii) if the Secretary of State considers it appropriate, publish details of the determination in such manner as the Secretary of State considers likely to bring it to the attention of those persons, and 30
  - (b) must notify each relevant interested body.
- (9) In subsection (8) “relevant interested body” means— 35
  - (a) a body of a kind mentioned in section 52(2) in whose Park or area affected land is situated (but which is not required to be notified under section 52(2)),
  - (b) a London borough council for an area in which affected land is situated,
  - (c) a local access forum for an area in which affected land is situated, 40
  - (d) the Historic Buildings and Monuments Commission for England, and
  - (e) the Environment Agency.

**55D Directions under Part 1 of the CROW Act**

- (1) This section applies where approved proposals relating to a long-distance route contain proposals as regards a direction to be made by Natural England under Chapter 2 of Part 1 of the CROW Act for the 45



exclusion or restriction of the right of access that would otherwise arise under section 2(1) of that Act.

- (2) Natural England must make the direction in accordance with those proposals.
- (3) Subsection (2) is without prejudice to any power Natural England may have to revoke or vary the direction after it is made. 5

**55E Ferries for the purposes of the English coastal route**

- (1) This section applies where –
  - (a) pursuant to the coastal access duty, approved proposals relating to a long-distance route include proposals for the provision and operation of a ferry, and 10
  - (b) an approach route to the ferry is not a highway.
- (2) The reference in section 53(1) to the highway authority for either or both of the highways to be connected by the ferry is to be read as including the highway authority in whose area the approach route is situated. 15
- (3) In this section “approach route”, in relation to a ferry, means a part of the English coastal route to be connected to another part of that route by the ferry.

**55F Variation pursuant to the coastal access duty 20**

- (1) In the case of a report made by Natural England under section 55(1) pursuant to the coastal access duty –
  - (a) the procedural requirements apply with the necessary modifications, and
  - (b) section 55(3) does not apply. 25
- (2) The Secretary of State may by regulations provide –
  - (a) for the procedural requirements to apply in relation to a direction under section 55(2) with the modifications specified in the regulations, and
  - (b) for section 55(3) not to apply in relation to the direction. 30
- (3) The Secretary of State may not make a direction under section 55(2) pursuant to the coastal access duty at a time when there are no regulations under subsection (2) in force.
- (4) For the purposes of this section –
  - “modify” includes amend, add to or revoke, and “modification” is to be construed accordingly;
  - “the procedural requirements” means sections 51(4) and (5), 52(1) and (2), 55B(4) to (8) and 55C. 35

**55G Temporary diversions**

- (1) This section applies where Natural England or the Secretary of State gives a direction by virtue of Chapter 2 of Part 1 of the CROW Act which excludes the right of access under section 2(1) of that Act, for any period (“the exclusion period”), in relation to any land over which (or any part of which) the English coastal route or any official alternative route passes. 40  
45





- (2) This section does not apply if the direction by virtue of that Chapter is expressed to have effect indefinitely.
- (3) Natural England may give a direction under this section specifying a route (“the temporary route”) which is to apply for the duration of the exclusion period or such part of it as is specified in the direction. 5
- (4) The temporary route specified by Natural England may pass only –
  - (a) over land which is access land for the purposes of Part 1 of the CROW Act,
  - (b) over land which, for the purposes of section 1(1) of that Act, is treated by section 15(1) of that Act as being accessible to the public apart from that Act, 10
  - (c) along a highway, or
  - (d) over any other land the owner of which has agreed to the temporary route (so far as it passes over that land).
- (5) A direction under this section – 15
  - (a) must be in writing, and
  - (b) may be revoked or varied by a subsequent direction under this section.

**55H Interpretation of sections 55A to 55H**

- (1) In sections 55A to 55G and this section – 20
  - “affected land” means –
    - (a) land over which the route, or any alternative route, to which the proposals relate passes, and
    - (b) any other land which –
      - (i) is relevant coastal margin, or an alternative route strip in relation to such an alternative route, and 25
      - (ii) is not excepted land;
  - “alternative route” is to be construed in accordance with section 55A(6);
  - “alternative route strip”, in relation to an alternative route, means – 30
    - (a) in a case where the proposal for the alternative route has not yet been approved under section 52, the land which would become coastal margin during the operation of that route if the proposals in the report were to be so approved (without modifications), and 35
    - (b) in the case of an official alternative route, the land which would become coastal margin during the operation of that route;
  - “the coastal access duty” has the meaning given by section 55A; 40
  - “coastal margin” has the same meaning as in Part 1 of the CROW Act;
  - “the CROW Act” means the Countryside and Rights of Way Act 2000 (c. 37);
  - “the English coastal route” means the route secured pursuant to the coastal access duty; 45
  - “excepted land” has the same meaning as in Part 1 of the CROW Act;

**Clause 278: Access to the coastal margin**

657. This clause amends Part 1 of the CROW Act. *Subsection (2)(a)* includes coastal margin in the definition of access land in section 1(1) of the CROW Act. This has the effect of extending the right of access under section 2(1) of the CROW Act to the coastal margin, other than in relation to excepted land and land which is treated by section 15 of the CROW Act as accessible apart from that Act. *Subsection (2)(b)* inserts a definition of coastal margin into section 1(2) of the CROW Act. *Subsection (2)(c)* amends the definition of open country under the CROW Act. As a result, the definition of open country becomes “land which:

- a) appears to the appropriate countryside body to consist wholly or predominantly of mountain, moor, heath or down, and
- b) is not registered common land or coastal margin.”.

658. Open country is one of the categories of access land under section 1(1). So the effect of subsection (2)(c) is that where land appears to the appropriate countryside body to be mountain, moor, heath or down but has become coastal margin, the right of access under section 2(1) applies to it only by virtue of its being coastal margin. *Subsection (2)(d)* has a similar effect for land which is registered common land but has become coastal margin; for the purposes of Part 1 of the CROW Act it is not considered to be registered common land and the right of access under 2(1) applies to it by virtue of its being coastal margin. These provisions ensure that only one regime of access and access management under the CROW Act applies to the coastal margin.

659. *Subsection (3)* deals with how the right of access under the CROW Act relates to other enactments as regards prohibitions. The position for coastal land is different from the position for other land to which the right applies. As regards coastal land, prohibitions under any other enactments will apply, whether the enactment is local or general, public or private. So, for instance, rules prohibiting certain types of activities on beaches under a local byelaw will continue to apply. For other land to which the right of access under the CROW Act applies,

- “local access forum” means a local access forum established under section 94 of the CROW Act;
- “official alternative route” means an alternative route of the kind mentioned in section 55A(6) which is contained in approved proposals relating to a long-distance route; 5
- “owner”, in relation to land, means the person who holds an estate in fee simple absolute in possession in the land;
- “relevant coastal margin”, in relation to proposals, means –
- (a) in a case where the proposals have not yet been approved under section 52, land which would become coastal margin if the proposals were to be approved (without modifications) under that section (disregarding the alternative route strip in relation to any alternative route), and 10
  - (b) in a case where the proposals have been so approved (with or without modifications), land which becomes coastal margin as a result of the proposals having been so approved (disregarding the alternative route strip in relation to any official alternative route). 15
- (2) For the purposes of sections 55A to 55G, a person has a relevant interest in land if the person – 20
- (a) is the owner of the land,
  - (b) holds a term of years absolute in the land, or
  - (c) is in lawful occupation of the land.”
- 278 Access to the coastal margin** 25
- (1) Part 1 of the CROW Act (access to the countryside) is amended as follows.
- (2) In section 1 –
- (a) in subsection (1) (definition of “access land”) omit “or” at the end of paragraph (d) and after that paragraph insert – 30
    - “(da) is coastal margin, or”,
  - (b) in subsection (2), after the definition of “the appropriate countryside body” insert –
    - ““coastal margin” means land which is of a description specified by an order under section 3A;”,
  - (c) in that subsection, in the definition of “open country”, in paragraph (b) after “land” insert “or coastal margin”, and 35
  - (d) in subsection (3), after “2006” insert “(but is not coastal margin)”.
- (3) In section 2 (rights of public in relation to access land) –
- (a) in subsection (3), for “prohibition” to the end substitute “relevant statutory prohibition”, and 40
  - (b) after that subsection insert –
    - “(3A) In subsection (3) “relevant statutory prohibition” means –
    - (a) in the case of land which is coastal margin, a prohibition contained in or having effect under any enactment, and 45
    - (b) in any other case, a prohibition contained in or having effect under any enactment other than an enactment contained in a local or private Act.”

prohibitions under other enactments only apply if that other enactment is not a local or private Act.

660. *Subsection (4)* makes section 3 of the CROW Act apply to Wales only, rather than to England and Wales as at present.

661. *Subsection (5)* inserts a new section 3A into the CROW Act, section 3A (*Power to extend to coastal land etc: England*). *Subsection (1)* of the new section 3A allows the Secretary of State to make an order defining coastal margin in England. *Subsection (7)* requires orders under section 3A(1) to be approved by resolution of each House of Parliament. This is the same procedure as for orders under section 3 to modify provisions which apply to coastal land in Wales.

662. *Section 3A(2)* sets out ways in which the order may describe land, but is not an exclusive list. It sets out a number of ways in which land may be described by reference to the English coastal route. In the case of land described as mentioned in *Section 3A(2)(a)*, the land, taken as a whole, must be coastal land, as defined in section 3 of the CROW Act, in other words foreshore or land adjacent to the foreshore. In the case of land related to an alternative route, land included as a result of the boundary of the coastal margin being made to coincide with a physical feature, or land related to a temporary diversion, land can be specified which is not itself coastal land.

663. *Section 3A(3)* makes it clear that an order under section 3A(1) can be made describing land by reference to the English coastal route before any such route is in existence. This will allow the order to be made before any English coastal route is proposed, so that Natural England in proposing a route, and the Secretary of State when approving the proposals, can take account of the implications of that route for the coastal margin.

664. *Section 3A(4)* provides that an order under subsection (1) can modify the provisions of Part 1 of the CROW Act insofar as they apply to coastal margin. This is similar to the power in section 3 to modify provisions which apply to coastal land in Wales and would allow the Secretary of State, for instance, to modify the categories of excepted land which apply to the coastal margin.

665. *Section 3A(5)(a)* specifies particular things that provision made under section 3A(4) may do. It may for example confer functions on the Secretary of State or Natural England. Examples of this might be, in relation to the Secretary of State, a function of considering representations, and, in relation to Natural England, a function of making directions regarding exclusions or restrictions, if new grounds for exclusions or restrictions are introduced. *Section 3A(5)(b)* makes provision in relation to any description of land which is excluded from any category of excepted land. It enables an order to make similar provision in relation to land of that description as in relation to other access land. For example, where the route runs along a strip of land along the seaward edge of arable land (which is excepted land under the CROW Act), the area of coastal margin along that route could be enlarged or narrowed to allow it to coincide with a physical feature. *Section 3A(5)(c)* specifies that the order may disapply the appeal mechanism under section 30 of the CROW Act, which provides for appeals against a decision by the relevant authority regarding an application for an exclusion or restriction of the right of access, and provide for representations on such decisions and the review of such decisions by the Secretary of State.

666. *Section 3A(6)(a)* provides for a period of time, referred to as the access preparation period, between the approval of a coastal route and the right of access coming into force. This is to allow time for Natural England to make preparations such as doing work to sign the route and establishment works to make it suitable for public access (e.g. installing gates or steps) and to make directions with regard to restrictions and exclusions. *Subsection (6)(b)* allows Natural England to make directions for the exclusion or restriction of access which will come into force after the end of the preparation period. *Subsection (6)(c)* provides that land in the

- (4) In section 3 (power to extend to coastal land) –
- (a) at the end of the heading insert “: Wales”, and
  - (b) in subsection (1) for “Secretary” to “Wales)” substitute “Welsh Ministers”, and
  - (c) in that subsection after “include” insert “as respects Wales”. 5

- (5) After that section insert –

**“3A Power to extend to coastal land etc: England**

- (1) The Secretary of State may by order specify the descriptions of land in England which are coastal margin for the purposes of this Part.
- (2) An order under subsection (1) may, in particular – 10
- (a) describe land by reference to it being –
    - (i) land over which the line taken by the English coastal route passes,
    - (ii) land which is adjacent to and within a specified distance of that line, or 15
    - (iii) land which is adjacent to land within sub-paragraph (ii), if the land described under paragraphs (i) to (iii), taken as a whole, is coastal land;
  - (b) in relation to cases where a proposal of the kind mentioned in section 55A(4) of the 1949 Act (power to determine the route in accordance with provision made in the report) is contained in relevant approved proposals, describe land by reference to the line taken by the English coastal route as it has effect from time to time in accordance with that proposal; 20
  - (c) in relation to cases where a proposal of the kind mentioned in section 55A(6) of that Act (provision of alternative route for particular periods etc) is contained in relevant approved proposals, describe land by reference to it being – 25
    - (i) land over which the line taken by an official alternative route which is for the time being in operation passes, or 30
    - (ii) land which is adjacent to and within a specified distance of that line, whether or not it is coastal land;
  - (d) in relation to cases where a proposal of the kind mentioned in section 55B(2)(a) or (b) of that Act (proposal that boundary should coincide with a physical feature) is contained in relevant approved proposals, provide that the boundary of an area of coastal margin is to coincide with a physical feature as provided for in that proposal (and for this purpose it is immaterial if the effect is to include other land as coastal margin or to exclude part of an area of coastal land); 35 40
  - (e) in relation to cases where a direction under subsection (3) of section 55G of that Act (temporary diversions) specifies a route which (or any part of which) passes over land within subsection (4)(d) of that section, describe land by reference to it being – 45
    - (i) land over which the line taken by that route (so far as it passes over land within subsection (4)(d) of that section) passes, or
    - (ii) land which is adjacent to and within a specified distance of that line (so far as it so passes), 50

coastal margin that was already open country or registered common land will continue to be treated as open country or registered common land until the end of the preparation period. This ensures that any existing rights of access over such land under the CROW Act continue until the end of that period. *Subsection (6)(c)(ii)* further makes clear that the position as regards occupier's liability will remain unchanged until the right of access to the land as coastal margin comes into force: once it does come into force the position as regards occupier's liability will be as set out in section 1(6AA) of the Occupiers' Liability Act 1984 (see clause 288).

667. *Section 3A(7)* provides that any exclusions or restrictions of the right of access relating to such land will cease to have effect at the end of the preparation period. Where appropriate, Natural England should have replaced any such exclusions or restrictions with directions forming part of the proposals for an English coastal route, and these replacement restrictions can be made to come into effect immediately after the end of the preparation period (subsection (6)(b)).

668. *Section 3A(8)* ensures that any direction made under subsection (6)(b) to take effect after the end of the preparation period will not be negated by subsection (7).

669. *Subsection 3A(9)* provides that subsections (6) and (7) do not apply where land is already dedicated as coastal margin. This is because, at the time that an order under section 3A(1) comes into force, the land is already treated as coastal margin by virtue of the dedication.

670. *Subsection (6)* of clause 278 amends section 16 of the CROW Act relating to dedication of land. It allows land in England which is coastal margin or adjacent to coastal margin to be dedicated as coastal margin. If the land is already coastal margin, the effect of dedicating it is that the restrictions in Schedule 2 to the CROW Act can be relaxed by the dedication if the dedicator so wishes. This subsection also provides that where land is dedicated as coastal margin, then if the land would otherwise be excepted land (within the meaning of Part 1 of the CROW Act) it is treated as if it were not excepted land, unless it is land which is accessible to the public under another enactment or rule of law (for instance, a public right of way). The subsection enables land adjacent to coastal margin to be dedicated as coastal margin, and in this case, in addition to the effects already described, the dedication ensures that the land is treated for the purposes of Part 1 of CROW as if it were coastal margin. Existing dedications can be amended so that land which is already dedicated as access land can also be dedicated as coastal margin.

671. *Subsection (7)* amends section 44 of the CROW Act to ensure that orders under section 3A(1) of that Act are subject to affirmative resolution procedure (like the existing orders under section 3 of that Act).

672. *Subsection (8)* amends section 45 of the CROW Act to include a definition of coastal margin. The definition is that definition set out in section 1(2) of that Act (as amended by this clause): "land which is of a description specified by an order under section 3A".

- whether or not it is coastal land.
- (3) For the purposes of subsection (2) it is immaterial whether the English coastal route is in existence at the time the order is made.
- (4) An order under subsection (1) may modify the provisions of this Part in their application to land which is coastal margin. 5
- (5) Provision made by virtue of subsection (4) may, in particular –
- (a) confer functions on the Secretary of State or Natural England;
  - (b) if providing for any description of land which is coastal margin to be excluded from any description of excepted land –
    - (i) describe that land as mentioned in subsection (2)(a)(i) to (iii), (b) or (c), or 10
    - (ii) in relation to cases where a proposal of the kind mentioned in section 55B(2)(c) of the 1949 Act (proposal that boundary should coincide with a physical feature) is contained in relevant approved proposals, provide that the boundary of that land (or any part of it) is to coincide with a physical feature as provided for in that proposal; 15
  - (c) provide that no appeal may be made under section 30 against decisions relating to land which is coastal margin, and provide for the review of decisions under Chapter 2 by the Secretary of State in specified circumstances and the making of representations by persons in connection with such reviews. 20
- (6) Where, as a result of proposals becoming approved proposals relating to a long-distance route, land becomes coastal margin by virtue of an order under subsection (1) – 25
- (a) section 2(1) does not apply in relation to the land by reason of it being coastal margin until the end of the access preparation period in relation to the land,
  - (b) any direction given under Chapter 2 in relation to the land may be expressed to take effect immediately after the end of that period, and 30
  - (c) until the end of that period, the land is not to be regarded as coastal margin –
    - (i) for the purpose of determining whether it is open country or registered common land, or 35
    - (ii) for the purposes of section 1(6AA) of the Occupiers' Liability Act 1984 (duty of occupier of coastal margin to persons other than the occupier's visitors).
- (7) Where, as a result of proposals becoming approved proposals relating to a long-distance route, land becomes coastal margin by virtue of an order under subsection (1), any exclusion or restriction under Chapter 2 of access to the land by virtue of section 2(1) ceases to have effect at the end of the access preparation period. 40
- (8) Subsection (7) does not apply to any exclusion or restriction resulting from a direction under Chapter 2 which takes effect after the end of the access preparation period. 45





- (9) Subsections (6) and (7) do not apply to land if, at the time it becomes coastal margin by virtue of an order under subsection (1), it is already dedicated as coastal margin under section 16.
- (10) In this section –
- “the 1949 Act” means the National Parks and Access to the Countryside Act 1949; 5
  - “access preparation period”, in relation to any land, means the period which –
    - (a) begins when the land becomes coastal margin, and
    - (b) ends with the day appointed by the Secretary of State by order under this subsection in relation to that land; 10
  - “approved proposals relating to a long-distance route” is to be construed in accordance with sections 52(3) and 55(4) of the 1949 Act;
  - “coastal land” has the same meaning as in section 3; 15
  - “the English coastal route” means the route secured (or to be secured) pursuant to the coastal access duty (within the meaning of section 272 of the Marine Act 2008);
  - “modify” includes amend, add to or revoke;
  - “official alternative route” has the meaning given by section 55H of the 1949 Act; 20
  - “relevant approved proposals” means approved proposals relating to a long-distance route which is or forms part of the English coastal route;
  - “specified” means specified in an order under subsection (1); 25
- and references to the exclusion or restriction under Chapter 2 of access to any land by virtue of section 2(1) are to be interpreted in accordance with section 21(2) and (3).”
- (6) In section 16 (dedication of land as access land) –
- (a) after subsection (2) insert – 30
    - “(2A) Where a person makes a dedication under this section in respect of land within subsection (2B), that dedication may also dedicate the land as coastal margin.
    - (2B) The land within this subsection is –
      - (a) land which is coastal margin, and 35
      - (b) any other land in England which is adjacent to land which is coastal margin.
    - (2C) Where land is dedicated as coastal margin –
      - (a) in the case of land within subsection (2B)(b), it is to be treated as coastal margin for the purposes of any provision made by or by virtue of this Part (other than section 1), and 40
      - (b) if –
        - (i) disregarding this paragraph, it would be excepted land, and 45
        - (ii) it is not land which is accessible to the public by virtue of any enactment or rule of law (other than this Act),

***Clause 279: Extension of Chapter 3 of Part 1 of the CROW Act***

673. This clause applies to land over which the coastal route passes which falls under any of the enactments set out in section 15 of the CROW Act. It provides for the powers of access authorities in relation to means of access to access land in Chapter 3 of Part 1 of the CROW Act to be exercisable by Natural England.

- it is to be treated for the purposes of any provision made by or by virtue of this Part as if it were not excepted land.”,
- (b) in subsection (6), omit “and” at the end of paragraph (c) and after that paragraph insert— 5
- “(ca) in the case of land within subsection (2B), enable a dedication previously made under this section in respect of the land (otherwise than by virtue of subsection (2A)) to be amended, by the persons by whom a dedication could be made, so as to provide that the land is dedicated as coastal margin for the purposes of subsection (2C), 10
- (cb) provide for any exclusion or restriction under Chapter 2 of access by virtue of section 2(1) which has effect in relation to land which is within subsection (2B)(b) immediately before it is dedicated as coastal margin to cease to have effect at the time the dedication takes effect, and”, and 15
- (c) after subsection (6) insert—
- “(6A) In subsection (6)(cb) the reference to the exclusion or restriction under Chapter 2 of access to any land by virtue of section 2(1) is to be interpreted in accordance with section 21(2) and (3).” 20
- (7) In section 44 (orders and regulations under Part 1), in subsection (3) after “section 3” insert “or 3A(1)”. 25
- (8) In section 45 (interpretation of Part 1), after the definition of “the appropriate countryside body” insert—
- ““coastal margin” has the meaning given by section 1(2);”.

*Establishment and maintenance of the route etc*

**279 Extension of Chapter 3 of Part 1 of the CROW Act**

- (1) Chapter 3 of Part 1 of the CROW Act (means of access) applies in relation to section 15 route land as it applies in relation to access land. 30
- (2) Functions conferred by that Chapter which are exercisable in relation to any land by the access authority in relation to the land (including those exercisable by virtue of subsection (1)) are also exercisable in relation to the land by Natural England for the purposes of the coastal access duty. 35
- (3) In this section—
- “access land” has the same meaning as in Chapter 3 of Part 1 of the CROW Act;
- “section 15 route land” means land—
- (a) over which the English coastal route (or any part of it) passes, and 40
- (b) which, for the purposes of section 1(1) of the CROW Act, is treated by section 15(1) of that Act as being accessible to the public apart from that Act.

**Clause 280: Agreements with respect to establishment and maintenance of the route**

674. *Subsection (1)* provides for Natural England to enter into an agreement with the owner or occupier of any land where it thinks it appropriate for works to be carried out in order to meet its coastal access duty, as set out in clause 272. *Subsection (2)* enables the access authority to enter into a similar agreement. *Subsection (3)* defines the types of works that the agreement may include, including clearance or maintenance, drainage or levelling, the removal of an obstruction to use of the route, or the construction of a barrier.

675. *Subsection (4)* enables the works to be carried out by either the owner or occupier or by a contracting authority (which is defined in *subsection (8)* as being either Natural England or the access authority), and allows a contracting authority to make a contribution towards the costs of the works under the agreement if the works are carried out by the owner or occupier.

676. *Subsections (5) and (6)* enable a notice to be given by the contracting authority to the owner or occupier, if the owner or occupier required by the agreement to carry out the works fails to carry them out. *Subsection (6)* requires the contracting authority to give at least 21 days' notice before taking steps to carry out the works.

677. *Subsection (7)* enables the contracting authority to recover the costs of any works where a notice under *subsection (6)* has been given.

**280 Agreements with respect to establishment and maintenance of the route**

- (1) Where, in respect of any land, it appears to Natural England that it is appropriate for works within subsection (3) to be carried out for the purposes of the coastal access duty, Natural England may enter into an agreement with the owner or occupier of the land as to the carrying out of the works. 5
- (2) Where, in respect of any land, it appears to the access authority in relation to that land that it is appropriate for works within subsection (3) to be carried out for the purpose of assisting Natural England to discharge the coastal access duty, the access authority may enter into an agreement with the owner or occupier of the land as to the carrying out of the works. 10
- (3) The works within this subsection are –
- (a) the clearance or maintenance of land for the purpose of facilitating the use of the English coastal route by the public for journeys on foot;
  - (b) the drainage or levelling of land, or the improvement of its surface, for that purpose; 15
  - (c) the removal, for that purpose, of any obstruction of the route;
  - (d) the construction, removal, repair or improvement of any wall, rail, fence or other barrier or any posts, or the planting of any hedge.
- (4) An agreement under this section may provide –
- (a) for the carrying out of works by the owner or occupier or by the contracting authority, and 20
  - (b) for the making of payments by the contracting authority as a contribution towards, or for the purpose of meeting, costs incurred by the owner or occupier in carrying out any works for which the agreement provides. 25
- (5) Subsection (6) applies if the owner or occupier of any land fails to carry out within the required period any works which the owner or occupier is required by an agreement under this section to carry out.
- (6) The contracting authority may take all necessary steps for carrying out the works, but it may do so only after giving at least 21 days’ notice of its intention to do so to the owner or occupier required by the agreement to carry out the works. 30
- (7) Where the contracting authority carries out any works by virtue of subsection (6), the authority may recover the relevant expenses from the person by whom, under the agreement, the cost of carrying out the works (after deduction of the authority’s contribution) would fall to be borne. 35
- (8) In this section –
- “contracting authority” means –
    - (a) in relation to an agreement under subsection (1), Natural England, and 40
    - (b) in relation an agreement under subsection (2), the access authority by which the agreement is made;  - “relevant expenses”, in relation to works carried out under subsection (6) by a contracting authority, means the amount of any expenses reasonably incurred by the authority in carrying out the works, reduced by its contribution under the agreement; 45
  - “the required period” means –

**Clause 281: Establishment and maintenance of the route in absence of agreement**

678. *Subsections (1) to (3)* enable Natural England or the access authority, to carry out any necessary works to enable Natural England to meet its coastal access duty (as set out in clause 272), where they are unable to conclude an agreement under clause 280.

679. *Subsection (4)* requires a period of not less than 21 days' notice to be given to the owner or occupier before any works can be carried out.

680. *Subsection (5)* requires that the notice given to the owner or occupier must provide details of how an appeal against the notice may be made.

681. *Subsection (6)* requires the notice to be given to each owner or occupier of any land to which the notice refers.

682. *Subsection (7)* enables Natural England or the access authority to take steps to carry out the works if any of the works which had been required under the notice have not been carried out before the end of the period specified in the notice.

**Clause 282: Appeals relating to notices under section 281**

683. This clause provides for appeals to be made against a notice given under clause 281, which relates to works carried out in relation to the establishment and maintenance of the route in the absence of an agreement. *Subsection (1)* enables the person given that notice, or any other owner or occupier of the land to which the notice relates, to appeal to the Secretary of State.

684. *Subsection (2)* sets out the grounds on which an appeal may be made. These are: that the notice requires the carrying out of works which are not necessary, that the works have already been carried out, or that the period specified in the notice after which Natural England or the access authority take steps to carry out the works is too short. *Subsection (3)(a)* allows the Secretary of State, where an appeal has been made, to confirm the notice (with or without modifications) and *subsection (3)(b)* allows him to cancel the notice.

- (a) the period specified in, or determined in accordance with, the agreement as that within which the works must be carried out, or
  - (b) if there is no such period, a reasonable period.
- 281 Establishment and maintenance of the route in absence of agreement** 5
- (1) This section applies where –
    - (a) it appears to Natural England that, for the purposes of the coastal access duty, it is necessary for works within section 280(3) to be carried out on any land, or
    - (b) it appears to the access authority in relation to any land that, for the purpose of Natural England discharging the coastal access duty, it is necessary for such works to be carried out on that land. 10
  - (2) In this section –
    - “the relevant authority” means –
      - (a) in a case within subsection (1)(a), Natural England, and 15
      - (b) in a case within subsection (1)(b), the access authority in question;
    - “the required works” means the works within 280(3) which the relevant authority considers it necessary to carry out for the purposes mentioned in subsection (1)(a) or (b). 20
  - (3) If the relevant authority is satisfied that it is unable to conclude on reasonable terms an agreement under section 280 with the owner or occupier of the land for the carrying out of the required works, it may give the owner or occupier a notice stating that, after the end of the specified period, it intends to take all necessary steps for carrying out the required works. 25
  - (4) The “specified period” means the period specified in the notice, being a period of not less than 21 days beginning with the day on which the notice is given.
  - (5) A notice under subsection (3) must contain particulars of the right of appeal conferred by section 282.
  - (6) Where a notice under subsection (3) is given to any person as the owner or occupier, the relevant authority must give a copy of the notice to every other owner or occupier of the land. 30
  - (7) If, at the end of the period specified in the notice under subsection (3), any of the required works have not been carried out, the relevant authority may take all necessary steps for carrying out those works. 35
- 282 Appeals relating to notices under section 281**
- (1) Where a notice under section 281(3) has been given to a person in respect of any land, that person or any other owner or occupier of the land may appeal against the notice to the Secretary of State.
  - (2) An appeal against a notice under section 281(3) may be brought on any of the following grounds – 40
    - (a) that the notice requires the carrying out of any works which it is not necessary to carry out for the purposes of the coastal access duty;
    - (b) that any of the works have already been carried out;

685. *Subsection (4)* provides for sections 7 and 8 of, and Schedule 3 to, the CROW Act to apply to an appeal made under this clause. Those provisions, among other things, make provision enabling an appeal to take the form of a hearing and provision for the Secretary of State to delegate functions relating to appeals.

686. *Subsection (5)* allows the Secretary of State to make regulations as to the period and manner in which appeals may be made, the advertising of such an appeal and the manner in which appeals are to be considered.

687. *Subsection (6)* says that, where an appeal has been made, neither Natural England nor an access authority may exercise any of its functions relating to clause 281 until the appeal is determined by the Secretary of State or withdrawn.

#### ***Clause 283: Power for Natural England to fund works***

688. This clause provides for Natural England to meet or contribute to the costs of any works of a kind which could be the subject of an agreement reached by either Natural England or an access authority under clause 280, or an agreement under section 35 of the CROW Act where it is exercised for the purposes of the coastal access duty.

#### ***Clause 284: Erection and maintenance of notices and signs***

689. This clause allows Natural England to put up and maintain notices or signs about the English coastal route, including certain signs relating to the coastal margin over land over which the route passes and also land which is accessible to the public by virtue of an Order under section 3A of CROW. *Subsection (2)* provides that notices or signs may identify or provide information about the route, warn the public of obstacles or hazards, inform them of general restrictions on access to any area of coastal margin or inform them of any exclusion or restriction by virtue of Chapter 2 of the CROW Act. *Subsection (3)* provides that Natural England must consult with the owner and lawful occupier before erecting a notice or sign. *Subsection (4)* allows Natural England to meet or contribute towards the costs to others of erecting such notices and signs. *Subsection (5)* allows Natural England to delegate its powers under this section to the access authority.

690. *Subsection (6)(a)* provides for the powers in this section to apply equally to any official alternative route. *Subsection (6)(b)* provides for the powers in this section to apply equally to any temporary route. *Subsection (6)(c)* provides for the powers to apply once the access proposals have been approved, even if the right of access has not yet come into force; this allows Natural England to prepare for the right of access coming into force.

691. *Subsection (7)* provides that this clause does not apply in relation to a highway that is not a public footpath.



- (c) that the period specified in the notice as the period after which steps are to be taken to carry out the works is too short.
- (3) On an appeal under this section, the Secretary of State may –
  - (a) confirm the notice with or without modifications, or
  - (b) cancel the notice. 5
- (4) Sections 7 and 8 of, and Schedule 3 to, the CROW Act have effect in relation to an appeal under this section as they have effect in relation to an appeal under section 6 of that Act.
- (5) Regulations may make provision as to –
  - (a) the period within which and manner in which appeals under this section are to be brought, 10
  - (b) the advertising of such appeals, and
  - (c) the manner in which such appeals are to be considered.
- (6) Where an appeal has been brought under this section against a notice under section 281(3) given by Natural England or an access authority, it may not exercise its powers under section 281(7) pending the determination or withdrawal of the appeal. 15

**283 Power for Natural England to fund works**

- Natural England may meet or contribute towards expenditure incurred or to be incurred by any person in carrying out – 20
- (a) works of a kind which could be the subject of an agreement under section 280, and
  - (b) works of a kind which could be the subject of an agreement under section 35 of the CROW Act entered into by Natural England by virtue of section 279. 25

**284 Erection and maintenance of notices and signs**

- (1) Natural England may erect and maintain notices or signs within subsection (2) on –
    - (a) any land over which the English coastal route passes, and
    - (b) any other land which is within section 272(5)(a) (land which is accessible to the public by virtue of section 3A of the CROW Act). 30
  - (2) The notices or signs within this subsection are those which –
    - (a) identify, or provide information about, the English coastal route (or any part of it),
    - (b) warn the public of the existence of obstacles or hazards along that route or on any other land which is coastal margin, 35
    - (c) inform the public of the effect of general restrictions under Schedule 2 to that Act of access to any area of coastal margin by virtue of section 2(1) of that Act, or
    - (d) inform the public of any exclusion or restriction, by virtue of Chapter 2 of Part 1 of that Act, of access to any area of coastal margin by virtue of section 2(1) of that Act, 40
- and any other notices or signs which relate to the English coastal route.

***Clause 285: Removal of notices and signs***

692. This clause allows Natural England and an access authority, where authorised by Natural England, to remove a notice or sign relating to the coastal margin which was erected under clause 284. *Subsection (2)* requires a person who has been authorised by either Natural England or the access authority to consult, as far as reasonably practicable, the owner and, if different, the lawful occupant of the land before removing a notice or sign.

693. *Subsection (3)* allows Natural England to meet or contribute towards the costs to others of removing notices and signs of a kind that could have been erected under that clause.

***Clause 286: Powers of entry***

694. This clause provides for powers of entry. *Subsection (1)* sets out the purposes for which a person authorised by Natural England may enter any land, including the need to survey that or any other land in preparing a report containing proposals for the coastal route. *Subsection (2)* sets out purposes for which a person authorised by either Natural England or the access authority may enter any land. These are; the need to determine whether any works are necessary under clause 280, to determine whether the public is able to exercise rights of access on land subject to section 15 of CROW Act, the need to consider an appeal made against a notice made under clause 282, and the need to erect, maintain or remove a notice or sign under either clauses 284 or 285.

- (3) Before erecting a notice or sign on any land under this section, Natural England must, so far as reasonably practicable, consult the owner and (if different) the person in lawful occupation of the land.
- (4) Natural England may meet or contribute towards expenditure incurred or to be incurred by any person in displaying notices or signs of a kind which may be erected under this section. 5
- (5) Natural England may, in relation to any land, delegate to the access authority in relation to the land any function conferred on Natural England by this section.
- (6) For the purposes of this section – 10
- (a) an official alternative route, in relation to the English coastal route, is to be regarded as part of the English coastal route,
  - (b) a temporary route which has effect by virtue of section 55G of the 1949 Act is to be treated as part of the English coastal route, and
  - (c) where by virtue of section 3A(6)(a) of the CROW Act any land is not yet accessible under section 2(1) of that Act, the references in this section to the English coastal route include any route which would form part of the English coastal route if that land were so accessible. 15
- (7) Nothing in this section applies in relation to the English coastal route in so far as it passes along a right of way which is a highway other than a public footpath. 20
- (8) In this section –
- “coastal margin” means land which is coastal margin for the purposes of Part 1 of the CROW Act (including any land treated as coastal margin by virtue of section 16 of that Act); 25
  - “official alternative route” has the meaning given by section 55H of the 1949 Act.

## 285 Removal of notices and signs

- (1) Any notice or sign erected under section 284 may be removed by – 30
- (a) Natural England, or
  - (b) where authorised to act on its behalf, the access authority in relation to the land on which the sign or notice is erected.
- (2) Before removing a notice or sign on any land under subsection (1), a person must, so far as reasonably practicable, consult the owner and (if different) the person in lawful occupation of the land. 35
- (3) Natural England may meet or contribute towards expenditure incurred or to be incurred by any person in removing notices or signs of a kind which may be erected under section 284.

## 286 Powers of entry

- (1) A person who is authorised by Natural England may enter any land – 40
- (a) for the purpose of surveying that or any other land in connection with the preparation of a report under section 51 or 55 of the 1949 Act pursuant to the coastal access duty;

695. *Subsection (3)* provides for the supplementary provisions in section 40(5) to (10) of the CROW Act, which apply to the exercise of rights of entry under section 40 of that Act, also to apply in relation to a person exercising the power of entry conferred by this clause. *Subsection (4)* modifies section 40(8) of the CROW Act as it relates to the coastal route.

696. *Subsection (5)* has the effect of applying the powers relating to compensation under section 41 of the CROW Act to a body by which an authorisation may be given under this clause.

***Clause 287: Restricting liabilities of Natural England and the Secretary of State***

697. *Subsection (1)* removes any duty of care owed by Natural England under the law of negligence in certain respects. There are many dangers on the coast. *Subsection (1)(a)* makes it clear that Natural England does not owe a duty of care under the law of negligence in preparing or proposing the coastal route. This is because Natural England cannot take responsibility for the safety of people who choose to use the route or associated access land. *Subsection (1)(b)* makes it clear that Natural England does not owe a duty of care under the law of negligence in connection with any failure by it to erect notices and signs warning of obstacles or hazards. Again, this is because Natural England cannot assume responsibility for erecting such notices and signs for every obstacle or hazard that exists. It is expected that

- (b) in connection with the consideration of any representations made to Natural England in respect of a report submitted under section 51 of that Act pursuant to that duty;
  - (c) for the purpose of assisting Natural England to determine whether to exercise the power conferred by section 276(2) (decision to treat waters of river as part of the sea); 5
  - (d) for the purpose of assisting Natural England to provide the Secretary of State with advice in connection with the exercise of the Secretary of State’s power under section 275(2)(b) (power to specify islands).
- (2) A person who is authorised by Natural England or the appropriate access authority may enter any land— 10
- (a) for the purpose of determining whether any works of the kind mentioned in section 280(3) are required in respect of the land;
  - (b) for the purpose of ascertaining whether members of the public are being permitted to exercise the rights conferred on them in relation to section 15 route land by or under an enactment mentioned in section 15(1) of the CROW Act; 15
  - (c) in connection with an appeal under section 282;
  - (d) for the purpose of erecting, maintaining or removing notices or signs under section 284 or 285. 20
- (3) Subsections (5) to (10) of section 40 of the CROW Act (powers of entry for the purposes of Part 1 of that Act) apply in relation to a person acting in the exercise of a power conferred by this section, and the rights conferred by this section, as they apply in relation to a person acting in the exercise of a power conferred by that section and the rights conferred by that section. 25
- (4) For the purposes of subsection (3), section 40(8) of that Act has effect as if—
- (a) the reference to “access land” included any land over which the English coastal route passes, and
  - (b) paragraph (c) were omitted.
- (5) Section 41 of that Act (compensation relating to powers under section 40) has effect as if the reference to section 40 included a reference to this section. 30
- (6) In subsection (2)—
- “appropriate access authority” means the access authority in relation to the land in respect of which the right of entry is being exercised;
  - “section 15 route land” means land— 35
    - (a) over which the English coastal route (or any part of it) passes, and
    - (b) which, for the purposes of section 1(1) of the CROW Act, is treated by section 15(1) of that Act as being accessible to the public apart from that Act. 40

*Liabilities*

**287 Restricting liabilities of Natural England and the Secretary of State**

- (1) No duty of care is owed by Natural England to any person under the law of negligence—

Natural England will only erect notices or signs when it is aware that there is an obstacle or hazard which is unusual or cannot be easily identified by the public. *Subsection (1)(c)* makes it clear that Natural England does not owe a duty of care under the law of negligence in connection with any failure by it to exclude or restrict access, except in association with an application made under section 24 of the CROW Act, which relates to a direction for the purposes of land management, or an application under section 25(1)(b) of that Act, which relates to a direction for the purpose of avoiding a danger to the public. *Subsection (2)* restricts the liability of anyone acting on Natural England's behalf in the same way.

698. *Subsection (3)* makes it clear that the Secretary of State does not owe any duty of care under the law of negligence when approving proposals for a coastal long-distance route or giving a direction for the variation of such proposals.

#### ***Clause 288: Occupiers' liability***

699. The CROW Act amended section 1 of the Occupiers' Liability Act 1984 in certain respects including by removing the liability of occupiers of access land to those exercising the right of access and to trespassers, in respect of risks arising from natural features of the landscape "or any river, stream, ditch or pond whether or not a natural feature". This exclusion of liability is subject to certain safeguards and does not apply if the danger is due to anything done by the landowner with the intention of creating that risk, or being reckless as to whether that risk is created.

700. This clause extends this exclusion of liability, as regards land which is coastal margin, in respect of a risk resulting from any physical feature (whether of the landscape or otherwise), or a risk resulting from a person injuring themselves when not using a means of access in a proper manner, subject to the same safeguards. Coastal land includes many man-made features, such as war-time defences. Occupiers should enjoy the same reduced liability for these as they enjoy for natural features.

#### ***Clause 289: Isles of Scilly***

701. This clause relates to the position of the Isles of Scilly. *Subsection (1)* says that clauses 272 to 276, 279 to 287, 290 and 291 do not apply to the Isles of Scilly unless there is an order made by the Secretary of State under *subsection (2)*. *Subsection (3)* requires the Secretary of State to consult the Council of the Isles of Scilly before making such an order.

702. Part 4 of the 1949 Act applies to the Isles of Scilly, but an order under section 111 can provide for it to apply as if those Isles were a separate county (and not part of Cornwall).

- (a) when preparing or submitting proposals under section 51 or 55 of the 1949 Act (long-distance routes and variations of such routes) pursuant to the coastal access duty,
  - (b) in connection with any failure by it to erect under section 284(1) a notice or sign of the kind mentioned in section 284(2)(b) (notices or signs warning of obstacles or hazards), or 5
  - (c) in connection with any failure by it to exclude or restrict access under Chapter 2 of Part 1 of the CROW Act to any land which is coastal margin, other than a failure within subsection (2).
- (2) A failure is within this subsection if it arises as a result of Natural England – 10
- (a) deciding not to act in accordance with an application under section 24 or 25 of that Act, or
  - (b) deciding not to act in accordance with representations made by a person on being consulted under section 27(5) of that Act (consultation of original applicant etc before revoking or varying a direction). 15
- (3) In subsections (1) and (2) the references to Natural England include any person acting on its behalf.
- (4) No duty of care is owed by the Secretary of State to any person under the law of negligence when –
- (a) approving proposals (with or without modifications) under section 52 or 55 of the 1949 Act pursuant to the coastal access duty, or 20
  - (b) giving a direction under section 55 of that Act, pursuant to that duty.
- (5) In this section “coastal margin” means land which is coastal margin for the purposes of Part 1 of the CROW Act (including any land treated as coastal margin by virtue of section 16 of that Act). 25

## 288 Occupiers’ liability

In section 1 of the Occupiers’ Liability Act 1984 (c. 3) (duty of occupier to persons other than the occupier’s visitors), after subsection (6A) insert –

- “(6AA) Where the land is coastal margin for the purposes of Part 1 of that Act (including any land treated as coastal margin by virtue of section 16 of that Act), subsection (6A) has effect as if – 30
- (a) in paragraph (a) for “natural feature” to the end there were substituted “physical feature (whether of the landscape or otherwise)”, and
  - (b) after paragraph (b) there were inserted “or 35
  - (c) a risk of that person suffering injury when using any other means of access (within the meaning of section 34 of that Act) other than in a proper manner.””

### General

## 289 Isles of Scilly 40

- (1) Subject to the provisions of an order under subsection (2), sections 272 to 276, 279 to 287, 290 and 291 do not apply in relation to the Isles of Scilly.

*Subsection (4)* makes it clear that such an order can be made in relation to Part 4 of that Act as amended by this Part of the draft Bill. Part 1 of the CROW Act does not apply to the Isles of Scilly unless an order is made under section 100 of that Act applying it there. *Subsection (5)* makes it clear that an order under section 100 of the CROW Act can be made in relation to Part 1 of that Act as amended by this Part of the draft Bill.

***Clause 290: The Crown***

703. This clause makes Part 9 of the draft Bill binding on the Crown and applies it to any Crown land. *Subsection (2)* sets out what constitutes “Crown land”.

704. *Subsection (3)* enables the appropriate authority (as defined by subsection (5)) in relation to land held by or on behalf of the Crown to enter into an agreement under section 35 of the CROW Act (agreements with respect to means of access) by virtue of clause 279 or an agreement under clause 280 in respect of that Crown land. *Subsection (4)* provides that an agreement with respect to any other interest in Crown land (for example, a person entering an agreement in respect of his leasehold interest in Crown land) is of no effect unless it has been approved by the appropriate authority in relation to that land. *Subsection (5)* sets out what constitutes the “appropriate authority” in relation to different categories of Crown land.

705. *Subsection (6)* provides for any question as to which Crown authority is the appropriate authority for the purpose of making or approving an agreement under *subsection (3)* to be referred to the Treasury, whose decision is final.



- (2) The Secretary of State may by order made by statutory instrument provide for the application of any of those provisions in relation to the Isles of Scilly, subject to such modifications as may be specified in the order.
- (3) Before making an order under subsection (2), the Secretary of State must consult the Council of the Isles of Scilly. 5
- (4) The power exercisable under section 111 of the 1949 Act (application to Isles of Scilly as if a separate county) in relation to the provisions of Part 4 of that Act is exercisable in relation to that Part as amended by section 277.
- (5) The powers exercisable under section 100(1), (2) and (4) of the CROW Act (application to Isles of Scilly) in relation to provisions of Part 1 of that Act are exercisable in relation to that Part as amended by section 278. 10

## 290 The Crown

- (1) This Part is binding on the Crown and applies in relation to any Crown land as it applies in relation to any other land.
- (2) For this purpose “Crown land” means land an interest in which— 15
  - (a) belongs to Her Majesty in right of the Crown,
  - (b) belongs to Her Majesty in right of the Duchy of Lancaster,
  - (c) belongs to the Duchy of Cornwall, or
  - (d) belongs to a government department or is held in trust for Her Majesty for the purposes of a government department. 20
- (3) The appropriate authority may enter into—
  - (a) an agreement under section 35 of the CROW Act (means of access) entered into by virtue of section 279, or
  - (b) an agreement under section 280 (establishment and maintenance of the English coastal route), 25as respects an interest in Crown land held by or on behalf of the Crown.
- (4) An agreement described in subsection (3)(a) or (b) as respects any other interest in Crown land is of no effect unless approved by the appropriate authority.
- (5) The “appropriate authority” means—
  - (a) in the case of land which belongs to Her Majesty in right of the Crown, the Crown Estate Commissioners or other government department having management of the land in question; 30
  - (b) in the case of land which belongs to Her Majesty in right of the Duchy of Lancaster, the Chancellor of the Duchy;
  - (c) in the case of land which belongs to the Duchy of Cornwall, such person as the Duke of Cornwall, or the possessor for the time being of the Duchy of Cornwall, appoints; 35
  - (d) in the case of land which belongs to a government department or is held in trust for Her Majesty for the purposes of a government department, that department. 40
- (6) If any question arises under this section as to what authority is the appropriate authority in relation to any land, that question is to be referred to the Treasury, whose decision is final.

***Clause 291: Interpretation of this Part***

706. A number of definitions are provided for words or expressions used in this Part.

***Clause 292: Area in which functions of Natural England exercisable***

707. This clause amends section 1 of the Natural Environment and Rural Communities Act 2006 (c. 16) in order to clarify the area over which Natural England may exercise its functions. *Subsection (2)* amends subsection (3) of the 2006 Act to make clear that the reference to England includes, where the context requires, the territorial sea adjacent to England (i.e. up to 12 nautical miles from baseline). *Subsection (3)* inserts a new subsection (3A) allowing for boundary changes to be made through Orders in Council.

708. It does not change the status quo. Natural England and its predecessor bodies have regularly undertaken research and given advice on relevant marine issues within territorial waters. However a new formulation of their territorial scope was expressed in the NERC Act which it has been suggested might restrict their scope. This clause puts that beyond doubt.

**291 Interpretation of this Part**

In this Part –

- “the 1949 Act” has the meaning given by section 272(8);
- “access authority”, in relation to any land, has the same meaning as in Part 1 of the CROW Act; 5
- “the coastal access duty” has the meaning given by section 272(4);
- “the CROW Act” has the meaning given by section 272(8);
- “the English coast” has the meaning given by section 275;
- “the English coastal route” has the meaning given by section 272(3);
- “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); 10
- “functions” includes powers and duties; 15
- “long-distance route” means a route provided for in approved proposals relating to a long-distance route within the meaning of section 52(3) of the 1949 Act (as read with 55(4) of that Act);
- “owner” has the same meaning as in Part 1 of the CROW Act;
- “the sea” does not include any part of a river which is upstream of the seaward limit of the river’s estuarial waters. 20

**PART 10**

MISCELLANEOUS

*Natural England*

**292 Area in which functions of Natural England exercisable** 25

- (1) Section 1 of the Natural Environment and Rural Communities Act 2006 (c. 16) (constitution of Natural England) is amended as follows.
- (2) In subsection (3) (area in which functions exercisable) after “in relation to England” insert “(including, where the context requires, the territorial sea adjacent to England)”. 30
- (3) After subsection (3) insert –
  - “(3A) An order or Order in Council made –
  - (a) under section 158(3) of the Government of Wales Act 2006 (c. 32) for the purposes of determining which waters are treated as being adjacent to Wales, or 35
  - (b) under section 126(2) of the Scotland Act 1998 (c. 46) for the purposes of determining which waters are treated as being adjacent to Scotland,applies for the purposes of this section as it applies for the purposes of the Act under which it is made.”. 40

***Clause 293: Natural England not to be responder for Civil Contingencies Act 2004***

709. This clause amends Schedule 1 to the Civil Contingencies Act 2004 (c. 36)(category 1 and 2 responders) so as to omit paragraph 11A (Natural England). Paragraph 11A was inserted by paragraph 174 of Schedule 11 to the Natural Environment and Rural Communities Act 2006 (c. 16), and had the effect of making Natural England a category 1 responder. Such responders have duties under section 2 of the 2004 Act (e.g. to assess emergency risks and to maintain contingency plans). It has not been commenced. This clause will remove Natural England from the lists of category 1 responders. Natural England has an important role in certain types of emergency, but it has been concluded that non-statutory arrangements are a more cost effective way of engaging them.

***Clause 294: Amendments of the Harbours Act 1964***

710. Schedule 12 sets out a number of miscellaneous amendments of the Harbours Act 1964.

***Clause 295: Regulations and Orders***

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

**293 Natural England not to be responder for Civil Contingencies Act 2004**

In Schedule 1 to the Civil Contingencies Act 2004 (c. 36) (category 1 and 2 responders) omit paragraph 11A (Natural England).

*Harbours Act 1964*

**294 Amendments of the Harbours Act 1964**

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Schedule 12 (which contains amendments of the Harbours Act 1964 (c. 40)) has effect.

**PART 11**

SUPPLEMENTARY PROVISIONS

**295 Regulations and orders**

10

(1) Any power conferred by this Act on the Secretary of State, the Scottish Ministers, the Welsh Ministers or a Northern Ireland department to make regulations or an order includes –

(a) power to make different provision for different cases, and

(b) power to make incidental, consequential, supplemental, or transitional provision or savings.

15

(2) The power conferred by subsection (1)(b) includes power, for the purpose of making any such provision or savings, to amend enactments (whenever passed or made).

(3) Any power conferred by this Act on the Secretary of State, the Scottish Ministers or the Welsh Ministers to make regulations or an order is exercisable by statutory instrument.

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(4) Subsection (3) does not apply to an order made under any of sections 105 to 121 (orders made for the purpose of designating, or furthering the objectives of, MCZs).

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(5) Any regulations or order made under this Act by a Northern Ireland department are to be a statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1513 (N.I. 12)).

(6) A statutory instrument or statutory rule which contains (whether alone or with other provisions) –

30



- (a) any regulation or order which makes provision by virtue of subsection (2), or
  - (b) any regulation or order under any of the provisions specified in subsection (7),is subject to draft affirmative procedure. 5
  
- (7) The provisions are –
  - (a) section 60(3);
  - (b) section 83, 85 or 87;
  - (c) section 200;
  - (d) paragraph 6 of Schedule 1. 10
  
- (8) A statutory instrument or statutory rule made under this Act which is not subject to –
  - (a) draft affirmative procedure, or
  - (b) Commons draft affirmative procedure,is subject to negative resolution procedure. 15
  
- (9) Subsection (8) does not apply to a statutory instrument containing only orders under section 300 (commencement orders).
  
- (10) In this Act –
  - “draft affirmative procedure” means –
    - (a) in relation to any statutory instrument made by the Secretary of State, a requirement that a draft of the instrument be laid before, and approved by a resolution of, each House of Parliament; 20
    - (b) in relation to any statutory instrument made by the Scottish Ministers, a requirement that a draft of the instrument is to be laid before, and approved by a resolution of, the Scottish Parliament; 25
    - (c) in relation to any statutory instrument made by the Welsh Ministers, a requirement that a draft of the instrument is to be laid before, and approved by a resolution of, the National Assembly for Wales; 30
    - (d) in relation to any statutory rule made by a Northern Ireland department, a requirement that a draft of the rule be laid before, and approved by a resolution of, the Northern Ireland Assembly;
  - “negative resolution procedure” means – 35
    - (a) in relation to statutory instruments made by the Secretary of State, annulment in pursuance of a resolution of either House of Parliament;
    - (b) in relation to statutory instruments made by the Scottish Ministers, annulment in pursuance of a resolution of the Scottish Parliament; 40
    - (c) in relation to statutory instruments made by the Welsh Ministers, annulment in pursuance of a resolution of the National Assembly for Wales;
    - (d) in relation to statutory rules made by a Northern Ireland department, negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954 (c. 33 N.I.). 45

***Clause 296: Directions***

712. This clause contains details for making directions under the draft Bill.

***Clause 297: Financial Provisions***

713. This clause provides for the payment out of money provided by Parliament of expenditure incurred by the Minister or Government Department, or of increases in expenditure under legislation caused by the draft Bill.

***Clause 298: Interpretation***

714. This clause contains explanations of some key terms and definitions which are used in the draft Bill.



- (11) In this section “Commons draft affirmative procedure” means, in relation to any statutory instrument, a requirement that a draft of the instrument be laid before, and approved by a resolution of, the House of Commons.

**296 Directions**

- (1) Any directions given under this Act must be in writing. 5
- (2) Any power conferred by this Act to give a direction includes power, exercisable in the same manner and subject to the same conditions or limitations, to vary or revoke the direction.

**297 Financial provisions**

- There shall be paid out of money provided by Parliament – 10*
- (a) *any expenditure incurred by a Minister of the Crown or government department under or by virtue of this Act, and*
- (b) *any increase attributable to this Act in the sums payable out of money so provided under any other Act.*

**298 Interpretation**

- (1) In this Act –
- “baseline” means the baseline from which the breadth of the territorial sea is measured;
- “British fishery limits” has the meaning given by section 1 of the Fishery Limits Act 1976 (c. 86); 20
- “draft affirmative procedure” has the meaning given in section 295;
- “English inshore region” means the area of sea within the seaward limits of the territorial sea adjacent to England;
- “financial year” means any period of twelve months ending with 31st March (except where the context otherwise requires); 25
- “Great Britain offshore region” means so much of the UK marine area as –
- (a) is beyond the seaward limits of the territorial sea, and
- (b) is not within the Northern Ireland offshore region;
- “marine policy statement” is to be construed in accordance with sections 40 and 42; 30
- “Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975 (c. 26);
- “the MMO” means the Marine Management Organisation;
- “MPS” means a marine policy statement;
- “nautical mile” means an international nautical mile of 1,852 metres; 35
- “negative resolution procedure” has the meaning given in section 295;
- “Northern Ireland inshore region” means the area of sea within the seaward limits of the territorial sea adjacent to Northern Ireland;
- “Northern Ireland offshore region” means so much of the Northern Ireland zone as lies beyond the seaward limits of the territorial sea; 40
- “Northern Ireland zone” has the same meaning as in the Northern Ireland Act 1998 (c. 47) (see section 98(1) and (8) of that Act);
- “notice” means notice in writing;



- “offshore area adjacent to Scotland” means so much of the UK marine area as lies outside the Scottish inshore region and consists of –
- (a) areas of sea which lie within the Scottish zone, and
  - (b) areas of sea which lie outside the Scottish zone but which are nearer to any point on the baselines from which the breadth of the territorial sea adjacent to Scotland is measured than to any point on the baselines in any other part of the United Kingdom; 5
- “public authority” means –
- (a) a Minister of the Crown;
  - (b) a public body; 10
  - (c) a person holding an office –
    - (i) under the Crown,
    - (ii) created or continued in existence by a public general Act, or
    - (iii) the remuneration in respect of which is paid out of money provided by Parliament; 15
  - (d) a statutory undertaker;
- “public body” includes any government department, local authority or local planning authority; 20
- “renewable energy zone” means any area for the time being designated by an Order in Council under section 84(4) of the Energy Act 2004 (c. 20); 20
- “Scottish inshore region” means the area of sea within the seaward limits of the territorial sea adjacent to Scotland;
- “Scottish zone” has the same meaning as in the Scotland Act 1998 (c. 46) (see section 126(1) and (2) of that Act); 25
- “sea” is to be read in accordance with section 39(2);
- “subordinate legislation” has the same meaning as in the Interpretation Act 1978 (see section 21 of that Act);
- “territorial sea” means the territorial sea of the United Kingdom;
- “UK marine area” has the meaning given by section 39; 30
- “UK sector of the continental shelf” means the areas for the time being designated by an Order in Council under section 1(7) of the Continental Shelf Act 1964 (c. 29);
- “Welsh inshore region” means the area of sea within the seaward limits of the territorial sea adjacent to Wales. 35
- (2) In the definitions of “public authority” and “public body” in subsection (1) –
- “local authority” means –
- (a) in relation to England, a county council, a district council, a parish council, a London borough council, the Common Council of the City of London or the Council of the Isles of Scilly; 40
  - (b) in relation to Wales, a county council, a county borough council or a community council;
- “statutory undertaker” means a person who is or is deemed to be a statutory undertaker for the purposes of any provision of Part 11 of the Town and Country Planning Act 1990 (c. 8). 45
- (3) Any order or Order in Council made –
- (a) under section 126(2) of the Scotland Act 1998 for the purposes of determining which waters are treated as being adjacent to Scotland,

*Clause 299: Extent*

715. This clause explains to which parts of the UK the provisions in the draft Bill apply. This is different for different Parts of the draft Bill.

- (b) under section 98(8) of the Northern Ireland Act 1998 (c. 47) for the purposes of determining which waters are treated as being adjacent to Northern Ireland, or
    - (c) under or by virtue of section 158(3) or (4) of the Government of Wales Act 2006 (c. 32) for the purposes of determining which waters are treated as being adjacent to Wales for the general or residual purposes of that Act, 5

applies for the purposes of this Act as it applies for the purposes of the Act under which it was made.
  - (4) Any boundary between – 10
    - (a) waters which are to be treated as internal waters or territorial sea of the United Kingdom, or as sea within British fishery limits, adjacent to England, and
    - (b) waters which are not to be so treated,

is to be determined by applying for that purpose any order or Order in Council falling within subsection (5) as that order or Order in Council applies for the purposes of the Act under which it was made. 15
  - (5) The orders and Orders in Council are –
    - (a) any Order in Council made under section 126(2) of the Scotland Act 1998 (c. 46); 20
    - (b) any order or Order in Council made under or by virtue of section 158(3) or (4) of the Government of Wales Act 2006 (c. 32) for the general or residual purposes of that Act.
- 299 Extent**
- (1) Subject to the following provisions of this section, this Act extends to England and Wales only. 25
  - (2) The amendment or repeal of any enactment (including an enactment comprised in subordinate legislation) by the following provisions of this Act has the same extent as the enactment amended or repealed –
    - (a) Part 1 (the MMO); 30
    - (b) Chapter 3 of Part 7 (migratory and freshwater fish);
    - (c) Chapter 4 of Part 7 (obsolete fisheries enactments);
    - (d) Part 9 (coastal access);
    - (e) in Part 10, sections 292 and 293 (Natural England);
    - (f) Schedule 8 (minor and consequential amendments relating to IFC authorities). 35
  - (3) Subject to subsection (2), the following provisions also extend to Scotland –
    - (a) Part 1 (the MMO);
    - (b) Part 2 (marine planning);
    - (c) Part 3 (marine licensing); 40
    - (d) Part 4 (conservation);
    - (e) in Part 7 (fisheries) –
      - (i) section 182 (crabs and lobsters);
      - (ii) section 200 (keeping, introduction and removal of fish);
    - (f) in Part 8 (enforcement) – 45
      - (i) in Chapter 1, sections 214 to 216, 218 and 219;

***Clause 300: Commencement***

716. This clause explains when the different provisions in the draft Bill will come into force.

***Clause 301: Short title***

717. This clause gives the short title of the draft Bill.

(ii) Chapter 2;	
(iii) in Chapter 4, section 262;	
(iv) Chapter 5.	
(4) Subject to subsection (2), the following provisions also extend to Northern Ireland –	5
(a) Part 1 (the MMO);	
(b) Part 2 (marine planning);	
(c) Part 3 (marine licensing);	
(d) Part 4 (conservation);	
(e) in Part 8 (enforcement) –	10
(i) in Chapter 1, sections 214 to 219;	
(ii) Chapters 2, 4 and 5.	
(5) The amendments made by –	
(a) section 182 (taking of crabs and lobsters for scientific purposes), and	
(b) section 183 (orders prohibiting the taking and sale of certain lobsters),	15
also extend to the Isle of Man and the Channel Islands, and have effect in those Islands subject to such adaptations and modifications as Her Majesty may by Order in Council provide.	
<b>300 Commencement</b>	
(1) The following provisions of this Act come into force on the day on which this Act is passed –	20
(a) this Part;	
(b) any power of a Minister of the Crown, the Scottish Ministers, the Welsh Ministers or a Northern Ireland department to make regulations or an order under or by virtue of this Act.	25
(2) The following provisions of this Act come into force at the end of the period of 2 months beginning with the day on which this Act is passed –	
(a) Part 2 (marine planning);	
(b) Part 9 (coastal access).	
(3) The other provisions of this Act come into force on an appointed day.	30
(4) In this section “appointed day” means such day or days as the Secretary of State may by order appoint; and different days may be so appointed for different purposes.	
<b>301 Short title</b>	
This Act may be cited as the Marine Act 2009.	35

***Schedule 1: The Marine Management Organisation***

718. This Schedule sets out detailed arrangements for the establishment of the MMO including the appointment, terms of appointment (including allowances) and resignation or suspension from office of the MMO Chair and other Board members. The Chair and Board members are to be appointed by the Secretary of State, the latter after consultation with the Chair.

719. The Schedule also deals with the appointment of staff including the Chief Executive. These are to be appointed by the MMO. However to reduce delay in establishing the body, the Secretary of State may instead appoint the first Chief Executive. The MMO is enabled to pay pensions, allowances and gratuities to staff – and must consult the Secretary of State before determining what these should be.

720. The MMO is required to produce an annual report and proper accounts and records, to provide these to the Secretary of State and to send the latter to the Comptroller and Auditor General (i.e. the National Audit Office) for auditing. The annual report, the (audited) accounts and the statement of account must all be laid before Parliament.

721. MMO is also required to provide the Secretary of State for Environment, Food and Rural Affairs with information relating to the discharge of its functions and its property. This is because the Secretary of State is ultimately accountable to Parliament for the activities and performance of the MMO. In accordance with usual practice we envisage that this will be set out in a Management Statement and Financial Memorandum.



## SCHEDULES

### SCHEDULE 1

Section 1

#### THE MARINE MANAGEMENT ORGANISATION

##### *Status of the MMO*

- |   |   |    |
|---|---|----|
| 1 | (1) The MMO is a body corporate.  | 5  |
|   | (2) The MMO is not to be regarded –<br>(a) as a servant or agent of the Crown,<br>(b) as enjoying any status, privilege or immunity of the Crown, or<br>(c) as exempt, by virtue of any connection with the Crown, from any tax,<br>duty, rate, levy or other charge whatsoever, whether general or local,<br>and the property of the MMO is not to be regarded as property of, or held<br>on behalf of, the Crown. | 10 |
|   | (3) Accordingly, employees of the MMO are not to be regarded as –<br>(a) servants or agents of the Crown, or<br>(b) enjoying any status, immunity or privilege of the Crown.  | 15 |

##### *The chair of the MMO*

- |   |  |  |
|---|--|--|
| 2 | A person (the “chair of the MMO”) is to be appointed by the Secretary of State to chair the MMO. |  |
|---|--|--|

##### *Membership*

- |   |   |    |
|---|---|----|
| 3 | (1) The members of the MMO are to be –<br>(a) the person who is for the time being the chair of the MMO, and<br>(b) not fewer than 5, nor more than 8, other members (“ordinary<br>members”) who are to be appointed by the Secretary of State. | 20 |
|   | (2) The Secretary of State must consult the chair of the MMO before appointing<br>any of the ordinary members.  | 25 |
|   | (3) If a person who is an ordinary member is to become the chair of the MMO,<br>the appointment as ordinary member ceases immediately before the person<br>becomes the chair of the MMO.  |    |

##### *The deputy chair of the MMO*

- |   |   |    |
|---|---|----|
| 4 | The Secretary of State may appoint one of the ordinary members to be the<br>deputy chair of the MMO (“the deputy chair”). | 30 |
|---|---|----|

##### *Considerations in making appointments*

- |   |   |    |
|---|---|----|
| 5 | In appointing any person to be the chair of the MMO or an ordinary<br>member, the Secretary of State must have regard to the desirability –<br>(a) of appointing a person who has experience of, and has shown some<br>capacity in, some matter relevant to the exercise of the MMO’s<br>functions, and | 35 |
|---|---|----|



- (b) of securing that a variety of skills and experience is available among the members.

*Power to amend the numbers of members specified in paragraph 3(1)*

- 6 The Secretary of State may by order amend paragraph 3(1) so as to substitute a different number for any of the numbers for the time being specified there. 5

*Terms of appointment*

- 7 (1) A person appointed as –
  - (a) the chair of the MMO, or
  - (b) an ordinary member,holds and vacates office in accordance with the terms of the appointment. 10
- (2) A person appointed as the deputy chair holds and vacates that office in accordance with any particular terms of appointment there may be in the case of that appointment in addition to the terms of the person's appointment as an ordinary member.
- (3) Sub-paragraphs (1) and (2) are subject to paragraphs 3(3) and 8 to 10. 15
- (4) The terms of appointment to any office in any particular case are to be such as the Secretary of State may determine.
- (5) No appointment is to be for longer than 5 years.
- (6) No person may be a member for a total period of more than 10 years (whether or not continuous). 20

*Resignation from office*

- 8 A person may, by giving notice to the Secretary of State, resign from office as –
  - (a) the chair of the MMO,
  - (b) the deputy chair, or
  - (c) an ordinary member. 25

*Suspension from, or termination of, office*

- 9 (1) The Secretary of State may suspend or terminate the appointment of any person as the chair of the MMO, the deputy chair, or an ordinary member, if –
  - (a) the person has become bankrupt or made an arrangement with creditors, 30
  - (b) the person's estate has been sequestrated in Scotland or the person has, under Scots law, made a composition arrangement with, or granted a trust deed for, creditors, 35
  - (c) the person has been absent from meetings of the MMO for a period of more than 6 months without the permission of the MMO,
  - (d) the person is disqualified from acting as a company director,
  - (e) the person has been convicted (whether before or after appointment) of a criminal offence, the conviction not being spent for the purposes of the Rehabilitation of Offenders Act 1974 (c. 53), 40



or if the person is, in the opinion of the Secretary of State, unable or unfit to discharge the functions of the appointment for any other reason.

- (2) A person whose appointment as the chair of the MMO is suspended is accordingly also suspended as a member.
- (3) If a person's appointment as an ordinary member is suspended, any appointment of that person as the deputy chair is also suspended. 5

*Eligibility for re-appointment*

- 10 A person who ceases to hold any of the following offices –
- (a) chair of the MMO,
  - (b) deputy chair,
  - (c) ordinary member,
- is not by reason of that cessation prevented from subsequently being reappointed to that office (or, in the case of paragraph (a) or (c), from subsequently becoming a member again). 10

*Members' remuneration and allowances* 15

- 11 The MMO may pay to its members such remuneration and allowances as the Secretary of State may determine.

*Pensions, allowances and gratuities*

- 12 If required to do so by the Secretary of State, the MMO must –
- (a) pay such pensions, allowances or gratuities as the Secretary of State may determine to or in respect of any person who is or has been a member; 20
  - (b) pay such sums as the Secretary of State may determine towards provision for the payment of pensions, allowances or gratuities to or in respect of any such person. 25

*Compensation for loss of office*

- 13 If –
- (a) a person ceases to be a member, and
  - (b) it appears to the Secretary of State that there are special circumstances which make it appropriate for the person to receive compensation,
- the Secretary of State may require the MMO to make such payments to the person as the Secretary of State may determine. 30

*Chief executive*

- 14 (1) The MMO must appoint a person to be its chief executive. 35
- (2) The person appointed must have been approved by the Secretary of State.
- (3) The chief executive is an employee of the MMO.
- (4) The Secretary of State may appoint the first chief executive.



*Other staff*

- 15 The MMO may appoint other employees.

*Staff remuneration and allowances*

- 16 (1) The MMO may pay such remuneration and allowances as it may determine to any of its employees. 5
- (2) The MMO may only make a determination under sub-paragraph (1) with the approval of the Secretary of State.

*Staff pensions etc*

- 17 (1) The MMO may – 10
- (a) pay such pensions, allowances or gratuities as it may determine to or in respect of any person who is or has been an employee of the MMO;
- (b) pay such sums as it may determine towards provision for the payment of pensions, allowances or gratuities to or in respect of any such person.
- (2) The MMO may only make a determination under sub-paragraph (1) with the approval of the Secretary of State. 15

*Staff superannuation*

- 18 (1) Employment with the MMO is to be included among the kinds of employment to which a scheme under section 1 of the Superannuation Act 1972 (c. 11) can apply. 20
- (2) Accordingly, in Schedule 1 to that Act (kinds of employment to which the Act applies) insert at the appropriate place –  
“Marine Management Organisation.”
- (3) The MMO must pay to the Minister for the Civil Service, at such times as that Minister may direct, such sums as that Minister may determine in respect of any increase attributable to this paragraph in the sums payable out of money provided by Parliament under that Act. 25

*Procedure*

- 19 (1) Subject to the following provisions of this Schedule, the MMO may regulate – 30
- (a) its own procedure (including quorum), and
- (b) the procedure of any of its committees or sub-committees (including quorum).

*Delegation of functions*

- 20 (1) The MMO may authorise a committee, sub-committee, member or employee of the MMO to exercise any of the MMO’s functions. 35
- (2) The MMO must keep a record of any authorisations under sub-paragraph (1).
- (3) No authorisation under sub-paragraph (1) –





- (a) prevents the MMO from exercising the function itself, or
- (b) affects the power of the MMO to authorise a committee, sub-committee, member or employee to carry out functions of the MMO.

*Membership of committees and sub-committees*

- 21 (1) A committee or sub-committee may include persons who are not members of the MMO. 5
- (2) The MMO may pay such remuneration and allowances as it may determine to any person who –
- (a) is a member of a committee or sub-committee, but
  - (b) is not a member of the MMO. 10
- (3) The MMO may only make a determination under sub-paragraph (2) with the approval of the Secretary of State.

*Validity of proceedings*

- 22 (1) The validity of anything done by the MMO, or by any committee or sub-committee of the MMO, is not affected by any of the following – 15
- (a) any vacancy in the office of chair of the MMO or chair of the committee or sub-committee,
  - (b) any deficiency in the number of ordinary members or in the number of members of the committee or sub-committee,
  - (c) any defect in, or suspension of, any person’s appointment as the chair or other member of the MMO or of the committee or sub-committee. 20

*Application of seal and proof of documents*

- 23 (1) The application of the MMO’s seal must be authenticated by the signature of – 25
- (a) a member who is authorised (generally or specially) for that purpose, or
  - (b) an employee of the MMO who is so authorised.
- (2) A document purporting to be duly executed under the seal of the MMO is to be received in evidence and taken to be so executed, unless the contrary is shown. 30

*Documents served etc by the MMO*

- 24 (1) Any document which the MMO is authorised or required by or under any enactment to serve, make or issue may be signed on behalf of the MMO by any member or employee of the MMO who has been authorised for the purpose, whether generally or specially, by the MMO. 35
- (2) Every document purporting –
- (a) to be an instrument made or issued by or on behalf of the MMO, and
  - (b) to be signed by a person authorised by the MMO for the purpose,
- is to be received in evidence and taken to be so made or issued, unless the contrary is shown. 40



*Annual report*

- 25 (1) For each financial year, the MMO must prepare an annual report on how it has discharged its functions during the year.
- (2) The MMO must send the report to the Secretary of State as soon as possible after the end of the year to which it relates. 5
- (3) The Secretary of State must lay a copy of the report before each House of Parliament.
- (4) In this paragraph “financial year” means –
- (a) the period that –
- (i) begins with the day on which the MMO is established, and 10
  - (ii) ends with the next 31st March,
- (b) each subsequent period of 12 months ending with 31st March.

*Accounts and records*

- 26 (1) The MMO must keep proper accounts and proper records in relation to the accounts. 15
- (2) For each financial year, the MMO must prepare a statement of accounts in respect of that financial year.
- (3) The statement must be in such form as the Secretary of State may direct.
- (4) Within such period as the Secretary of State may direct, the MMO must send a copy of the statement to – 20
- (a) the Secretary of State, and
  - (b) the Comptroller and Auditor General.
- (5) In this paragraph “financial year” has the same meaning as in paragraph 25.

*Audit*

- 27 (1) This paragraph applies where, in pursuance of paragraph 26, the MMO has sent a copy of a statement of accounts to the Comptroller and Auditor General. 25
- (2) The Comptroller and Auditor General must –
- (a) examine, certify and report on the statement, and
  - (b) send a copy of the certified statement and of the report to the Secretary of State as soon as possible. 30
- (3) The Secretary of State must lay before each House of Parliament a copy of the certified statement and of the report.

*Duty to provide information to the Secretary of State*

- 28 (1) The MMO must provide the Secretary of State with – 35
- (a) copies of such returns or accounts, or
  - (b) such information,
- as the Secretary of State may require.
- (2) Sub-paragraph (1) applies only in relation to accounts, returns or information relating to – 40

***Schedule 2: Minor and consequential arrangements relating to the MMO***

***Paragraph 1: Public Records Act 1958***

722. The effect of this is to make the administrative records of the MMO subject to the provisions of the Public Records Act 1958, which forms the main legislation governing public records in the United Kingdom.

***Paragraph 2: Parliamentary Commissioner Act 1967***

723. The MMO is to be added to the list of bodies which are subject to investigation by the Parliamentary Commissioner for Administration in the event of maladministration.

***Paragraph 3: House of Commons Disqualification Act 1975***

724. The addition of the MMO to the list of members in this Act will prevent members of the House of Commons also being members of the MMO Board.

***Paragraph 4: Race Relations Act 1976***

725. The MMO is to be added to the list of bodies that are subject to the duty to promote race equality.

***Paragraph 5: Inheritance Tax Act 1984***

726. The MMO is to be added to the list so that Inheritance Tax is not applicable on any property given to the MMO.

***Paragraph 6: Freedom of Information Act 2000***

727. The MMO is added to the list of bodies which are subject to the requirements of the Freedom of Information Act 2000 (and therefore also the requirements of the Environmental Information Regulations 2004, SI 2004/3391).

- (a) the MMO’s property, or
  - (b) the discharge, or proposed discharge, of the MMO’s functions.
- (3) The MMO must also –
- (a) permit any person authorised by the Secretary of State to inspect and make copies of any accounts or other documents of the MMO, and 5
  - (b) provide such explanation of them as the Secretary of State or that person may require.

SCHEDULE 2

Section 1

MINOR AND CONSEQUENTIAL AMENDMENTS RELATING TO THE MMO

- Public Records Act 1958 (c. 51)* 10
- 1 In Schedule 1 to the Public Records Act 1958 (definition of public records) in Part 2 of the Table at the end of paragraph 3 insert at the appropriate place –  
“The Marine Management Organisation.”
- Parliamentary Commissioner Act 1967 (c. 13)*
- 2 In Schedule 2 to the Parliamentary Commissioner Act 1967 (departments and authorities subject to investigation) insert at the appropriate place –  
“The Marine Management Organisation.” 15
- House of Commons Disqualification Act 1975 (c. 24)*
- 3 In Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975 (bodies of which all members are disqualified) insert at the appropriate place –  
“The Marine Management Organisation.” 20
- Race Relations Act 1976 (c. 74)*
- 4 In Part 2 of Schedule 1A to the Race Relations Act 1976 (bodies and other persons subject to general statutory duty) insert at the appropriate place under the heading “Other Bodies, Etc.” –  
“The Marine Management Organisation.” 25
- Inheritance Tax Act 1984 (c. 51)*
- 5 In Schedule 3 to the Inheritance Tax Act 1984 (gifts for national purposes etc) after the entry for the Countryside Council for Wales insert –  
“The Marine Management Organisation.” 30
- Freedom of Information Act 2000 (c. 36)*
- 6 In Part 6 of Schedule 1 to the Freedom of Information Act 2000 (other public bodies and offices which are public authorities) insert at the appropriate place –  
“The Marine Management Organisation.” 35

***Schedule 3: Transfer schemes***

728. This Schedule sets out technical provisions in relation to transfer schemes.

***Paragraph 1: Introductory***

729. This paragraph explains the meaning of “transferor” and “transferee” to aid readers of this Schedule. We expect the “transferors” will be Government Departments and Natural England and the “transferee” will be the MMO.

***Paragraph 2: The property, rights and liabilities that may be transferred***

730. This paragraph makes it clear that property, rights or liabilities which would normally be excluded from transfer can be transferred by means of including them in a transfer scheme.

***Paragraph 3: Creation and apportionment of property, rights or liabilities***

731. This paragraph enables the creation of interests in or rights over transferred property for the benefit of transferor and/or the transferee and/or others and between the transferor and transferee.

***Paragraph 4: Vesting certificates***

732. This paragraph enables the Secretary of State to create legal certainty by issuing a vesting certificate to set out conclusively what the effect of a transfer scheme is.

***Paragraph 5: Employment contracts***

733. This ensures continuity of contracts for staff transferring to the MMO. This is important in respect of continuity of service in relation to pensions etc..

***Paragraph 6: Employee expressing objection to transfer of contract of employment***

734. This paragraph explains what happens if an employee objects to his employment being transferred to the MMO. The contract of employment will cease when the transfer would have taken place and they will not be considered to have been dismissed.

***Paragraph 7: Right to terminate contract of employment for substantial detrimental change in conditions***

735. This preserves the right of individuals to terminate their contract of employment where there has been a detrimental change in working conditions (that is a change other than the fact that their employer has changed).

***Paragraph 8: Civil servants***

736. Civil servants do not have contracts of employment but public servants (e.g. within a Non Departmental Public Body) will need employment contracts This paragraph sets out that the terms on which civil servants are employed (for example the staff handbook) are to be used to form the terms of their contract of employment as public servants.

SCHEDULE 3

Section 37

TRANSFER SCHEMES

*Introductory*

- 1 In this Schedule—
- “transferor” means the person from whom any property, rights or liabilities are transferred; 5
  - “transferee” means the person to whom any property, rights or liabilities are transferred.

*The property, rights and liabilities that may be transferred*

- 2 (1) A scheme may provide for the transfer of any property, rights or liabilities, whether or not otherwise capable of being transferred or assigned. 10
- (2) A scheme may provide for the transfer of any property, rights or liabilities to take effect regardless of any such—
- (a) contravention,
  - (b) liability, or 15
  - (c) interference with an interest or right,
- as there would be (apart from this sub-paragraph) by reason of an inhibiting provision.
- (3) For the purposes of sub-paragraph (2) an “inhibiting provision” is a provision having effect (whether under an enactment or an agreement or in any other way) in relation to the terms on which the transferor is entitled to the property or right, or is subject to the liability, that is the subject of the transfer. 20

*Creation and apportionment of property, rights or liabilities*

- 3 (1) A scheme may— 25
- (a) create for the transferor interests in or rights over property transferred by virtue of the scheme;
  - (b) create for the transferee interests in or rights over property retained by the transferor;
  - (c) create rights or liabilities between the transferor and the transferee. 30
- (2) In this Schedule, any reference—
- (a) to the transfer of interests, rights or liabilities by virtue of a scheme, or
  - (b) to any interests, rights or liabilities transferred by virtue of a scheme, includes a reference to the creation of interests, rights or liabilities, or to interests, rights or liabilities created, by virtue of sub-paragraph (1). 35
- (3) A scheme may make incidental provision as to the interests, rights and liabilities of persons other than the transferor and the transferee with respect to the subject matter of the scheme.

***Paragraph 9: Compensation***

737. This allows the Secretary of State to include provision for compensation payments in transfer schemes.

***Paragraph 10: Validity***

738. This ensures that anything done by the transferor before the time of transfer is still valid after transfer. An example of this would be where the MFA has signed the lease for a building and then subsequently becomes the MMO. This paragraph would ensure that the signature is still valid.

***Paragraph 11: Continuity***

739. This allows anything done by a transferor in relation to something transferred to be treated as though it had been done by the MMO (the transferee). Similarly, the MMO may continue to do anything started by the transferor before transfer. For example if an enforcement action were being taken against someone by the MFA, this paragraph would enable the MMO to continue the action. Similarly, if an employee had brought a court action against their employer (the transferor), that case would continue against the MMO after the transfer.

***Paragraph 12: Documents***

740. This paragraph means that any reference to the MFA in a document can legally be read as a reference to the MMO. This saves having to change the wording on documents such as leases, etc.

***Paragraph 13: Remedies***

741. This clause means that the rights, powers and remedies which were available to the transferor are available to the MMO - in relation to any right or liability that it assumes on transfer - in exactly the same way as they could have been relied upon by the transferring organisation.

***Paragraph 14: Interim arrangements***

742. This paragraph enables the Secretary of State to include as part of a scheme arrangements for premises, facilities and staff to be made available to the MMO by the transferor(s) during the period after the scheme is made but before the permanent transfers take place.

***Paragraph 15: Retrospective modification of schemes***

743. This enables the Secretary of State to remedy any mistakes made in schemes by making changes as though they had been in place from the time of the scheme. This is to avoid adversely affecting matters such as continuity of service.

***Paragraph 16: Incidental, consequential, supplemental, or transitional provision or savings***

744. This enables the Secretary of State to include within schemes additional provisions that are needed for a smooth transition to the new arrangements and those designed to make the changes work efficiently.



*Vesting certificates*

- 4 A certificate by the Secretary of State that anything specified in the certificate has vested in any person by virtue of a scheme is conclusive evidence of that fact for all purposes.

*Employment contracts*

5

- 5 (1) This paragraph applies if rights and liabilities under a contract of employment are transferred by virtue of a scheme.
- (2) The contract of employment –
- (a) is not terminated by the transfer, and
  - (b) has effect from the transfer date as if made between the employee and the transferee. 10
- (3) The rights, powers, duties and liabilities of the transferor under or in connection with the contract are transferred to the transferee on the transfer date.
- (4) Anything done before the transfer date by or in relation to the transferor in respect of the contract or the employee is to be treated from that date as having been done by or in relation to the transferee. 15
- (5) This paragraph is subject to paragraph 6.

*Employee expressing objection to transfer of contract of employment*

- 6 (1) Rights and liabilities under a contract of employment are not transferred under this Schedule if the employee objects to the transfer and informs the transferor or transferee of that objection. 20
- (2) If the employee informs the transferor or transferee of an objection under sub-paragraph (1) –
- (a) the employee's contract of employment is terminated immediately before the transfer date, but
  - (b) the employee is not to be treated, for any purpose, as having been dismissed by the transferor. 25

*Right to terminate contract of employment for substantial detrimental change in conditions*

- 7 Nothing in this Schedule affects any right a person has to terminate a contract of employment if (apart from the change of employer) a substantial detrimental change is made in the person's working conditions. 30

*Civil servants*

- 8 (1) This Schedule applies with the following modifications in relation to employment in the civil service of the State on terms which do not constitute a contract of employment. 35
- (2) In the case of an individual who holds employment in the civil service of the State immediately before the transfer date –
- (a) the individual is to be treated as employed by virtue of a contract of employment, 40



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(b)	the terms of that employment are to be regarded as constituting the terms of that contract, and	
(c)	the reference in paragraph 6 to dismissal by the transferor is to be read as a reference to termination of that employment.	
(3)	In the case of an individual who is to hold employment in the civil service of the State on and after the transfer date, the terms and conditions of the individual's contract of employment immediately before that date have effect on and after that date as if they were terms and conditions of the individual's employment in the civil service of the State.	5
<i>Compensation</i>		10
9	A scheme may contain provision for the payment of compensation by the Secretary of State to any person whose interests are adversely affected by the scheme.	
<i>Validity</i>		
10	A transfer under this Schedule does not affect the validity of anything done by or in relation to the transferor before the transfer takes effect.	15
<i>Continuity</i>		
11	(1) Anything which—	
	(a) is done by the transferor for the purposes of, or otherwise in connection with, anything transferred by virtue of a scheme, and	20
	(b) is in effect immediately before the transfer date, is to be treated as done by the transferee.	
	(2) There may be continued by or in relation to the transferee anything (including legal proceedings)—	
	(a) which relates to anything transferred by virtue of a scheme, and	25
	(b) which is in the process of being done by or in relation to the transferor immediately before the transfer date.	
<i>Documents</i>		
12	In any document which—	
	(a) relates to anything transferred by virtue of a scheme, and	30
	(b) is in effect immediately before the transfer date, any reference to the transferor is to be read as a reference to the transferee.	
<i>Remedies</i>		
13	(1) As from the date on which a transfer takes effect—	
	(a) the transferee, and	35
	(b) any other persons,	
	are to have the same rights, powers and remedies with regard to any right or liability transferred as if the right or liability had at all times been a right or liability of the transferee.	

***Schedule 4: Preparation of an MPS or of amendments of an MPS***

745. This Schedule sets out the procedure which must be followed when preparing or amending a marine policy statement (an “MPS”).

746. *Paragraph 2* defines certain terms used in this Schedule.

747. *Paragraph 3* sets out the stages of preparation of an MPS. This is relevant to consultation between Northern Ireland departments under paragraph 4, and the preparation of the Statement of Public Participation under paragraph 5.

748. *Paragraph 4* requires that the Department of Environment in Northern Ireland consult with the other relevant Northern Ireland departments at each stage of the preparation or amendment of an MPS. ‘Stages’ are defined in paragraph 3.

749. *Paragraphs 5 and 6* make provision for the publication of a ‘Statement of Public Participation’ (“SPP”) by the policy authorities engaged in preparing or amending the MPS. This must set out how and when the policy authorities intend to involve “interested persons” in the process (defined in sub-paragraph (3)). Policy authorities must keep the SPP under review, and must amend it when necessary to keep it up to date and re-publish it as amended. They are obliged to take all reasonable steps to comply with the SPP.

*Interim arrangements*

- 14 (1) A scheme may include provision requiring a transferor to make available to a transferee during any interim period any of the following—
- (a) any designated premises or facilities occupied or used by the transferor; 5
  - (b) any designated officers or employees of the transferor.
- (2) In this paragraph “interim period”, in the case of any transfer by virtue of a scheme, means a period—
- (a) beginning with the day following the making of the scheme, and
  - (b) ending with the date on which the transfer takes effect. 10

*Retrospective modification of schemes*

- 15 (1) If, at any time after a scheme has come into force, the Secretary of State considers it appropriate to do so, the Secretary of State may direct that the scheme shall be taken to have come into force with such modifications as may be specified in the direction. 15
- (2) A direction under this paragraph—
- (a) may make, with effect from the coming into force of the scheme, such provision as could have been made by the scheme, and
  - (b) in connection with giving effect to that provision from that time, may contain such incidental, consequential, supplemental, or transitional provision or savings as the Secretary of State thinks fit. 20

*Incidental, consequential, supplemental, or transitional provision or savings*

- 16 A scheme may include such incidental, consequential, supplemental, or transitional provision or savings as the Secretary of State thinks fit.

SCHEDULE 4

Sections 40 and 42

25

PREPARATION OF AN MPS OR OF AMENDMENTS OF AN MPS

*Introductory*

- 1 Before any policy authorities publish a relevant document, they must comply with the requirements imposed by the following provisions of this Schedule. 30

*Interpretation*

- 2 (1) In this Schedule—
- “the consultation draft” is to be read in accordance with paragraph 8;
  - “the final text” means that draft of the relevant document which is adopted by the relevant authorities and published by them under paragraph 12 as the relevant document; 35
  - “the relevant authorities” means the policy authorities that publish the relevant document;
  - “relevant document” means—

750. The SPP must contain a timetable for the various stages of preparing the MPS or amendments, and must also set out how and when representations about the consultation draft (defined in *paragraph 8*) should be made.

751. *Paragraph 7* requires policy authorities to allow a “reasonable interval” between publishing the consultation draft and settling the final text, to allow people to make representations about the consultation draft, and then for the policy authorities to consider those representations.

752. *Paragraph 8* requires the policy authorities to prepare a draft of the MPS (or amendments) and publish it so that “interested persons” are aware of it and may make representations about it. “Interested persons” is defined in sub-paragraph (4).

753. *Paragraph 9* permits any person to make representations about the consultation draft, but requires that such representations must be made in accordance with the SPP (see *paragraph 6*).

754. *Paragraph 10* requires the policy authorities to consider any representations made under *paragraph 9* when they are settling the final text of the MPS (or amendments).

755. If the policy authorities make any changes to the MPS or amendments between publishing the consultation draft and adopting the final text, *paragraph 11* requires that they publish a summary of those changes and the reasons for them alongside the final text.

756. *Paragraph 12* establishes that the policy authorities adopt the final text by deciding that that text should be published as the MPS, and then notifying the other policy authorities of their decision. As soon as possible after all the policy authorities have adopted the final text, it must be published. Sub-paragraph (4) provides that policy authorities which have not yet adopted the final text must be given a ‘reasonable interval’ in which to do so before the MPS is published.

757. *Paragraph 13* provides that an MPS is still valid even if it is not adopted by all the policy authorities which were engaged in preparing it.

- (a) an MPS, or
  - (b) amendments of an MPS;
- “SPP” means a statement of public participation under paragraph 5.

- (2) In this Schedule –
  - (a) any reference to each, some or any of the relevant authorities is a reference to those authorities separately, 5
  - (b) any other reference to the relevant authorities is a reference to those authorities acting jointly.

*The stages of preparation*

- 3 (1) Any reference in this Schedule to a stage of the preparation of the relevant document is a reference to any of the following – 10
  - (a) preparation and publication of an SPP under paragraph 5;
  - (b) preparation and publication of a consultation draft under paragraph 8;
  - (c) consideration of any representations made under paragraph 9 about the consultation draft; 15
  - (d) the settling of the final text.

*Consultation in Northern Ireland*

- 4 (1) If one of the relevant authorities is the Department of the Environment in Northern Ireland, that Department must consult the other relevant Northern Ireland departments – 20
  - (a) during the preparation of the consultation draft, and
  - (b) during the settling of the final text.
- (2) For the purposes of this paragraph the relevant Northern Ireland departments are those Northern Ireland departments which have functions in relation to the whole or any part of the UK marine area. 25

*Statement of public participation*

- 5 (1) The relevant authorities must prepare and publish a statement of public participation (an “SPP”).
- (2) An SPP is a statement of the policies settled by the relevant authorities for or in connection with the involvement of interested persons in the preparation of the relevant document. 30
- (3) In sub-paragraph (2) “interested persons” means –
  - (a) any persons appearing to the relevant authorities likely to be interested in, or affected by, policies proposed to be included in the relevant document, and 35
  - (b) members of the general public.
- (4) Each of the relevant authorities must take all reasonable steps to comply with the SPP.
- (5) The relevant authorities must keep the SPP under review. 40
- (6) If at any time the relevant authorities consider it necessary or expedient to revise the SPP, they must do so.





- (7) Where the relevant authorities revise the SPP, they must publish it as revised.
- (8) Any reference in this Schedule to an SPP includes a reference to an SPP as revised.

*Further provision about the content of an SPP* 5

- 6 (1) An SPP must include a timetable for –
- (a) the remaining stages of the preparation of the relevant document, and
  - (b) the further stages of adopting and publishing the relevant document.
- (2) An SPP may include provision for or in connection with the holding of public meetings about the consultation draft. 10
- (3) An SPP must include provision about the making of representations under paragraph 9 about the consultation draft, including provision about –
- (a) the manner in which representations may be made;
  - (b) the time within which representations must be made. 15

*Interval between publication of consultation draft and settlement of final text*

- 7 (1) The interval between –
- (a) the publication of the consultation draft under paragraph 8, and
  - (b) the settling of the final text,
- must be such as the relevant authorities consider reasonable for the purposes in sub-paragraph (2). 20
- (2) The purposes are –
- (a) the making of representations under paragraph 9 about the consultation draft;
  - (b) the consideration by the relevant authorities of any such representations before settling the final text. 25

*Preparation and publication of a consultation draft*

- 8 (1) The relevant authorities must prepare and publish a draft of the proposed relevant document (the “consultation draft”) for the purpose of enabling persons to make representations under paragraph 9 about the draft. 30
- (2) The relevant authorities must publish the consultation draft in such manner as they consider appropriate.
- (3) They must also take such steps as they consider appropriate to secure that the proposals contained in the consultation draft are brought to the attention of interested persons. 35
- (4) In sub-paragraph (3) “interested persons” means –
- (a) any persons appearing to the relevant authorities likely to be interested in, or affected by, policies proposed to be included in the relevant document, and
  - (b) members of the general public. 40



*Representations about the consultation draft*

- 9 (1) Any person may make representations about the consultation draft.  
(2) Any such representations are to be made in accordance with the SPP.

*Settling the final text: duty to consider representations*

- 10 In settling the final text, the relevant authorities must consider any representations made under paragraph 9 about the consultation draft. 5

*Differences between the consultation draft and the final text*

- 11 (1) This paragraph applies if there are any differences between—  
(a) the proposed policies, statements and information contained in the consultation draft, and 10  
(b) the policies, statements and information contained in the final text.  
(2) On the day on which the relevant authorities publish the relevant document, they must also publish—  
(a) a summary of the differences, and  
(b) a statement of the reasons for them. 15

*Adoption and publication of the relevant document*

- 12 (1) A policy authority adopts the final text by—  
(a) deciding to publish the final text as the relevant document, and  
(b) giving notice of that decision to each of the other policy authorities.  
(2) The relevant document is to be published as soon as reasonably practicable after the final text has been adopted by the relevant authorities. 20  
(3) If the final text has been adopted by one or more, but not all, of the policy authorities, the authorities that have not adopted the final text must be allowed a reasonable period in which to do so before the relevant document is published. 25

*Validity of document where policy authority participates in preparation but does not adopt*

- 13 (1) If any policy authority—  
(a) participates to any extent in the preparation of a relevant document, but  
(b) does not adopt the final text, 30  
sub-paragraph (2) applies.  
(2) The participation of the policy authority in the preparation of the relevant document does not affect the validity of—  
(a) the relevant document, or  
(b) the adoption of that document by any of the other policy authorities. 35

**Schedule 5: Marine plans: preparation and adoption**

758. This schedule sets out the procedure which must be followed when preparing marine plans under clause 46.

759. *Paragraphs 1 and 2* relate to co-operation, consultation and consistency in planning arrangements made by the different marine plan authorities.

760. Paragraph 1 places two duties on marine plan authorities when they decide to prepare a plan near to the border between their marine planning region and that of a different marine plan authority. When they make the decision to plan in that area (or an area which affects, or is affected by the other marine plan authority's region), they must notify the other marine plan authority of their intention. This is so that the other authority can consider how they might want to be involved in the planning process and plan ahead for their involvement. Then, as they prepare the plan, they must take all reasonable steps to ensure that plans on either side of the border are "compatible".

761. *Paragraph 2* places a duty on the Department of the Environment in Northern Ireland to consult other relevant Northern Ireland departments at key stages of the plan preparation process.

762. *Paragraphs 3 to 11* then set out the process for preparing and adopting marine plans.

763. *Paragraph 3* requires the marine plan authority to publish a 'statement of public involvement' or 'SPI' (similar to the Statement of Public Participation under Schedule 4 above). This statement sets out the marine plan authority's policies for involving "interested persons" in the preparation process, and must include certain elements:

- A clear description or identification of the area to be covered by the plan - subsection (3)
- An invitation to make representations about what should be included in the plan – subsection (4)
- The marine plan authority's intended timetable for the process – subsections (5) and (6);

764. The marine plan authority must take all reasonable steps to comply with the SPI, and must publish it in a way that brings it to the attention of "interested persons", as defined in sub-paragraph (9).

765. *Paragraph 4* requires the marine plan authority to keep the SPI under review and update it when necessary.

766. *Paragraph 5* makes clear that the marine plan authority may convene "advisory and consultative groups" to assist it in developing and consulting on a draft marine plan. The marine plan authority would be able to establish new groups, or make use of any existing groups which met its needs.

767. *Paragraph 6* sets out a non-exhaustive list of matters to be considered in preparing a marine plan. These include:

- any MPS adopted by the marine plan authority and in effect for the marine plan area;

SCHEDULE 5

Section 46

MARINE PLANS: PREPARATION AND ADOPTION

*Marine plans for marine plan areas adjoining or adjacent to different marine planning regions*

- 1 (1) Where a marine plan authority decides to prepare a marine plan for a marine plan area which— 5
  - (a) adjoins or is adjacent to the marine planning region of a different marine plan authority, or
  - (b) which affects, or is affected by, the whole or any part of such a region, the marine plan authority must, before beginning to prepare the plan, notify that other marine plan authority of its intention to do so. 10
- (2) In preparing marine plans for adjoining or adjacent marine plan areas which are in different marine planning regions, the marine plan authorities preparing the plans must take all reasonable steps to secure that the plans are compatible.

*Consultation in Northern Ireland* 15

- 2 (1) In the case of a marine plan for a marine plan area in the Northern Ireland offshore region, the marine plan authority must consult the relevant Northern Ireland departments— 20
  - (a) during the preparation of the consultation draft under paragraph 9, and
  - (b) during the settling of the text of the plan for adoption under paragraph 11.
- (2) For the purposes of this paragraph the relevant Northern Ireland departments are those Northern Ireland departments which have functions in relation to the whole or any part of the UK marine area. 25

*Statement of public involvement*

- 3 (1) Before preparing a marine plan for any marine plan area, a marine plan authority must prepare and publish a statement of public involvement (an “SPI”).
- (2) An SPI is a statement of the policies settled by the marine plan authority for or in connection with the involvement of interested persons in the preparation of the proposed marine plan. 30
- (3) An SPI must identify (by means of a map or otherwise) the proposed marine plan area.
- (4) An SPI must invite the making of representations in accordance with the SPI as to matters to be included in the proposed marine plan. 35
- (5) An SPI must include a proposed timetable for the preparation of the proposed marine plan.
- (6) The timetable must include a statement of when the marine plan authority expects to publish proposals for inclusion in the plan. 40
- (7) The marine plan authority must publish the SPI in a way calculated to bring it to the attention of interested persons.

- the results of the marine plan authority’s review of matters likely to affect the exercise of their functions (see clause 47);
- the SPI;
- any marine plan for a related area;
- for marine plans in coastal areas in England and Wales, any terrestrial development plan and regional planning documents for an adjacent area;
- any other plan prepared by a public or local authority in connection with the management of marine or coastal resources (e.g. River Basin Management Plans prepared under the Water Framework Directive<sup>1</sup>, Shoreline Management Plans).
- the powers and duties of the Crown Estate Commissioners.

768. Subsection (3) of paragraph 6 defines a ‘related’ marine plan area as one next to, overlapping with, affecting or affected by the proposed marine plan area.

769. Existing obligations under the Strategic Environmental Assessment Directive require that an assessment is made of the environmental impacts of a proposed plan. In addition to this environmental assessment, *paragraph 7* requires that the economic and social impacts of the proposed plan are appraised. Subparagraph (3) makes clear that the results of the appraisals are to influence which proposals the marine plan authority takes forward – it may only proceed with proposals if the results of the appraisals indicate that it is ‘appropriate’ to do so. Subparagraph (4) requires the marine plan authority to produce a report of the results of these appraisals.

770. *Paragraph 8* enables marine plan authorities to seek advice and assistance from bodies or authorities with relevant expertise.

771. *Paragraph 9* sets out the requirements for publication of the “consultation draft” of a marine plan. It must be published by the marine plan authority in a way that brings it to the attention of interested persons. Anybody may make representations about the draft plan, in accordance with the SPI.

772. *Paragraph 10* enables a marine plan authority to decide to hold an independent investigation into the draft plan, to look in more detail at the proposals or the responses received to the consultation on the proposals. Subparagraph (2) sets out the factors to which the authority should have regard in deciding whether to hold an independent investigation, and subparagraph (3) requires the investigator to make recommendations and give his reasons for them. Subparagraph (4) requires the marine plan authority to publish the recommendations and reasons given by the investigator.

773. *Paragraph 11* sets out the process for adopting and publishing a marine plan in its final form. A marine plan authority ‘adopts’ a marine plan by making the decision to publish it. Before deciding to adopt the marine plan, the authority must have regard to the results of the consultation and any independent investigation, and any other relevant matters.

774. Subparagraph (3) requires that Welsh Ministers must obtain the agreement of the Secretary of State before they adopt a marine plan which would be likely to affect or influence activities which are carried out by a Minister of the Crown.

- (8) The marine plan authority must take all reasonable steps to comply with the SPI.
- (9) In this paragraph “interested persons” means any persons appearing to the marine plan authority to be likely to be –
  - (a) affected by policies in the proposed marine plan, or
  - (b) interested in matters to which that plan may relate, and includes members of the general public.

*Review and revision of the SPI*

- 4 (1) The relevant authorities must keep the SPI under review.
- (2) If at any time the relevant authorities consider it necessary or expedient to revise the SPI, they must do so.
- (3) Where the relevant authorities revise the SPI, they must publish it as revised.
- (4) Any reference in this Schedule to an SPI includes a reference to an SPI as revised.

*Advisory and consultative groups*

- 5 (1) The steps that a marine plan authority 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
  - (b) consultation in connection with such proposals, include the convening of groups of persons for such purposes, and in such manner, as the marine plan authority considers appropriate.
- (2) In this paragraph “interested persons” has the same meaning as in paragraph 3.

*Matters to be considered in preparing a marine plan*

- 6 (1) The matters to which a marine plan authority is to have regard in preparing a marine plan include each of the matters in sub-paragraph (2).
- (2) They are –
  - (a) any MPS adopted by the marine plan authority and for the time being in effect,
  - (b) the results of the review required by section 47,
  - (c) the SPI under paragraph 3,
  - (d) any representations made in response to the invitation issued under sub-paragraph (4) of that paragraph,
  - (e) any marine plan proposed or adopted, whether by the same or any other marine plan authority, for any related marine plan area or proposed marine plan area,
  - (f) in the case of a proposed marine plan area in the English inshore region or in the Welsh inshore region –
    - (i) the development plan for any adjoining or adjacent area in England or Wales,
    - (ii) the Wales Spatial Plan prepared under section 60 of the Planning and Compulsory Purchase Act 2004 (c. 5),

775. Subparagraph (4) enables the marine plan authority to make changes to the draft marine plan before they adopt it, and subsection (5) requires that they publish the plan as soon as possible after they have adopted it, along with details of any changes and the reasons for them. If an independent investigation has been carried out, but the marine plan authority has not implemented some of the recommendations made by the investigator, they must also publish their reasons for not implementing the recommendations.



- (g) any plan (not falling within paragraph (e) or (f)) prepared by a public or local authority in connection with the management or use of the sea or the coast, or of marine or coastal resources, in the proposed marine plan area or in any adjoining or adjacent area in England or Wales, 5
- (h) the powers and duties of the Crown Estate Commissioners under the Crown Estate Act 1961 (c. 55),  
and such other matters as the marine plan authority 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 – 10
  - (a) the one area adjoins or is adjacent to the other;
  - (b) the one area lies wholly or partly within the other;
  - (c) the one area affects or is affected by the other.
- (4) Any reference in this paragraph to the “development plan” is to be construed in accordance with section 38(2) to (5) of the Planning and Compulsory Purchase Act 2004. 15

*Sustainability appraisals of likely environmental, social and economic effects*

- 7 (1) A marine plan authority preparing a marine plan must carry out a sustainability appraisal.
- (2) A sustainability appraisal consists of – 20
  - (a) an appraisal of the likely environmental effects of the authority’s proposals for inclusion in the plan, and
  - (b) an appraisal of the likely economic and social effects of those proposals.
- (3) The authority may only proceed with those proposals if it considers that, on balance, the results of the appraisals indicate that it is appropriate to do so. 25
- (4) The marine plan authority must publish a report of the results of any appraisal under this paragraph.

*Advice in connection with preparation of marine plan etc*

- 8 (1) In connection with the preparation of a marine plan, or of any proposals for a marine plan, – 30
  - (a) the marine plan authority, or
  - (b) a policy authority which is a constituent member of the marine plan authority,
- may seek advice or assistance from any body or authority in relation to any matter in which that body or authority has particular expertise. 35

*Publication of draft proposals etc*

- 9 (1) Before a marine plan is adopted, the marine plan authority preparing the plan must publish a draft (the “consultation draft”) containing its proposals for inclusion in the plan. 40
- (2) The marine plan authority must publish the consultation draft in such manner as it considers appropriate.



- (3) The marine plan authority 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.
- (4) Any person may make representations about the proposals in the consultation draft. 5
- (5) Any such representations are to be made in accordance with the SPI.
- (6) In this paragraph “interested persons” means any persons appearing to the marine plan authority to be likely to be –
  - (a) affected by the proposals, or
  - (b) interested in matters to which the proposals relate, 10and includes members of the general public.

*Independent investigation*

- 10 (1) A marine plan authority which has published a consultation draft in accordance with paragraph 9 may appoint an independent person to investigate the proposals contained in that draft and report on them. 15
- (2) In deciding whether to appoint such a person, the marine plan authority must have regard to –
  - (a) any representations received about the SPI,
  - (b) any representations received about the proposals published in the consultation draft, 20and such other matters as the marine plan authority considers relevant.
- (3) The person so appointed must –
  - (a) make recommendations, and
  - (b) give reasons for the recommendations.
- (4) The marine plan authority must publish the recommendations and the reasons given for them. 25

*Adoption of a marine plan*

- 11 (1) A marine plan is “adopted” by a marine plan authority –
  - (a) in a case where the marine plan authority is a single policy authority, when that authority has decided to publish the plan; 30
  - (b) in any other case, when the policy authorities which are constituent members of the marine plan authority have each decided to publish the plan in the same form;and “adopt” and related expressions are to be to be read accordingly.
- (2) Before adopting a marine plan, a policy authority must have regard to each of the following matters – 35
  - (a) any representations made under paragraph 9 about the proposals in the consultation draft,
  - (b) any recommendations made by any independent person appointed under paragraph 10, 40
  - (c) the reasons given by any such person for any such recommendations,and any other matters that the marine plan authority considers relevant.

***Schedule 6: Further provision about civil sanctions under Part 3***

***Paragraph 2: Fixed monetary penalties: other sanctions***

776. Imposition of a fixed monetary penalty removes the person's liability to criminal prosecution for the relevant offence in respect of the act of non-compliance in question. Liability to criminal prosecution is also removed if the person has discharged their liability to a fixed monetary penalty under subsection (2)(b) of clause 84.

777. The enforcement authority cannot issue either a compliance or remediation notice as well as a fixed monetary penalty to a person for the same offence.

***Paragraph 3: Variable monetary penalties: other sanctions***

778. Imposition of a variable monetary penalty removes the person's liability to criminal prosecution for the relevant offence in respect of the act of non-compliance in question.

779. The enforcement authority cannot issue a compliance notice and a variable monetary penalty for the same offence.

***Paragraph 4: Combination of sanctions***

780. The enforcement authority can only combine sanctions for the same offence in certain ways. In addition to the combinations prohibited in Paragraphs 2 and 3, it cannot impose either a variable monetary penalty or issue a stop notice for an offence where a fixed monetary penalty has been imposed or a person has discharged their liability to a fixed monetary penalty under subsection (2)(b) of clause 84. All other permutations are possible.

***Paragraph 5: Monetary penalties***

781. This paragraph allows an order made under clauses 83 and 85 to make provision for discounts for early payment of a monetary penalty and for the payment of interest or a financial penalty 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.

- (3) If a proposed marine plan for an area within the Welsh inshore region is such that it will (if adopted) be likely to affect or influence the discharge of any functions of a Minister of the Crown, the Welsh Ministers may only adopt the proposed marine plan with the agreement of the Secretary of State.
- (4) The marine plan which a policy authority decides to publish may be— 5
  - (a) the same as the proposals published in the consultation draft, or
  - (b) those proposals with such modifications as the policy authority thinks fit.
- (5) A marine plan authority which adopts a marine plan must publish the plan as soon as reasonably practicable after its adoption, together with statements of each of the following— 10
  - (a) any modifications that have been made to the proposals published in the consultation draft,
  - (b) the reasons for those modifications,
  - (c) if any recommendations made by any independent person appointed under paragraph 10 have not been implemented in the marine plan, the reasons why those recommendations have not been implemented. 15

SCHEDULE 6

Section 88

FURTHER PROVISION ABOUT CIVIL SANCTIONS UNDER PART 3 20

*Interpretation*

- 1 In this Schedule “civil sanction” means a fixed monetary penalty, a variable monetary penalty or enforcement undertaking (and references to imposition of a civil sanction include acceptance of an enforcement undertaking).

*Fixed monetary penalties: other sanctions* 25

- 2 (1) Provision under section 83 must secure that, in a case where a notice of intent referred to in section 84(2)(a) is served on a person—
  - (a) no criminal proceedings for the offence to which the notice relates may be instituted against the person in respect of the act or omission 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 84(2)(b), and 30
  - (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 or omission. 35
- (2) Provision under section 83 must also secure that, in a case where a fixed monetary penalty is imposed on a person—
  - (a) 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 or omission giving rise to the penalty; 40
  - (b) the enforcement authority may not issue a compliance notice or a remediation notice to that person in respect of the act or omission giving rise to the penalty.

782. This paragraph also provides for the enforcement of unpaid penalties (and any interest or late payment charges) through the civil courts. It also allows an order to create a process of recovery by treating the penalty as if it were payable under a court order.

***Paragraph 6: Costs recovery***

783. An order made under clause 85 can require a person on whom a variable monetary penalty has been imposed to pay the costs the enforcement authority has incurred in imposing that penalty. Such costs would include investigation costs; administration costs; and costs of obtaining expert advice.

***Paragraph 7: Appeals***

784. This paragraph enables any order used for establishing a fixed or variable monetary penalty regime, or the acceptance of enforcement undertakings, as given under clauses 83, 85 and 87 respectively, to set out an appeals mechanism.

785. Sub-paragraphs (3) and (4) outline amongst other things the powers granted to any tribunal conducting an appeal.

***Paragraph 8: Excluded provision: Northern Ireland***

786. This prevents the Secretary of State making of orders relating to fixed or variable monetary penalties or the acceptance of enforcement undertakings where it is within the legislative competence of the Northern Ireland Assembly.

***Paragraph 9: Consultation and consent: Wales***

787. This provides for consultation between the Secretary of State and the Welsh Ministers when making orders relating to fixed or variable monetary penalties or the acceptance of enforcement undertakings.

***Paragraph 10: Consultation: general***

788. This requires the licensing authority proposing to make an order under clause 83, 85 or 87 to consult with the enforcement authority that will be the recipient of the powers to be granted by the order and such other persons the authority considers appropriate. The authority will also be required to consult with relevant organisations that it considers represent the interests of persons substantially affected by the proposals.

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

***Paragraph 11: Guidance as to use of civil sanctions***

790. The licensing authority may not make an order enabling the imposition of fixed or variable monetary penalties or acceptance of enforcement undertakings, unless it secures that the enforcement authority to publish guidance in relation to the use of these powers ("Penalty Guidance"). The enforcement authority may be required to consult specified persons before publishing or revising the Penalty Guidance. The Penalty Guidance must also be revised by the enforcement authority when appropriate, for example, when there has been a change in the rules. The order must also stipulate that the enforcement authority has regard to the Penalty Guidance when exercising its functions.

*Variable monetary penalties: other sanctions*

- 3 Provision under section 85 must secure that, in a case where a variable monetary penalty is imposed on a person –
- (a) 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 or omission giving rise to the penalty; 5
  - (b) the enforcement authority may not issue a compliance notice to that person in respect of the act or omission giving rise to the penalty.

*Combination of sanctions*

- 4 (1) Provision may not be made under section 83 and section 85 conferring powers on an enforcement authority in relation to the same offence unless it secures that – 10
- (a) the authority may not serve a notice of intent referred to in section 84(2)(a) on a person in relation to any act or omission where a variable monetary penalty has been imposed on that person in relation to that act or omission, and 15
  - (b) the authority may not serve a notice of intent referred to in section 86(2)(a) on a person in relation to any act or omission where –
    - (i) a fixed monetary penalty has been imposed on that person in relation to that act or omission, or 20
    - (ii) the person has discharged liability to a fixed monetary penalty in relation to that act or omission pursuant to section 84(2)(b).
- (2) Provision under section 83 which results in an enforcement authority having power to impose a fixed monetary penalty or to issue a stop notice in relation to the same offence must secure that – 25
- (a) the authority may not serve a notice of intent referred to in section 84(2)(a) on a person in relation to any act or omission where a stop notice has been served on that person in relation to that act or omission, and 30
  - (b) the authority may not serve a stop notice on a person in relation to any act or omission where –
    - (i) a fixed monetary penalty has been imposed on that person in relation to that act or omission, or
    - (ii) the person has discharged liability to a fixed monetary penalty in relation to that act or omission pursuant to section 84(2)(b). 35

*Monetary penalties*

- 5 (1) An order under section 83 or 85 which confers power on an enforcement authority to require a person to pay a fixed monetary penalty or a variable monetary penalty may include provision – 40
- (a) for early payment discounts;
  - (b) for the payment of interest or other financial penalties for late payment of the penalty, such interest or other financial penalties not in total to exceed the amount of that penalty; 45
  - (c) for enforcement of the penalty.
- (2) Provision under sub-paragraph (1)(c) may include –

791. The Penalty Guidance must contain information about the circumstances in which a sanction is likely to be imposed or undertakings accepted, the defences available to the person, and the person's rights of appeal.

***Paragraph 12: Guidance as to enforcement of offences***

792. This paragraph requires that, where the licensing authority makes an order enabling the imposition of fixed or variable monetary penalties or acceptance of enforcement undertakings, the enforcement authority should prepare and publish guidance regarding the manner in which the offence to which the power relates is enforced ("Enforcement Policy"). For each offence, the Enforcement Policy must set out the relevant sanctions to which a person may be liable. The Enforcement Policy must also set out the action that the enforcement authority may take to enforce the offence. For example, it might state that a particular offence will usually be enforced by way of a fixed monetary penalty rather than criminal prosecution. The Enforcement Policy must set out the circumstances in which the enforcement authority is likely to take such action. For example, the policy might say that criminal prosecution may be more likely where the person has a history of regulatory non-compliance. The Enforcement Policy, in contrast to Penalty Guidance, is focused on how particular offences are enforced.

793. An enforcement authority will be able to revise its guidance periodically. The enforcement authority will be required to consult with all persons it considers appropriate before publishing or revising its guidance.

***Paragraph 13: Publication of enforcement action***

794. Any order made under clauses 83, 85 and 87 establishing a civil sanction regime must make provision for the publication of certain information relating to its enforcement actions. Those particulars are listed in sub-paragraphs (2) to (4).

***Paragraph 14: Payment of penalties into Consolidated Fund etc***

795. Any monies received by the enforcement authority in pursuant of its enforcement functions under clauses 83, 85 and 87 must be paid into the relevant consolidated fund as determined by sub-paragraph (2).

***Paragraph 15: Disclosure of information***

796. This paragraph permits those listed in sub-paragraph (2) to disclose information to an enforcement authority that has had the new sanctioning powers conferred on it. Information may only be disclosed where the enforcement authority has an enforcement function in relation to a criminal offence and for the purposes of the enforcement authority exercising one of the new powers. The police will not have access to the new sanctioning powers but if, for example, they have begun a criminal investigation but think that it no longer merits a criminal prosecution, this clause would allow them to pass information to the enforcement authority to determine whether to issue an alternative sanction.



- (a) provision for the enforcement authority to recover the penalty, and any interest or other financial penalty for late payment, as a civil debt;
- (b) provision for the 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. 5

*Costs recovery*

- 6 (1) Provision under section 85 may include provision for an enforcement authority, by notice, to require a person on whom a variable monetary penalty is imposed to pay the costs incurred by the enforcement authority in relation to the imposition of the penalty up to the time of its imposition. 10
- (2) In sub-paragraph (1) the references to costs include in particular –
- (a) investigation costs;
  - (b) administration costs;
  - (c) costs of obtaining expert advice (including legal advice). 15
- (3) Provision under this paragraph must secure that, in any case where a notice requiring payment of costs is served –
- (a) the notice specifies the amount required to be paid;
  - (b) the enforcement authority may be required to provide a detailed breakdown of that amount; 20
  - (c) the person required to pay costs is not liable to pay any costs shown by the person to have been unnecessarily incurred;
  - (d) the person required to pay costs may appeal against –
    - (i) the decision of the enforcement authority to impose the requirement to pay costs; 25
    - (ii) the decision of the enforcement authority as to the amount of those costs.
- (4) Provision under this paragraph may include the provision referred to in sub-paragraphs (1)(b) and (c) and (2) of paragraph 5.
- (5) Provision under this paragraph must secure that an enforcement authority is required to publish guidance about how it will exercise the power conferred by the provision. 30

*Appeals*

- 7 (1) An order under section 83, 85 or 87 may not provide for the making of an appeal other than to – 35
- (a) the First-Tier Tribunal, or
  - (b) another tribunal created under an enactment.
- (2) In sub-paragraph (1)(b) “tribunal” does not include an ordinary court of law.
- (3) An order under section 83, 85 or 87 which makes provision for an appeal in relation to the imposition of any requirement or service of any notice may include – 40
- (a) provision suspending the requirement or notice pending determination of the appeal;
  - (b) provision as to the powers of any person to whom the appeal is made; 45



- (c) provision as to how any sum payable in pursuance of a decision of that person is to be recoverable.
- (4) The provision referred to in sub-paragraph (3)(b) includes provision conferring on the person to whom the appeal is made power –
- (a) to withdraw the requirement or notice; 5
  - (b) to confirm the requirement or notice;
  - (c) to take such steps as the enforcement authority could take in relation to the act or omission 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 enforcement authority; 10
  - (e) to award costs.

*Excluded provision: Northern Ireland*

- 8 An order under section 83, 85 or 87 may not, except for consequential purposes, make any provision which would be within the legislative competence of the Northern Ireland Assembly if it were contained in an Act of that Assembly. 15

*Consultation and consent: Wales*

- 9 (1) A Minister of the Crown must consult the Welsh Ministers before making an order under section 83, 85 or 87 in relation to an offence which applies in or in relation to Wales. 20
- (2) A Minister of the Crown must obtain the consent of the Welsh Ministers before making an order under section 83, 85 or 87 containing provision which relates to a Welsh ministerial matter.
- (3) The Welsh Ministers must consult the Secretary of State before making an order under section 83, 85 or 87. 25
- (4) In this paragraph –
- (a) “Welsh ministerial matter” means a matter in Wales in respect of which the Welsh Ministers exercise functions, and
  - (b) “Wales” has the meaning given by the Government of Wales Act 2006 (c. 32). 30

*Consultation: general*

- 10 (1) Before making an order under section 83, 85 or 87, the appropriate licensing authority must consult the following (in addition to any persons who must be consulted under paragraph 9) –
- (a) the enforcement authority to which the order relates, 35
  - (b) such organisations as appear to the licensing authority to be representative of persons substantially affected by the proposals, and
  - (c) such other persons as the licensing authority considers appropriate.
- (2) If, as a result of any consultation required by sub-paragraph (1), it appears to the licensing authority that it is appropriate substantially to change the whole or any part of the proposals, the licensing authority must undertake such further consultation with respect to the changes as it considers appropriate. 40



- (3) If, before the day on which this Schedule comes into force, 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 civil sanctions*

5

- 11 (1) Where power is conferred on an enforcement authority under section 83, 85 or 87 to impose a civil sanction in relation to an offence the provision conferring the power must secure the results in sub-paragraph (2).
- (2) Those results are that—
- (a) the enforcement authority must publish guidance about its use of the sanction, 10
  - (b) in the case of guidance relating to a fixed monetary penalty or a variable monetary penalty, the guidance must contain the relevant information,
  - (c) the enforcement authority must revise the guidance where appropriate, 15
  - (d) the enforcement authority must consult such persons as the provision may specify before publishing any guidance or revised guidance, and
  - (e) the enforcement authority must have regard to the guidance or revised guidance in exercising its functions. 20
- (3) In the case of guidance relating to a fixed monetary penalty, the relevant information referred to in sub-paragraph (2)(b) is information as to—
- (a) the circumstances in which the penalty is likely to be imposed,
  - (b) the circumstances in which it may not be imposed, 25
  - (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.
- (4) In the case of guidance relating to a variable monetary penalty, the relevant information referred to in sub-paragraph (2)(b) is information as to—
- (a) the circumstances in which the penalty is likely to be imposed,
  - (b) the circumstances in which it may not be imposed,
  - (c) the matters likely to be taken into account by the enforcement authority in determining the amount of the penalty (including, where relevant, any discounts for voluntary reporting of non-compliance), and 35
  - (d) rights to make representations and objections and rights of appeal. 30

*Guidance as to enforcement of offences*

- 12 (1) Where power is conferred on an enforcement authority under section 83, 85 or 87 impose a civil sanction in relation to an offence the enforcement authority must prepare and publish guidance about how the offence is enforced. 40
- (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, 45



- (b) the action which the enforcement authority may take to enforce the offence, whether by virtue of section 83, 85 or 87 or otherwise, and
- (c) the circumstances in which the enforcement authority is likely to take any such action.
- (3) An enforcement authority may from time to time revise guidance published by it under this paragraph and publish the revised guidance. 5
- (4) The enforcement authority must consult such persons as it considers appropriate before publishing any guidance or revised guidance under this paragraph.
- Publication of enforcement action* 10
- 13 (1) Where power is conferred on an enforcement authority under section 83, 85 or 87 to impose a civil sanction in relation an offence, the provision conferring the power must, subject to this paragraph, secure the result in sub-paragraph (2).
- (2) That result is that the enforcement authority must from time to time publish reports specifying – 15
- (a) the cases in which the civil sanction had been imposed,
- (b) where the civil sanction is a fixed monetary penalty, the case in which liability to the penalty has been discharged pursuant to section 84(2)(b), and 20
- (c) where the civil sanction is a variable monetary penalty, the case in which an undertaking referred to in section 86(5) is accepted from such a person.
- (3) In sub-paragraph (2)(a), the reference to cases in which the civil sanction has been imposed do not include cases where the sanction has been imposed but overturned on appeal. 25
- (4) The provision conferring the power need not secure the result in sub-paragraph (2) in cases where the appropriate licensing authority considers that it would be inappropriate to do so.
- Payment of penalties into Consolidated Fund etc* 30
- 14 (1) Where pursuant to any provision made under section 83, 85 or 87 an enforcement authority receives –
- (a) a fixed monetary penalty or a variable monetary penalty, or
- (b) any interest or other financial penalty for late payment of such a penalty, 35
- the authority must pay it into the relevant Fund.
- (2) In sub-paragraph (1) “the relevant Fund” means –
- (a) in a case where the authority has functions only in relation to Wales, the Welsh Consolidated Fund;
- (b) in a case where the authority has functions only in relation to 40
- (c) in a case where the authority has functions only in relation to Scotland, the Scottish Consolidated Fund;
- (c) in a case where the authority has functions only in relation to Northern Ireland, the Consolidated Fund of Northern Ireland;
- (d) in any other case, the Consolidated Fund.

***Schedule 7: Further provision about civil sanctions under Part 4***

***Paragraph 1***

797. This paragraph defines the meaning of “civil sanction”.

***Paragraph 2***

798. The imposition of a fixed monetary penalty removes the person's liability to criminal prosecution for the relevant offence in respect of the offence in question. Clause 127 requires that any order implementing fixed monetary penalties secures this.

***Paragraph 3: Monetary penalties***

799. This paragraph allows an order made under section 127 of the draft Bill to make provision for discounts for early payment of a monetary penalty and for the payment of interest or a financial penalty 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.

800. This paragraph also provides for the enforcement of unpaid penalties (and any interest or late payment charges) through the civil courts. It also allows the order to create a more streamlined process of recovery by treating the penalty as if it were payable under a court order.



*Disclosure of information*

- 15 (1) Information held by or on behalf of a person mentioned in sub-paragraph (2) may be disclosed to an enforcement authority on whom powers are conferred under section 83, 85 or 87 where –
- (a) the person has an enforcement function in relation to an offence, and 5
  - (b) the information is disclosed for the purpose of the exercise by the enforcement authority of any powers conferred on it under any of those sections in relation to that offence.
- (2) The persons are –
- (a) the Crown Prosecution Service, 10
  - (b) a member of a police force in England or Wales,
  - (c) a Procurator Fiscal,
  - (d) a constable of a police force in Scotland,
  - (e) the Public Prosecution Service for Northern Ireland, or
  - (f) a member of the Police Service of Northern Ireland. 15
- (3) It is immaterial for the purposes of sub-paragraph (1) whether the information was obtained before or after the coming into force of this paragraph.
- (4) A disclosure under this paragraph is not to be taken to breach any restriction on the disclosure of information (however imposed). 20
- (5) Nothing in this paragraph authorises the making of a disclosure in contravention of –
- (a) the Data Protection Act 1998 (c. 29), or
  - (b) Part 1 of the Regulation of Investigatory Powers Act 2000 (c. 23).
- (6) This paragraph does not affect a power to disclose which exists apart from this paragraph. 25

## SCHEDULE 7

Section 130

## FURTHER PROVISION ABOUT CIVIL SANCTIONS UNDER PART 4

*Interpretation*

- 1 In this Schedule “civil sanction” means a fixed monetary penalty or enforcement undertaking (and references to imposition of a civil sanction include acceptance of an enforcement undertaking). 30

*Fixed monetary penalties: other sanctions*

- 2 (1) Provision under section 127 must secure that, in a case where a notice of intent referred to in section 128(2)(a) is served on a person – 35
- (a) no criminal proceedings for the offence to which the notice relates may be instituted against the person in respect of the act or omission 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 128(2)(b), and 40

***Paragraph 4: Appeals***

801. This paragraph makes provision for appeals against civil sanctions to a First Tier Tribunal or such other tribunal as may be created under any enactment.

802. Provision may be made in relation to the suspension of a requirement or notice pending determination of the appeal, the powers of the appeal tribunal and as to payment in pursuance of that determination. The tribunal to whom the appeal is made shall have the power to withdraw or confirm any notice or requirement, enforce it, remit any matter relating to it back to the enforcement authority, and award costs.

***Paragraph 5: Consultation and consent: Wales***

803. This provides for consultation to take place between a Minister of the Crown and Welsh Ministers before making orders relating to fixed or variable monetary penalties or the acceptance of enforcement undertakings.

***Paragraph 6: Consultation: general***

804. This requires the “appropriate authority” (the Secretary of State or Welsh Ministers) proposing to make an order under clause 127 or 129 to consult with the enforcement authority that will be the recipient of the powers to be granted by the order and such other persons the authority considers appropriate. The relevant authority will also be required to consult with relevant organisations that it considers represents the interests of persons substantially affected by the proposals.

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

***Paragraph 7: Guidance as to use of civil sanctions***

806. The Secretary of State or Welsh Ministers may not make an order enabling the imposition of fixed monetary penalties or acceptance of enforcement undertakings, unless it secures that the enforcement authority publish guidance in relation to the use of these powers (“Penalty Guidance”). The enforcement authority may be required to consult specified persons before publishing or revising the Penalty Guidance. The Penalty Guidance must also be revised by the enforcement authority where appropriate, for example, where there has been a change in the rules. The order must also stipulate that the enforcement authority have regard to the Penalty Guidance when exercising its functions.

807. The Penalty Guidance must contain information about the circumstances in which a sanction is likely to be imposed or undertakings accepted, the amount of the penalty, the defences available to the person, and the person's rights of appeal.

***Paragraph 8: Guidance as to enforcement of offences***

808. This clause requires that, where the Secretary of State or Welsh Ministers make an order enabling the imposition of fixed monetary penalties or acceptance of enforcement undertakings, the enforcement authority should prepare and publish guidance regarding the manner in which the offence to which the power relates is enforced (“Enforcement Policy”). For each offence, the Enforcement Policy must set out the relevant sanctions to which a person may be liable. The Enforcement Policy must also set out the action, which the enforcement authority may take to enforce the offence. For example, it might state that a particular offence will usually be enforced by way of a fixed monetary penalty rather than criminal prosecution. The Enforcement Policy must set out the circumstances in which the enforcement authority is likely to take such action. For example, the policy might say that criminal prosecution may be

- (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 or omission.
- (2) Provision under section 127 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 or omission giving rise to the penalty. 5

#### *Monetary penalties*

- 3 (1) An order under section 127 which confers power on an enforcement authority to require a person to pay a fixed monetary penalty may include provision – 10
  - (a) for early payment discounts;
  - (b) for the payment of interest or other financial penalties for late payment of the penalty, such interest or other financial penalties not in total to exceed the amount of that penalty; 15
  - (c) for enforcement of the penalty.
- (2) Provision under sub-paragraph (1)(c) may include –
  - (a) provision for the enforcement authority to recover the penalty, and any interest or other financial penalty for late payment, as a civil debt; 20
  - (b) provision for the 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*

- 4 (1) An order under section 127 or 129 may not provide for the making of an appeal other than to – 25
  - (a) the First-Tier Tribunal, or
  - (b) another tribunal created under an enactment.
- (2) In sub-paragraph (1)(b) “tribunal” does not include an ordinary court of law.
- (3) An order under section 127 or 129 which makes provision for an appeal in relation to the imposition of any requirement or service of any notice may include – 30
  - (a) provision suspending the requirement or notice pending determination of the appeal;
  - (b) provision as to the powers of any person to whom the appeal is made; 35
  - (c) provision as to how any sum payable in pursuance of a decision of that person is to be recoverable.
- (4) The provision referred to in sub-paragraph (3)(b) includes provision conferring on the person to whom the appeal is made power – 40
  - (a) to withdraw the requirement or notice;
  - (b) to confirm the requirement or notice;
  - (c) to take such steps as the enforcement authority could take in relation to the act or omission giving rise to the requirement or notice;

more likely where the person has a history of regulatory non-compliance. The Enforcement Policy, in contrast to Penalty Guidance, is focused on how particular offences are enforced.

809. An enforcement authority will be able to revise its guidance periodically. The enforcement authority will be required to consult with all persons it considers appropriate before publishing or revising its guidance

***Paragraph 9: Publication of Enforcement Information***

810. Any enforcement authority given powers in relation to civil sanctions shall from time to time be obliged to publish information, concerning their use of those powers, cases where a civil sanction is imposed (but not overturned on appeal), and in the case of fixed monetary, where liability is discharged by payment of a prescribed sum.

***Paragraph 10: Payment into Consolidated Fund***

811. All payments made in relation to civil sanctions are to be paid into either the Consolidated Fund or the Welsh Consolidated Fund as appropriate.

***Paragraph 11: Disclosure of information***

812. This paragraph permits those listed in subsection (2) to disclose information to an enforcement authority that has had the new sanctioning powers conferred on it. Information may only be disclosed where the enforcement authority has an enforcement function in relation to a criminal offence and for the purposes of the enforcement authority exercising one of the new powers. The police will not have access to the new sanctioning powers but if, for example, they have begun a criminal investigation but think that it no longer merits a criminal prosecution, this clause would allow them to pass information to the enforcement authority to determine whether to issue an alternative sanction.

- (d) to remit the decision whether to confirm the requirement or notice, or any matter relating to that decision, to the enforcement authority;
- (e) to award costs.

*Consultation and consent: Wales*

- 5 (1) A Minister of the Crown must consult the Welsh Ministers before making an order under section 127 or 129 in relation to an offence which applies in or in relation to Wales. 5
- (2) A Minister of the Crown must obtain the consent of the Welsh Ministers before making an order under section 127 or 129 containing provision which relates to a Welsh ministerial matter. 10
- (3) The Welsh Ministers must consult the Secretary of State before making an order under section 127 or 129.
- (4) In this paragraph “Welsh ministerial matter” means a matter in Wales (within the meaning of the Government of Wales Act 2006 (c. 32)) in respect of which the Welsh Ministers exercise functions. 15

*Consultation: general*

- 6 (1) Before making an order under section 127 or 129, the appropriate authority must consult the following (in addition to any persons who must be consulted under paragraph 5) – 20
- (a) the enforcement authority to which the order relates,
  - (b) such organisations as appear to the authority to be representative of persons substantially affected by the proposals, and
  - (c) such other persons as the authority considers appropriate.
- (2) If, as a result of any consultation required by sub-paragraph (1), it appears to the authority that it is appropriate substantially to change the whole or any part of the proposals, the authority must undertake such further consultation with respect to the changes as it considers appropriate. 25
- (3) If, before the day on which this Schedule comes into force, 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. 30

*Guidance as to use of civil sanctions*

- 7 (1) Where power is conferred on an enforcement authority under section 127 or 129 to impose a civil sanction in relation to an offence the provision conferring the power must secure the results in sub-paragraph (2). 35
- (2) Those results are that –
- (a) the enforcement authority must publish guidance about its use of the sanction,
  - (b) in the case of guidance relating to a fixed monetary penalty, the guidance must contain the relevant information, 40
  - (c) the enforcement authority must revise the guidance where appropriate,



- (d) the enforcement authority must consult such persons as the provision may specify before publishing any guidance or revised guidance, and
  - (e) the enforcement authority must have regard to the guidance or revised guidance in exercising its functions. 5
- (3) The relevant information referred to in sub-paragraph (2)(b) is information as to—
- (a) the circumstances in which the penalty is likely to be imposed,
  - (b) the circumstances in which it may not be imposed,
  - (c) the amount of the penalty, 10
  - (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*

- 8 (1) Where power is conferred on an enforcement authority under section 127 or 129 to impose a civil sanction in relation to an offence the enforcement authority must prepare and publish guidance about how the offence is enforced. 15
- (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, 20
  - (b) the action which the enforcement authority may take to enforce the offence, whether by virtue of section 127 or 129 or otherwise, and
  - (c) the circumstances in which the enforcement authority is likely to take any such action. 25
- (3) An enforcement authority may from time to time revise guidance published by it under this paragraph and publish the revised guidance.
- (4) The enforcement authority must consult such persons as it considers appropriate before publishing any guidance or revised guidance under this paragraph. 30

*Publication of enforcement action*

- 9 (1) Where power is conferred on an enforcement authority under section 127 or 129 to impose a civil sanction in relation an offence, the provision conferring the power must, subject to this paragraph, secure the result in sub-paragraph (2). 35
- (2) That result is that the enforcement authority must from time to time publish reports specifying—
- (a) the cases in which the civil sanction had been imposed, and
  - (b) where the civil sanction is a fixed monetary penalty, the case in which liability to the penalty has been discharged pursuant to section 128(2)(b). 40
- (3) In sub-paragraph (2)(a), the reference to cases in which the civil sanction has been imposed do not include cases where the sanction has been imposed but overturned on appeal.





- (4) The provision conferring the power need not secure the result in sub-paragraph (2) in cases where the appropriate authority considers that it would be inappropriate to do so.

*Payment of penalties into Consolidated Fund etc*

- 10 (1) Where pursuant to any provision made under section 127 or 129 an enforcement authority receives – 5
- (a) a fixed monetary penalty, or
  - (b) any interest or other financial penalty for late payment of such a penalty,
- the authority must pay it into the relevant Fund. 10
- (2) In sub-paragraph (1) “the relevant Fund” means –
- (a) in a case where the authority has functions only in relation to Wales, the Welsh Consolidated Fund;
  - (b) in any other case, the Consolidated Fund.

*Disclosure of information*

- 11 (1) Information held by or on behalf of a person mentioned in sub-paragraph (2) may be disclosed to an enforcement authority on whom powers are conferred under section 127 or 129 where –
- (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 enforcement authority of any powers conferred on it under either of those sections in relation to that offence. 20
- (2) The persons are –
- (a) the Crown Prosecution Service,
  - (b) a member of a police force in England or Wales, 25
  - (c) a Procurator Fiscal,
  - (d) a constable of a police force in Scotland,
  - (e) the Public Prosecution Service for Northern Ireland, or
  - (f) 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 force of this paragraph. 30
- (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 – 35
- (a) the Data Protection Act 1998 (c. 29), or
  - (b) Part 1 of the Regulation of Investigatory Powers Act 2000 (c. 23).
- (6) This paragraph does not affect a power to disclose which exists apart from this paragraph. 40

***Schedule 8: Inshore fisheries and conservation authorities: amendments***

813. Paragraph 1 repeals the Sea Fisheries Regulation Act 1966 (the 1966 Act). The 1966 Act relates to the sea fisheries of England and Wales and provides for the establishment of sea fisheries districts and sea fisheries committees. It is being repealed because equivalent and improved provision is made for the sea fisheries of England and Wales in the draft Bill.

814. Paragraphs 2 to 7 provide for amendment of the Sea Fish (Conservation) Act 1967. These amendments are consequential to the repeal of the 1966 Act and to the creation of IFC districts and IFC authorities.

815. Paragraph 8 provides for the amendment of section 101 of the Local Government Act 1972 concerning arrangements for discharge of functions by local authorities.

816. Paragraph 9 repeals section 37 of the Salmon Act 1986 concerning the power of local fisheries committees to make byelaws for the purpose of protecting salmon, and of preventing any interference with their migration. Section 37 is repealed because similar provision is made in Part 6 of the draft Bill.

817. Paragraph 10 amends section 13(4) of the Local Government and Housing Act 1989. This amendment is consequential to the repeal of the 1966 Act and the establishment of IFC authorities under the draft Bill.

818. Paragraph 11 sets out repeals to the Sea Fisheries (Wildlife Conservation) Act 1992. This Act concerns a duty to have regard to conservation of marine wildlife when discharging sea fisheries functions. These repeals are consequent to the repeal of the 1966 Act.

819. Paragraph 12 adds IFC authorities to schedule 7 of the Natural Environment and Rural Communities Act 2006. The Secretary of State may enter into an agreement with designated bodies listed in schedule 7 for that body to perform a Defra function in the whole or part of England.

SCHEDULE 8

Section 168

INSHORE FISHERIES AND CONSERVATION AUTHORITIES: AMENDMENTS

*Sea Fisheries Regulation Act 1966 (c. 38)*

- 1 The Sea Fisheries Regulation Act 1966 is repealed.

*Sea Fish (Conservation) Act 1967 (c. 84)*

5

- 2 The Sea Fish (Conservation) Act 1967 is amended as follows.

- 3 In section 3 (regulation of nets and other fishing gear), in subsection (7), for the words from “any byelaw” to “Sea Fisheries Regulation Act 1966” substitute “any byelaw made under section 144 of the Marine Act 2009”.

- 4 (1) Section 13 (institution of proceedings by local fisheries committee) is amended as follows. 10

- (2) In subsection (1)–

- (a) for “A local fisheries committee” substitute “An inshore fisheries and conservation authority”;  
(b) for “the district of the committee” substitute “its district”. 15

- (3) Omit subsection (2).

- (4) In consequence of the amendments made by this paragraph, the heading to the section becomes “Institution of proceedings by inshore fisheries and conservation authority”.

- 5 In section 16 (enforcement of orders under sections 1 and 2), omit– 20

- (a) paragraph (d) of subsection (1) (apart from the word “and” at the end of that paragraph);  
(b) subsection (2).

- 6 Section 17 (enforcement of orders under section 3) is repealed.

- 7 In section 22(1) (interpretation), for the definition of “local fisheries committee” substitute– 25

““inshore fisheries and conservation authority” means the authority for an inshore fisheries and conservation district established under section 138 of the Marine Act 2009;”.

*Local Government Act 1972 (c. 70)*

30

- 8 In section 101 of the Local Government Act 1972 (arrangements for discharge of functions by local authorities), for subsection (9) substitute–

“(9) Section 138 of the Marine Act 2009 is exempted from subsection (8) above.”

*Salmon Act 1986 (c. 62)*

35

- 9 Section 37 of the Salmon Act 1986 (power of local fisheries committee to make byelaws for purposes of protecting salmon, etc) is repealed.

***Schedule 9: Migratory and freshwater fish: consequential amendments***

820. *Paragraph 2* omits section 3 of the Salmon and Freshwater Fisheries Act 1975. Section 3 regulates the use of nets in certain waters. It is being repealed and future conditions will be introduced as conditions issued as part of a licence or authorisation.

821. *Paragraphs 3 to 5* omit sections 6 to 8 and 16 and 17 of the Salmon and Freshwater Fisheries Act 1975. These sections place restrictions on the operation of fixed nets and traps. The Environment Agency will include relevant operating conditions within the conditions of licences and authorisations.

822. *Paragraph 6* removes the cross-reference to section 17 of the Salmon and Freshwater Fisheries Act 1975, due to the repeal of that section.

823. *Paragraph 7* omits sections 19 to 21 of the Salmon and Freshwater Fisheries Act 1975. Section 19 contains offences in relation to close seasons and close times, section 20 sets out requirements in relation to operation of fixed engines and obstructions during close seasons and close times, and section 21 sets out similar requirements in relation to eel baskets. The offence in relation to close seasons and close times is now an instance of the general offence of breaching an Environment Agency byelaw, found in section 211 of the Water Resources Act 1991. Environment Agency may make equivalent provision to that in sections 20 and 21 by means of conditions of licences and authorisations, or by means of byelaws.

824. Amendments to section 25 of the Salmon and Freshwater Fisheries extend the licensing system to means of fishing which are not “instruments”. *Paragraph 8* amends other references to “instruments” in section 25 accordingly.

825. The new section 25 replaces the term “the appropriate national authority” for that of “the Minister”. Section 26 is also concerned with the licensing system, and *paragraph 9* therefore continues this substitution to ensure consistency.

*Local Government and Housing Act 1989 (c. 42)*

- 10 In section 13 of the Local Government and Housing Act 1989 (voting rights of members of certain committees), in subsection (4), for paragraph (b) substitute –
- “(b) an inshore fisheries and conservation authority for a district established under section 138 of the Marine Act 2009;”.
- 5

*Sea Fisheries (Wildlife Conservation) Act 1992 (c. 36)*

- 11 (1) Section 1 of the Sea Fisheries (Wildlife Conservation) Act 1992 (duty to have regard to conservation of marine wildlife when discharging sea fisheries functions) is amended as follows. 10
- (2) In subsection (1), omit “or any relevant body”.
- (3) In subsection (2), omit the definition of “relevant body”.

*Natural Environment and Rural Communities Act 2006 (c. 16)*

- 12 In Schedule 7 to the Natural Environment and Rural Communities Act 2006 (designated bodies), after paragraph 1 insert – 15
- “1A An inshore fisheries and conservation authority for a district established in England under section 138 of the Marine Act 2009.”

SCHEDULE 9

Section 201(1)

MIGRATORY AND FRESHWATER FISH: CONSEQUENTIAL AMENDMENTS

*Salmon and Freshwater Fisheries Act 1975 (c. 51)* 20

- 1 The Salmon and Freshwater Fisheries Act 1975 has effect subject to the amendments in paragraphs 2 to 16.
- 2 Section 3 (nets) is omitted.
- 3 Sections 6 to 8 (fixed engines, fishing weirs and fishing mill dams) are omitted. 25
- 4 Section 16 (boxes and cribs in weirs and dams) is omitted.
- 5 Section 17 (restrictions on taking salmon or trout above or below an obstruction or in mill races) is omitted.
- 6 In section 18 (supplementary provisions), in subsection (4), for “, 15 or 17” substitute “or 15”. 30
- 7 Sections 19 to 21 (close seasons etc) are omitted.
- 8 (1) Section 25 (licences to fish) is amended as follows.
- (2) In subsection (2), for “an instrument” substitute “the means of fishing”.
- (3) In subsection (3) –
- (a) for “an instrument” substitute “any means of fishing”; 35
- (b) for “the instrument” substitute “that means of fishing”.

826. *Paragraph 10* amends section 27 of the Salmon and Freshwater Fisheries Act 1975 (unlicensed fishing) in consequence of provisions on fishing authorisations.

827. *Paragraph 11* amends section 33 of the Salmon and Freshwater Fisheries Act 1975 which enables enforcement officers to enter lands situated on or near to any waters where they suspect any relevant offence is being committed or likely to be committed under migratory and freshwater fisheries legislation. Officers first need to apply to any justice of the peace. This power has been extended so that officers have the power when the offence has been committed in relation to lampreys, smelt and any kind of fish added by order under section 40A.

828. *Paragraph 14* omits Schedule 1 to the Salmon and Freshwater Fisheries Act 1975, which makes provision in relation to close times. Clause 194(4) empowers the Environment Agency to set close times through byelaws.

829. *Paragraph 15* amends Schedule 2 to the Salmon and Freshwater Fisheries Act 1975.

830. Under Schedule 2, the Environment Agency has the power in special cases to exempt a person from paying a licence duty which would otherwise apply. It operates a policy of excusing all those under the age of 12, and runs a number of other schemes whereby the duty is not payable: for example for people with mental disabilities who are sometimes presented with the fishing experience as a form of therapy, and teenagers who are encouraged to participate in fishing to reduce anti-social behaviour. *Paragraph 15(2)* provides that the Agency may exempt persons from the obligation to have a licence when it considers it appropriate to do so.

831. Paragraph 2 of Schedule 2 gives the Environment Agency the power to introduce licences for different areas. Clause 187 clarifies that the Environment Agency may introduce licences that differentiate between different types of water (such as canals or to rivers of different qualities of fishing). *Paragraph 15(3)* allows different rates to be charged for such licences.

832. Amendments to section 25 of the Salmon and Freshwater Fisheries extend the licensing system to means of fishing which are not “instruments”. *Paragraph 15(4), 15(7), 15(8), 15(9) and 15(10)* amends other references to “instruments” in Schedule 2 accordingly.

833. *Paragraph 16* amends Schedule 4 to the Salmon and Freshwater Fisheries Act 1975. This Schedule sets out the penalties for offences contained with that Act. The references to offences under sections 19 and 21 will be repealed in consequence of the repeal of those sections.

834. Those who operate a fish farm are exempt from those offences listed in Part 1 of Schedule 4 to the Fisheries Act 1981. For example, offences of killing unclean or immature fish, or killing fish during close seasons. *Paragraph 17* updates this list to ensure it makes correct reference to the (amended) offences under the Water Resources Act 1991.

835. Amendments to Schedule 25 to the Water Resources Act 1991 extend the Environment Agency’s byelaw making powers to salmon, trout, lampreys, smelt, shad, eels, freshwater fish and any kind of fish specified by order under section 40A of the Salmon and Freshwater Fisheries Act 1975. *Paragraphs 21 and 23* amend other references to fish species in Schedule 25 and section 212 accordingly.

836. *Paragraph 22; Paragraph 7(1)* of Schedule 25 to the Water Resources Act 1991 requires that when making byelaws within the district of a Sea Fisheries Committee the Environment Agency must seek its consent. Sea Fisheries Committees are to be replaced with Inshore Fisheries and Conservation Authorities; the relationship between the two jurisdictions will be managed administratively rather than through statutory limitations.

- 9 (1) Section 26 (limitation of fishing licences), is amended as follows
- (2) In subsection (1), for “the Minister” substitute “the appropriate national authority”.
- (3) In subsection (2)–
- (a) for “the Minister” substitute “the appropriate national authority”; 5
  - (b) for “he” (in both places) substitute “that authority”;
  - (c) for “his” substitute “that authority’s”;
  - (d) for “him” substitute “that authority”.
- (4) In subsection (3)–
- (a) for “The Minister” substitute “The appropriate national authority”; 10
  - (b) for “him” substitute “that authority”;
  - (c) for “he” substitute “that authority”.
- (5) In subsection (6)–
- (a) for “The Minister” substitute “The appropriate national authority”;
  - (b) for “him” substitute “that authority”; 15
  - (c) for “he” substitute “that authority”.
- (6) In subsection (7)–
- (a) for “the Minister”, in the first place, substitute “the appropriate national authority”;
  - (b) for “the Minister”, in the second place, substitute “that authority”. 20
- 10 (1) Section 27 (unlicensed fishing) is amended as follows.
- (2) The existing provision is renumbered as subsection (1).
- (3) In that subsection, after “of any description” insert “by any licensable means of fishing”.
- (4) In that subsection, for paragraphs (a) and (b) substitute– 25
- “(a) fishes for or takes fish of that description by that means and –
    - (i) is not entitled to use that means for that purpose by virtue of a fishing licence, or
    - (ii) is acting in breach of any condition of such a licence, or 30  - (b) where that licensable means of fishing is an instrument, has that instrument in his possession with intent to use it for that purpose and is not entitled to use it for that purpose by virtue of a fishing licence.”
- (5) After that subsection insert– 35
- “(2) Subsection (1) above does not apply to a person where–
    - (a) he has permission under section 25(10) above to take fish of that description in that place by that means, and
    - (b) he is not acting in breach of any condition of that permission.” 40
- 11 In section 33 (orders and warrants to enter suspected premises), in subsection (2)–

837. Paragraph 7(2) prohibits the Environment Agency from making byelaws which would prejudice any powers of a sewerage undertaker to discharge sewage which is permitted under any other Act. The repeal of this subparagraph is consequential on the repeal of paragraph 6(4) (of Schedule 25 to the Water Resources Act 1991) by clause 195.

838. Paragraph 22 of this Schedule therefore omits this paragraph.

839. Section 13 of the Environment Act 1995 requires the Environment Agency to create regional and local fisheries advisory committees. *Paragraph 24* amends the reference to kinds of fish within this section.



- (a) for “or any salmon, trout, freshwater fish or eels to have been illegally taken” substitute “or an offence against this Act to have been committed in the taking of any fish”;
- (b) for “all salmon, trout, freshwater fish or eels” substitute “fish”.
- 12 In section 34, for the words from “illegally takes or kills” to “by this Act” substitute “takes or kills any fish where the taking or killing constitutes an offence under this Act, or is found on or near any waters with intent to take or kill any fish where the taking or killing would constitute an offence under this Act, or having an instrument prohibited by this Act in his possession for the capture of any fish, where the capture would constitute an offence under this Act”. 5 10
- 13 (1) In section 41 (definitions), subsection (1) is amended as follows.
- (2) In the definition of “fixed engine”, in paragraph (d), for “salmon or trout” substitute “fish”.
- (3) After the definition of “general licence” insert— 15  
““historic installation” has the meaning given by section 25 above;”;
- (4) After the definition of “inland water” insert—  
““licensable means of fishing” has the meaning given by section 25 above;”. 20
- 14 Schedule 1 (close seasons and close times) is omitted.
- 15 (1) Schedule 2 (licences) is amended as follows.
- (2) In paragraph 1(2), for “in special cases” substitute “in such cases as it considers appropriate”.
- (3) In paragraph 2, for the words from “different instruments” to “different descriptions of fish” substitute “different descriptions of licence”. 25
- (4) In paragraph 3, for “any instrument” substitute “any licensable means of fishing”.
- (5) In paragraph 4—  
(a) for “the Minister”, in the first place, substitute “the appropriate national authority”; 30  
(b) for “the Minister”, in the second place, substitute “that authority”.
- (6) In paragraph 5—  
(a) for “The Minister” substitute “The appropriate national authority”;  
(b) for “his” substitute “that authority’s”; 35  
(c) for “the Minister” substitute “that authority”.
- (7) In paragraph 7—  
(a) for “an instrument” substitute “any licensable means of fishing”;  
(b) for “that instrument” substitute “that means”.
- (8) In paragraph 9— 40  
(a) in sub-paragraph (1)—  
(i) for “an instrument of any description” substitute “any licensable means of fishing”;



- (ii) for “with instruments of that description” substitute “by that means”;
- (iii) for “an instrument of that description”, in the first place, substitute “that means of fishing”;
- (iv) in paragraph (b), for “an instrument of that description”, substitute “that means of fishing”; 5
- (v) in paragraph (c), for “the instrument” substitute “that means of fishing”;
- (b) in sub-paragraph (2)–
  - (i) for “an instrument of any description” substitute “any licensable means of fishing”; 10
  - (ii) for “an instrument of that description” substitute “that means of fishing”;
  - (iii) for “the instrument”, in the first place, substitute “that means of fishing”; 15
  - (iv) in paragraph (c), for “the instrument” substitute “that means of fishing”.
- (9) In paragraph 13, for “the instrument”, in both places, substitute “the means of fishing”.
- (10) In paragraph 17, for “instrument” substitute “other thing”. 20
- 16 (1) Schedule 4 (offences) is amended as follows.
  - (2) In the table in paragraph 1(2), the entries relating to section 19(2), section 19(4), section 19(6), section 19(7) and section 21 are omitted.
  - (3) In that table, in the entry relating to section 27 –
    - (a) in the second column – 25
      - (i) after “fishing for fish” insert “by licensable means of fishing”;
      - (ii) after “unlicensed” insert “licensable”;
    - (b) in the third column, in paragraph (a), for the words from “instrument” to “rod and line” substitute “offence is one alleged to be committed by use or possession of rod and line (only)”. 30
  - (4) In paragraph 1(3), for the words from “both” to the end substitute –
    - “(a) both are engaged in committing –
      - (i) an offence under section 1 above, other than one committed without any instrument, or
      - (ii) an offence under section 27 above, other than one committed by means of a rod and line, or 35
    - (b) one is aiding, abetting, counselling or procuring the commission of such an offence by the other.”
  - (5) In paragraph 7, for “salmon, trout or freshwater fish” substitute “fish”.
- Fisheries Act 1981 (c. 29)* 40
  - 17 (1) In the Fisheries Act 1981, in Part 1 of Schedule 4 (offences to which section 33(1) of that Act applies), paragraph 6 is amended as follows.
  - (2) In paragraph (a), after “any fish” insert “to which paragraph 6 of that Schedule applies”.



- (3) After paragraph (a) insert –  
 “(aa) specifying close seasons or times for the taking of any fish to which that paragraph applies by such means as may be prescribed by the byelaws;”.
- (4) In paragraph (b), for “trout or any freshwater fish of a size” substitute “any fish to which that paragraph applies of a size greater or” 5
- (5) In paragraph (c), for “salmon, trout, or freshwater fish” substitute “fish to which that paragraph applies”.
- (6) In paragraph (d), for “salmon, trout, freshwater fish and eels” substitute “fish to which that paragraph applies”. 10
- (7) In paragraph (f) –  
 (a) for “salmon or trout” substitute “fish to which that paragraph applies”;  
 (b) for “which is not licensed” substitute “which may not lawfully be used”. 15
- (8) In paragraph (g), for “the annual close season for salmon of a net capable of taking salmon” substitute “any close season or time for any description of fish to which that paragraph applies of a net capable of taking fish of that description”.
- Water Resources Act 1991 (c. 57)* 20
- 18 The Water Resources Act 1991 has effect subject to the amendments in paragraphs 19 to 23.
- 19 In section 115 (fisheries orders), in subsection (1) –  
 (a) in paragraph (a), after “Salmon and Freshwater Fisheries Act 1975” insert “(as amended by the Marine Act 2009)”; 25  
 (b) in paragraph (b), after “this Act” insert “(as so amended)”.
- 20 In section 116 (power to give effect to international obligations) –  
 (a) the existing provision is renumbered as subsection (1);  
 (b) after that subsection insert –  
 “(2) In subsection (1), the reference to functions includes any functions conferred on the Agency by virtue of the Marine Act 2009.” 30
- 21 (1) In Schedule 25 (byelaw-making powers of the Agency), paragraph 6 (byelaws for purposes of fisheries functions) is amended as follows.
- (2) In sub-paragraph (2) – 35  
 (a) the words “Subject to paragraph 7(1) below” are omitted;  
 (b) in paragraph (a), after “any fish” insert “to which this paragraph applies”;  
 (c) in paragraph (b) –  
 (i) in sub-paragraph (i), for “trout or any freshwater fish” substitute “any fish to which this paragraph applies”; 40  
 (ii) in sub-paragraph (ii), after “fish” insert “to which this paragraph applies”;

***Schedule 10: Warrants issued under section 224***

840. This Schedule sets out the procedure for applying for a warrant to enter a dwelling, rules about executing the warrant and other safeguards. It is based on the provisions in the Police and Criminal Evidence Act 1984.

- (d) in paragraph (c), for “salmon, trout, or freshwater fish” substitute “fish to which this paragraph applies”;
- (e) in paragraph (d), for “salmon, trout, freshwater fish and eels” substitute “fish to which this paragraph applies”;
- (f) in paragraph (g), omit “licensed”; 5
- (g) in paragraph (h)—
- (i) for “salmon or trout” substitute “fish to which this paragraph applies”;
- (ii) for “which is not licensed” substitute “which may not lawfully be used”; 10
- (h) in paragraph (i), for “the annual close season for salmon of a net capable of taking salmon” substitute “any close season or time for any description of fish to which this paragraph applies of a net capable of taking fish of that description”.
- (3) In sub-paragraph (5) for “salmon, trout, freshwater fish or eels” substitute “fish to which this paragraph applies”. 15
- (4) In sub-paragraph (7), at the end insert “(as amended by the Marine Act 2009)”.
- 22 In that Schedule, paragraph 7 is omitted.
- 23 (1) Section 212 (compensation in respect of certain fisheries byelaws) is amended as follows. 20
- (2) In subsection (2)—
- (a) in paragraph (a), for “salmon, trout, or freshwater fish” substitute “any fish to which paragraph 6 of that Schedule applies”;
- (b) in paragraph (b), for “salmon, trout, freshwater fish and eels” substitute “any such fish”. 25
- (3) In subsection (4) at the end insert “(as amended by the Marine Act 2009)”.
- Environment Act 1995 (c. 25)*
- 24 In section 13 of the Environment Act 1995 (regional and local fisheries advisory committees), in subsection (1)(a), for the words from “salmon fisheries” to “eel fisheries” substitute “fisheries referred to in section 6(6) above”. 30

## SCHEDULE 10

Section 224

## WARRANTS ISSUED UNDER SECTION 224

- Introductory* 35
- 1 (1) This Schedule has effect in relation to the issue to enforcement officers of warrants under section 224.
- (2) An entry into a dwelling under such a warrant is unlawful unless it complies with the provisions of this Schedule.





*Applications for warrants*

- 2 (1) Where an enforcement officer applies for a warrant, the officer must –
- (a) state the ground on which the application is made,
  - (b) state the enactment under which the warrant would be issued,
  - (c) specify the matters set out in sub-paragraph (2), and
  - (d) identify, so far as is practicable, the purpose for which entry is desired.
- 5
- (2) The matters are –
- (a) if the application relates to one or more dwellings specified in the application, each dwelling which it is desired to enter and inspect;
  - (b) if the application relates to any dwelling occupied or controlled by a person specified in the application –
    - (i) as many dwellings which it is desired to enter and inspect as it is reasonably practicable to specify,
    - (ii) the person who is in occupation or control of those dwellings and any others which it is desired to enter and inspect,
    - (iii) why it is necessary to search more dwellings than those specified under sub-paragraph (i), and
    - (iv) why it is not reasonably practicable to specify all the dwellings which it is desired to enter and inspect.
- 10
- 15
- 20
- (3) If the application is for a warrant authorising entry and inspection on more than one occasion, the officer must also state –
- (a) the ground on which the officer applies for such a warrant, and
  - (b) whether the officer seeks a warrant authorising an unlimited number of entries, or (if not) the maximum number of entries desired.
- 25
- 3 (1) An application for a warrant must be made without notice and must be supported by an information in writing or, in Scotland, evidence on oath.
- (2) The officer must answer on oath any question that the justice hearing the application asks the officer.

*Safeguards in connection with power of entry conferred by warrant*

- 4 (1) A warrant authorises an entry on one occasion only, unless it specifies that it authorises multiple entries.
- (2) If a warrant specifies that it authorises multiple entries, it must also specify whether the number of entries authorised is unlimited, or limited to a specified maximum.
- 35
- 5 (1) A warrant must specify –
- (a) the name of the person who applies for it,
  - (b) the date on which it is issued, and
  - (c) the enactment under which it is issued.
- (2) A warrant must also specify –
- (a) each dwelling to be entered, or
  - (b) in the case of an all premises warrant –
    - (i) the person who is in occupation or control of dwellings to be entered, and
- 40



- (ii) any dwellings under the person’s occupation or control which can be specified and which are to be entered.
- (3) A warrant must identify, so far as is practicable, the purpose for which entry is desired.
- 6 (1) Two copies are to be made of a warrant that specifies only one dwelling and does not authorise multiple entries. 5
- (2) As many copies as are reasonably required may be made of any other kind of warrant.
- (3) The copies must be clearly certified as copies.
- Execution of warrants* 10
- 7 (1) A warrant may be executed by any appropriate enforcement officer.
- (2) In sub-paragraph (1) the reference to an appropriate enforcement officer is a reference to any enforcement officer acting on behalf of the same relevant authority as the enforcement officer who applied for the warrant, and includes a reference to that officer. 15
- (3) In sub-paragraph (2) “relevant authority” means the person or body on whose behalf the officer who applied for the warrant was acting.
- 8 (1) A warrant may authorise persons to accompany any enforcement officer who is executing it.
- (2) A person authorised under this paragraph has the same powers as the officer whom the person is accompanying in respect of the execution of the warrant, but may exercise those powers only in the company of, and under the supervision of, an enforcement officer. 20
- 9 (1) Execution of a warrant must be within three months from the date of its issue. 25
- (2) Execution of a warrant must be at a reasonable time, unless it appears to the officer executing it that there are grounds for suspecting that the purpose of entering the dwelling may be frustrated if the officer seeks to enter at a reasonable time.
- 10 (1) Where the occupier of a dwelling that is to be entered under a warrant is present at the time when an enforcement officer seeks to execute the warrant, the following requirements must be satisfied – 30
  - (a) the occupier must be told the officer’s name;
  - (b) the officer must produce to the occupier documentary evidence of the fact that the officer is an enforcement officer; 35
  - (c) the officer must produce the warrant to the occupier;
  - (d) the officer must supply the occupier with a copy of it.
- (2) Where – 40
  - (a) the occupier of a dwelling that is to be entered under a warrant is not present when an enforcement officer seeks to execute it, but
  - (b) some other person who appears to the officer to be in charge of the dwelling is present,sub-paragraph (1) has effect as if any reference to the occupier were a reference to that other person.

*Schedule 11: Forfeiture of prohibited gear or under-sized fish*

841. Please see note to clause 249.

- (3) If there is no person present who appears to the enforcement officer to be in charge of the dwelling, the officer must leave a copy of the warrant in a prominent place in the dwelling.

*Return of warrants*

- 11 (1) A warrant which— 5
- (a) has been executed, or
  - (b) has not been executed within the time authorised for its execution, must be returned to the appropriate person.
- (2) In sub-paragraph (1) the appropriate person is— 10
- (a) in the case of a warrant issued by a justice of the peace in England and Wales, the designated officer for the local justice area in which the justice was acting when the warrant was issued; 10
  - (b) in the case of a warrant issued by a lay magistrate in Northern Ireland, the clerk of petty sessions for the petty sessions district in which the dwelling is situated; 15
  - (c) in the case of a warrant issued by a sheriff, the sheriff clerk;
  - (d) in the case of a warrant issued by a justice of the peace or stipendiary magistrate in Scotland, the clerk of the justice of the peace court.
- (3) A warrant that is returned under this paragraph must be retained by the person to whom it is returned for a period of 12 months. 20
- (4) If during that period the occupier of the dwelling to which the warrant relates asks to inspect it, the occupier must be allowed to do so.

SCHEDULE 11

Section 249

FORFEITURE OF PROHIBITED GEAR OR UNDER-SIZED FISH

- Application of Schedule* 25
- 1 (1) This Schedule applies where—
- (a) property seized by an enforcement officer in the exercise of any power conferred by this Act is in the possession of the relevant authority,
  - (b) the relevant authority is satisfied that there are reasonable grounds for believing that the property is forfeitable property, and 30
  - (c) either—
    - (i) no proceedings are being taken against any person in respect of the property, or
    - (ii) any such proceedings have concluded without any order for forfeiture having been made in respect of the property. 35
- (2) The following property is “forfeitable property”—
- (a) any item the use of which for sea fishing would in any circumstances constitute an offence under the law of England and Wales;
  - (b) any fish in respect of which, by virtue of the fish being smaller than a particular size, an offence under the law of England and Wales has been committed. 40



*Notice of intended forfeiture*

- 2 (1) The relevant authority must give notice of the intended forfeiture of the property (“notice of intended forfeiture”) to the appropriate person.
- (2) The notice of intended forfeiture must set out—
- (a) a description of the property, 5
  - (b) the grounds of the intended forfeiture, and
  - (c) how a person may give a notice of claim under this Schedule and the period within which such a notice must be given.
- (3) Property may be treated or condemned as forfeited under this Schedule only if— 10
- (a) the requirements of this paragraph have been complied with in the case of the property, or
  - (b) it was not reasonably practicable for them to be complied with.

*Notice of claim*

- 3 A person claiming that the property is not liable to forfeiture must give written notice of the claim to the relevant authority. 15
- 4 (1) A notice of claim must be given—
- (a) within one month of the day of the giving of the notice of intended forfeiture, or
  - (b) if no such notice has been given, within one month of the date of the seizure of the property. 20
- (2) A notice of claim must specify—
- (a) the name and address of the claimant, and
  - (b) in the case of a claimant who is outside the United Kingdom, the name and address of a solicitor in the United Kingdom who is authorised to accept service of process and to act on behalf of the claimant. 25
- (3) Service of process upon a solicitor so specified is to be taken to be proper service upon the claimant.
- (4) In a case in which notice of intended forfeiture was given to different persons on different days, the reference in this paragraph to the day on which that notice was given is a reference— 30
- (a) in relation to a person to whom notice of intended forfeiture was given, to the day on which that notice was given to that person, and
  - (b) in relation to any other person, to the day on which notice of intended forfeiture was given to the last person to be given such a notice. 35

*Automatic forfeiture in a case where no claim is made*

- 5 The property is to be taken to have been duly condemned as forfeited if— 40
- (a) by the end of the period for the giving of a notice of claim in respect of the property, no notice of claim has been given to the relevant authority, or
  - (b) a notice of claim has been given which does not comply with the requirements of paragraphs 3 and 4.





*Decision whether to take court proceedings to condemn property as forfeited*

- 6 (1) Where a notice of claim in respect of the property is duly given in accordance with paragraphs 3 and 4, the relevant authority must decide whether to take proceedings to ask the court to condemn the property as forfeited.
- (2) The decision whether to take such proceedings must be taken as soon as reasonably practicable after the receipt of the notice of claim. 5

*Return of property if no forfeiture proceedings*

- 7 (1) If, in a case in which a notice of claim has been given, the relevant authority decides not to take proceedings for condemnation of the property, it must return the property to the person appearing to it to be the owner of the property, or, if there is more than one such person, to one of those persons. 10
- (2) Any property required to be returned in accordance with sub-paragraph (1) must be returned as soon as reasonably practicable after the decision not to take proceedings for condemnation.

*Forfeiture proceedings*

- 8 (1) This paragraph applies if, in a case in which a notice of claim has been given, the relevant authority decides to take proceedings for the condemnation of the property by the court. 15
- (2) If the court is satisfied that the property is forfeitable property, it must condemn the property as forfeited. 20
- (3) If the court is not satisfied that the property is forfeitable property, the court must order the return of the property to the person appearing to the court to be entitled to it or, if there is more than one such person, to one of those persons.

*Supplementary provision about forfeiture proceedings*

- 9 Proceedings by virtue of this Schedule are civil proceedings and may be instituted – 25
- (a) in the High Court, or
- (b) in any magistrates' court in England or Wales.
- 10 (1) In proceedings by virtue of this Schedule, the claimant or the claimant's solicitor must make an oath that, at the time of the seizure, the property was, or was to the best of that person's knowledge and belief, the property of the claimant. 30
- (2) In proceedings by virtue of this Schedule instituted in the High Court – 35
- (a) the court may require the claimant to give such security for the costs of the proceedings as may be determined by the court, and
- (b) the claimant must comply with such a requirement.
- (3) If a requirement of this paragraph is not complied with, the court must give judgment for the relevant authority.
- 11 (1) In the case of proceedings by virtue of this Schedule instituted in a magistrates' court in England or Wales, either party may appeal against the decision of that court to the Crown Court. 40



- (2) This paragraph does not affect any right to require the statement of a case for the opinion of the High Court.
- 12 Where an appeal has been made (whether by case stated or otherwise) against the decision of the court in proceedings by virtue of this Schedule in relation to property, the property is to be left with the relevant authority pending the final determination of the matter. 5
- Effect of forfeiture*
- 13 Where property is treated or condemned as forfeited under this Schedule, the forfeiture is to be treated as having taken effect as from the time of the seizure. 10
- Disposal of property which is not returned*
- 14 (1) This paragraph applies where any property is required to be returned to a person under this Schedule.
- (2) If the property is still in the relevant authority’s possession after the end of the period of three months beginning with the day after the requirement to return it arose, the relevant authority may dispose of it in any manner it thinks fit. 15
- (3) The relevant authority may exercise its power under this paragraph to dispose of property only if it is not practicable at the time when the power is exercised to dispose of the property by returning it immediately to the person to whom it is required to be returned. 20
- Provisions as to proof*
- 15 In proceedings under this Schedule, the fact, form and manner of the seizure of the property are to be taken, without further evidence and unless the contrary is shown, to have been as set forth in the process. 25
- 16 In any proceedings, the condemnation by a court of property as forfeited under this Schedule may be proved by the production of—
- (a) the order or certificate of condemnation, or
- (b) a certified copy of the order purporting to be signed by an officer of the court by which the order or certificate was made or granted. 30
- Special provisions as to certain claimants*
- 17 (1) This paragraph applies where, at the time of the seizure of the property, it was—
- (a) the property of a body corporate,
- (b) the property of two or more partners, or 35
- (c) the property of more than five persons.
- (2) The oath required by paragraph 10, and any other thing required by this Schedule or by rules of court to be done by the owner of the property, may be sworn or done by—
- (a) a person falling within sub-paragraph (3), or 40
- (b) a person authorised to act on behalf of such a person.
- (3) The persons are—



- (a) where the owner is a body corporate, the secretary or some duly authorised officer of that body;
- (b) where the owners are in partnership, any one or more of the owners;
- (c) where there are more than five owners and they are not in partnership, any two or more of the owners acting on behalf of themselves and any of their co-owners who are not acting on their own behalf. 5

*Power to destroy fish before condemnation, etc*

- 18 (1) The relevant authority may destroy any fish liable to be treated or condemned as forfeited under this Schedule, even if such fish have not yet been so treated or condemned. 10
- (2) If in proceedings under this Schedule the court is not satisfied that any fish destroyed under this paragraph were forfeitable property, the relevant authority must, if requested to do so, pay to the claimant a sum of money equal to the market value of the fish at the time of seizure. 15
- (3) A claimant who accepts any sum of money paid under sub-paragraph (2) is not entitled to maintain any action on account of the seizure, detention or destruction of the fish.
- (4) For the purposes of sub-paragraph (2), the market value of any fish at the time of seizure is to be taken to be such amount as the relevant authority and the claimant may agree or, in default of agreement, as may be determined by a referee appointed by the Lord Chancellor. 20
- (5) The procedure on any reference to a referee under sub-paragraph (4) is to be such as may be determined by the referee.
- (6) The referee’s decision is final and conclusive. 25
- (7) The Lord Chancellor may not appoint as a referee for the purposes of this paragraph—
- (a) any official of a government department;
  - (b) any office-holder in, or any member of the staff of, the Scottish Administration. 30

*Saving for owner’s rights*

- 19 Neither the imposition of a requirement by virtue of this Schedule to return property to a person nor the return of property to a person in accordance with such a requirement affects—
- (a) the rights in relation to that property of any other person, or
  - (b) the right of any other person to enforce any rights against the person to whom it is returned. 35

*Interpretation*

- 20 In this Schedule—
- “the court” is to be read in accordance with paragraph 9;
  - “forfeitable property” is to be read in accordance with paragraph 1(2). 40

**Schedule 12: Amendments of the Harbours Act 1964**

842. Under the Harbours Act 1964, the relevant authority has powers to repeal or modify Acts of local application when making a Harbour Revision Order or a Harbour Reorganisation Scheme. Paragraph 2 provides that this power will also apply when making a Harbour Empowerment Order.

843. The draft Bill will amend the Harbours Act 1964 so that the authority that is currently responsible for issuing harbours orders will have the power, by order, to delegate some or all of its functions for making certain orders to another person or body, provided that person or body gives consent for the delegation.

844. In this way the licensing functions that govern harbours may be transferred to the same body that may be responsible for issuing marine licences as a result of an order issued under clause 93.

845. The functions the authority can delegate are:

- a) making harbour revision orders on receipt of an application
- b) making harbour revision orders without receipt of an application
- c) making orders that vary the constitution of harbour authorities
- d) making harbour empowerment orders
- e) confirming or making harbour reorganisation schemes
- f) making orders amending Acts of local application.

Such orders made by the relevant authority will be subject to negative resolution procedure.

846. Table 3 below illustrates who can issue which harbour order and in what circumstances after a delegation of powers has been made.

Table 3: Roles of harbour order issuing bodies after delegation

	<b>Harbour Act Relevant Authority</b>	<b>Delegated Public Body</b>
Making harbour revision orders on receipt of an application	Cannot issue	Can issue
Making harbour revision orders without receipt of an application	Can issue Gives consent to public body	Can only issue with consent of relevant authority
Making orders that vary the constitution of harbour authorities	Can issue	Can issue
Making harbour empowerment orders	Cannot issue	Can issue
Confirming or making harbour reorganisation schemes	Can issue Gives consent to public body	Can only issue with consent of relevant authority
Making orders amending Acts of local application	Cannot issue	Can issue

AMENDMENTS OF THE HARBOURS ACT 1964

- 1       The Harbours Act 1964 (c. 40) is amended as follows.
- Provision that may be made by harbour empowerment order*
- 2       (1) Section 16 (power to make harbour empowerment orders) is amended as follows. 5
- (2) In subsection (6) after “any Act (including this Act)” insert “and for repealing any statutory provision of local application affecting the area in relation to which the powers are intended to be exercised”.
- Delegation of certain functions under the Act* 10
- 3       (1) After section 42 (accounts and reports) insert –
- “Delegation of certain functions*
- 42A Power to make orders delegating functions**
- (1) The relevant authority may by order provide for such of the delegable functions as are designated in the order to be exercisable by such person as is designated in the order. 15
- (2) An authority may make an order under subsection (1) only with the consent of the person designated in it (“the delegate”).
- (3) The delegate – 20
- (a) must comply with the order, and
- (b) is to be taken to have all the powers necessary to do so.
- (4) For so long as an order under subsection (1) remains in force, the functions designated in the order – 25
- (a) are exercisable by the delegate acting on behalf of the authority, and
- (b) are not exercisable by the authority.
- This subsection is subject to subsections (5) and (6).
- (5) The delegate must obtain the consent of the relevant authority before exercising any function under – 30
- (a) section 15;
- (b) section 15A;
- (c) section 18.
- (6) Subsection (4)(b) does not apply to any function under – 35
- (a) section 15;
- (b) section 15A;
- (c) section 18.
- (7) If a function is, by virtue of an order under subsection (1), exercisable by a person, any reference in this Act to the relevant authority is to be read, so far as relating to that function or the exercise of it, as a reference to that person. 40

847. Paragraph 4 inserts a new section 42B into the Harbours Act. Its effect would be that no such order or scheme could be made which would repeal or modify any provision made by the Secretary of State, whether under the Marine Act, an instrument made under that Act or a provision of local application, without the prior consent of Welsh Ministers. The new sections also provide that if Welsh Ministers have not refused their consent within a period to be set, the Secretary of State may continue with the process of making the order.

848. Similarly, paragraph 4 inserts a further new section 42C into the Harbours Act which would have the reciprocal effect of that described immediately above.

849. Paragraphs 5 and 6 make amendments to bring the Act, as it applies to England and Wales, into line with arrangements in Scotland. At present, if there are any objections to a proposed harbour order then a public inquiry must be held. This is so even if only a single objection was made and the objector did not request an inquiry be held.

850. These paragraphs allow the Secretary of State to decide whether an inquiry is necessary. It gives particular weight to objections from certain people or organisations.



- (8) An order under subsection (1) may make different provision for different cases, different areas or different persons.
- (9) The delegable functions are functions under the following sections –
- (a) section 14 (making harbour revision orders, except as mentioned in paragraph (b) below); 5
  - (b) section 15 (making harbour revision orders for limited purposes for securing harbour efficiency);
  - (c) section 15A (making orders varying powers of appointment in the constitutions of harbour authorities);
  - (d) section 16 (making harbour empowerment orders); 10
  - (e) section 18 (confirming or making harbour reorganisation schemes);
  - (f) section 60 (making orders amending Acts of local application).
- (10) In this section “the relevant authority”, in relation to any delegable function, means the authority by whom (apart from any order under subsection (1)) the function is exercisable.” 15
- (2) In section 54 (orders and regulations) after subsection (2) insert –
- “(3) Subsection (4) applies to any statutory instrument containing –
- (a) an order made under section 42A by a relevant authority in relation to a delegable function, or 20
  - (b) an order made by any person, by virtue of an order under that section, in the exercise of a delegable function under section 14, 15, 16 or 18.
- (4) A statutory instrument to which this subsection applies – 25
- (a) if the relevant authority in relation to the delegable function is the Secretary of State, is subject to annulment in pursuance of a resolution of either House of Parliament;
  - (b) if the relevant authority in relation to the delegable function is the Welsh Ministers, is subject to annulment in pursuance of a resolution of the National Assembly for Wales.”. 30

*Consent of Welsh Ministers or Secretary of State required for making of certain harbour orders*

4 After section 42A (inserted by paragraph 3(1)) insert –

**“42B Consent of Welsh Ministers required for making of certain orders and schemes 35**

- (1) This section applies to any harbour revision order or harbour empowerment order which is made in the exercise of an English delegated function and which excludes, modifies or repeals –
- (a) any provision of the Marine Act 2009 in so far as it applies to Wales; 40
  - (b) any instrument made under that Act by the Welsh Ministers;
  - (c) any statutory provision of local application made by the Welsh Ministers.
- (2) This section also applies to any harbour reorganisation scheme which – 45



- (a) is made in the exercise of an English delegated function, and
  - (b) repeals or amends any statutory provision of local application made by the Welsh Ministers.
- (3) The delegate must notify the Welsh Ministers of any intention to make an order or scheme to which this section applies. 5
- (4) The delegate must not make the order or (as the case may be) scheme if, within the prescribed period beginning with the date of the notification under subsection (3), the Welsh Ministers refuse their consent to the making of it.
- (5) In this section – 10
  - “delegate” has the meaning given by section 42A;
  - “English delegated function” means a function in respect of which an order under section 42A has been made and in relation to which the relevant authority is the Secretary of State; 15
  - “prescribed period” means such period as is prescribed in an order made by the Secretary of State for the purposes of this section.
- 42C Consent of Secretary of State required for making of certain orders and schemes 20**
  - (1) This section applies to any harbour revision order or harbour empowerment order which is made in the exercise of a Welsh delegated function and which excludes, modifies or repeals –
    - (a) any provision of the Marine Act 2009 in so far as it applies to England; 25
    - (b) any instrument made under that Act by the Secretary of State;
    - (c) any statutory provision of local application made by the Secretary of State.
  - (2) This section also applies to any harbour reorganisation scheme which – 30
    - (a) is made in the exercise of a Welsh delegated function, and
    - (b) repeals or amends any statutory provision of local application made by the Secretary of State.
  - (3) The delegate must notify the Secretary of State of any intention to make an order or scheme to which this section applies. 35
  - (4) The delegate must not make the order or (as the case may be) scheme if, within the prescribed period beginning with the date of the notification under subsection (3), the Secretary of State refuses consent to the making of it.
  - (5) In this section – 40
    - “delegate” has the meaning given by section 42A;
    - “prescribed period” means such period as is prescribed in an order made by the Secretary of State for the purposes of this section;
    - “Welsh delegated function” means a function in respect of which an order under section 42A has been made and in 45



relation to which the relevant authority is the Welsh Ministers.”.

*Procedure for dealing with applications for harbour orders*

- 5 (1) In Schedule 3 (procedure for making harbour revision and empowerment orders), paragraph 18 (which provides for the holding of an inquiry or public hearing when an objection is made) is amended as follows. 5
- (2) For sub-paragraph (1) substitute –
- “(1) This paragraph applies if an objection to the application was made to the Secretary of State and has not been withdrawn unless –
- (a) the Secretary of State decides that the application shall not proceed further, 10
- (b) the Secretary of State considers that the application is frivolous or trivial,
- (c) the objection does not specify the grounds on which it is made, or 15
- (d) the objection was not made within the period allowed for making it.
- (1A) Before deciding the application under paragraph 19, the Secretary of State may –
- (a) cause an inquiry to be held, or 20
- (b) give to the person who made the objection referred to in sub-paragraph (1) an opportunity of appearing before and being heard by a person appointed by the Secretary of State.
- (1B) Where – 25
- (a) the objection referred to in sub-paragraph (1) is made by a person within sub-paragraph (1C), and
- (b) that person makes a request in writing to the Secretary of State that the objection be referred to an inquiry or dealt with in accordance with sub-paragraph (1A)(b), 30
- the Secretary of State must, before deciding the application under paragraph 19, either cause an inquiry to be held or, if the Secretary of State so determines, cause the objection to be dealt with in accordance with sub-paragraph (1A)(b).
- (1C) The persons within this sub-paragraph are – 35
- (a) any local authority for an area in which the harbour (or any part of it) is situated,
- (b) the relevant conservation body, and
- (c) if the order will authorise the compulsory acquisition of land, any person who is entitled to be served with notice under paragraph 11.”. 40
- (3) In sub-paragraph (2) for “sub-paragraph (1)(a)” substitute “sub-paragraph (1A)(b)”.
- (4) In sub-paragraph (3) omit paragraph (a).
- (5) After sub-paragraph (3) insert – 45



- “(4) In this paragraph—
- “local authority” means—
- (a) in England, a county council, a district council, a London borough council, the Common Council of the City of London, the Council of the Isles of Scilly, a parish council and a parish meeting of a parish not having a separate parish council, and 5
  - (b) in Wales, a county council, a county borough council and a community council; 10
- “the relevant conservation body” means—
- (a) if the harbour (or any part of it) is situated in England, Natural England, and
  - (b) if the harbour (or any part of it) is situated in Wales, the Countryside Council for Wales.”. 10

*Procedure where harbour revision orders are made otherwise than on application* 15

- 6 (1) For paragraph 28 of Schedule 3 (inquiry to be held in most cases where an objection is made) substitute—
- “28 (1) This paragraph applies if an objection to the proposal was made to the Secretary of State and has not been withdrawn unless—
- (a) the Secretary of State decides that the proposal shall not proceed further, 20
  - (b) the Secretary of State considers that the objection is frivolous or trivial,
  - (c) the objection does not specify the grounds on which it is made, or 25
  - (d) the objection was not made within the period allowed for making it.
- (2) Before deciding the application under paragraph 29, the Secretary of State may—
- (a) cause an inquiry to be held, or 30
  - (b) give to the person who made the objection referred to in sub-paragraph (1) an opportunity of appearing before and being heard by a person appointed by the Secretary of State.
- (3) Where— 35
- (a) the objection referred to in sub-paragraph (1) is made by a person within sub-paragraph (4), and
  - (b) that person makes a request in writing to the Secretary of State that the objection be referred to an inquiry or dealt with in accordance with sub-paragraph (2)(b), 40
- the Secretary of State must, before deciding the application under paragraph 29, either cause an inquiry to be held or, if the Secretary of State so determines, cause the objection to be dealt with in accordance with sub-paragraph (2)(b).
- (4) The persons within this sub-paragraph are— 45
- (a) any local authority for an area in which the harbour (or any part of it) is situated, and
  - (b) the relevant conservation body.





- (5) Where an objector is heard in accordance with sub-paragraph (2)(b), the Secretary of State must allow such other persons as the Secretary of State thinks appropriate to be heard on the same occasion.
- (6) In this paragraph “local authority” and “relevant conservation body” have the same meaning as in paragraph 18.” 5
- (2) In paragraph 29 of that Schedule (decision on harbour revision order proposed by Secretary of State), in sub-paragraph (1)(b), after “inquiry” insert “and of any person appointed for the purpose of hearing an objector”.

## **FINANCIAL EFFECTS OF THE BILL**

851. The draft Bill will not result on public expenditure, beyond that already accounted for in Departmental Expenditure Limits.

## **EFFECTS OF THE BILL ON PUBLIC SERVICE MANPOWER**

852. The draft Bill provides for the establishment of the Marine Management Organisation. The Impact Assessment outlines the anticipated structure and staffing requirements for the MMO. The MMO will be staffed by the existing 179 staff currently employed by the Marine and Fisheries Agency, plus staff from the Department for Transport, Department for Business, Enterprise and Regulatory Reform and from the Department for Environment Food and Rural Affairs. This includes staff performing fisheries management, nature conservation and licensing, including the Executive team and support services such as HR and finance. The provisions in the draft Bill will require approximately an additional 40 staff to fulfil the new duties of the MMO.

853. Responsibility for inshore fisheries management in England and Wales will be transferred from Sea Fisheries Committees (SFCs) to newly created Inshore Fisheries and Conservation Authorities (IFCAs) through the draft Bill. Around 115 existing SFC staff will be transferred to the new Authorities at the same time. IFC Authorities are likely to recruit further staff (e.g. enforcement officers) to meet their wider duties but this is a matter for the local authorities responsible for funding IFCAs.

854. It is also likely there will be a small number of additional staff required on a temporary basis to implement coastal access within coastal local authorities.

855. The draft Bill is not expected to have any significant implications for public sector manpower aside from this.

## **IMPACT ASSESSMENT**

856. An impact assessment (IA) of the draft Bill's provisions has been published alongside the draft Bill, and sets out where there will be an impact on business, Government and the third sector. The evidence presented in the Marine Bill Impact Assessment indicates that total discounted benefits of the draft Bill's provisions (other than coastal access provisions) over a 20 year period are estimated at £1.9 – £4.2bn. Total discounted costs over a 20 year period are estimated at £0.7bn – £1.5bn. Therefore, the best estimate net benefit of implementing the draft Bill is £1.9bn.

857. The IA outlines that the provisions will aid reduction of carbon emissions and help the UK Government and devolved administrations meet targets to limit greenhouse gas emissions. The net value of the carbon savings brought forward every year from the reduced time required in the licensing application stage is £72.5 million (present value of the annual benefits over 20 years for England and Wales only).

858. The coastal access impacts have been assessed separately. The evidence on these provisions indicates that total discounted benefits over a 20 year period will be £57 – 285mn, with total discounted costs at £31 – 106mn. The best estimate net benefit of the coastal access provisions is therefore £89mn. There are not expected to be any significant changes to greenhouse gas emissions as a result of changes to coastal access.

859. The ranges presented in the costs and benefits are an indication of the different costs/benefits associated with regulatory options and the inherent uncertainty in the estimation process.

860. The IA is available for Members in the Vote Office and to the public on the DEFRA website at [www.defra.gov.uk](http://www.defra.gov.uk).

### **EUROPEAN CONVENTION ON HUMAN RIGHTS**

861. The Secretary of State has concluded that the draft Bill is compatible with the European Convention on Human Rights and has made a statement to that effect.

### **TERRITORIAL EXTENT AND DEVOLUTION**

862. The draft Bill extends to England and Wales, Scotland and Northern Ireland. It has been drafted for the purposes of consultation. Before the Bill is introduced into the UK Parliament, agreement from each of the devolved administrations on how to handle the devolved aspects of the Bill will need to be reached, and the Bill amended accordingly.

### **COMMENCEMENT**

863. The provisions of the draft Bill will come into force as outlined in clause 300. It is likely that different provisions will come into effect at different times.





# Draft Marine Bill

Impact Assessment

April 2008

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## Summary: Intervention & Options

Defra

Impact Assessment of the Marine Bill

**Stage:** Final Draft

**Version:** 1

**Date:** 3 April 2008

**Related Publications:** A Marine Bill – A consultation document of the Department for Environment, Food and Rural Affairs; A Sea Change – A Marine Bill White Paper and Partial Regulatory Impact Assessment

**Available to view or download at:**

<http://www.defra.gov.uk/marine>

### What is the problem under consideration? Why is government intervention necessary?

The UK Government and devolved administrations are committed to pursuing sustainable development, including in the marine area and inland waters. Existing institutional arrangements carry considerable risk that we will not make the best use of marine space and resources and will be unable to cope with the increased demands we expect to be making on the marine area in the future. Marine licensing is currently complex, preventing regulators from making holistic decisions and placing a continuing burden on marine developers. Evidence shows that marine and freshwater biodiversity, some fish stocks and ecosystems are deteriorating, with considerable risk that national/international commitments will not be met and the economic potential of marine resources will not be realised.

### What are the policy objectives and the intended effects?

The overall objective of the Marine Bill is to help the UK Government implement their strategy for sustainable development of the marine and coastal area. To do so we wish to introduce a marine planning system; streamline the licensing process for specified marine activities; introduce a new flexible mechanism for conserving marine biodiversity; simplify, modernise and extend some arrangements for managing marine fisheries; establish a new Marine Management Organisation (MMO); and modernise migratory and freshwater fisheries management powers. Pursuing these proposals together will maximise the effect of each individual element.

### What policy options have been considered? Please justify any preferred option.

Defra has developed the proposals through extensive consultation with Government departments, agencies, devolved administrations and the public. Initial policy options, including 'do nothing', can be found in the 2006 consultation document. Responses to this consultation and to a White Paper published in 2007, allowed Defra to adjust proposals and develop the preferred option of having a Marine Bill. The resulting draft Bill aims to achieve the Government's objectives for sustainable use of the marine area whilst accommodating as many stakeholders' views as possible. Evidence presented in this IA suggests benefits of the Marine Bill will outweigh the likely costs.

**When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?** A Post-Implementation Review will take place three years after Royal Assent for some of the proposals, four years after for inshore fisheries and conservation authorities, and approximately five and ten years after for marine planning, marine licensing and marine biodiversity proposals.

**Ministerial Sign-off** For final proposal / implementation stage Impact Assessments:

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible Minister:



Date: April 2008

## Summary: Analysis & Evidence

Policy Option: Chosen Option – Implement Marine Bill

Description: Implementation of Marine Bill

<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups' The Government will incur costs of establishing and running the Marine Management Organisation to deliver its functions (planning, licensing, nature conservation and marine fisheries); further costs to Government (including for the statutory nature conservation agencies) will include those related to the designation of MCZs. Marine developers and the fishing industry will incur costs complying with new licensing legislation.	
	<b>One-off (Transition)</b>	<b>Yrs</b>		
	<b>£22m – £26m</b>	1		
	<b>Average Annual Cost</b> (excluding one-off)			
	<b>£39m – £82m</b>	20	<b>Total Cost (PV)</b>	<b>£709m – £1.543bn</b>
Other <b>key non-monetised costs</b> by 'main affected groups' All significant costs have been estimated.				

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups' Marine developers will incur efficiency benefits estimated at £0.6 – 1.2m annually, through more streamlined licensing, planning, better data and a single point of contact. Marine nature conservation proposals are estimated to provide £749m – 1.6bn environmental benefits annually, including carbon sequestration, based on a range of scenarios developed to assess possible MCZ implementation.	
	<b>One-off</b>	<b>Yrs</b>		
	<b>£ N/A</b>			
	<b>Average Annual Benefit</b> (excluding one-off)			
	<b>£755m – £1.655bn</b>	20	<b>Total Benefit (PV)</b>	<b>£1.897bn – £4.171bn</b>
Other <b>key non-monetised benefits</b> by 'main affected groups'				
<ul style="list-style-type: none"> <li>The Marine Bill will provide greater certainty to marine developers and government through the functions of planning, licensing, marine nature conservation and specific fisheries measures, delivered through the MMO.</li> <li>The government will make efficiency savings due to better licensing enforcement. Streamlining the licensing system will reduce the administrative burden on regulators and advisory bodies.</li> <li>Not all environmental goods and services have been valued, therefore, the benefits of marine nature conservation are likely to be underestimated. In particular, non-use values from marine conservation have not been valued and these are potentially significant.</li> </ul>				

### Key Assumptions/Sensitivities/Risks

The IA relies on many assumptions and implementation scenarios to construct a reasonable view of costs and benefits as the draft Bill does not specify all the parameters necessary to facilitate detailed analysis. For example, regulatory efficiency savings to marine developers and MCZ network scenarios can only be considered as illustrative. Moreover the methodology applied to value environmental goods and services is approximate as primary valuation was not possible at this stage. Sensitivity analysis suggests that the result of a positive NPV is robust to a worst case scenario analysis which significantly reduces benefits and increases the costs.



Price Base Year 2008	Time Period Years 20	<b>Net Benefit Range</b> (NPV) <b>£1.188bn – £2.628bn<sup>1</sup></b>		<b>NET BENEFIT</b> (NPV Best estimate) <b>£1.908bn<sup>2</sup></b>	
What is the geographic coverage of the policy/option?				UK marine area	
On what date will the policy be implemented?				To be confirmed	
Which organisation(s) will enforce the policy?				Govt & delivery bodies	
What is the total annual cost of enforcement for these organisations?				£0.74m – £1.41m	
Does enforcement comply with Hampton principles?				YES	
Will implementation go beyond minimum EU requirements?				YES	
What is the value of the proposed offsetting measure per year? <sup>3</sup>				£1.9m – £2.5m	
What is the value of changes in greenhouse gas emissions?				£72.5m total PV over 20 years	
Will the proposal have a significant impact on competition?				NO	
Annual cost (£-£) per organisation (excluding one-off) <sup>4</sup>		Micro N/A	Small N/A	Medium N/A	Large N/A
Are any of these organisations exempt?		NO	NO	NO	NO
<b>Impact on Admin Burdens Baseline</b> (2005 Prices) <sup>5</sup> (Increase – Decrease)					
Increase of	£ N/A	Decrease of	£ N/A	<b>Net Impact</b>	£ N/A

Key: Annual costs and benefits: Constant Prices (Net) Present Value

- 1 This reflects the costs and benefits estimated for a range of implementation scenarios as opposed to a range around one preferred implementation option, and is derived from taking the PV costs from the PV benefits which are detailed above. Due to range not representing one implementation option, the upper cost estimate has not been taken from the lower benefit estimate; the range takes low cost from low benefit and high cost from high benefit. A worst/best case scenario range can be found in section 4: Assumptions, Risks, and Sensitivity Analysis.
- 2 The best estimate represents an average of the net benefit range, an average derived from the worst/best case scenario can be found in section 4: Assumptions, Risks, and Sensitivity Analysis.
- 3 These figures represent estimated annual efficiency savings to industry due to streamlined licensing proposals, a unified scheme for movements of live fish, a system of administrative penalties for marine fisheries and improvements to the operation of Several and Regulating Orders.
- 4 We do not anticipate significant impacts on any specific group of businesses – see the Specific Impact Tests for further discussion.
- 5 We will not be able to calculate estimates for administrative burdens until the detail of secondary legislation has been developed however it is expected that the administrative burdens to industry will decrease.

### Section 1: Marine Bill Introduction

1. This impact assessment (IA) sets out the costs and benefits of the draft Marine Bill. It should be referred to in conjunction with the draft legislation and the accompanying policy statement.
2. The introduction to this IA (Section 1) sets out the main policy areas in the Marine Bill, the implementation plan, the consultation and evidence gathering process for the Bill and the plans for post-implementation review. Section 2 presents the baseline scenario of existing Marine Management arrangements (i.e. no Marine Bill) effectively providing the baseline from which the assessment of the Marine Bill is made. The costs and benefits of the draft Bill are detailed in Section 3. Section 4 presents sensitivity analysis alongside a discussion of the assumptions and risks. Section 5 concludes.
3. The draft Marine Bill also includes legislative proposals for improving access to the English coast. The scope of these proposals is substantially different from the marine management framework set out in the remainder of the Bill and therefore the impact assessment of this part of the Marine Bill has been completed separately. The full Impact Assessment of the Coastal Access elements is included in Annex 4.
4. As enabling legislation the Marine Bill itself does not specify all the parameters necessary to facilitate detailed cost benefit analysis. Consequently the evidence presented relies on a wide range of assumptions and implementation scenarios in order to construct a reasonable view of the potential costs and benefits of the Bill. Prior to implementation more detailed cost benefit analysis will be undertaken, in particular in order to specify a number of the conservation proposals and this should be taken into account when considering the evidence base.
5. Whilst the proposals in the draft Marine Bill apply in full to the marine area adjacent to England and to UK offshore waters they do not apply in full and may be implemented in different ways in territorial waters adjacent to the devolved administrations. For practical reasons this assessment takes account of the different geographic scope of each of the elements of the proposals but not of some of the different arrangements that may be in place in devolved administrations or potential differences in implementation. Further refinement of this assessment will be possible before introduction of the Marine Bill to Parliament to take full account of these differences where needed and separate assessments of the impact of these proposals may be undertaken by the devolved administrations themselves. Wales has already undertaken and published an assessment of the impact of the draft Marine Bill proposals in Welsh waters<sup>6</sup>.

### Main policy areas of the Marine Bill

6. There are six main policy areas covered in the Marine Bill IA:
  - (i) Marine planning (“planning”)
  - (ii) Marine licensing (“licensing”)
  - (iii) Marine nature conservation (“nature conservation”)

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<sup>6</sup> The assessment of the impact of the draft Marine Bill proposals in Wales can be found at: [http://new.wales.gov.uk/topics/environmentcountryside/env\\_cons\\_management/marine\\_fisheries/marinepolicy/marineb?lang=en](http://new.wales.gov.uk/topics/environmentcountryside/env_cons_management/marine_fisheries/marinepolicy/marineb?lang=en)

- (iv) Marine fisheries management (“marine fisheries”)
  - (v) Marine Management Organisation (“MMO”)
  - (vi) Migratory and freshwater fisheries management (“migratory and freshwater fisheries”)
7. The planning system will have two key elements:
- (i) the preparation of a UK marine policy statement articulating the UK Government and devolved administrations joint vision and objectives for the marine environment; and
  - (ii) the development of a series of marine plans, which will set out how the policy statement should be implemented in specific areas, using information about spatial uses and needs in those areas.
8. The Bill will introduce a streamlined, transparent and consistent marine licensing system, making it faster, cheaper and simpler to license marine developments. Key elements of the proposals are to:
- (i) consolidate and modernise the Food and Environmental Protection Act (“FEPA”) and the Coast Protection Act (“CPA”), drawing together into a single licensing decision consideration of environmental, human health, and navigational safety factors as well as the interests of other users of the sea;
  - (ii) enable Ministers to set time limits on licensing applications, and set out the provisions for transparency (including the right of an individual to challenge the licensing decisions); and
  - (iii) introduce new, flexible enforcement tools so that court action is not the only hard sanction Government has e.g. the licensing authority will be able to issue a notice requiring a developer to put right, at their own expense, any damage that their activity has caused.
9. Nature conservation measures will provide a new mechanism for improving the conservation of marine wildlife and habitats, halting the deterioration in the state of the UK’s marine biodiversity, promoting recovery where practicable and helping to support healthy, functioning and resilient marine ecosystems whilst ensuring environmental considerations are at the heart of decision-making processes for the marine environment. Key elements of the proposals are:
- (i) the establishment of Marine Conservation Zones (MCZs) to help protect marine biodiversity in English territorial waters and the UK off-shore zone. Welsh Ministers will have the same powers for Welsh territorial waters;
  - (ii) a modernised set of enforcement powers to enforce conservation orders which protect MCZs from unregulated activities; and

- (iii) a series of duties on public bodies to ensure that the conservation objectives of MCZs are furthered (as far as reasonably possible).
10. Marine fisheries proposals will strengthen fisheries and environmental management to conserve marine ecosystems and help achieve a sustainable and profitable fisheries sector. The commercial sector will take more responsibility for the management and costs associated with marine fisheries. Key elements of the proposals are to:
- (i) Reform inshore fisheries management arrangements in England and Wales through the establishment of Inshore Fisheries and Conservation Authorities (IFCAS) – to replace Sea Fisheries Committees – that would be equipped with the appropriate tools to deliver a fully effective management service;
  - (ii) Strengthen enforcement powers available to British Sea Fishery Officers (BSFOs) and simplify the legislation for officers and stakeholders;
  - (iii) Introduce enabling powers in the Bill to ensure existing conservation powers can be used to manage recreational sea angling and other currently unregulated commercial fishing activities;
  - (iv) Repeal several out-of-date or redundant Fisheries Acts in line with our commitments under the Davidson Review on implementation of EU legislation;
  - (v) Amend the Sea Fisheries (Shellfish) Act 1967 to reduce the likelihood that a public inquiry will be called during the application process of a Several and Regulating Order and clarify the scope of tolls and royalties so grantees of Regulating Orders are able to recover a proportion of their costs; and
  - (vi) Clarify powers to control activities of UK nationals on non-UK fishing boats outside EC waters and create a system of administrative penalties for minor offences committed by both UK and foreign vessels.
  - (vii) Strengthen existing powers to charge for commercial fishing vessel licences.
11. The new Marine Management Organisation (MMO) will be established to take on UK Government reserved and non-devolved functions and will be a centre of marine management expertise. The MMO will subsume the Defra Marine and Fisheries Agency in its entirety, take on further functions from BERR, DfT, Defra and deliver new Marine Bill functions. It will:
- (i) contribute to sustainable development of the marine area by providing consistent, co-ordinated and effective delivery of both new and existing marine functions;

- (ii) ensure that every time a decision is made for our seas it will be based on a clear policy, sound evidence and research, taking into account the views of those who will be affected;
  - (iii) build effective relationships with marine developers, nature conservation bodies, and commercial and recreational users of the sea who will interface with the same organisation for planning, licensing and enforcement functions – reducing the bureaucracy associated with marine decision-making processes; and
  - (iv) improve coordination of enforcement and related monitoring activities and make best use of information and data.
12. Migratory and freshwater fisheries measures will introduce powers for better management of inland fisheries in England and Wales. Key elements of the proposals are:
- (i) More targeted and effective licensing and authorisation of inland fishing leading to improved fish stocks through new, more flexible powers and a formal separation between licensed and authorised instruments; and
  - (ii) Greater protection for inland fish stocks and fisheries in crisis situations by giving the Environment Agency powers to introduce emergency byelaws in such circumstances as drought and flooding; and
  - (iii) Greater protection for native biodiversity of inland waters and reduced costs for the fish movements industry through a framework power for the introduction of a new live fish movements scheme in England and Wales.
13. The Marine Bill proposals are structured to link coherently with devolved administration responsibilities. Where proposals concern issues where responsibility has been devolved, then whether and how they will apply will be determined by the devolved administrations.
14. The draft Marine Bill sets out an integrated set of proposals for a new approach to the management of activities in the marine area. They will allow the UK Government and the devolved administrations to be proactive when making policy decisions. The Marine Bill will provide the tools to maximise the benefits from the seas and coasts whilst preserving their integrity for the future – achieving an holistic approach that has never been achieved or achievable before. The benefits of the six main policy areas will thus be complementary and so the benefits that the six bring together are expected to be greater than the sum of their individual parts.
15. The added benefits provided by undertaking all of these improvements as an integrated whole are difficult to quantify and are therefore only partially identified in this Impact Assessment. However, they will include the benefits of greater certainty for both marine business and conservation interests, of synergies

arising through the coordination of activities, and of strategic coordination rather than repetition and duplication of activities on a sectoral basis.

16. Each of the different elements of the Bill also will contribute significantly to the achievement of the objectives and benefits of the others. For instance in the case of the nature conservation proposals, location of Marine Conservation Zones will be facilitated by marine plans, whilst their conservation objectives will be delivered through marine licensing and extended conservation powers of the new Inshore Fisheries and Conservation Authorities (IFCAs)<sup>7</sup> and the MMO, and enforcement in many areas will be more effectively delivered through the MMO and its improved marine enforcement arrangements.

### **Implementation and delivery plan**

17. It is expected that the Marine Bill will be enacted in Summer 2009 with measures that can come into effect immediately being implemented within 2-3 months after Royal Assent, for example, the migratory and freshwater fisheries licensing proposals. The following milestones are then envisaged:
  - (i) The majority of the measures proposed in the Bill will be implemented one to two years after Royal Assent: the vesting of the MMO; UK wide Marine Policy Statement; new licensing rules; all enforcement measures; order-making powers in relation to MCZs; Lundy Marine Nature Reserve being designated as an MCZ; all marine, migratory and freshwater fisheries measures; and the appointment of members of the IFCAs under the new regime.
  - (ii) The second stage to implementing the marine planning system, the development of marine plans by the MMO and the devolved administrations, will start after adoption and publication of the UK marine policy statement. These plans will be developed in a staged approach over a number of years.
  - (iii) By 2020, complete a UK site network that conserves marine biodiversity comprising European marine sites and MCZs.
18. Although it will be some time before the combined benefits of all the proposals are realised, each proposal will be implemented as soon as is practicable. For example, whilst the full benefits of the reformed marine licensing regimes will be achieved when there is a full set of marine plans to guide licensing decisions, this does not mean that there will be any delay until marine plans are implemented before introducing improvements to marine licensing arrangements which will bring benefits in their own right.
19. An important principle throughout the implementation of the proposals is that no one should be disadvantaged retrospectively through the imposition of new rules. Only activities undertaken or applications for new licences made after

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<sup>7</sup> Currently Sea Fishery Committees (SFCs)

specific advertised dates will be subject to the new rules. Any applications already accepted prior to these dates will be processed in accordance with existing rules and guidance.

### **Ongoing consultation and evidence gathering**

20. The Marine Bill proposals have been discussed widely within Government departments and agencies. The initial proposals on marine planning, marine licensing, marine nature conservation and the MMO put forward in the March 2006 consultation document were the result of a number of informal and formal reviews and consultations with other Government departments and agencies, and the devolved administrations. The proposals contained in the March 2007 White Paper presented the Government's policies as they stood at that time.
21. The Marine Bill proposals have been informed by several public consultation exercises over recent years, including a 1999 Review of Marine Nature Conservation and a 2004 marine spatial planning pilot project in the Irish Sea. In March 2006 Defra conducted the first formal public consultation on initial options for a Marine Bill and an initial impact assessment. Responses to this consultation provided a significant evidence base that contributed to the assessment and elimination of a number of those possible options. Having narrowed the policy options and focused the proposals, Defra published its detailed proposals for the Marine Bill in a White Paper in March 2007 along with a further developed Partial Impact Assessment. The responses contributed to a further refinement of the proposals now set out in the draft Marine Bill, and comments on the Initial and Partial Impact Assessments, as well as comments on general cost and benefits issues relating to the proposals, have been taken on board in producing this final Impact Assessment<sup>8</sup>.
22. In order to strengthen the evidence base since the White Paper was published, Defra commissioned a number of research and data gathering projects, the findings of which have fed into this Impact Assessment. Projects commissioned included: 'A Survey to Assess the Impact of Marine Bill Proposals on Marine and Coastal Developers'; 'Valuing the benefits of Marine Nature Conservation Proposals'; and 'Cost Impact of Marine Biodiversity Policies on Business'. Responses to Marine Bill consultations have also informed the Impact Assessment.
23. This Impact Assessment therefore relates to the proposals set out in the draft Marine Bill and takes account of the information presently available. However, data gathering to provide evidence for the Marine Bill and its implementation is an ongoing process. For instance a project to determine monetary values for use and non-use goods and is currently being carried out by Defra is expected to report in the summer. Prior to introduction of the final Marine Bill to Parliament this Impact Assessment will be further updated to take account of such research and any new information arising following publication and scrutiny of this Impact Assessment alongside the draft Marine Bill.

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<sup>8</sup> The previous Marine Bill consultation documents and Impact Assessments can be found at: [www.defra.gov.uk/marine](http://www.defra.gov.uk/marine)

24. The proposals in the draft Marine Bill are for a flexible marine management framework that will be implemented over a period of time through secondary legislation and guidance which will set out the detail of how the various elements are intended to operate. The flexibility of the intended framework will allow a range of possible outcomes and ongoing review may lead to changes in the future in response to for instance environmental change. Further cost benefit analysis and consultation within Government and in public will therefore be necessary for many elements of the Bill and will be undertaken prior to the introduction of secondary legislation and accompanying guidance. The legislation also specifies a requirement in certain cases for specific assessments to be undertaken on certain elements, particularly marine plans and consequently much of the more detailed assessment will come later. Key elements of the Bill on which further Impact Assessment will be undertaken include:

- Where orders are made to designate any new Marine Conservation Zones or for the protection of Marine Conservation Zones.
- Requirements for the planning authority to: 1) undertake during initial marine plan preparation an assessment of the economic, social and environmental effects of each marine plan, including meeting EU obligations to carry out a strategic environmental assessment and appropriate assessment where necessary; and 2) keep under review the effects of the policies in the marine plan following agreement, to determine how far they are achieving the relevant objectives, effectively undertaking an ongoing impact assessment that will feed into the next round of plans.
- When assessing the new boundaries and numbers of IFCA districts and when implementing the improved IFCA byelaw making powers and on the drawing up of Several and Regulatory Orders under the new extended powers.
- On the new marine fisheries administrative penalty scheme and on any use of powers to charge the commercial fishing industry.
- On the prohibition of any further migratory and freshwater fishing instruments; on changes to the licensing or authorisation of instruments; on any extension of management powers in the Salmon and Freshwater Fisheries Act (SAFFA) 1975 and Water Resources Act (WRA) 1991 to other fish species; and on the live fish movement scheme prior to introduction.
- On any new marine activity that comes to light that we want to subject to marine licensing, prior to its addition to the new licensing regime or on new or additional marine licensing fees and charges prior to their introduction; on any activities we plan on exempting from marine licensing; and on any power to decommission old structures.
- On the delegation of licensing functions to the MMO, including the licence applications and appeals processes; and on the transfer of functions under the Harbours Act to the MMO.



## **Post-implementation review**

25. Defra, in consultation with other Government departments, plans to conduct a review of the legislation, for those elements where it is sensible to do so, within 3 years of Enactment. However, it is expected that it will take longer than 3 years to be able to make any realistic assessment of the legislation for a number of aspects of the Bill and it is anticipated that these will be reviewed later, most likely after five years. Defra will report to Ministers on effectiveness and performance against principles of good regulatory practice. The review will check whether the legislation is delivering the objectives that will be set out in the UK marine policy statement. Improvements will be proposed where necessary.
26. In evaluating the measures introduced through the legislation, the following will be a useful guide to success:
  - (i) the tools it introduces are being used successfully in conjunction with existing delivery measures to provide increased certainty and transparency in implementing Government's policies for the marine area;
  - (ii) the net environmental, social and economic benefits of implementing the proposals justify the resource allocated to them i.e. they are cost effective, and there is no evidence that this resource could have reasonably been used in a different way to produce superior results more efficiently;
  - (iii) development in the marine area and exploitation of its resources continues without the negative effects on the marine environment that are currently occurring and would continue to occur if changes were not made;
  - (iv) the proposals are perceived as being implemented fairly and constructively by the majority of those involved in the marine environment; and
  - (v) the MMO has delivered benefits from the co-delivery of its functions within one organisation (such as increased efficiency in dealing with applications) over and above those that could have been realised through delivering the functions separately.
27. Post-implementation review will be facilitated through ongoing marine monitoring and assessment activities and processes. These will provide assessments of the quality status of the marine area and of progress against a broad set of environmental indicators. These include quality status reports prepared by the Convention for the Protection of the Marine Environment of the North East Atlantic (OSPAR), the International Council for the Exploration of the Sea (ICES), and the European Union (EU) and UK Government assessments of the implementation of EU Recommendations and Directives.

## **Alternative policy options**

28. This Impact Assessment presents the chosen option 'implement Marine Bill' compared against 'no intervention', which makes no change to existing

arrangements and provides the baseline against which to assess the impact of the proposed policy package. It is important to note that, since this is an integrated package of proposed measures, any changes, including do nothing, in one area will impact on the proposed policy package in another policy area and in some cases across the entire package of measures in the draft Bill. Therefore, for the purposes of analysis, 'no intervention' actually reflects the 'no change' baseline across the entire set of issues potentially covered by a Marine Bill.

29. A broader range of policy options have already been considered (see paragraphs 19-20 above) and were set out in the March 2006 consultation on proposals for a Marine Bill. Initial Regulatory Impact Assessments were also completed for these proposals as part of that consultation. The responses to that consultation contributed to the further refinement and narrowing of the options, as presented in the White Paper and now the draft Bill and assessed in this Impact Assessment. A range of different options have therefore been considered and dismissed.
30. The two key factors in dismissing more limited statutory intervention or a wholly administrative approach are that: 1) as discussed in paragraphs 13-15 above, eliminating or reducing the scope of one element of the Bill can have consequences for the effectiveness of other linked elements, thereby reducing the overall deliverable benefits; and 2) the costs of these different approaches will be similar to the current proposals but the benefits in many areas will be considerably reduced.
31. For instance, taking a non-statutory, non-intervention approach to protecting marine areas will not guarantee the protection of important areas of biodiversity. An alternative 'No intervention' option might involve protection of marine biodiversity through existing statutory protection (e.g. designation of Marine Nature Reserves under section 36 of the Wildlife and Countryside Act 1981, and the existing biodiversity duty on public bodies under section 40 of the Natural Environment and Rural Communities Act 2006) combined with non-statutory measures (e.g. protection delivered as a matter of policy via current licensing regimes). The costs to Government in identifying areas for protection would be similar to the costs to the Bill's proposals for designating a network of MCZs. However, placing a value on the other costs and benefits under this scenario is particularly difficult. The environmental benefits are likely to be considerably less than those identified for the Bill's proposals (because the protection regime would be less effective), the costs to business higher (because of delays and less certainty of outcomes) and the on-going costs to Government would be higher (in administering a more complex system). There would also be a significant risk that appropriate authorities will be inconsistent in the weight afforded to protection across different sectors leading to inconsistent application that would undermine the effectiveness of protection and could lead to competitiveness issues across sectors. In addition, although voluntary approaches have been successful in some areas they too cannot guarantee the protection of important areas of biodiversity as has been demonstrated in a number of voluntary marine nature reserves.

## Section 2: No Intervention

32. The costs and benefits of retaining existing Marine Management arrangements (i.e. no Marine Bill) effectively provide the baseline from which the assessment of the Marine Bill is made – and are described as ‘No Intervention’ for presentational purposes.<sup>9</sup> As noted in the introduction, other options have been ruled out through the consultation process on the Bill.

### Planning

33. Existing arrangements for marine management will remain, no UK marine policy statement will be created and no marine plans will be developed.

### *Benefits*

34. There are no additional long-term environmental, social or economic benefits from this option. The existing management framework will still be in place, and responsibilities for marine resource use and protection will remain with the same organisations, that will continue to make decisions based on policy as it is currently articulated.

### *Costs*

35. In the longer term, the existing costs incurred by Government and business are expected to rise. Increased and competing use of the marine environment will result in increased pressure on marine ecosystems, habitats and species, and compound any present decline in socioeconomic value (direct, indirect and non-use) derived from ecosystem goods and services. There are no additional short term financial costs to business and Government from no intervention.

### *Risks*

36. A lack of certainty over long term priorities and obligations may mean that the costs and benefits of no intervention may change in the long term.

### Licensing

37. Use of the marine area is currently regulated by a combination of centrally operated licensing regimes and locally-managed controls. UK Government permission is required for any activity which involves placing material or objects on the sea bed or over the sea surface and construction of offshore infrastructure.

### *Benefits*

38. This option would result in the least disruption to existing regimes in the short-term, since it would imply no changes to existing domestic legislation. Organisational structures would remain as they are, and licensing work would continue to run at current levels of efficiency, although some measures could be taken to improve administrative processes.

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<sup>9</sup> Obviously existing arrangements already entail a degree of government intervention.

39. Enforcement across the UK will remain as at present, with officers relying on numerous pieces of legislation for inspection powers. The present system is one that stakeholders understand and largely accept.

#### *Costs*

40. There are no additional financial costs under this option. The Government and industry will continue to incur costs in administering and adhering to licensing regulations respectively.
41. Taking this option would mean an opportunity would be missed to provide co-ordinated enforcement powers in the marine area around England and Wales. The multiple powers on which officers currently rely will continue to allow the possibility for confusion on the part of both the officer and the person being enforced against. This ultimately may lead to ineffective enforcement and harm to the environment or unfair disruption of lawful pursuits through illegal activities by others.

#### *Risks*

42. Cumulative impacts of projects and other potential alternative uses may not be considered fully when taking licensing decisions under the current sectoral system. There is a risk of licences being granted when better use could have been made of the marine resource.
43. Not introducing improved enforcement tools will allow the current situation – where there can be an unwanted advantage towards operators not complying with licence conditions – to continue.

#### **Nature Conservation**

44. The 'No Intervention' scenario is based on a continuation of the current policy practice (i.e. designation of further sites to meet obligations under EU law only and without designation of new Marine Nature Reserves (MNRs)) with general duties on public bodies to conserve biodiversity. The risks, benefits and costs of this scenario are fully outlined in Annex 3 of the Partial RIA which accompanied the Marine Bill White Paper, with further evidence collated via two research projects commissioned in 2007.<sup>10</sup>

#### *Benefits*

45. There are no additional long-term environmental, social or economic benefits from this option.

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10 ABPmer, RPA & Brooke, J. (2007). *Cost Impact of Marine Biodiversity Policies on Business – The Marine Bill*. Defra Report, Natural Environment Science Division, Bristol.  
SAC Ltd & University of Liverpool. (2007). *The Marine Bill – Marine Nature Conservation Proposals – valuing the benefits*. Defra Report, Natural Environment Science Division, Bristol.  
Available at <http://www.defra.gov.uk/marine/biodiversity/marine-bill.htm>.

### *Costs*

46. Continuing the current system of marine nature conservation management will not incur any additional administrative costs to business and government over those currently incurred. However, delaying action would be likely to cause further deterioration in marine ecosystems, meaning that more severe restrictions, with higher associated costs, would be required at a later date.
47. The costs of delayed action relate to the loss of goods and services provided by the marine environment. Specifically, that would include a significant reduction in the existence value of UK marine biodiversity and the ecosystem services provided by it and a risk to current economic activities such as commercial fishing and leisure activities and future opportunity to derive commercial benefits from the diverse biological organisms in the marine area.

### *Risks*

48. The impacts of human activities on important areas not currently protected could lead to further declines in marine species and habitats. Unchecked there is also a risk of deterioration in marine ecosystems, with the potential for detrimental changes or in the most extreme cases, irreversible damage to ecosystems and a consequent irreversible degradation in the provision of the ecological goods and services on which we rely. There would also be continued costs for marine industries associated with uncertainty over where important areas for marine biodiversity are located and where licensing applications might be subject to restrictions, conditions or mitigation on ecological grounds.
49. The UK Government could also be accused of failing to meet its international commitments under OSPAR and the Convention of Biological Diversity.
50. Continuing the current system of marine management entails accepting current levels of risk to marine ecosystems. If the marine ecosystems continues to deteriorate, measures will have to be introduced in the future to prevent further deterioration. It is expected that in delaying action, the need would be more pressing, requiring severe restrictions with consequently higher associated costs.

### **Marine fisheries**

51. Under this option, fisheries administrations would continue to rely on existing powers to manage fish stocks and the impact of fishing on the marine environment. Enforcement of marine fisheries (and licensing) would continue to be undertaken by British Sea Fisheries Officers working for the MFA and SFCs. Officers currently rely on numerous pieces of legislation for inspection powers across the UK.

### *Benefits*

52. There are no additional long-term environmental, social or economic benefits from this option.

### *Costs*

53. There would be continued gaps in the tools with which to manage fisheries and the marine environment with respect to angling and other unregulated activities. Further, there would be continued full public funding of fisheries management costs and therefore a missed opportunity to reduce a proportion of the burden on Government.
54. In addition, an opportunity would have been missed to reduce the risk of infraction proceedings by the European Commission by putting our compliance with European Communities (EC) law beyond doubt. Fines resulting from infraction proceedings for breaches of EC law, which fall on the taxpayer, can be substantial. This is an area where the Commission has paid particular attention in recent times.

### *Risks*

55. Limitations to existing powers means that the marine environment and its supporting ecosystems would be exposed to a higher risk of damage through inadequate protection and enforcement. This could lead to a decline in fish and shellfish stocks as well as a decline in marine biodiversity. This could also have negative consequences for the fisheries sector and could lead to reduced profitability and viability of fisheries-related businesses. Furthermore, the potential economic benefits of the resource would not be realised.

### **MMO**

56. Under the no intervention option, the existing arrangements for management of the marine environment would remain in place. Decisions would continue to be taken by a range of bodies and no single body would be charged with pro-active management to make the best sustainable use of our marine resources.

### *Benefits*

57. There are no long-term economic, environmental or social benefits from not creating the MMO.

### *Costs*

58. There are no immediate additional costs to Government of the no intervention option. Sea users will continue to experience the inconvenience and confusion of multiple decision making bodies in the marine area.
59. The benefits of creating the MMO are closely linked to the benefits of the functions it will deliver, including the new functions that the Bill would create – hence the costs of not creating the MMO are inextricably linked to the costs of not having a new planning system, reformed licensing system and integration of fisheries and environmental management.

## Risks

60. There are links here to the risks of not having the planning, licensing, nature conservation and licensing functions that the Marine Bill will introduce and additionally that of an inconsistent approach due to multiple decision makers in the marine environment.

## Migratory and Freshwater Fisheries

61. Under this option, migratory and freshwater fisheries managers would continue to rely on existing powers to manage fish stocks and the impact fishing has on the environment.

## Benefits

62. There are no additional long-term environmental, social or economic benefits from this option although short term change and disruption would be avoided – stakeholders understand and largely accept the present enforcement system.

## Costs

63. A number of fish species (for example; smelt and lamprey) will remain unlicensed and fisheries for them will remain unregulated and unmanaged. This lack of control will mean that the sustainability of fish stocks and the fisheries dependent on them will be threatened. This will in turn hamper our ability to manage estuarine and migratory fisheries as required under the Water Framework Directive (WFD), which could lead to the Government being accused of failing to meet its obligations under the WFD<sup>11</sup>.
64. The current legislation lacks flexibility and hampers the Environment Agency's ability to successfully manage fish stocks sustainably. For example – the majority of salmon stocks in England and Wales continue to be in a depleted state<sup>12</sup>, and the situation for eels is considered to be far graver, with the stock considered to be *outside safe biological limits*.<sup>13</sup> This situation could potentially worsen in the future where impacts such as climate change have an effect on fish stocks. Failure to act could cause further reductions in catches for all sectors as well as reducing the value of landings and participation in fisheries. This will represent a cost to the fishing industry and fishing communities.
65. If the Environment Agency do not have powers to introduce emergency byelaws they will continue to make use of the variety of controls that can already be introduced via standard byelaws. These cannot be implemented quickly<sup>14</sup>, and the Environment Agency cannot respond to emergency situations by introducing

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11 The Water Framework Directive requires Member States to take action to ensure water bodies achieve Good Ecological Status (or for waters that are heavily modified through human intervention, Good Ecological Potential). These assessments will include consideration of the status of fish stocks.

12 Annual Assessment of Salmon Stocks and Fisheries in England and Wales 2006, Cefas and Environment Agency

13 ICES advice, 2006

14 Typically byelaws take one year to make

temporary control measures on fishing. In the short term this option will have little effect on fishers. However, given that byelaws are introduced to protect stocks, if adequate protection cannot be put in place there will be a resulting decline in fish stocks, commercial catches will reduce, recreational anglers' experience will decline, and the value of fisheries will reduce.

66. If no new scheme controlling the movement of live fish is implemented then it will require fish suppliers and fisheries owners to continue to apply for consents for introductions and removals on a case by case basis with the associated high administrative burden. Current costs of applying for a consent are approximately £220,000 per annum<sup>15</sup> for businesses. Some of the benefits to the protection of native biodiversity will arise from the implementation of European legislation, but it will be implemented in a piecemeal fashion.

### *Risks*

67. If fish stocks continue to decline then there is a risk to the ability to enhance the public enjoyment of fishing as a recreational activity and an inability to enhance the economic contribution from fisheries. Under the current regulatory framework it is difficult to maintain effective and efficient methods of ensuring the conservation of fish stocks and the environment upon which they depend.
68. Not implementing a new live fish movements scheme would mean that there would be confusion within Industry as to what legislation is applicable when undertaking fish introductions, removals or movements. The current patchwork system would be even further fragmented and there are, potentially, further administrative costs of dealing with the various systems. Fish movement applications have increased by over 16% in the last four years<sup>16</sup> and the current system has been shown to be inadequate.

### **Conclusion to no intervention option**

69. No intervention carries considerable risk to the sustainability of the marine environment. Evidence is already available on the deterioration in marine ecosystem components on which the UK economy depends. Marine related activities in the UK contribute 3–4% of GDP and directly employ nearly half a million people.<sup>17</sup> The current approach makes consideration of the cumulative impacts of activities on each other, and on the environment difficult. Without effective planning and licensing arrangements managed efficiently by a single body (the MMO) making good use of data, we are at risk of being unprepared to deal with the new demands that expanding industries, such as renewable energy generation will present. If the current licensing enforcement regime continues there is a high risk that operators who fail to comply with licence conditions will continue to gain an unfair advantage.

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15 Environment Agency estimate

16 Environment Agency estimate

17 Figures from MFA business planning 2007/08. <http://intranet/mfa/about/documents/MFA-Business-Plan-08.pdf>



70. Continuing with current nature conservation measures risks severe long-term damage to valuable marine ecosystems. If no action is taken now, action in the future is likely to require more severe restrictions with consequently higher associated costs. The UK Government could also be accused of failing to meet its commitments under OSPAR and the Convention on Biological Diversity. No intervention on marine fisheries could lead to substantial fines from EU infraction proceedings and a decline in fish and shellfish stocks could bring into question the viability of certain fisheries-related businesses while no intervention on migratory and freshwater fisheries could have negative impacts on the profitability of fisheries businesses.
71. The benefits of retaining existing arrangements are largely short-term continuity in some areas.

### **Section 3: Costs and Benefits of the Marine Bill**

72. To make the IA easier to follow each cost or benefit has been attributed to a particular policy area, although in many cases benefit themes, such as efficiency, occur across policy areas in an interdependent manner.
73. In Section 3 part A, costs have been analysed under each policy area as follows:
- (i) Planning
  - (ii) Licensing
  - (iii) Nature Conservation
  - (iv) Marine Fisheries
  - (v) MMO
  - (vi) Migratory and Freshwater Fisheries
74. For each policy area the costs have been further broken down as:
- (i) Costs to Government
  - (ii) Costs to industry and public
75. In Section 3 part B, benefits have been broken down by the following 5 broad themes:
- (i) Efficiency Savings
  - (ii) Greater Certainty
  - (iii) Environmental Benefits
  - (iv) Enhanced Knowledge Management and Expanded Knowledge Base
  - (v) Maximise Sustainable Economic Benefits from Marine Resources
76. In Section 3 part C there is a table summarising the key benefits and costs of the Marine Bill Option.
77. Costs of establishing civil sanctions penalty schemes have not been included in this IA<sup>18</sup>. We had been expecting to use powers under the Regulatory Enforcement and Sanctions (RES) Bill (currently going through Parliament) to establish such schemes. However, we will now be introducing the powers

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<sup>18</sup> With the exception of costs of appeals against fixed administrative penalties in the nature conservation costs section.

under the Marine Bill, building on the base of the RES Bill and existing fisheries administrative penalty scheme upon which Defra recently consulted. There will be efficiencies through the MMO/regulatory authority being able to co-ordinate the schemes across different policy areas.

## Section 3 Part A: Costs

### Planning

#### *Costs to Government*

78. Planning costs have been divided into the preparation of the plan, appraising the impacts of the plan, conducting an independent consideration or investigation of the plan and review of plans. The establishment of a major new planning system will inevitably result in a number of costs in the initial years. However we expect the process to become more efficient over time as we gain experience and increased efficiencies should result in cost savings.

#### Plan preparation

79. Plan preparation is interpreted here as the development of, and consultation on, draft plans. Estimates of the costs of preparing and developing an individual marine plan are drawn from terrestrial planning experiences, specifically costs provided to Defra from regional organisations in England of creating Regional Spatial Strategies, as well as from the Marine Spatial Planning Pilot Project<sup>19</sup> in the Irish Sea. Based on these sources, it is estimated that preparation, adoption and publication of a marine plan would cost approximately **£2 million per plan which would be spread over 2 years**. These costs are staffing costs (assuming six people work on each plan), plus the cost of involving stakeholders throughout the process of planning, including formal consultation stages.
80. Plans will be produced on a rolling basis, with possible efficiency savings with experience. The costs have not been reduced to reflect these efficiency benefits because they are difficult to calculate, and the costs given are therefore likely to be an over estimate. The estimates of the present value of costs are calculated assuming plans are prepared on a rolling basis with two plans starting each year and taking two years to produce. Assuming 10 plans are prepared for the marine area, (which is an estimate based on early consideration of an appropriate scale for planning, based on experiences in other countries) the total cost for the plan preparation element of the entire marine planning process will be **£20 million**.

#### Appraising the impacts of the plan

81. An appraisal of the sustainability and impacts of the plan will be carried out, and this will include the required assessment in accordance with the Strategic Environmental Assessment Directive. The only assessments that have been carried out in the marine environment that are comparable in size to those needed

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19 <http://www.abpmer.net/mspp/>

for marine plans are the SEAs for offshore energy, prepared by the Department of Business, Enterprise and Regulatory Reform (BERR). The average cost for each of the eight offshore energy SEAs (including oil & gas and, more recently, offshore wind), carried out since 1999, was £2.4m. The indication from the Marine Spatial Planning Pilot Project is that, taking into account the growing amount of data available (including that from oil and gas SEAs), £2.4m is almost certainly an over-estimate for an SEA of a marine plan. However, in the absence of more reliable estimates, **£2.4m per SEA is an illustrative estimate of costs**. Consultation with various stakeholders has shown that the majority (up to 90%) of the costs of SEAs relate to data collection. The remaining £0.24m costs are attributable to carrying out the assessment and producing a final report or statement. Assuming an SEA is created for all ten plans, the total cost would be **£24m** of which **£20m is an investment in new data**.

82. This investment in data will not just be used for appraising the impacts of plans. It will be used by, and key to, the MMO in delivering its other functions such as nature conservation and licensing.

#### Independent consideration or investigation of plans

83. After preparing a plan, there would be a period of public consultation and following this the marine plan authority is likely to request an independent investigation of any important or contentious elements of the plan that remain. This process will share similarities with the Examination in Public (EiP) process undertaken for Regional Spatial Strategies, and therefore costs are estimated from examples of this process. The total costs of this process were approximately **£1m**, excluding costs incurred by participants and interested parties attending the Examination. Assuming that similar costs will apply for each marine plan, the costs for ten plans will be a approximately **£10m**.

#### Review of plans

84. It is intended that plans will be reviewed every three years and we anticipate that they may need renewing after every other review (i.e. every 6 years), or more frequently if it is felt that there is a need. The costs could be higher in the early years of marine planning, as experience is developing. To estimate the costs of review, the maximum likely costs have been considered by including all the costs considered above, this is likely to be an overestimate. The six year review cycle includes the two year plan preparation process.

85. The table below presents a summary of planning costs to government:

<b>Table 1: Summary of illustrative quantified costs to government over 20 years</b>		
<b>Cost Category</b>	<b>Cost per plan (£m)</b>	<b>Overall costs of 10 plans (£m)</b>
<b>Initial Plan</b>		
Plan Preparation (over 2 years)	2	20
Consideration of Plans	1	10
Costs for appraisal of the impacts of the plan	2.4	24
<b>Total Costs for Plan Preparation</b>	<b>5.4</b>	<b>54</b>
<b>Renewal of Plan (every 6 years after initial plan) – assuming renewal occurs twice over the 20 year period</b>		
Plan Preparation for renewal (over 2 years)	4	40
Consideration of Plans for renewal	2	20
Costs for appraisal of the impacts of the plan for renewal	4.8	48
<b>Total Costs for Renewal</b>	<b>10.8</b>	<b>108</b>
<b>Average undiscounted annual estimate</b>	<b>£8.1m</b>	
<b>Total PV of All Costs (Plan preparation &amp; Renewal)</b>	<b>£118m</b>	

#### *Costs to industry and public*

86. The introduction of marine planning will not lead to any direct costs to industry or the wider public. We have considered the potential costs of blight or delays to investment arising from the introduction of this new regime and do not consider them significant.

## **Licensing**

### *Costs to Government*

#### Costs of licensing enforcement

87. Table 2 illustrates the expected additional costs of enforcement as a result of the new licensing proposals. There are total one-off costs of £13k associated with navigational safety training. This is a new cost brought about by the application of enforcement powers to navigational safety. Global Positioning System (GPS) equipment will be required, and replacement of this equipment is estimated at every 8 years. However, it is noted that this is potentially an overestimate. New

licensing proposals imply an additional annual cost of £29k. The total costs of additional enforcement discounted over 20 years at 3.5% is £510k.

88. New licensing proposals are expected to increase the amount of time spent on inspections by 60% each year. Consequently, annual inspection costs are expected to increase by £5280. In addition, the introduction of new notices presents an enforcement cost burden and further costs due to potential appeals against the new notices. These annual costs are estimated at £11.3k.
89. Prosecutions of marine developers under the Food and Environment Protection Act (FEPA) for breaching licence requirements are currently infrequent, with an average of one per year in England and Wales. It has been estimated that prosecutions are likely to increase to two per year as a result of potential breaches of new notices.

<b>Table 2: Additional costs of licensing enforcement due to Marine Bill proposals (England &amp; Wales)</b>				
<b>Activity</b>	<b>Unit cost (£)</b>	<b>Unit change post Marine Bill</b>	<b>Cost (£)</b>	<b>Time/frequency</b>
Inspections	176	30	5280	Annual
Training Navigational safety	176	72	12672	One-off (1 <sup>st</sup> year)
Equipment (GPS)	28500	1	28500	Every 8 years
Equipment maintenance	2000	1	2000	Annual
Prosecutions	10375	1	10375	Annual
Enforcement of notices	176	36	6336	Annual
Appeals against notices	5000	1	5000	Annual
<b>Total annual cost</b>	<b>£29.2k</b>			
<b>Total one-off cost</b>	<b>£12.7k</b>			
<b>Total discounted cost over 20 years at 3.5%</b>	<b>£509.6k</b>			

*Costs to industry and public*

Costs to industry from regulating currently non-licensable dredging

90. Dredging methods that do not involve sediment disposal directly from a vessel are currently unregulated. It is difficult to determine how many ports are using

them. The survey of marine developers<sup>20</sup> found that out of the 250 ports, harbours and marinas surveyed, 85% of respondents carried out some form of dredging and 27% reported using non-licensable dredging techniques. It can be inferred from this that 32% of all dredging is unlicensed (although some respondents may have been doing both). Extending licensing may result in an additional 26 applications per year; there are on average 56 applications per year at present. However, this is likely to be an overestimate as some of the dredging applications will benefit from an exemption under the Marine Bill. Additionally a CEFAS survey<sup>21</sup> indicates that many would start using other methods, with cost reduction identified as an important incentive for using non-licensable dredging in small ports.

91. At present, the scale of projects using these techniques in isolation is usually small, and the experiences of developers indicates that 'the major limitation of hydrodynamic dredging techniques is a loss in effectiveness with increasing quantities of material moved'. Most respondents to the survey of developers who used only these techniques for their dredging activities indicated they involved quantities of less than 5,000 wet tonnes per year. However, some larger projects do use these techniques.
92. To estimate the costs for each applicant it is assumed that they are comparable to those who currently apply for FEPA licences for small maintenance dredging operations. This is because the majority of cases will involve small quantities of sediment, and where this is not the case, they will be in conjunction with operations that are already assessed, implying minimal extra work for regulators and applicants. The survey of developers found that the average cost of the consents process (excluding fees) for small maintenance dredging projects (below 10,000 wet tonnes per annum), was £3.5k. Combining this with the expected number of additional applications per year (26), gives a cost of £91k to developers per year.
93. In addition, costs will be incurred by government in regulating these activities, but these will be passed on to industry in the form of licence fees. The current FEPA fee for a small scale maintenance dredging licence is £3k. Combining this with the expected number of applications of 26 per year gives a further cost of £78k. Therefore, the total cost to developers is £169k per year.
94. It should be noted that in some cases, as the CEFAS survey indicates, non-licensable forms of dredging are used specifically when a developer has failed to obtain a disposal licence, possibly because the material to be redistributed is contaminated. This means that in bringing these methods into the scope of regulation, some firms may be prevented from carrying out these procedures. The costs of such decisions would have to be assessed against any reduction in environmental damage. Reforms to the licensing system to make regulation more proportionate and the small scale nature of most unregulated dredging,

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20 Frontline report for Defra 'Survey to assess the impact of Marine Bill proposals on Marine and Coastal Developers' (2007) (England & Wales)

21 CEFAS surveys: [www.cefasc.co.uk/publications.aspx](http://www.cefasc.co.uk/publications.aspx)

means that it is unlikely that many firms will be restricted, but it has not been possible to estimate these costs.

95. Table 3 below presents the costs of regulating previously unlicensed dredging.

<b>Table 3: Costs of regulating previously unlicensed dredging</b>	
Total annual cost to industry	Present value costs over 20 years
<b>£169k</b>	<b>£2.49m</b>

## Nature conservation

### *Costs to Government*

96. Government (through the statutory nature conservation agencies) will work with stakeholders in identifying and selecting possible sites for protection, and will then designate and ensure measures are put in place to achieve their objectives. Table 4 below provides a summary of the possible direct costs associated with identifying and designating a network of MCZs in English territorial waters and UK offshore waters, of around 92<sup>22</sup> MCZs covering approximately 71,000 km<sup>2</sup> (this equates to 8.2% of UK waters to the limits of the Continental Shelf)<sup>23</sup>.
97. Surveys will be required to inform the site selection process. This will involve collation of existing marine environmental data, surveys for information that is lacking, and analysis and possible modelling of data. Costs can be categorised under:
- (i) Site selection and working with stakeholders/public consultation: Estimated costs for the site selection process are taken from a previous assessment of the costs associated with establishing European marine sites. The statutory nature conservation agencies are developing a process to maximise stakeholder involvement in seeking consensus on recommended regional MCZ networks, for submission to the Secretary of State. This work is at an early stage and estimated costs are therefore taken from a previous assessment of the costs associated with establishing European marine protected sites.

22 Bangor University study average number of sites reported at 92. This should be considered illustrative as actual site number will depend on size and attributes considered in site selection, which depend on NE and JNCC network design principles. See: Richardson, E.A, Kaiser, M., Hiddink, J.G, Galanidi, M. and Donald, E.J (2006). Developing scenarios for a network of marine protected areas.

23 These figures are based on outcomes from Richardson *et al.*, 2006 and represent MCZ coverage in addition to current SAC and offshore Areas of Search for SACs.



- (ii) Management of MCZs: We expect the statutory nature conservation agencies to work in partnership with public authorities (and other stakeholders) to ensure that measures are put in place to deliver MCZ conservation objectives. This might include management schemes detailing the approach which one or more public bodies intend to follow in order to comply with their legal duties in respect of an MCZ.
- (iii) Implementation: The costs for implementation will fall largely to public authorities (e.g. the MMO), who will need to review their approach to the undertaking of their functions, and to the granting of licences and consents, where this might impact on the conservation objectives for an MCZ.
- (iv) Monitoring of conservation status: Costs to assess the success of management measures in delivering site objectives.

<b>Table 4: Summary of costs to the Government for establishing and implementing a network of 92 additional MCZs</b>		
<b>Activity</b>	<b>Cost per MCZ site (£k)</b>	<b>Cost for the network of MCZs (£m)</b>
Survey Costs	100 – 110	9.2 – 10
Site Selection	20 – 25	1.8 – 2.3
Consultation	100 per RMNC Regional Sea, or 50 (inshore) and 38 (offshore)	1.1 – 3.6
Management of MCZs	250 for 11 inshore sites; 160 for 16 offshore sites;  or 500 (extrapolation of NE estimate for English Natural Areas)	0.4 – 0.5
<b>Total one-off costs</b>		<b>12.5 – 16.4</b>
Implementation		0.08 p.a.
Monitoring of conservation status	150 (inshore)  175 (offshore)	2.6 p.a. for each 6 year monitoring cycle
<b>Total annual costs</b>		<b>2.7</b>
<b>Total NPV of costs (over 20 years, 3.5% discount rate)</b>		<b>28 – 32</b>

Source: Defra estimation

### Costs of nature conservation enforcement

98. There are enforcement costs related to making and confirming conservation orders. The estimate of the cost of orders has been based on an assessment of SFCs costs in making byelaws. Based on these assumptions the administrative costs of orders is likely to be between £200k and £400k per year. This figure would be likely to decrease as a comprehensive set of orders is developed.
99. Once conservation orders are made they will require enforcement. This would be a risk-based, intelligence-led approach integrated into existing enforcement work. There would also be costs in relation to processing appeals against the imposition of any fixed administrative penalties. Estimated costs (which may reduce as we develop the detailed approach to the use and enforcement of conservation orders) are detailed in table 5 below:

<b>Table 5: Estimate of additional enforcement costs per year and over 20 years</b>		
	<b>Cost range (£m)</b>	
<b>Activity</b>	<b>Low</b>	<b>High</b>
Additional Surface Patrol and Targeted Enforcement Action (50 or 100 days @£8k per day)	0.4	0.8
Additional desk-based staff to handle casework (4 to 7 officers @ £50k overheaded cost)	0.2	0.35
Investigations/prosecutions (10 to 20 @£9.25k each)	0.093	0.185
Appeals against notices (10 to 20 @ 2k per appeal)	0.020	0.040
Training	0.003	0.006
<b>Total Annual costs</b>	<b>0.71</b>	<b>1.38</b>
<b>Discounted costs over 20 years (£m)</b>	<b>10.5</b>	<b>20.3</b>

## *Costs to industry and public*

### Costs to Marine Developers<sup>24</sup> of MCZ proposals

100. Research by ABPmer (2007)<sup>25</sup> conducted for Defra has developed quantified estimates of costs to marine developers resulting from the MCZ proposals in the Marine Bill. Costs will depend on the activities currently operating within potential MCZs, the regulatory regime imposed and the size/shape of the MCZ network itself. The study used three network scenarios (A, G and J<sup>26</sup>) selected from the output of an earlier Defra analysis of potential MCZ networks (Richardson et al., 2006<sup>27</sup>) and two hypothetical management regimes, to estimate potential costs to a number of key sectors. The two different levels of restrictions were assumed to apply to MCZ sites within each network: 'highly restricted' (HR-MCZ) and 'maintenance of conservation status' (MCS-MCZ)<sup>28</sup>. Consultation workshops were held with a wide range of different stakeholders to help develop and validate the estimates, and to understand how affected sectors may react to certain restrictions.
101. A further network scenario (I) which preferentially excluded the selection of sites where aggregate licences existed was investigated to assess the costs implications of the network with the inclusion of socio-economic information in the design. The overlap between MCZ networks and sectoral activities was identified using GIS mapping. Potential conflicts were then identified, evaluated and circulated to appropriate stakeholders for comments and suggestions. The two regulatory regimes, HR-MCZ and MCS-MCZ, analysed in 3 different degrees of restrictiveness, were used to elicit a comparable range of potential cost estimates for the network and regulatory scenarios.
102. The study was restricted to English territorial waters and UK offshore waters. The key sectors likely to be affected were identified to be: Marine aggregate dredging, cable networks, oil and gas, fisheries, and renewable energy. Businesses carrying out regulated activities in or near MCZs may incur costs in complying with measures to compensate or mitigate for any adverse impacts which proposed developments have on MCZs.

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24 Note that marine developers can be either private or public sector bodies

25 ABPmer, RPA & Brooke, J. (2007). *Cost Impact of Marine Biodiversity Policies on Business – The Marine Bill*. Defra Report, Natural Environment Science Division, Bristol.

26 Network A represented the smallest MCZ network with the lowest representation of threatened and declining species (using OSPAR listings). Network G was larger in size and gave preferential selection to nursery and spawning areas for fisheries stocks. Network J was the largest network and was characterised by a few large sites mainly located offshore.

27 Richardson et al (2006) 'Developing Scenarios for a network of Protected Marine Areas. Defra Research & Development Contract CRO 0348'.

28 HR-MCZ and MCS-MCZ represent regulatory regimes at opposite ends of the protection spectrum. HR-MCZ entails the progressive removal of all activities within the MCZ that are deemed potentially damaging, with exceptions such as; where the benefit to the public clearly outweighs the cost to the environment, or action to benefit the environment is undertaken which offsets any damage that development may cause. MCS-MCZ allows development and extraction to continue but regulates activities where there is medium/high expected impact on biodiversity.

103. Under the new legislation, the MMO will have the power to make conservation orders, out to 12nm, to control currently unregulated activities occurring within MCZs where they are necessary to achieve the site's conservation objectives. This may impose a new cost on business. Urgent (temporary) conservation orders, which can be issued quickly when a MCZ is under imminent threat, will also be introduced.

<b>Table 6 Cost to Industry of MCZ's</b>	
Sector	Range of total discounted costs (£m) (3.5% over 20 yrs)
Aggregates	7.9 – 27.9
Telecommunication	5.2 – 17.1
Power cables	2.6 – 5.1
Offshore wind energy	8.8 – 34.6
Wave energy	0.1
Tidal Energy	0.5 – 1.5
Oil and Gas	257.0 – 794.3
Fisheries	157.1 – 346.6
<b>Total – all sectors</b>	<b>440 – 1230</b>

Source: ABPmer, RPA & Brooke, J. (2007). Cost Impact of Marine Biodiversity Policies on Business – The Marine Bill. Defra Report, Natural Environment Science Division, Bristol.

104. Table 6 above presents the range of total costs by sector across the different network and regulatory scenarios assessed. Annual costs range **from £20m to £61m**. Total costs range **from £440m to £1.2bn**. This wide range largely reflects the differences in network size and management regime, but also highlights the inherent uncertainty in these estimates. Oil and gas and fisheries account for 59-65% and 28-36% of total costs respectively. Together these sectors represent over 90% of the total estimated costs of a MCZ network.
105. In practice the network of MCZ sites will differ from the hypothetical networks used in this analysis because socio-economic factors<sup>29</sup> will be taken into account in all site selection. It should be possible to design MCZ networks to avoid/minimise significant socio-economic costs (e.g. limiting some fisheries activities), consequently, the figures contained in table 6 are likely to be overestimates.

<sup>29</sup> Socio-economic factors would be considered in cost-benefit analysis undertaken at site selection process.

106. Recreational sectors may also be affected; for instance, conservation orders could restrict individual boat owners due to new no-mooring zones. This would represent a cost to business of the lost income from leasing the moorings. The Helford Estuary provides an illustrative example; information from Helford River Moorings company indicate that if moorings were available and subsequently a temporary conservation order was imposed, a loss of income of approximately £12,000 to £14,000 per annum would occur. Such measures will only be applied to specific local situations, consequently, the imposition of major costs on recreational business as a whole is unlikely. A lack of evidence prevents a more detailed cost analysis.
107. The third sector (e.g. RSPB and The Wildlife Trusts), may incur costs such as monitoring the MCZs and producing evidence of the impacts of sectoral activities on conservation features. Estimates suggest a range between £5,700 and £41,200 per site, however, these organisations tend to be established to encourage marine nature conservation so their costs are considered discretionary, and are not included in the final analysis.
108. A significant influence on costs to business and the third sector is the regulatory regime applied at individual sites. The highly restrictive regime is estimated to impose three to ten times higher costs than the partially restrictive regime. There is scope to apply less restrictive regulatory regimes in areas of high economic and social importance, which will reduce costs.

## **Marine fisheries**

### *Costs to Government*

#### Reform of inshore fisheries management in England and Wales

109. We estimate that the reform of inshore fisheries management in England and Wales will result in an additional financial burden on constituent local authorities<sup>30</sup> of between £4m-£6m<sup>31</sup> per year<sup>32</sup>. This will include expenditure on:
- (i) effective management of estuarine and coastal areas that previously have been subject to low intervention;
  - (ii) enhanced byelaw making procedures, including improved evidence-based decision-making and consultation on Impact Assessments (IAs);

<sup>30</sup> The new burden on constituent local authorities in England will be met through an Area Based Grant funded by Defra. The Welsh Assembly Government has yet to determine the funding mechanism to be used for IFCA's in Wales.

<sup>31</sup> Defra estimate based on information provided by the Association of Sea Fisheries Committees and the Local Government Association.

<sup>32</sup> Annual expenditure by SFCs in England and Wales is currently in the order of £6.6m and is met by constituent local authorities. The Environment Agency spends a further £350k per year on managing a number of estuaries and some coastal areas under its powers of an SFC. SFCs have been able to apply for funding from the European Commission for enforcement equipment and training and this reduces their costs.

(iii) increased monitoring, inspection and enforcement (including, more enforcement officers); and

(iv) improved staff training and development.

110. There will also be one-off costs related to implementation of the reform package. These are estimated to be a maximum of £500k<sup>33</sup>.

#### Modernising Several and Regulating Orders for shellfisheries

111. Tighter criteria for public inquiries could lead to a slightly increased risk of costs due to judicial review of decisions by the Secretary of State (SoS) to grant new Orders.

#### Changes to marine fisheries enforcement

112. There will be higher enforcement costs as a result of new powers in respect of Illegal, Unreported and Unregulated (IUU) fishing. There will also be set-up costs to government of approximately £200k for an IT system to issue Fixed Administrative Penalties to track whether payments have been made and to instigate court proceedings in cases of non-payment.

#### **Costs to industry and public**

113. IFCA's will be able to introduce a chargeable permit scheme under new byelaw making powers. Any charge would be associated with the costs to the IFCA of operating such a scheme which could be used to control fishing effort for conservation and enforcement purposes. Costs to fishermen would therefore arise.

<b>Table 7: Summary of costs of fisheries management proposals</b>		
	One-off costs (£m)	Annual costs (£m)
Reform of inshore fisheries management (additional burden on constituent local authorities)	0.5	4 – 6
IT system to issue Fixed Administrative Penalties	0.2	
<b>Total undiscounted costs</b>	<b>0.7</b>	<b>4 – 6</b>
<b>Total discounted costs (3.5% over 20 yrs)</b>	<b>59.5 – 89</b>	

<sup>33</sup> Defra estimate.

## MMO

### *Costs to Government*

114. Establishing the MMO will incur one-off set-up costs and ongoing running costs. Running costs are the costs to Government of delivering the MMO's functions. Indicative one-off set-up costs are estimated at **£3.65m** and summarised in table 8. These costs are indicative figures informed by those incurred in the set-up of the Agricultural and Horticultural Development Board (AHDB), the Marine Fisheries Agency, and Natural England.
115. We expect to recruit approximately 40 new posts to the MMO (beyond those transferring from the MFA, Defra, DfT and BERR). These posts will deliver new functions, brought in by the Marine Bill and enhance the MMO's senior management team and corporate centre.

<b>Table 8: Indicative MMO set-up costs</b>	
<b>Cost category</b>	<b>Indicative Cost (£m)</b>
Staff within Defra MMO team and specialist support (over 2 years)	0.7
Marketing (to include branding, communications, launch)	0.5
Consultancy input (e.g. tax advice, due diligence, benchmarking of targets etc)	0.5
Support services – to ensure finance and IT systems are fit for purpose for new organisation	0.5
Appointment of board & senior management team	0.15
Skeleton body (Board, staff and accommodation)	0.82
Recruitment of other new staff	0.15
<b>Sub Total</b>	<b>3.32</b>
10% contingency	0.332
<b>Total expected MMO set-up costs</b>	<b>3.652</b>

116. Indicative annual ongoing running costs for the MMO (including pay), beyond those currently incurred by Government are £4.4m. These figures are summarised in table 9. £1.7m of these costs are captured in the planning, licensing and nature conservation sections of this IA. Hence the net annual ongoing MMO running costs are £2.7m. A ten percent contingency allowance was added on the set-up costs to allow for optimism bias.

**Table 9: Indicative pay and non-pay running costs (additional to that already incurred)**

<b>Cost category</b>	<b>Cost (£m)</b>
Staff pay	2.1
Accommodation costs	0.34
Other non-pay (HR and finance services, IT, T&S, training)	0.46
Potential maximum VAT liability <sup>34</sup>	1.1
MMO Board (pay and T&S)	0.4
<b>Total expected MMO annual costs</b>	<b>4.4</b>
Less annual MMO running costs captured in other sections	<b>-1.7</b>
<b>Net MMO annual costs</b>	<b>2.7</b>
<b>Total discounted annual costs over 20 years at 3.5%</b>	<b>39.7</b>

#### Costs of Geographic Information System (GIS) for Marine Data

117. A Geographic Information System (GIS) will be necessary to allow the MMO to make effective use of marine data. Table 10 presents the estimated capital and running costs of a GIS for marine data based on a generic server-based GIS with similar functionality, scope and remit to the system the MMO is anticipated to require.

**Table 10: Costs of GIS for Marine data (£m)**

Capital costs (over first 3 years)	4.345
Total running costs over 20 years	1.738
Annual Running costs	0.0869
Total costs over 20 years	6.083
<b>Total discounted costs</b>	<b>5.5922</b>

<sup>34</sup> As an NDPB, the MMO will not be party to the Government Department/Executive Agency derogation to reclaim VAT on contracted-out services to non-business activity. This £1.1million figure relates to VAT on services currently provided to the MFA exempt from VAT and also services that will be provided to the MMO.



118. Capital costs represent one-off system set-up costs which mainly occur in the first year, and then to a lesser extent in the following two years. For example, hardware and software purchases, system development and training on the new equipment. The total capital costs over three years are £4.3m.
119. Annual running costs include hardware and software maintenance and data management, and are estimated to be £86.9k per year. The total set-up and running costs for a GIS for marine data over 20 years, discounted at 3.5%, is **£5.6m.**
120. The total discounted cost over a 20 year period for the MMO (including set-up costs, running costs and GIS costs) at 3.5% is **£48.92m.**

#### *Costs to industry and public*

121. There should be no additional costs to industry and the public as a result of the creation of the MMO bar some minor short term disruption due to changes in organisational structures.

### **Migratory and freshwater fisheries**

#### *Costs to government*

122. The new licensing, byelaw and live fish movement powers will be cost neutral to the Environment Agency<sup>35</sup>. The cost of introducing the authorisation and live fish movements schemes will be met from current Agency funds. Efficiency savings from the latter scheme will be used to improve enforcement and control of live fish movements.

#### Newly licensed species

123. Whilst the Environment Agency will incur some additional administrative, management and enforcement costs for the licensing and management of fisheries for new species, these will be minimal as the duties will be combined with existing licences, enforcement regimes and annual assessments of stocks. Costs for lamprey and smelt fisheries management are estimated to be approximately £10k each<sup>36</sup> and will be met from the Environment Agency's existing budget for managing stocks. There will also be costs associated with updating the necessary IT infrastructure to account for these new licences, however, this cost will be negligible and estimated at < £50k<sup>37</sup>.

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35 Annual expenditure by the Environment Agency on Freshwater and Migratory Fisheries related activities is in the order of £31m: approximately £9.6m comes from government and £21.5m from licensing fishing activities. £5m is spent annually on enforcement, with the rest being spent on regulation, monitoring and research of fisheries, control of live fish movements, fisheries improvement schemes and core functions.

36 Environment Agency estimate

37 Ibid.

### Authorising currently licensed fishing methods

124. The Environment Agency expect to receive approximately 800 requests for authorisations. The introduction of authorisations will incur some establishment and administration costs to the EA, but much of the costs of assessing whether a proposed fishery should be authorised will be covered by charges to the fisher.

### Emergency byelaws

125. The cost to the Environment Agency of introducing emergency byelaws will be small; of the order £1.5k – £30k<sup>38</sup>, These costs will be met from their existing budget for managing stocks.

### Live fish movements scheme<sup>39</sup>

126. The Environment Agency is likely to have an increased workload initially in implementing a new scheme, probably lasting a year. There will be some initial additional work and development costs in setting up long term consents (this one-off cost is estimated to be £100k), but in the longer term the Environment Agency expect a 50% reduction in consent workload (both at National Fisheries Permitting and Enforcement Team) with the freed up resources shifting from administration of suppliers registrations to compliance monitoring. There will therefore be no long term increase in costs to the Environment Agency.

## **Costs to industry and public**

### Newly licensed species

127. The proposed licensing and emergency byelaw measures will have a low impact on industry. Those who target the newly covered species will most likely already purchase a licence, as it is unlikely that fishers target solely lamprey or smelt. We expect therefore that less than 20 people will need to purchase a new licence at a cost of approximately £500 per annum in total.

### Authorising currently licensed fishing methods

128. The Environment Agency will need to issue approximately 800 authorisations. The Agency will charge for these authorisations set according to an agreed set of criteria. They are expected to cost approximately £100 for eel traps (i.e. at a similar level to that charged for licences at present), £10 for crayfish traps, and approximately £100 for authorisations for fisheries management (e.g. electro fishing). Costs for authorisations will be subject to consultation before

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38 Defra estimate based on 2 – 12 days (Full Time Equivalent (FTE)) per byelaw and 3 and 10 such measures per annum. Estimate is based on overheaded salaries (overheaded salaries include costs such as accommodation and administration relating to an employee)

39 This impact assessment is based on a unified scheme that will in part be implemented through Marine Bill legislation and in part through the legislation arising from Europe and implemented via an Order made under the European Communities Act 1972. It has not been possible to separate the costs or benefits between the two component parts.

the charges are introduced. However, it is estimated that the total cost will be approximately £35k<sup>40</sup>.

#### Power of notice to apply to statutory entitlements to fish

129. The Environment Agency will have the power to limit effort on statutory entitlements to fish where they deem necessary for the protection of the fisheries. This may have an effect on the value of the fishery. However, it is impossible to quantify the impact until the measures can be assessed and this will be carried out on a case by case basis.

#### Removal of bar on making Net Limitation Orders (NLOs)

130. The law currently requires that NLOs can only be introduced if it does not remove a licence from a net/fisherman who has fished in recent years and who is dependent on that fishing for his livelihood. This means that any rapid reduction in fishing opportunity where such individuals are involved is not possible. This restriction has been removed. However, provision has been made so that the Environment Agency may pay compensation in such circumstances.

#### Emergency byelaws

131. Until the detail of such measures has been drafted it is not possible to identify costs to each individual sector<sup>41</sup>.

#### Live fish movements scheme<sup>42</sup>

132. The administrative cost to businesses of implementing the new scheme to manage the introduction of fish species to inland waters is expected to be approximately £345k<sup>43</sup> in the year following implementation. However, this becomes a saving of £215k in the second year and subsequent years. Total current burdens on direct customers average £220k per year. Therefore, the costs of implementation are recouped during the third year following implementation and by the end of the fourth year, the total saving to fish suppliers and fishery owners is £300k<sup>44</sup>.

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40 Defra estimate based on total number of relevant licences in 2006 and approximate costs envisaged. Full costs will be subject to consultation.

41 An example of when an emergency byelaw would have been introduced is for the River Usk when extremely low flows during a prolonged drought made salmon more vulnerable to fishing at various migration barriers. If the powers had been available the Environment Agency would have imposed a temporary ban on fishing adjacent to obstacles (both up and downstream) to reduce the vulnerability of salmon to fishing. Whilst this would have temporarily reduced fishing opportunities at favoured locations other sites nearby would still be available. It is likely that those local businesses supporting angling would suffer a temporary decline in trade.

42 This impact assessment is based on a unified scheme that will in part be implemented through Marine Bill legislation and in part through the legislation arising from Europe and implemented via an Order made under the European Communities Act 1972. It has not been possible to separate the costs or benefits between the two component parts.

43 Environment Agency estimate

44 *Ibid.*

133. The total additional costs of Migratory and Freshwater Fisheries measures are summarised in table 11 below:

<b>Table 11: Total additional costs of Migratory and Freshwater Fisheries measures</b>		
	One-off costs (£k)	Annual costs (in addition to baseline) (£k)
Management of new species	50	20
Introduction of emergency byelaws	0	1.5 – 30
Introduction and enforcement of live fish movements scheme	100	0
<b>Total cost to Environment Agency</b>	<b>150</b>	<b>21.5 – 50</b>
New licences for new species	0	0.5
Purchase of authorisations	0	35
Effect of interim measures	0	0
Application for live fish movements scheme	345	0
<b>Total cost to Industry</b>	<b>345</b>	<b>35.5</b>
<b>Total costs to Industry &amp; EA</b>	<b>495</b>	<b>57 – 85.5</b>
<b>Total Discounted cost over 20 years: £1.33m – £1.75m</b>		

*Total monetised costs of the Marine Bill*

<b>Table 12</b> <b>Area of cost</b>	<b>Geographical area</b>	<b>One-off costs (£m)</b>	<b>Annual costs (£m)</b>	<b>Total costs (PV 20 yrs) (£m)</b>
<b>Planning</b> (costs to Government)	England & UK offshore	N/A	8.1	118
<b>Licensing</b> (costs to industry)	England & Wales	N/A	0.169	2.49
<b>Licensing</b> (enforcement costs to Government)	England & Wales	0.013	0.029	0.5
<b>Nature conservation</b> (costs to government)	England & UK offshore	12.5 – 16.4	2.7	28 – 32
<b>Nature conservation</b> (costs to industry)	England & UK offshore	N/A	20 – 61	440 – 1230
<b>Nature conservation</b> (enforcement costs to Government)	England & Wales	N/A	0.71 – 1.38	10.5 – 20.3
<b>Marine fisheries</b> (costs to Government and industry)	England & Wales	0.7	4 – 6	59.5 – 89
<b>MMO</b> (costs to Government – includes GIS system)	England & UK offshore	7.997	2.787	48.92
<b>Migratory &amp; Freshwater Fisheries</b>	England & Wales	0.495	0.057 – 0.0855	1.33 – 1.75
<b>Total monetised costs of the Marine Bill</b>		<b>22 – 26</b>	<b>39 – 82</b>	<b>709 – 1543</b>

## Section 3 Part B: Monetised and non-monetised benefits

134. The Marine Bill sets out an integrated set of proposals for a new approach to the management of activities in the marine area. The Marine Bill will provide the tools to maximise benefits from the seas and coasts whilst preserving their integrity for the future – achieving a holistic approach that has never been achieved before. The benefits of the six main policy areas will thus be complementary and so the benefits that the six bring together will be greater than the sum of their individual parts<sup>45</sup>.

### Efficiency savings

#### *Planning*

135. The availability of high quality data, some of which will be communicated through marine plans, will increase efficiency for industry as well as the government who will have a more accurate and easily available source of information to draw on. Plans will show all activities, identify the most and least suitable sites for development and will help consideration of the interactions between activities, the cumulative effects they generate and the potential for future development in different areas. This will provide developers with significant efficiency gains in terms of money, time and resource.

#### *Licensing marine development*

136. Currently significant costs can be incurred due to chasing non-compliant licensees. It is expected that the new proposals will reduce these costs over time as the industry moves closer to compliance.
137. Streamlining licensing legislation will provide a clearer licensing regime which will allow licensing staff and developers to more easily identify which licence applies to the proposed development. This will reduce confusion and delays in decision-making in both licensing authorities and applicant companies.
138. There will also be efficiencies for the permitting of some harbour developments because of the proposal to allow the Harbour Order process to be used for considering the necessary Marine Act licence. The reduction in overlap and duplication of harbours and environmental legislation will help reduce the workload of regulators. In addition, in those cases where dredging requires the consent of a harbour authority, the requirement for consent on navigational grounds from central government will be removed, reducing the number of applications needed for harbour activities. There will also be a streamlining of the treatment of Water Resources Act 1991 consent and marine controls, bringing further cost savings in regulatory operations.
139. Activities with little or no adverse effect on the marine environment, heritage, or other legitimate uses of the sea, will be subject to a lighter administrative burden. Where a single body wants to carry out a series of related activities in a defined area then, subject to appropriate safeguards, it will be possible to

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45 See explanation paragraphs 13-15.

make an application in relation to that series of activities. A licence permitting phased working over an extended period could follow. This would provide further benefits of a reduction in the activities of regulatory and advisory bodies.

140. Enabling strict time limits to be set throughout the licensing process under the new regime, would also reduce the administrative burden on regulators and advisory bodies.
141. Currently costs incurred under the Coast Protection Act (CPA) licensing regime are not recoverable through licence fees. Under the future consolidated regime the cost of considering the navigational aspects of a licence application will be charged for. So while the reformed regime will not include a separate CPA consent, licence charges will include the cost of the equivalent work.
142. Repealing the provisions of the Telecommunications Act 1984, which allow for consent under that Act instead of licensing under general marine rules, will similarly allow Government to reduce and recover costs. For smaller projects involving the direct laying of cables on the seabed, this is likely to imply fees of around £1,625 based on the current Food and Environment Protection Act (FEPA) fee bands. Larger projects which require movement of sediment already incur FEPA licence charges, so there will be no equivalent effect on the regulation of these activities.

#### Survey to quantify the benefits of streamlined licensing on developers

143. Defra commissioned a survey<sup>46</sup> of developers in the marine area to estimate the average costs of licence applications for developers prior to implementation of the Marine Bill, this was subsequently used to derive potential efficiency savings from Marine Bill proposals. The survey consulted around 60 developers<sup>47</sup> (from industry, public sector, including Local Authorities, and third sector) who had recently applied for licences and consents to develop in the marine area. The cost of the application process for firms varies considerably. The information provided by respondents confirmed that while some projects require only a small amount of staff time, many entail significant internal and consultant costs in navigating the various regulatory regimes, conducting local consultations, and providing the necessary environmental assessments. For example, the average cost of gaining permissions to carry out small scale maintenance dredging (of quantities of less than 10,000 wet tonnes) was found to be around £3,500, whereas the average cost for a large construction project (between £500,000 and £16m project cost) was £42,000.

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46 Frontline report for Defra 'Survey to assess the impact of Marine Bill proposals on Marine and Coastal Developers' (2007) (England & Wales)

47 The average number of FEPA licence applicants in one year is approximately 350 for England and Wales. The survey was sent to 350 licence applicants who had their licences approved in a recent year. The response rate was approximately 16% and the sample of responses was representative of the total population.

144. The costs for licence applications include not only the actual expense of submitting applications to licensing authorities but costs arising throughout the application process. The survey of marine developers showed that during the pre-application stage initial communication with stakeholders and government departments and identifying which consents will be required impose significant costs to developers. Scoping for alternative sites at the post-application stage and unexpected delays to developers during the application process can result in additional cost burdens. General data costs were reported as being considerable throughout the process; 78% of respondents were able to identify the proportion of the project costs that related to data collection. Results showed that data costs as a percentage of total application costs were approximately 58%.
145. Marine planning, licensing reform, data management improvements and setting up an MMO should all help reduce some of the costs described above that developers incur in making applications.
146. Results from the survey have been used to derive an estimate of the annual costs to developers in England and Wales in applying for consents to conduct marine works that are subject to FEPA controls. While for an individual developer the licence application costs for a project are a *one-off*, the costs calculated here are the average *annual* costs for the whole sector owing to the current licensing system. There are approximately 350 applications for FEPA licences per year. A few projects require more than one FEPA licence, thus the total number of projects for which applications are submitted is less than 350. The costs were grouped into bands by size and type of project (maintenance dredging, capital dredging, construction or renewables) before taking averages for each band and multiplying by the expected number of applications<sup>48</sup> in each group.
147. Larger offshore renewable energy projects (greater than 100MW) and port projects of national significance will come under the remit of the new Infrastructure Planning Commission (IPC)<sup>49</sup> being set up by the Planning Reform Bill rather than under the remit of the MMO. We therefore wanted to exclude consideration of such projects in the cost benefit analysis. It was not possible to exclude projects according to the thresholds and so we have excluded projects with a cost over £50m. The total cost of consents to all developers for marine works in England and Wales is estimated at **£6m per year**. This also excludes the costs of Environmental Impact Assessment (EIA) for all applications and the costs for developers that only require Coast Protection Act (CPA) consents.

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48 The expected number of applications in each group is drawn from projections made by MFA for their annual fee reviews.

49 These assumptions are based on a Defra/DTI agreed paper. IPC responsible for projects at or above 100 MWs, MMO those below. IPC decides 7 projects totalling 2,350 MWs (2.35% of supply). MMO decides 7 projects totalling 150 MWS (0.15% of supply).



148. Of particular relevance to the Marine Bill are small wave and tidal energy projects, usually with capacities of less than 100MW. Although few have been commissioned so far, these projects are likely to increase over the next 20 years. One respondent to the survey, who had recently gained permission to carry out such a development, incurred consent costs of £250k and a further £1.25m to undertake an Environmental Impact Assessment (EIA).
149. Estimates of the aggregated baseline costs of consent applications to marine developers are presented in table 13 below.
150. Evidence from the survey of developers provides an indication of clear efficiency savings from Marine Bill proposals. Respondents reported pre-application costs, such as initial contact with government departments and identifying which consents would be required, accounted for 15 – 25% of total costs. This is an area which would be directly addressed by Marine Bill proposals, although there will be variance in the degree to which these efficiency savings are felt across all developers. To provide an illustration of savings, it is assumed that between 10% and 20%<sup>50</sup> of the costs can be saved. Given the potential for savings in providing a clearer regime for developers, this is considered a conservative estimate.
151. The calculated potential annual efficiency savings of the Marine Bill to projects valued at less than £50 million (including small scale renewables projects) is in the range of **£0.6m to £1.2m**, this is summarised in Table 14 below.

**Table 13: Annual Baseline Costs of consent to developers prior to the implementation of the Marine Bill**

Region	Baseline costs (inc EIA) (£m)	Baseline costs (exc EIA) (£m)
England (90% of applications)	14.9	5.4
Wales (10% of applications)	1.7	0.6
Total (England & Wales)	16.6	6

<sup>50</sup> Savings could potentially fall between zero and 100% for different developers. 10-20% savings represent a conservative estimate

**Table 14: Illustrative Annual Benefits to developers after the implementation of the Marine Bill**

Region	Lower estimate of saving (10%) (£m)	Higher estimate of saving (20%) (£m)
England (90% of applications)	0.54	1.1
Wales (10% of applications)	0.06	0.1
<b>Total (England &amp; Wales)</b>	<b>0.6</b>	<b>1.2</b>
<b>Total discounted benefits (over 20 years at 3.5%)</b>	<b>8.8</b>	<b>17.7</b>

Enforcement efficiencies<sup>51</sup>

152. The existing arrangements may result in disproportionate penalties for minor offences. The aim is to make use of the more refined tools discussed in the Hampton and Macrory reviews, which promoted a greater range of administrative sanctions to give regulators increased flexibility and proportionality in their enforcement activities. The new enforcement measures suggested (e.g. compliance notices for licensing) are more proportionate and generate savings for the government.
153. Monitoring and enforcement of licence conditions should be improved by streamlining regulatory regimes so that enforcement powers operate across those regimes. There will be efficiency savings in combining the responsibilities which are currently held by different organisations, for example where inspection activities can be carried out jointly or where enforcement officers can undertake surveillance and enforcement activities across a range of sectors. Industry, as well as government, will benefit should this result in lower fees and/or an improved service.
154. Currently enforcement tools for licensing under FEPA are limited to the issue of warning letters or to prosecution. Consequently, minor infringements of the law have often gone unpunished because it has not been in the public interest to pursue a prosecution and in some cases developers have gained competitive advantage from their offence. Introduction of statutory notices under the Bill should reduce the amount of time spent repeatedly chasing offenders judged not in the public interest to prosecute. Breaching a notice would constitute an offence in itself; depending upon the severity of the breach, the licensing authority would then either issue a monetary penalty or prosecute. This will remove the

<sup>51</sup> Includes general principles Marine Bill enforcement measures are following that will lead to efficiencies in the enforcement of fisheries and nature conservation matters

competitive advantage currently afforded to some operators by non-compliance over those who abide by their licence conditions.

### *Nature Conservation*

155. The new enforcement measures for nature conservation are intended to reduce the burden on the courts through the introduction of a civil system of penalties.

### *Marine Fisheries*

#### Reform of inshore fisheries management

156. The establishment of the MMO and a clear purpose and duties for IFCAs will lead to efficiencies due to more collaborative working between IFCAs, the MMO and the EA. This will come about through the MMO and the EA sitting on each Committee, statutory consultation between these organisations, cross warranting of enforcement officers and a duty to co-operate.
157. New byelaw making procedures for IFCAs will result in clearly drafted legislation, a systematic cost-benefit analysis, and greater scrutiny through fuller consultation. This will lead to better decision making and efficiency savings for both government and industry. Proposals for fewer Committees will drive further efficiency savings, for example, through greater utilisation of expensive capital assets.

#### Several and Regulating Orders

158. Improvements to the operation of Several and Regulating Orders for shellfish will generate efficiency savings for industry. In England and Wales the first sale value of shellfish managed under Several and Regulating Orders was £26.2m in 2004<sup>52</sup>. The costs to the applicant of applying for a new Order or to renew an existing Order can range from £30K to £100K in cases where a public inquiry is held<sup>53</sup>. Under our proposals to remove the need for a public inquiry for trivial objections we estimate that there would be one less public inquiry per year representing savings to applicants of up to £100K and an efficiency saving for the government. The proposals will simplify the legislation making it easier to interpret and reduce administrative burdens on the grantees of Regulating Orders.

#### Revoking redundant legislation

159. Our proposals to revoke redundant and out-of-date primary fisheries legislation and, in some cases, to consolidate legislation, will result in more transparent, comprehensible and accessible legislation. This will reduce the complexity of the statute book and bring savings to Government from reduced transposition of EU requirements.

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52 CEFAS compile data on an annual basis for the production of farmed shellfish in England and Wales. These figures are published in Shellfish News, a bi-annual publication issued free to industry.

53 Based on two actual cases

## Enforcement

160. A system of administrative penalties will increase consistency, transparency and effectiveness of sanctions for minor offending. There will also be a reduced burden on government and on industry as a result of fewer court hearings. For fishermen these savings will be in the order of £1m in legal fees and lost fishing time<sup>54</sup>. Savings will also accrue to the government in reducing the burden on courts and legal aid. Strengthened enforcement officer powers will result in speedier investigations and act as a greater deterrent to illegal fishing. These measures will also result in less need for secondary legislation to implement EU measures.

<b>Table 15: Overall benefits to fishing industry from the Marine Bill for England and Wales</b>		
Region	Fisheries proposal	Annual benefits (£m)
England & Wales	Several & regulating orders	0.1
England & Wales	Changes to fisheries enforcement	1
<b>England &amp; Wales</b>	<b>Total Annual benefits</b>	<b>1.1</b>
<b>Total discounted benefits (over 20 years at 3.5%) 16.2</b>		

## Fishing vessel licences

161. Proposals to strengthen existing powers to charge for fishing vessel licences would, if used, transfer some of the cost burden from the taxpayer to the industry. Currently there are powers to charge for vessel licences under s 4(4) of the Sea Fish (Conservation) Act 1967. These powers have not been used to date. Our proposals would apply in England and Wales and would allow the setting of different fees based on the cost of granting and administering different classes of licence. Before introducing any charging scheme there would be consultation to consider the potential impact on the profitability and competitiveness of the industry. The number of vessels administered in England and Wales in 2007 was 3,530. The annual cost of administering the fishing vessel licensing scheme is approximately £0.6m<sup>55</sup>. If introduced the aim would be full cost recovery.

## *MMO*

162. The creation of an MMO will improve the delivery of planning, licensing, nature conservation and marine fisheries functions by making more effective links between them. Establishing an MMO will bring more functions into one marine contact point so bringing efficiencies for both Government and external stakeholders.

54 Further details can be found in the final RIA to the consultation on a system of Administrative for Fisheries Offences at <http://www.defra.gov.uk/corporate/consult/penalty-fish-offence/index.htm>

55 Marine and Fisheries Agency estimate

## *Migratory and Freshwater Fisheries*

163. Using a conservative first sale value, the total reported salmon catch by nets and traps in 2006 would be worth over £670,000<sup>56</sup>. Operating costs need to be taken into account in assessing the value of the net fisheries. In the Northeast these have been estimated at between 10 – 20% of the value of fish sold whilst in other fisheries higher figures have been quoted. The gross, first sale value of the sea trout catch is estimated at about £312,000<sup>57</sup>. Lamprey fisheries are valued at an estimated £125,000<sup>58</sup>. Operating costs for both these fisheries can be similar to those quoted for salmon fisheries. Smelt are largely caught as bycatch. The value of the fishery may amount to £100,000<sup>59</sup> (no extra running costs). An estimate of the total value of commercial eel fisheries (glass, yellow and silver eels) is in the order of £1.6m annum<sup>60</sup>; though this varies widely from year to year.
164. Research commissioned jointly by the Environment Agency and Defra into the economic value of inland fisheries<sup>61</sup> has looked at economic aspects of freshwater fish and fishing. Expenditure by freshwater anglers in England and Wales supports about a billion pounds of household income equating to 37,000 full-time jobs. A separate study assessed the total economic value of salmon. It concluded that, on average, the public would be willing to pay £15.80 per household per year to prevent “a severe decline in salmon populations across [England and Wales], with 95 percent of salmon being lost for at least 25 years”. Aggregated across all households in England and Wales this amounts to a value of around £350 million per year.

### Introduction of a unified scheme for all movements of live fish<sup>62</sup>

165. Long term consents for most inland waters will lead to a significant reduction in the number of fish movement applications (under the new scheme) and a significant reduction in suppliers’ time and costs associated with fish movement applications. Reductions in administrative costs would also be achieved by consenting fish removals on an annual basis for registered suppliers, thereby eliminating the need for individual consents for each and every operation and

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56 Environment Agency estimate

57 *Ibid.*

58 *Ibid.*

59 *Ibid.*

60 Defra estimate based on HMRC import/export records in ICES/EIFAC Eel Working Group Report on the eel stock and fishery in United Kingdom 2007. A Walker, M Aprahamian, B Knights, J Godfrey, R Rosell (2007)

61 Economic Evaluation of Inland Fisheries: Welfare benefits of inland fisheries in England and Wales. Lawrence, K.S., Spurgeon, J. (2007) <http://publications.environment-agency.gov.uk/pdf/SCHO1207BNNV-e-e.pdf> and Economic Evaluation of Inland Fisheries: The economic impact of freshwater angling in England and Wales. Radford A., Riddington G., Gibson H. (2007) <http://publications.environment-agency.gov.uk/pdf/SCHO1207BNNW-e-e.pdf>

62 This impact assessment is based on a unified scheme that will in part be implemented through Marine Bill legislation and in part through the legislation arising from Europe and implemented via an Order made under the European Communities Act 1972. It has not been possible to separate the costs or benefits between the two component parts.

removing the current 20-day period for consent approval<sup>63</sup>. This will allow greater freedom for fish suppliers and fisheries, particularly those engaged in low risk operations.

166. The new live fish movement scheme will enable the Environment Agency to redeploy resources from administration to focus on high risk categories of fish movements, illegal activity and to respond to intelligence gathered. They will also be able to increase enforcement on the removal of fish, as this is a key deterrent to further illegal introductions of fish, particularly non-native species.
167. The proposed introduction of a unified scheme for all movements of live fish will result in efficiency savings benefits to industry. An illustrative estimate presents potential annual benefits of £215,000<sup>64</sup>.

### Modified licensing schemes

168. Removing the automatic trigger for public enquiry when a single objection is raised to an NLO will result in savings for the Environment Agency in responding to such an enquiry. There are currently 19 NLOs and most of these are renewed every ten years, with the remaining on 4-5 year cycles. If a public enquiry is triggered in response to a proposed Net Limitation Order (NLO) then an additional burden of £50,000 is placed on the Environment Agency. By removing the automatic trigger for such enquiries, potential upper savings are in the region of £125,000 per annum<sup>65</sup>, set against total running costs (excluding enquiries) of £94,200 – £138,000 per annum<sup>66</sup>.
169. In addition to the financial savings there are non-financial benefits from the proposed change. For example, it will enable the Environment Agency to pursue conservation measures which they would currently avoid due to the potential high public enquiry costs attached. Currently this disincentive to take action means weaker measures are being put in place than is appropriate.

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63 Under current arrangements any person seeking to introduce non-native fish into the wild is subject to two different pieces of legislation. Whilst this process has been streamlined as far as possible within current legislative boundaries, the application-processing period is 10-20 working days and can involve three organisations. Additionally, if the fish are obtained from the wild, a third permit is required relating to the fish removal operation. The proposal is for a single permit from a single organisation for both removal and stocking, which will reduce administrative burden and simplify applications for businesses.

64 Environment Agency estimate

65 Based on Environment Agency estimates of £50k per enquiry, with 15 NLOs on a renewal period of ten years and 4 NLOs on a renewal period of four years

66 Based on Environment Agency estimates of a typical NLO costing 21.4-35.7k to implement with further running costs of 0.5-6k per annum

**Table 16: Administrative savings in England and Wales to Environment Agency and fish suppliers and fisheries owners**

<b>Migratory and Freshwater Fisheries proposals</b>	<b>Annual benefits (£k)</b>
NLO; removal of Public Enquiry trigger	125
Live fish movement scheme	215
<b>Total annual benefits</b>	<b>340</b>
<b>Total discounted benefits (3.5% over 20 years)</b>	<b>£5m</b>

## **Greater certainty**

### *Planning*

170. Developers will be better able to assess the likely outcome of applications because the plan will make clear the context in which decisions will be made. Licensing authorities will also benefit from not having to weigh up the combined intent of many different national and local policies in coming to each decision they make.
171. Specific economic benefits will accrue to developers if there is greater certainty and clarity about plans, leading to better focussed investment and therefore reduced risk. Plans will also assist developers and users of the sea in selecting suitable sites for their activities (based on better data), as well as increasing awareness of other activities operating in the same area that may affect their project. Potential conflict between marine activities increases uncertainty for a variety of businesses active in the marine area, including the energy and leisure industries. A strategic planning system will be able to mitigate these unnecessary costs on industry and government.
172. The plans will provide a focus for bringing together and considering the views of all those with an interest in their marine area, and allow them to have a strong influence over what happens during the plans' preparation. This will lead to better planning, and give those that might be affected by a plan the opportunity to shape it, enabling them to share ownership of the final product. This increases certainty for developers by reducing the likelihood of issues unexpectedly arising at the licensing stage.
173. This involvement of stakeholders at an early stage of plan preparation reduces the risk of legal challenge to applications. This will lead to savings in Government and stakeholder legal costs.

### *Licensing marine development*

174. Improved clarity in the licensing system and consistency in its delivery will help reduce the time and effort developers put into making licence applications fit for purpose. These benefits can partly be attributed to an improved marine planning

system. In general, a clearer regulatory framework and a more transparent marine management system will enable firms to better assess what is necessary for a successful application. Firms can also consider where a project is best located to fit in with the environmental and social interests on which plans are based. Discouraging speculative applications, which can distract regulators from more important duties, will reduce the burden on government.

175. A clearer regime should minimise uncertainty and delays, with benefits accruing to both licence applicants and regulators, and a reduction in incomplete applications.
176. Carefully drafted secondary legislation and guidance could ensure that the application process runs more smoothly and transparently. For example, there are likely to be requirements which mean that applicants and consultees have to submit information within certain timescales.
177. For offshore renewable energy generation, the application procedure is currently carried out in stages and with a great deal of communication between developer and regulators. Consolidating licensing regimes for offshore renewable energy projects so that there is only one body to deal with will help speed up this process and minimise delays.
178. The proposed exemptions and general permissions would also reduce uncertainty for developers participating in activities which are insignificant or pose a low risk to the marine environment, heritage or other legitimate uses of the sea. This is not possible to quantify without knowledge of the provisions to be introduced in secondary legislation. The reduction in the administrative procedures necessary in applying for consent under the Harbours Act 1964 will bring similar benefits.
179. A more flexible use of licensing powers with regards to phased activities such as navigational dredging would also bring benefits for industry by reducing the number of times administrative processes have to be carried out and reducing uncertainty for developers wanting to carry out a series of related activities.

#### Survey to quantify the benefits of streamlined licensing on developers

180. A recent survey<sup>67</sup> of marine developers used an in-depth questionnaire to explore the experience of a range of private, public and third sector organisations with regard to costs of the current licensing arrangements.
181. Delays and uncertainty about timing appear to be significant issues for many respondents. Where the application proved to be less straightforward, there were more frequent comments to the effect that developers did not know what was happening and had no idea what the timetable might prove to be: a number commented on the adverse effect upon their business as a result.

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67 'A survey to assess the impact of Marine Bill proposals on Marine and Coastal Developers' Frontline



182. Table 17 below shows the number of returns we received where an unexpected delay was cited, and the cause attributed to this.
183. Table 18 below shows the number of returns we received where further data requirements were cited, and the cause attributed to this.
184. Table 19 below shows those respondents who indicated that uncertainty about the process was an issue for them, and the specific area where this applied.
185. Although we are unable to estimate the extent to which the Marine Bill will reduce uncertainty for marine developers it is clear from the survey evidence that uncertainty is an issue for a significant portion of businesses and industry comments suggest that these are having adverse impacts on businesses. Thus we can conclude that the marine bill by increasing this certainty will reduce costs to business.

<b>Table 17: Unexpected delays by cause</b>	
<b>Reason for unexpected delays</b>	<b>Responses</b>
Unexpected data requirements emerged	7
Delays from regulators (real or perceived)	13
Unexpected consent requirements	12
Unexpected delays in consultation process	10
Unexpected requirements to negotiate compensation/mitigation	6
Other	6
<b>Total number of respondents (where unexpected delay was cited)</b>	<b>30</b>

<b>Table 18: Reasons further data required during the application process</b>	
<b>Reason</b>	<b>Responses</b>
Not made aware of requirements	9
Misunderstood guidance	1
New requirements emerged during application investigation	15
Other	10
<b>Total number of respondents (where further data requirements were cited)</b>	<b>31</b>

<b>Table 19: Uncertainty about the process</b>	
<b>Aspects of uncertainty</b>	<b>Responses</b>
Likely length of the process	25
Information regulators would require from you	13
Likely decision	13
Likely licence requirements	17
Likely extent/form of mitigation or compensation required	11
Terms of investigation by authorities/the other interests which would be considered by investigators	9
Other	0
<b>Total number of respondents (where uncertainty about the process was cited)</b>	<b>32</b>

### *Nature conservation*

186. Marine industries currently incur costs due to uncertainty over where important areas for marine biodiversity are located and where licensing applications might be subject to restrictions, conditions or mitigation on ecological grounds. Setting up a network of MCZs would reduce this uncertainty for marine developers.
187. For nature conservation there will be effective enforcement structured around a clearly published scale of penalties for breach of conservation orders which are intended to control unrestricted activities. This will result in more certainty about the penalties associated with certain offences and address threats identified for inshore MCZs.

### *Marine Fisheries*

188. Both the reform of inshore fisheries management and the review of primary fisheries legislation will simplify legislation, making it more transparent, comprehensible and accessible to fishermen, regulators and others.
189. Enforcement by IFCA officers will be strengthened through the Bill, this will provide greater certainty in management of the inshore area.

### *MMO*

190. Establishing an MMO will bring more functions within one marine contact point; this should give stakeholders greater certainty in their approaches to Government.

### *Migratory and Freshwater Fisheries*

191. The impact of these proposals will be most strongly felt as efficiency savings. However, there will be greater clarity to businesses involved in live fish movements and also greater protection for native biodiversity from the new scheme, thereby bringing greater certainty for the Environment Agency when dealing with live fish movements.

## **Environmental benefits**

### *Planning*

192. More strategic planning of marine resources and a more efficient licensing process will lead to better management of environmental resources in the area. Strategic planning in the marine environment will enable decision-makers to look at long-term and cumulative effects, and so operate in a way that minimises the risk of significant ecosystem damage. A planning system will not replace the need to carry out Environmental Impact Assessments (EIAs) and Appropriate Assessments (AAs) to accompany new development proposals. However, as the planning system starts to draw together data and information from Strategic Environmental Assessments (SEA) and plans, these EIAs will be better informed, leading to improved decision-making on the feasibility of projects and the measures needed to mitigate adverse environmental impacts.

### *Licensing marine development*

193. At present, the environmental impacts of most dredging projects are carefully assessed while certain forms, such as hydrodynamic dredging, remain unregulated. With the new licensing regulations in the Marine Bill all dredging would fall under the scope of licensing rules. This will produce benefits in that fragile or especially important parts of the marine environment will be protected from activities which are currently uncontrolled. A recent CEFAS survey indicated that the use of non-licensable dredging is significant in the UK<sup>68</sup>.
194. The introduction of the “immediate effect notice” will bring environmental benefits. This notice will allow immediate action to be taken in cases where activity will or is likely to cause serious harm to the environment, human health or interfere with the legitimate uses of the seas. Compliance notices will provide more effective tools towards ensuring that remediation or mitigation measures specified in licence conditions can be enforced, with consequent environmental improvements.

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<sup>68</sup> Of the 250 ports, harbours and marinas surveyed in that study, 27% of respondents reported using non-licensable techniques, such as hydrodynamic and plough dredging. The number of ports and harbours in the UK has been estimated at roughly 650: on this basis, around 176 businesses may use these techniques.

## Nature Conservation

### Nature Conservation – Valuing the benefits

195. Designation of Marine Conservation Zones (MCZs) is an important element of the Marine Bill. It is anticipated that such zones will have a number of significant benefits. These benefits can be categorised into:
- (i) On-site benefits: the changes in the provision of ecosystem goods and services within a MCZ, defined in economic terms into three broad value categories<sup>69</sup> – direct use, indirect use and non-use benefits.
  - (ii) Off-site benefits: the benefits accruing outside of the site e.g. fish productivity spill-over.
196. The current level of legislative detail required to obtain precise costs and benefits is not available. Consequently, careful potential scenario building has been used to provide an illustrative benefit range. It should be noted that these scenarios represent a range of implementation paths that are not necessarily indicative to what will actually be administered in practice.
197. In order to determine monetary estimates for these potential benefits Defra commissioned SAC Ltd and the University of Liverpool to undertake a study<sup>70</sup>. Owing to resource and time constraints no primary economic valuation studies were carried out within this study, and the value of ecosystem services thus relied upon Benefits Transfer (BT)<sup>71</sup>.
198. In addition to the specific limitations of the study undertaken, BT is itself subject to methodological limitations. Although BT does not have the reliability of primary valuation studies, it represented the best methodology within the time available. More detailed limitations of BT and of the assumptions used in this study are discussed below.

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69 Direct use value: arises from the direct exploitation of the environment, generally demand driven goods, e.g. fisheries; Indirect use value: are benefits, which are derived from the environment without human intervention, e.g. climate regulation; Non-use value: economic value attached to an environmental or natural resource that is not based on the tangible human use of the resource. E.g. existence value.

70 SAC Ltd & University of Liverpool (2007). *Marine Bill – Marine Nature Conservation – Valuing the Benefits*.

71 Benefits Transfer is a pragmatic way of estimating values for environmental or social tradeoffs when there is limited time or funding available. It operates by transferring values in some way from existing valuation studies to a target study of interest.

## Study Methodology

199. This study estimated the value arising from the application of three representative networks of MCZs, which were also used in the corresponding costs study (see paragraph 99). These 3 networks (A,G and J)<sup>72</sup> were selected from the output of an earlier Defra analysis (Richardson et al. 2006<sup>73</sup>). Two different levels of restrictions were assumed to apply to MCZ sites within each network: 'highly restricted' (HR-MCZ) and 'maintenance of conservation status' (MCS-MCZ)<sup>74</sup>. It is more likely that designation will combine different levels of protection across the implementation network and thus 3 management scenarios combining different levels of protection were subsequently assessed to produce 9 regulatory combinations.
200. The study then used 11 value categories<sup>75</sup> provided by the UK marine environment to inform the estimation of on-site benefits within these MCZs, these are explained in Annex 3.
201. Under the 9 regulatory combinations, benefits arising from each hypothetical scenario were analysed by estimating the biophysical changes resulting from each scenario, these changes were measured against the status quo (do nothing option) and a monetary value was attached to the environmental goods and services generated by these changes.
202. In order to value the benefits in monetary terms, the values calculated for each of the 11 goods and services categories were apportioned across the habitat/ landscape likely to deliver that good or service. A value was then determined based on the proportion of that habitat found in the network scenario.
203. Translating aggregate UK ecosystem goods & services values (Beaumont et al 2006) for application to the network scenarios required a 5 step process. Food provision in aphotic reef habitats provides an example of this process, and is explained in Annex 3.
204. The study was restricted to English territorial waters out to 12 nm and UK offshore waters.

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72 Network A represented the smallest MCZ network with the lowest representation of threatened and declining species (using OSPAR listings). Network G was larger in size and gave preferential selection to nursery and spawning areas for fisheries stocks. Network J was the largest network and was characterised by a few large sites mainly located offshore.

73 Richardson, E. A, Kaiser, M., Hiddink, J. G, Galanidi, M & Donald, E. J. (2006). *Developing Scenarios for a network of marine protected areas*.

74 HR-MCZ and MCS-MCZ represent regulatory regimes at opposite ends of the protection spectrum. HR-MCZ entails the progressive removal of all activities within the MCZ that are deemed potentially damaging, with exceptions such as; where the benefit to the public clearly outweighs the cost to the environment, or action to benefit the environment is undertaken which offsets any damage that development may cause. MCS-MCZ allows development and extraction to continue but regulates activities where there is medium/high expected impact on biodiversity.

75 Categories based on report for Defra by N.J. Beaumont , M.C. Austen, S.C. Mangi, M. Townsend (2006) 'Marine Biodiversity – An Economic Valuation. Building the evidence base for the Marine Bill'. Available online at [www.sciencedirect.com](http://www.sciencedirect.com)

## Results

205. Table 20 below presents the average undiscounted annual on-site benefits for the 9 regulatory combinations. Sensitivity analysis has been carried out to provide the most robust estimates. Table 21 below presents the present value of benefits over 20 years after sensitivity analysis has been carried out, and therefore, includes only the most robust estimates.

<b>Table 20: Average undiscounted annual on-site benefits</b>			
	Degree of restriction: Least restriction – Greatest restriction		
Region	10% HR/90% MCS (£billion)	20% HR/80% MCS (£billion)	30% HR/70% MCS (£billion)
Scenario A: Smallest area/lowest biodiversity conservation	£0.749	£0.753	£0.758
Scenario G: Medium area/medium biodiversity conservation	£1.271	£1.280	£1.289
Scenario J: Largest area/largest biodiversity conservation	£1.636	£1.642	£1.649

<b>Table 21: Total discounted (3.5%) on-site benefits over 20 years</b>			
	Degree of restriction: Least restriction – Greatest restriction		
Region	10% HR/90% MCS (£billion)	20% HR/80% MCS (£billion)	30% HR/70% MCS (£billion)
Scenario A: Smallest area/lowest biodiversity conservation	£1.794	£1.934	£2.075
Scenario G: Medium area/medium biodiversity conservation	£3.157	£3.210	£2.914
Scenario J: Largest area/largest biodiversity conservation	£3.966	£4.013	£4.060

206. In addition to on-site benefits there are potential off-site benefits from MCZs. Off-site benefits can accrue due to the potential spill-over effect into the wider marine environment from an increase in biodiversity conservation within the MCZ networks. The study attempted to value the off-site fish productivity benefits using a production function approach based on the positive relationship

between protected marine environments and healthy fish populations. This is an example of surrogate market valuation; the value of changes in the provision of MCZ networks is inferred by observing the corresponding changes in production of a related marketed good (fish). Estimated annual benefits of £16.8 million were calculated. However, the confidence that can be attached to the off-site benefits is low and as such these have been excluded from the total benefits figure. Further details on this can be found in the limitations of the study section below.

#### Limitations of the study methodology

207. BT involves reviewing the literature for relevant environmental valuation studies, then transferring a value estimate from that study site and applying it to the network scenarios. Modifications were made to value estimates to reflect differences in key parameters between the study site and the policy site (in this case the network scenarios) in terms of physical differences between habitats. However, no meta-analysis<sup>76</sup> was undertaken, and the study mainly used unadjusted mean values which should be considered less reliable than where benefits are transferred using a benefit function or a mean value adjusted for local socio-economic and ecological conditions.
208. The precision of BT depends on the availability of studies corresponding to the relevant benefit categories identified as a result of regulatory change. Owing to the paucity of data and studies pertaining to marine ecosystems in temperate waters, this study relied in the main on a single study for the majority of ecosystem service categories.
209. There are some values which higher level of confidence can be applied with regards quantification. For example, the estimated benefit for food provision is calculated from direct market valuation, whereas, the benefit for bioremediation of waste is derived using BT from a single study of a Spanish marine reserve. To ensure the benefits presented are as robust as possible, sensitivity analysis was carried out which excluded less reliable estimates.
210. The use-value estimates were derived by apportioning total value estimates through expert assessment of the biophysical changes likely to arise under the regulatory scenarios. The subjectivity which accompanies any work based on expert judgement alone should be considered when reviewing the study results. However, under sensitivity analysis the lower bound estimate as based on expert assessment for impacts of the zones on landscape/habitat types was used and thus the results can be considered a lower bound estimate which accounts for the uncertainty of subjective judgement as much as is possible.

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<sup>76</sup> Meta-analysis is the statistical analysis of the summary findings of prior empirical studies for the purpose of integrating findings.

211. There is limited scientific basis for suggesting that off-site benefits are significant, due to data restrictions and controversy within biology literature related to the merits of the methodology used. Excluding off-site benefits suggests that benefits are likely to be an underestimate of total benefits (see para 205 above).
212. The study does not attempt to value non-use values, these are assumed to be the benefit accruing to a potentially large proportion of the UK public arising from the knowledge of Marine Bill related improvement. Again overall benefits values can be considered an underestimate as non-use values have not been included. A study<sup>77</sup> is currently underway using Contingent Valuation methods to try and estimate the non-use values of the Marine Bill proposals and the related environmental goods and services which it will provide. The results of this are expected in April 2008 and should give an indication of the scale of non-use values for the Final Impact Assessment.
213. Four of the categories: resilience and resistance, biologically mediated habitat, cultural heritage & identity and Bioremediation of waste, could not be assigned a monetary estimate (due to a lack of literature and evidence as opposed to a zero value). Potentially the value derived by these categories could be large and therefore, the total benefits presented are likely to be an underestimate.
214. For each of the three scenarios, three different applications of the two management regimes were applied to reflect different levels of environmental protection to the network (i.e. 10% HR-MCZ/90% MCS-MCZ; 20% HR-MCZ/80% MCS-MCZ and 30% HR-MCZ/70% MCS-MCZ). Using Geographic Information System (GIS) software specific habitats were identified within each network scenario and the value of the environmental benefits arising under each management regime was then estimated for the network as a whole. This method contains a certain amount of error, as in practice MCZs will have different levels of protection according to their specific features and conservation objectives.
215. 'Leisure and Tourism' was considered the least reliable result, so the sensitivity analysis involved using an alternative methodology to derive an aggregate value for this benefit category resulting in a revised estimate of £1.4bn compared with the initial estimate of £3.4bn, this highlights the sensitivity of the results and that they should be used as an illustration of potential benefits but not an indication of specific figures.
216. In addition, the incremental benefits are the avoided damage arising compared with the status quo (i.e. no MCZ network designation). The assumption is that the status quo involves no change for the present day situation and does not account for measures which could be undertaken to protect areas of the marine environment in the absence of the Marine Bill.

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<sup>77</sup> SAC Ltd & University of Liverpool have been commissioned to produce a report entitled '*Determining monetary values for use and non-use goods and services – marine biodiversity*' (CRO 383). This work will report in April 2008.



## Conclusions

217. Gas and climate regulation has an aggregate annual UK value estimate of £8.2bn, this is significantly higher than the corresponding estimates for other ecosystem goods and services. This highlights the important role the marine environment has in climate control, partly due to its Green House Gas (GHG) sequestration capacity. The valuation method for Gas and climate regulation is explained in Annex 3.
218. Depending on site location and regulatory regime the present value benefits range from **£1.79bn to £4.06bn** (discounted over 20 years). It is expected that benefits will fall toward the upper range, as conservation impact (therefore greater environmental benefit) will be considered when choosing site location. In addition, the total benefit is likely to be an underestimate as there are several benefit categories for which estimates were not possible owing to a lack of data/pertinent studies, i.e. bioremediation of waste, biologically mediated habitats, resistance and resilience, cultural heritage and identity, non-use/bequest values and option use values. The study authors suggest that these values are likely to be substantive but are not captured in the monetary analysis. Whilst limitations to this methodology exist the results can be considered to have addressed these wherever possible, applying sensitivity analysis, and are the best estimates available.

## *Marine Fisheries*

219. SFC reform will allow for greater protection of the marine environment through more timely and effective management measures. Improved regulation of angling and unregulated commercial fishing will also help deliver fisheries and marine environment conservation benefits through improved protection of fish stocks and habitats. Powers to charge for fishing vessel licences will present an opportunity to influence fishermen's behaviour, for example by providing incentives to deploy more environmentally responsible fishing practices. In addition, changes to fisheries enforcement will act as an increased deterrent to illegal fishing, with consequent benefits for the marine environment.
220. Better enforcement through IFCA byelaws and licensing enforcement measures gives the tools to react flexibly to emerging threats and opportunities such as changing stocks, new uses of the sea or new priorities. IFCA's will have strengthened enforcement powers available to them to enforce their own fisheries byelaws, marine nature conservation byelaws, and other national and EU fisheries legislation. They will also be able to introduce emergency byelaws at short notice to prevent, stop or introduce restrictions on a damaging activity that could not have been reasonably foreseen.

## *MMO*

221. The main environmental benefits brought about by the MMO will be through the delivery of its functions – especially its nature conservation functions, the integration of fisheries and environmental management and enhanced enforcement powers.

### *Migratory and Freshwater Fisheries*

222. The proposed measures create a more flexible and transparent licensing system, and provide a better means to regulate or restrict activities that may have an adverse effect on stocks of migratory and freshwater fish. This will support delivery of UK commitments under the Water Framework Directive in relation to fish and transitional water. They also allow the Environment Agency to have greater control over the movement of live fish that potentially can be detrimental to native biodiversity. As well as environmental benefits, there are benefits to fishers from healthier fish stocks.

## **Enhanced knowledge management and expanded knowledge base**

### *Planning*

223. Plans will provide a reference point from which Government, industry and the public can analyse a number of factors including the location of licensed sites, the expected growth of particular industries, and the geographic spread of marine heritage sites or areas designated for conservation purposes. Marine plans and the appraisals carried out on them will generate data which will be publicly available where possible and of benefit for a range of marine management functions.

### *Licensing marine development*

224. The introduction of marine planning and the associated SEA process will generate additional data which should enable better licensing decisions.

### *Nature Conservation*

225. One of the benefits in designating a network of MCZs will be to improve the knowledge base on marine ecosystems. Benefits might conceivably accrue to medical research, future commercial exploitation of currently untapped resources, or our knowledge of environmental limits. Data that is collected in MCZs for designation, management and monitoring purposes will allow ever more proportionate, effective and targeted conservation measures.

### *Marine Fisheries*

226. The reform of inshore fisheries management in England and Wales will enable more active data collection on fishing activity and its impact on the marine environment. This will improve evidence-based decision making by the newly created Inshore Fisheries and Conservation Authorities (IFCAs) and in turn better management of fisheries activities within the inshore area.

### *MMO*

227. Central to the successful delivery of the Marine Bill's functions will be the availability of marine data and information. A great deal of marine data is currently being collected and held by different organisations. Gaps in our knowledge of the marine environment persist and there is duplication in collection, protocols, standards and systems. Combining functions within an

MMO will improve Government's ability to make best use of marine data across marine management functions.

228. Equipping the MMO with a GIS system will increase the accessibility to marine data and information for both decision makers and (where appropriate) the public. This should enable better informed, more accurate and quicker decisions to be made across the MMO's functions by enabling MMO staff to visualise the area under consideration and overlay and analyse data as needed.

#### *Migratory and Freshwater Fisheries*

229. The EA will have a greater understanding of pressures on new migratory fish species by requiring catch returns, with licences reflecting the combinations of species targeted by anglers, rather than the current predetermined licences. This will result in better management decisions based on sound science.

### **Maximise sustainable economic benefit from marine resources**

#### *Planning*

230. At present, proposed works only have to meet the criteria against which any licence will be determined. There is no clear mechanism to negotiate a new proposal (or refuse a licence in some instances) if an activity is considered not to be the best use of the intended location. For example difficulties would be encountered should a port development be proposed where new shipping channels would be liable to prevent future use of an adjacent area for a renewable energy project.
231. Marine planning will provide a more holistic and forward-looking approach to marine management. Tensions or conflicts between the objectives for different sectors can make it difficult for public bodies to arrive promptly at balanced licensing decisions on developments and activities. The current fragmented management system means that these conflicts are only identified at the licensing and decision-making stage and must then be resolved, which can result in additional costs for applications that take longer to approve, or may ultimately never be approved. A planning system will enable the strategic and proactive management of marine resources. This will create the opportunity to identify potential conflicts in advance and then take steps to address these before any significant investment is made.
232. Without the forward looking approach that planning will bring, we run the risk of being unprepared to deal with the new demands presented by expanding industries such as renewable energy generation.

#### *Licensing marine development*

233. Licence applications will as far as possible be considered in a single decision-making process, avoiding the current staggered series of decisions. This will help regulators take a balanced view, allowing better integration of strategic priorities into individual decisions. Clear and transparent division of responsibilities

improves decision making, enabling regulators to adopt a more holistic, long-term approach to managing marine activities. It will also improve the way in which regulators work together to address the cumulative impacts of particular projects, which could jeopardise future use of marine resources.

234. The primary objectives of licensing marine operations are to allow the use and exploitation of some part of the marine environment in such a way as to limit or mitigate any impact on the environment; avoid interference with other legitimate uses of the sea; and to protect human health. Proportionate enforcement tools to ensure that these aims can be met will lead to better management of environmental resources in the marine area.

#### *Nature Conservation*

235. The most significant benefits from the nature conservation measures will be environmental.

#### *Marine Fisheries*

236. Fisheries management proposals will allow more sustainable economic use of the marine area through: enhanced management and development of wild and cultivated shellfisheries; balanced stakeholder input into IFCA decision-making, allowing for economic, social and environmental factors all to be taken into account; and systematic cost benefit analysis of proposed fisheries byelaws leading to better, more balanced, decision-making.

#### *MMO*

237. The MMO will maximise sustainable economic benefit from marine resources through providing an effective delivery body for its functions.

#### *Migratory and Freshwater Fisheries*

238. Whilst proposed changes in Migratory and Freshwater Fisheries legislation to extend the number of licensed species will generate a negligible amount of additional licence income, this additional revenue will be used for extended fisheries management duties. This, in addition to the greater flexibility provided by new powers, will enable the Environment Agency to ensure improved fisheries management leading to improved stocks as a whole to the benefit of both commercial nets-men and anglers.

#### **Total monetised benefits of the bill**

239. The total monetised benefits of the Bill are presented in Table 22 below. This table presents the total annual benefits and the total present value of the benefits over 20 years. There are no one-off benefits.

<b>Table 22: Total Monetised Benefits of the Marine Bill</b>			
<b>Benefit theme</b>	<b>Geographical area</b>	<b>Annual benefit (£m)</b>	<b>Total benefit (PV 20 yrs) (£m)</b>
Efficiency savings to Marine developers	England & Wales	0.56 – 1.2	8.8 – 17.7
Efficiency savings to fishing industry and government	England & Wales	1.1	16.2
Efficiency savings to freshwater & migratory fishery industry and government	England & Wales	0.34	5
Environmental benefits	England inshore & UK offshore	749 – 1649	1794 – 4060
Carbon saving benefits <sup>78</sup>	England & Wales	3.6	72.5
<b>Total monetised benefits</b>		<b>755 – 1655</b>	<b>1897 – 4171</b>

<sup>78</sup> See Carbon Impact Test included in Annex 2.

## Section 3 Part C: Summary table of key costs and benefits under option 2

Table 23: Summary of key costs, benefits and assumptions		
Policy Area	Key costs	Key benefits
<b>Planning</b>	<b>Monetised</b>	<b>Non-monetised</b>
Key Assumptions:	(Per plan – costs are the same for initial plan or plan renewal)	Provide a focus for everyone to have a say in how the marine area should be managed, and how decisions will affect them
Plans produced on rolling basis, 2 plans starting each year taking two years to produce	£2m for plan preparation and consultation	Enable a more efficient use of available resources, and reduce potential conflict between marine users at an early stage, rather than during later decision making on specific activities.
10 plans prepared for marine area	£1m for independent investigation of the plan	Will enable better consideration of long term and cumulative effects of activities in the marine environment, and minimise the risk of ecosystem damage.
£2m initial data cost for each plan	£2.4m for sustainability appraisal of the plan, including requirements of strategic environmental assessment. £2m of this is data gathering which can also be used for other activities	Will provide a clearer, more informed basis on which to make decisions, and can better deliver government policy.
£2m data cost for review of each plan, review occurs twice for each plan in 20 year period	Total: £5.4m per plan (of which £2.0m is investment in new data)	Will draw together high quality information and present it in a way that is accessible and useful for all – regulators, developers and communities
	<u>Total costs</u>	
	Based on assumptions detailed in planning costs section on number of plans needed and review intervals PV over 20 years: £118m	Developers will be better able to assess the likely outcome of their applications, and can use plans that are based on greater stakeholder consensus. This will lead to focused investment and reduced risk.
	<b>Non-monetised</b>	
	Ongoing effort and participation from Government and stakeholders in the planning process	

**Table 23: Summary of key costs, benefits and assumptions**

Licensing	Monetised	Monetised
Key Assumptions:	<u>One-off</u>	£0.6m – £1.2m per annum efficiency savings to developers from a more streamlined licensing system
New GPS equipment will need to be replaced every 8 years	£12.7k one-off cost to Government to train enforcement officers on navigational safety issues	<b>Non-monetised</b>
26 additional licence applications annually from previously unregulated dredging	<u>Annual</u> £169k per annum to developers from extending licensing controls to cover all forms of dredging, £78k of which is from charges made to previously unlicensed dredging	A clearer, more transparent licensing system will reduce business uncertainty and delays in processing applications
Proposals expected to increase time spent on inspections by 60% annually	£29.2k per annum additional costs to Government to cover new enforcement arrangements	More flexible and proportionate enforcement will lead to greater compliance, and hence environmental protection, by removing competitive advantage of non-compliance
Costs based on current FEPA licences	<u>Total costs</u> Enforcement costs to Government PV over 20 years: £0.5m  Costs to industry PV over 20 years: £2.49m	Efficiency savings to regulators from combining enforcement responsibilities currently held by different bodies. Industry will also benefit from subsequent lower fees and/or improved service

**Table 23: Summary of key costs, benefits and assumptions**

<b>Nature conservation</b>	<b>Monetised</b>	<b>Monetised</b>
<p>Key Assumptions:</p> <p>Hypothetical MCZ networks consist of 92 sites covering 8.2% of UK waters</p> <p>Enforcement costs based on SFC's costs making byelaws</p> <p>Two illustrative regulatory regimes represent different degrees of protection</p>	<p><u>One-off</u></p> <p>Costs to Government of selecting and designating MCZs: £12.5m – £16.4m</p> <p><u>Annual</u></p> <p>Annual costs to Government in managing the MCZ network: £2.7m</p> <p>Annual costs to Industry (all sectors): £20m – £61m</p> <p>Annual costs to Government for nature conservation enforcement: £0.71m – £1.38 m</p> <p><u>Total costs</u></p> <p>Costs to industry (PV) over 20 years: £440m – £1.23bn</p> <p>Costs to Government for enforcement (PV) over 20 years: £10.5m – £20.3m</p> <p>Costs to Government for selecting, designating and ongoing management of MCZs: £28m – £32m</p>	<p><u>Annual</u></p> <p>Environmental benefits of a network of MCZs: £749m – £1.649bn</p> <p><u>Total benefits</u></p> <p>PV over 20 years: £1.79bn – £4.06 bn</p> <p><b>Non-monetised</b></p> <p>Improved knowledge of marine ecosystems</p> <p>Non-use value that the public potentially derive (from the knowledge that marine biodiversity is protected) – further research has been commissioned on this</p>



**Table 23: Summary of key costs, benefits and assumptions**

<b>Marine fisheries</b>	<b>Monetised</b>	<b>Monetised</b>
Key Assumptions:	<u>Annual</u>	<u>Annual</u>
Reform of inshore fisheries management assumes the following requirements:	£4m – £6m costs to government for funding the new financial burden associated with the reform of inshore fisheries management.	£1m savings to industry in legal fees and lost fishing time through establishing an administrative penalty scheme.  £0.1m efficiency savings to government from fewer public inquiries for SROs.
Additional patrol days;	<u>One-off</u>  £0.5m cost to government to implement reform of inshore fisheries management.	<u>Total Benefits</u>  Total PV over 20 years: £16.2m efficiency savings to industry
Additional fisheries officers;	£0.2m cost to government to set up IT system to issue fixed administrative penalty.	<b>Non-monetised</b>  Greater protection of the marine environment through more timely and effective management measures
Additional research & surveys;	<u>Total Costs</u>	Less risk of fish stocks declining thereby safeguarding fishing industry
New byelaw making requirements;	Total costs (PV over 20 years): £59.5m – £89m costs to industry and government	More collaborative working between IFCA's, MMO and the Environment Agency thereby providing efficiency savings and better services for fishermen and other customers
Greater role in estuaries management;	<b>Non-monetised</b>	Fewer public inquiries through clearer legislation for those granted Orders (grantees)
Staff training & development.	Tighter criteria for public inquiries on SROs could lead to an increased risk of judicial review of decisions to grant new Orders.	Fisheries and marine environment conservation benefits through improved regulation of the unregulated sector
		Improved scientific data on a wider range of fish stocks leading to better management
		A system of administrative penalties which would increase consistency, transparency and effectiveness of sanctions for minor offending
		Fisheries legislation that is more transparent, comprehensible and accessible to fishermen, regulators and others

**Table 23: Summary of key costs, benefits and assumptions**

<b>MMO</b>	<b>Monetised</b>	<b>Monetised</b>
<p>Key Assumptions:</p> <p>Costs based on establishing AHDB, MFA and NE</p> <p>40 additional staff required</p>	<p><u>One-off</u></p> <p>Set-up of MMO (including GIS): £8m</p> <p><u>Annual</u></p> <p>Annual running costs of MMO including GIS system (over and above existing costs): £2.8m</p> <p><u>Total costs</u></p> <p>(PV) over 20 years: £49m</p>	<p>The benefit of having the MMO is effective delivery of its functions, for which benefits are shown elsewhere.</p> <p><b>Non-monetised</b></p> <p>Bringing more functions together in one body will lead to improved efficiency of delivery and greater certainty for stakeholders in approaches to Government</p> <p>The MMO's GIS should lead to well informed, accurate and quick decisions being made across the MMO's functions</p>

**Table 23: Summary of key costs, benefits and assumptions**

<b>Migratory and freshwater fisheries</b>	<b>Monetised</b>	<b>Monetised</b>
Key Assumptions:	<u>One-off</u> Introduction of new live fish movements scheme: £495k	<u>Annual</u> Reduced costs for live fish movements: £215k pa
Assumed EA will issue approximately 800 new authorisations annually (for licensing)	<u>Annual</u> Annual cost for licensing and authorisations: £57 – 85.5k  Annual cost for emergency byelaws: £1.5k – £30k	Potential savings from removing automatic public enquiry trigger for Net Limitation Orders: £125k pa  <u>Total benefits</u>  PV over 20 years: £5m
Administration cost to industry from implementing new live fish movement scheme expected to transfer to a saving after the 2 <sup>nd</sup> year of implementation	<u>Total costs</u>  (PV) over 20 years: £1.33m – £1.75m  <b>Non-monetised</b>  New powers have the potential to restrict fishing effort in the short term, in order to protect stocks for future sustainability	<b>Non-monetised</b>  More streamlined applications process for live fish movements, resulting in a lower admin burden for users with released savings channelled into other areas such as enforcement  Greater protection for native biodiversity resulting from increased protection  More flexible management powers for all migratory and freshwater species to ensure sustainability of fisheries  Increased, sustainable fish stocks will benefit recreational and commercial sectors  Capacity for Environment Agency to react to unforeseen situations swiftly

## Section 4: Assumptions, Risks and Sensitivity analysis

240. As enabling legislation the Marine Bill itself does not specify all the parameters necessary to facilitate detailed cost benefit analysis. The evidence presented relies on a wide range of assumptions and potential implementation scenarios in order to construct a reasonable view of the potential costs and benefits of the Bill.
241. In order to provide a better understanding of the risks and uncertainties included in this Impact Assessment (IA) further sensitivity analysis has been undertaken to stress test several assumptions and scenarios. Given the size of the IA it is not possible to conduct sensitivity analysis on all the assumptions, although the main body contains a discussion on most of them and associated risks.
242. The following key assumptions are tested here in order to construct a ‘best’ and ‘worst’ case scenario:
- i. Licensing – Efficiency savings to developers through a more streamlined licensing system are assumed to be between 10-20% of current costs. For sensitivity analysis this is allowed to vary from 0% (worst case) to a 30% (best case) gain.
  - ii. Marine Nature Conservation – These estimates dominate the monetised costs and benefits in the IA. They are based on a process of benefits transfer which is challenging with the lack of primary valuation on the Marine area and this gives considerable uncertainty regarding the accuracy of the benefits estimates.<sup>79</sup> There is also uncertainty regarding how the benefits will arise given possible selection of sites and management regimes. As described in the body of the text, the monetised estimates are based on three alternative scenario zones of differing size and in turn for each zone three different regulatory scenarios are applied giving 9 potential scenarios. The estimates used as the main benefits estimates already represent the results of sensitivity analysis using more conservative estimates of benefits from the Zones – this is considered to be the most appropriate assumption given the analytical challenges presented by this type of benefits analysis. To stress test the estimates the upper benefits estimates (best case) are also presented alongside an even more conservative worst-case assumption that uses only 50% of the benefits presented after initial sensitivity analysis (worst case).
  - iii. Planning – These costs are already arguably overestimates as no efficiency savings are allowed for and it assumes a £2m data renewal cost every 6 years in addition to a £2m initial data cost. This represents the worst case cost scenario. A best-case scenario where initial and renewal costs are reduced by 50% is presented for comparison.

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<sup>79</sup> They are based on a full ecosystem services benefits measurement approach which is not ideal in terms of measuring the more marginal changes associated with the Marine Bill.

- iv. MMO – These costs are split between set-up and ongoing costs, sensitivity analysis has been applied to both. The central case (£3.7m) includes a 10% contingency cost due to the inherent uncertainty of establishing a new organisation, this is removed to present the best case scenario (£3.3m). For comparison, a worst case scenario (£4m) assumes a 20% contingency cost. For ongoing costs the central case (£2.7m) assumes £1.1m VAT cost, this is removed for the best case scenario (£1.6m) and increased by a further £1.2m for the worst case scenario (£3.9m).
- v. Migratory and Freshwater Fisheries – The central case used in the IA presents a cost range of £1.33 – 1.75m (total discounted over 20 years). A 10% increase and decrease from this estimate range has been calculated to analyse the worst and best case scenarios respectively.
- vi. Marine Fisheries – The central case used in the IA presents a cost range of £59.5 – 89m (total discounted over 20 years). A 10% increase and decrease from this estimate range has been calculated to analyse the worst and best case scenarios respectively.

<b>Table 24: Summary of sensitivity analysis</b>			
<b>Assumptions</b>	<b>Best case</b>	<b>Worst case</b>	<b>Central (main evidence)</b>
<b>I. Efficiency savings</b>	30% efficiency savings	Zero efficiency savings	10-20%
<b>II. Marine Nature Conservation Zones</b>	High end estimates	Central estimates less 50%	Low end estimates
<b>III. Planning</b>	50% of central data cost	£2m data cost	£2m data cost
<b>IV. MMO</b>	Ongoing costs: No VAT  Set-up costs: No contingency	Ongoing costs: VAT £2.3m  Set-up costs: 20% contingency	Ongoing costs: VAT £1.1m  Set-up costs: 10% contingency
<b>V. Migratory and Freshwater Fisheries</b>	Costs 10% lower than central estimate	Costs 10% higher than central estimate	£1.33m – £1.75m total discounted costs
<b>VI. Marine Fisheries</b>	Costs 10% lower than central estimate	Costs 10% higher than central estimate	£59.5m – £89m total discounted costs

<b>Table 24: Summary of sensitivity analysis</b>			
<b>Total Annual</b>	Costs: £35.459 – 78.955m  Benefits: £923.44m – £1953.04m	Costs: £40.071 – 83.972m  Benefits: £379.34 – 829.34m	Costs: £38.552m – £82.251m  Benefits: £754.6m – £1655.24m
<b>Total PV</b>	Costs: £665.11 – 1,495.76  Benefits: £2358.378m – £4468.678m	Costs: £733.24 – 1,569.86m  Benefits: £990.6m – £2116.7m	Costs: £709.24m – £1,542.96m  Benefits: £1896.5 – 4,171.4m
<b>NPV</b>	Range: £1,693.268m – £2,972.918m  <b>Mid-estimate: £2333.1m</b>	Range: £257.36m – £546.84m  <b>Mid-estimate: £402.1m</b>	Range: £1188m – £2,62844m  <b>Mid-estimate: £1907.9m</b>

243. The sensitivity analysis shows that when key assumptions are varied to account for a 'worst case' scenario the best estimate Net Present Value (NPV) remains positive at £402.1m, although clearly the margin between a net cost and a net benefit of Marine Bill proposals has been tightened considerably. Where assumptions have been varied to present the 'best case' scenario the best estimate NPV increases considerably to £2.33bn.
244. The sensitivity 'best case' analysis illustrates the huge potential for MNC benefits and efficiency savings to industry but also highlights that these benefits cannot be accurately estimated until more detailed proposals are made. The central best estimate NPV which is presented in this IA is £1.91bn. An average of the best and worst case scenarios is £1.37bn, however, evidence presented in this IA indicates that it is reasonable to expect that the likely NPV will tend towards the upper range.
245. In addition to the sensitivity analysis, there are wider risks and sensitivities that need to be taken into account in considering the costs and benefits of the Marine Bill:
- Evidence base – The evidence base relating to the Marine area and activities is more limited than for terrestrial areas. This IA has tried to address this through commissioning several bespoke studies to facilitate a better understanding of potential costs and benefits. Nonetheless, further work is needed to build up the evidence base and parts of the Bill will facilitate that. In particular, further work will be needed to adequately consider the costs and benefits of MCZ's. A study has recently been commissioned to provide estimates of the non-use value derived from Marine Bill marine nature conservation (MNC) proposals, this evidence will be included at a later date.

- Optimism bias – Wherever possible, when estimating the benefits accruing from Marine Bill proposals, the most conservative assumptions have been used to reduce optimism bias. Further, when estimating the costs of Marine Bill implementation, the upper bound estimates of cost have been used.<sup>80</sup>
- Time horizon – A 20-year time period has been used to analyse the costs and benefits of the Marine Bill proposals. Whilst this is an appropriate period over which to estimate costs, environmental benefits derived from MNC proposals (specifically MCZs) are likely to take longer to develop. Indeed some environmental benefits may only begin to be felt towards the end of the 20-year period. Considering only the next 20 years means the long term benefits of conserving the marine environment are likely to have been underestimated. The majority of MNC benefits will occur near the end of the analysis period, consequently the total discounted benefits over 20 years appears small in comparison to the annual figures, as discounting reduces the importance of costs or benefits felt further in the future. Future cost benefit analysis to inform Impact Assessments for particular MCZ sites would benefit from an extended appraisal period, to ensure that environmental benefits are presented in the most appropriate manner.
- MCZ sites – Until MCZ sites are selected there cannot be precise estimation of costs and benefits. As more detailed plans become available, for instance when MCZ site selection begins, a more precise analysis of potential costs and benefits will be possible. In addition, socio-economic factors were not considered when identifying the illustrative MCZ networks, in practice these would be considered and a balance would be found between socio-economic and conservation interests. Non-monetised non-use values<sup>81</sup> account for a considerable gap in the current evidence presented in this IA and a further primary research study<sup>82</sup> into the non-use value associated with conserving the marine environment is currently being carried out. Existing literature indicates that the non-use value associated with marine ecosystem goods and services can be considerable, for example, Beaumont et al (2006) estimates an annual UK range of £0.5bn – £1.1bn. Therefore, it can be expected that inclusion of non-use value estimates could significantly increase the environmental benefit value of implementing the Marine Bill.

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80 Link to green book: [http://www.hm-treasury.gov.uk/media/3/F/green\\_book\\_260907.pdf](http://www.hm-treasury.gov.uk/media/3/F/green_book_260907.pdf)

81 A non-use value is an economic value attached to an environmental or natural resource that is not based on the tangible human use of the resource, eg. bequest values where individuals attach value to the fact that an ecosystem resource will be passed on to future generations.

82 'Determining monetary values for use and non-use goods and services – Marine Biodiversity – primary valuation CRO 383' Report prepared for Defra by SAC Commercial Ltd.

## Section 5: Evidence base conclusion

246. The evidence presented in the Marine Bill Impact Assessment indicates that the benefits of implementing the Marine Bill proposals outweigh the costs of implementation. The preferred option of (implementing the Marine Bill) is presenting relative to a no intervention baseline. The no intervention baseline entails a considerable risk to the future health and sustainability of the marine environment, to ecosystem conservation and to human activity in and relating to the marine environment. The potential cost of not increasing marine environment protection is uncertain but is likely to be significant and potentially irreversible. By not implementing the Marine Bill UK marine industry could be put at a disadvantage by continuing inefficient and unsustainable use of the marine environment.
247. The Marine Bill sets out an integrated set of proposals for a new approach to the management of activities in the marine area. The Marine Bill will provide the tools to maximise the benefits from the seas and coasts whilst preserving their integrity for the future – achieving an holistic approach that has never been achieved before. The benefits of the six main policy areas will thus be complementary and so the benefits that the six bring together will be greater than the sum of their individual parts.
248. The government will incur additional costs of establishing and running the new Marine Management Organisation to deliver planning, licensing, enforcement and nature conservation functions. There will also be costs to government (via Local Authorities and the Environment Agency) of administering and enforcing new fisheries and freshwater & migratory fisheries legislation. Marine developers, the marine fishing industry and the freshwater and migratory fishing industry will incur costs in adhering to new legislation relating to licensing proposals and marine conservation zone controls. However, overall administrative burdens on both government and industry are expected to be reduced in the future as a consequence of providing a more modern, clear and user-friendly marine management system. This saving, however, is difficult to monetise at this stage until the details to be set out in secondary legislation have been determined.
249. A survey of marine developers<sup>83</sup> identified the considerable costs associated with the current licence application process. Creating an efficient marine planning system with access to better data and streamlined licensing legislation and providing developers with a clear line of communication will bring considerable benefits, estimated to be in the order of £0.6m – £1.2m annually. Marine conservation zones will bring environmental benefits annually in the order of £749m – £1.6bn – although these estimates can only be considered illustrative, they are likely to be conservative as not all environmental goods and services identified were not assigned a monetary value – in particular non-use values which could be considerable.

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83 Frontline report for Defra 'Survey to assess the impact of Marine Bill proposals on Marine and Coastal Developers' (2007) (England & Wales)



250. The evidence presented indicates that the benefits of implementing the Marine Bill proposals outweigh the costs of implementation. Total discounted benefits over a 20-year period are estimated at £1.9bn – £4.2bn. Total discounted costs over a 20-year period are estimated at £709m – £1.5bn. The result of a positive NPV is robust to a worst case scenario analysis which significantly reduces benefits and increases the costs. The ranges presented in the costs and benefits are an indication of the different costs/benefits associated with regulatory options (e.g. MCZ regulation) and the inherent uncertainty in the estimation process.
251. A separate stand alone Impact Assessment for proposals to improve access to the coast is attached in Annex 4.

## Specific Impact Tests: Checklist

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	No	Yes
Small Firms Impact Test	No	Yes
Legal Aid	No	Yes
Sustainable Development	No	Yes
Carbon Assessment	No	Yes
Other Environment	No	Yes
Health Impact Assessment	No	Yes
Race Equality	No	Yes
Disability Equality	No	Yes
Gender Equality	No	Yes
Human Rights	No	Yes
Rural Proofing	No	Yes

### **Annex 1: Specific Impact tests**

#### **Small Firms Impact Test**

1. A range of sectors and small business representatives have been involved throughout the development of proposals for the Marine Bill. Small firms representatives (including Federation of Small Business, Confederation of British Industry and Institute of Directors), as well as local and national fishing organisations and various marine industry organisations, were amongst the stakeholders invited to respond to both the 2006 Marine Bill Consultation and the 2007 Marine Bill White Paper. Both of these consultations included Small Firms Impact Tests, which provoked few responses from respondents.
2. In conducting research into the impact of the Marine Bill proposals on the commercial sector, Defra has looked into the impact on small firms. For a recent survey commissioned by Defra ('Survey to Assess the Impact of Marine Bill Proposals on Marine and Coastal Developers') 17 of the 57 respondents were small firms with less than 50 employees. Another project entitled 'Cost Impact of marine biodiversity policies on business – the Marine Bill' also looked into the impact on small firms.
3. Small firms affected by the Bill as a whole are likely to be involved in the following sectors:
  - offshore renewable energy;
  - submarine cables and pipelines, commercial salvage;
  - fisheries and aquaculture;
  - recreation and tourism;
  - navigation, marinas, coastal developments such as ports and harbours;
  - small firms that provide services to the larger industrial sectors (including oil and gas development).
4. At this stage many details of the legislation are in the process of being developed and will only be introduced following further impact assessments, cost benefit analysis, and thorough consultation. For example, consultation will be carried out on secondary legislation associated with the details of the licensing structure including the proposed future cost of licences. However, the Bill will give clarity on some of the future costs to business as offences and associated maximum penalties will be clearly scheduled. Offences will relate to the environmental damage caused by operator activity irrespective of the size of the business. However, when an offence has occurred the judicial system will work within the

parameters set by the legislation in deciding the due penalty. Further information on enforcement and sanctions can be found below.

5. As with any new or amended legislation, guidance on compliance and any application procedures will be provided for all firms that may be affected. Details on the content of this guidance cannot be given until the legislation has been finalised, however the UK Government is committed to providing good quality guidance and recognises that this is particularly important for small firms. More information on guidance under the proposed new licensing regime is included below.
6. As a result of devolution of certain legislative powers and the desire of some of the devolved administrations to legislate independently there could be a negative impact on small firms. However Marine Bill proposals are designed not to disproportionately disadvantage those operating in the devolved administrations.
7. Overall it is envisaged that the Marine Bill proposals will either bring many positive benefits to, or have a neutral impact on, small firms operating in the marine area. However, there will be some costs to small firms associated with some specific policy proposals. Some impacts can be attributed to specific policy areas, while others may result from the Marine Bill more generally. Further details on possible impacts are below.

## **Planning**

8. Since the general objective of a marine planning framework is to provide an improvement in management and licensing, small firms (including those that provide services to the larger industrial sectors) are likely to benefit from a net reduction in the costs of regulation.
9. The new marine planning system will enable the overall needs of all users within the region to be taken into account, including small scale activities. This will lead to a reduction in conflicts over the marine space between small firms, in particular small fisheries activities which comprise a large proportion of the fishing industry, and larger or more established businesses. Currently, small scale activities may tend to lose out in such conflicts, particularly where those activities are perceived to have the potential to relocate, such as fisheries.

## **Licensing**

10. Costs to licence applicants under the current, complex licensing system often account for a higher proportion of the total project costs for small projects (e.g. 14 – 50%) than for large projects (2 – 50%). A recent survey commissioned by Defra ('Survey to Assess the Impact of Marine Bill Proposals on Marine and Coastal Developers') showed that small firms are more likely to be uncertain about aspects of the current process. This is amplified for those small firms that have never previously made a licensing application and therefore find the

system difficult. The licensing proposals in the Bill aim to benefit both small and large firms.

11. Firstly, streamlining the marine licensing regime will make it easier for everyone to know which licence they need. This will particularly benefit small businesses, who do not have the resources to employ lawyers or consultants, nor the familiarity with the system that comes with making many applications. The guidance that currently describes the intricacies of Part 2 of the Food and Environment Protection Act 1985, Part 2 of the Coast Protection Act 1949 and the Telecommunications Act 1984 would, were our proposals enacted, only need to describe one marine licensing regime and would lead to simpler, more concise guidance. This would benefit all developers, but especially small firms. It would reduce the time taken to understand whether a particular activity needs a licence and, if so, how to apply for a licence. Promoting existing best practice in the shape of local consenting advice groups will also help small businesses to streamline their application process.
12. Secondly, the proposed flexible, proportionate and targeted provisions of the reformed licensing system will ensure that activities with little or no adverse impact on the environment, marine heritage or legitimate uses of the sea will not attract the regulatory burden of the full licensing process. Some activities will not be subject to licensing, unless they are in sensitive locations; others may require the developer only to notify the licensing authority of the activity, and abide by prescribed conditions where appropriate. Such activities will be selected after further research and consultation. Although these measures will not be linked to the size or type of operator, they will benefit small firms which are likely to be carrying out small scale operations.
13. Thirdly, streamlining harbours legislation will have a positive impact on small firms. It is proposed to exempt from generic marine licensing all activities that are specifically described in, and authorised by, an order under the Harbours Act 1964. This means that where developers are able to specify the methods and timing of their proposed operations, they will only have to apply for a Harbour Revision or Harbour Empowerment Order and not for a marine licence. Where there are described works taking place outside the area of the harbour authority that are consequential to works inside this area, the Harbour Revision Order or Harbour Empowerment Order may also remove the need for a generic marine licence. We expect this to apply primarily to dredging undertaken in a harbour. Under our proposed reforms, a local Act or Order will be able to authorise the deposit of dredged material outside the harbour authority's area in addition to authorising the dredging itself. All of these measures will particularly benefit small businesses (e.g. ship-builders) operating within a harbour.
14. The costs to most companies of regulatory reform to the licensing system will be negligible. However, by making currently non-licensable forms of dredging subject to licensing, those carrying out such dredging will bear extra costs. There will also be some additional costs associated with the administration of licence applications, and their monitoring and enforcement, which Government will be able to recover through fees (see Annex 2, paragraphs 53 to 55). For

example, currently licensed maintenance dredging of quantities less than 10,000 wet tonnes incurs a FEPA application fee of £3,000. A similar fee is likely to apply to most currently non-licensable forms of dredging. This could affect small businesses more than larger ones, although the expense should be proportionate to the scale of the activity.

## **Nature conservation**

15. Nature conservation proposals will benefit small firms involved directly and indirectly in tourism and recreation (e.g. wildlife tours and diving) by increasing or maintaining abundance, and therefore visibility, of local wildlife. More generally, the tourism industry as a whole could benefit from the UK's enhanced image as a result of the improvements to marine and coastal biodiversity. A recent study commissioned by Defra ('Marine Bill – Marine Nature Conservation Proposals – valuing the benefits') has estimated that the current value for UK coastal recreation is £3.4 billion. This represents the value of activities which are directly related to the quality of the marine coastal environment.
16. Nature conservation proposals are expected to have some impact on small firms due to restrictions on operations of small businesses in or near to a Marine Conservation Zone (MCZ). In addition, loss of access to areas suitable for recreational power boating as a result of setting up MCZs could negatively impact small businesses. A further study conducted for Defra ('Costs Impact of Marine Biodiversity Policies on Business: The Marine Bill') looked specifically at the impact on small firms within the affected sectors identified in the study:
  - Marine Aggregate Dredging: Of those companies assessed only one could be classed as small. There would be significant costs to business if this company lost its licence due to the introduction of MCZs.
  - Telecommunications Cables: There were no small businesses in this sector.
  - Power Cables: There were no small businesses in this sector.
  - Renewable Energies: There were two small wind energy developers, and costs to small enterprises were more likely to be imposed in networks G and J (see 'Costs Impact of Marine Biodiversity Policies on Business: The Marine Bill' for explanation of these networks). Wave and tidal technology developers are micro-small enterprises, and due to fewer areas of conflict associated with wave energy firms, a higher proportion of impact is expected in the tidal energy sector. However, it is expected that as renewable technologies become more commercially viable industry structure will move towards larger firms.
  - Oil and Gas: Within the drill and drop market a large number of small firms exist. Therefore, if this activity was restricted by the introduction of MCZs then there would be a considerable adverse effect on small firms.

- Fisheries: This sector is almost entirely composed of small firms; therefore, any restrictions imposed due to the introduction of MCZs will have a disproportionate adverse effect on small firms.
  - Recreation: The introduction of MCZs has the potential to impact on small local recreational firms, particularly due to the licensing of previously unregulated activities. However, this is not expected to adversely affect the recreational business sector as a whole.
17. However, whilst it is expected that the designation and protection of a network of MCZs will result in localised and/or short-term restrictions that could affect small businesses operating in certain locations, e.g. tourism and recreation, many restrictions are likely to modify behaviour (speed limits, gear restrictions) rather than prevent an activity from taking place. Furthermore, the application of byelaws will be limited to controlling unregulated activities for the purposes of nature conservation in MCZs, meaning that only a limited number of activities are affected by them.
18. There may be short-term impacts on some small businesses, primarily in tourism and recreation. It is expected, however, that these will balance out in the longer term, resulting in an overall neutral impact. An analysis of the cost impact of marine biodiversity policies on business found that although there could be significant costs at a local level for businesses, this would be unlikely to occur at a national level. More information on this can be found in Annex 3, paragraphs 59-63. Overall costs to industry will largely be driven by:

#### *Marine Conservation Zones*

- the location and size of MCZs;
- the extent to which MCZ site selection takes account of economic interests (e.g. avoids areas of important economic activity); and
- the conservation objectives, and the resulting conservation measures for each MCZ (i.e. do they allow or preclude economic activities).

#### **Marine Fisheries**

19. Proposals to strengthen marine fisheries and environmental management arrangements will mean more effective action can be taken to conserve fish and shellfish stocks. Safeguarding these stocks will bring benefits to the enterprises that rely upon them such as the fishing industry, ancillary businesses and those working in the recreational sea angling sector. Cultivators of shellfish will benefit under the proposals for Several Orders, including greater protection for cultivated stock. Plans to streamline some marine fisheries legislation will make regulations more transparent, comprehensible and accessible to fishermen.
20. Marine fisheries proposals are expected to have some impact on small firms due to restrictions on fishing activity that may be introduced to improve the

conservation of fish and shellfish stocks. Over the longer term however, these losses could be offset through more abundant stocks as a result of strengthened management measures. It is expected that there will also be costs to fishing businesses if proposals to recover fishing vessel licensing administration costs are introduced.

### **Migratory and Freshwater Fisheries**

21. All of the individuals or organisations that will be affected by the migratory and freshwater fisheries provisions can be classified as small to medium sized enterprises; as such the costs and benefits outlined will apply equally. The measures are designed to protect stocks and improve fisheries opportunities; as such the benefits derived will similarly apply to small firms. Proposals on live fish movements are likely to have a beneficial effect on small firms as they will reduce administrative burden and the number of applications having to be made. The separation of the licensing and authorisations scheme will likely affect some more greatly than others; however, this will be proportionate to the impact of the activity on fish stocks.

### **Marine Management Organisation**

22. By combining a range of marine management functions within a single organisation, establishing an MMO will improve the efficiency and effectiveness of delivery, co-ordination and enforcement. This should result in reduced costs for small firms as a result of a more efficient service, and a reduced number of Government interfaces.
23. A recent study into the impact of the Marine Bill proposals on marine and coastal developers showed that small firms would benefit from a clearer system that was easier to navigate. A single point of contact would reduce the risk of duplicating contact with several agencies and firms would know in a simple and timely manner what consents they need.

### **Enforcement, sanctions and monitoring**

24. Effective enforcement of legislation is essential if the reforms we are introducing in the Marine Bill are to be successful. We will take the opportunity to modernise tools and sanctions to provide a flexible, more proportionate enforcement regime, as recommended in the Hampton (2005) and Macrory (2006) Reviews.
25. One of the functions of the MMO is to provide a central focus for marine monitoring and enforcement, and so bring advantages of clarity and consistency to those who are regulated, for the environment, and to taxpayers. There will be opportunities for considerable cost savings from coordinating marine enforcement and monitoring functions through one body. Creation of a single organisation, the MMO, will be in line with many Government principles, such as those set out in the Hampton Review (2005) and the Gershon Review of Public Sector Efficiency (2004). It should be noted that the Environment Agency



will continue to carry out enforcement for Migratory and Freshwater Fisheries measures.

26. Criminal sanctions should continue to underpin the effective management of marine ecosystems. However, there is scope for more flexible, proportionate, timely and effective enforcement through greater reliance on targeted administrative mechanisms, including civil sanctions. Therefore, in line with Hampton<sup>25</sup> and Macrory<sup>28</sup> principles, sanctions will be proportionate to the case. The most serious sanctions will be reserved in practice for the most serious cases, with consequent savings in terms of regulatory resources. Other sanctions that will be applied in future will include a modernised set of administrative mechanisms of various sorts (including monetary penalties and powers to vary licences or suspend or stop licensable activity), and other civil sanctions (such as remediation and mitigation measures where damage has been caused). We will be both establishing some mechanisms in the Marine Bill and applying some of the provisions for enforcement tools in the draft Regulatory Enforcement and Sanctions Bill.

## **Competition assessment**

27. The competition assessment filter test asks whether the policy measures will directly or indirectly limit the number or range of suppliers; limit the ability of suppliers to compete; or reduce suppliers' incentives to compete vigorously. We have consulted OFT on the competition aspects of the proposals and have used their advice to consider the likely impact.
28. Information provided by respondents to the March 2006 consultation document and to the 2007 partial Regulatory Impact Assessment that accompanied the Marine Bill White Paper on the possible impact of our proposals on competition has been taken into account. It should be noted that there were few comments on this area and consequently few competition objections to the proposals, posing a challenge for the assessment of competition impacts on business.
29. Recent research commissioned by Defra sought to address some of the competition aspects of the proposals ('Survey to Assess the Impact of Marine Bill Proposals on Marine and Coastal Developers' and 'Cost Impact of marine biodiversity policies on business'). The evidence gathered suggests that taken as a whole, the Marine Bill proposals are unlikely to have a negative impact on competition as any new legislation or policy will apply equally to all existing and new businesses. As a result of devolution of certain legislative powers and the desire of some of the devolved administrations to legislate independently there could be a negative impact on competition. However Marine Bill proposals are designed not to disproportionately disadvantage those operating in the devolved administrations. Indeed, the combined effect of the proposals is expected to impact positively on competition. Some impacts can be attributed to specific policy areas, while others may result from the Marine Bill more generally.
30. The impacts on competition of various aspects of the Marine Bill proposals have been summarised below.

## **Planning and licensing**

31. Planning and licensing proposals are expected to have a positive impact on competition by reducing the uncertainty to developers in the marine area; producing a more equitable situation both across and within different industry sectors; and reducing the net regulatory burden on businesses. Set-up costs and current barriers to market entry for new or potential firms are expected to reduce as a result of increased transparency and equal access to information and data on the marine area. Although assessed as unlikely to occur, it is noted that greater transparency could lead to an increased risk of collusion in the marketplace between operators.
32. Licensing reforms, which benefit small firms in particular (see paragraphs 1.9 to 1.13 above), will have a positive effect on competition by enabling smaller businesses to take advantage of opportunities which were previously only available to firms with greater administrative resources and regulatory expertise.

## **Nature conservation**

33. Nature conservation proposals are not expected to affect the market structure, or change the number or size of firms operating in the marine area. We do not consider that the proposals would lead to higher set-up costs for new firms than those already incurred by existing firms. Thus we do not expect existing firms to have a competitive advantage over new firms in any future market opportunity. The proposals will not place additional restrictions on UK nationals which could affect their ability to compete in an open market.
34. The 2007 White Paper did not produce any comments on the impact of the nature conservation proposals on competition. Of 1200 responses to the March 2006 consultation document, only four revealed some concern as to the impact of nature conservation proposals on competition. Two responses predicted serious impacts on the commercial viability of businesses but no detailed assessment was given. The other two responses noted that an onerous regulatory regime may have an impact on attracting new oil, gas and offshore renewable energy companies to invest in the UK and on the ability of the sector to maximise economic recovery of resources. However, through the Marine Bill, the introduction of both a marine planning system and a streamlined marine licensing system will give rise to more certainty for all in the decision-making process of where development can take place in the marine area.
35. Such a low number of responses indicates either that the impacts on competition are probably not significant or are impossible to assess. However, we do not think our proposals will result in the impacts cited by stakeholders in paragraph [2.7] above for a number of reasons. Firstly, since sustainable development is at the core of the conservation policies, socio-economic impacts will always be taken into account in selecting and designating Marine Conservation Zones (MCZs). Secondly, provided a potentially harmful development meets the public interest and other tests, it will be allowed to proceed. Therefore important

projects in the public interest, such as oil and gas development and off-shore wind energy farms, will not be automatically precluded from MCZs. In addition, it is expected that if there is any potential impact on the UK's ability to attract foreign investment as a result of increased environmental controls, this will be counter-balanced by the commercial benefits that will come from a coherent planning system and streamlined licensing regimes.

36. A recent study for Defra ('Costs Impact of Marine Biodiversity Policies on Business: The Marine Bill') specifically looked into the potential implications for competition in the various sectors affected by the Marine Bill proposals:

- Marine Aggregate Dredging: Individual enterprises, especially small firms, could be significantly affected by the proposed measures, particularly in locations where little alternative marine supply opportunities exist. This could impede their competitiveness, but it is unlikely that a significant reduction in suppliers would result.
- Telecommunications Cables: If a MCZ was introduced to the site of an existing hub of telecommunications, then any subsequent constraint on the use of that hub would disproportionately affect those firms that were reliant on it. However, this is considered unlikely as over-riding public interest is likely to prevail in this scenario.
- Power Cables: A very small number of firms exist in this sector and significant competition affects are deemed unlikely.
- Renewable Energies: The offshore wind energy sector is dominated by a small number of firms and therefore significant competition affects are not expected. For wind, tidal and wave energy sectors if MCZ networks have few sites of conflict, then there is a higher chance of competition impacts as potentially some firms could be more adversely affected than others. Where there are more sites of conflict the impact is more evenly spread amongst firms.
- Oil and Gas: Due to the size and international structure of the industry it appears unlikely that proposals will have any significant competition effects.
- Marine fisheries: If proposals result in fishing activity being displaced but do not affect the costs of fishing then the competition impacts are unlikely to be significant. However, there would be a risk of competition impacts if proposals led to a reduction in UK fisherman's competitiveness in relation to their EU counterparts.

### **Marine Fisheries**

37. Marine fisheries proposals are expected to have a positive overall impact on competition though more effective management measures resulting in less risk of decline in fish and shellfish stocks. Small firms will also benefit from the

proposals to simplify marine fisheries legislation and reduce the administrative burdens that are placed upon the fishing industry.

38. Proposals to recover licensing administration costs from the fishing industry, if introduced, could reduce competitiveness of fishing businesses operating alongside foreign vessels which are not generally subject to such charges. However, before introducing any charging scheme there would be consultation and fisheries administrations would need to consider the potential impact on the profitability and competitiveness of the industry. It is expected that the amount of any charge would be set at a level which does not significantly disadvantage fishing businesses.

### **Migratory and Freshwater Fisheries**

39. The proposals are expected to have a positive overall impact on competition through more effective management and a subsequent improvement to fish stocks. The impact of any emergency byelaws required for the protection of migratory and freshwater fisheries will be assessed whilst these byelaws are being drawn up.
40. A new live fish movements scheme will reduce costs to customers and reduce administrative burden, therefore it will likely have a positive impact on small businesses.

### **Marine Management Organisation**

41. The establishment of an MMO is not expected to affect the market structure or change the number or size of firms operating in the marine area. We also consider that the proposed MMO will have a neutral or beneficial impact on business set-up costs. Indeed, the efficiencies introduced by the MMO may reduce set-up costs for new firms.

### **Legal Aid**

42. The impact of the marine bill proposals on criminal and civil legal aid has been assessed and it has been agreed with the Ministry of Justice that the impact is likely to be negligible. Further consideration will be given to this should there prove not to be significant numbers of legal aid cases arising from the Bill.

### **Sustainable Development**

43. The Marine Bill proposals will help the UK Government achieve its sustainable development objectives. In line with the principles of sustainable development, the Bill proposals aim to balance social, economic and environmental considerations. Overall sustainable development benefits will be generated from better use of the marine area through strategic marine planning, licensing reform, measures to protect ecosystem goods and services, more sustainable marine fisheries management, and the combination of functions within a new Marine Management Organisation. More specifically, sustainable development

objectives will be aided through increased opportunities for renewable energy generation and emerging technology. Meanwhile enhanced knowledge management will enable Government to monitor progress, and plan ahead, in order to further sustainable development.

## **Carbon Assessment**

44. The Marine Bill will aid reduction of carbon emissions and help the UK Government and devolved administrations meet targets to limit greenhouse gas emissions. In general, the Marine Bill's objective of managing the marine area in a more sustainable manner will help maintain the sea's crucial role in CO<sub>2</sub> absorption, which several environmental NGOs emphasised in their White Paper consultation responses. More specifically, the combination of licensing reforms, marine planning, a single delivery organisation (MMO) and better data management, will all help licensing applications for renewable projects undergo fewer unnecessary delays, thereby accelerating sustainable energy generation. The net value of the carbon savings brought forward every year from the reduced time required in the licensing application stage is £72.5million (present value of the annual benefits over 20 years for England and Wales only). Please refer to the monetised benefits section for more information.

## **Other Environment**

45. The Marine Bill proposals aim to realise many environmental benefits for the marine, coastal and inland areas. Some of these have already been mentioned in the Sustainable Development and Carbon Assessment sections above. In addition, a network of MCZs will help conserve certain species and habitats and protect marine biodiversity, while the inclusion of currently unlicensed dredging within the consents process will reduce the environmental impact of these damaging activities. Implicit in the migratory and freshwater fisheries proposals are measures to maintain and where necessary improve fish stocks, thereby preserving and enhancing the biodiversity in England and Wales.
46. More information is also included in the non-monetised benefits section.

## **Health Impact Assessment**

47. We are confident that the Marine Bill proposals will not raise any negative health issues. Moreover, the environmental and social benefits offered by the package of proposals will contribute positively to public health. There is much evidence to show that a diet including fish and shellfish can improve human health, as commented on by one respondent to the White Paper consultation<sup>84</sup>. Therefore the Marine Bill's aim of reducing the risk of decline in fish and shellfish stocks will play a part in contributing to this health benefit. In addition, conserving important species and habitats through the designation of a network of Marine Conservation Zones will improve genetic diversity in the

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84 Shellfish Association of Great Britain, Shellfish in the Diet, [http://www.shellfish.org.uk/shellfish\\_diet.htm](http://www.shellfish.org.uk/shellfish_diet.htm)

marine area, increasing the opportunities for medical research. Members of the public will also benefit from maintained or improved physical and mental wellbeing as a result of visiting better protected marine and coastal areas, an important benefit offered by marine and coastal areas according to some White Paper consultation respondents: “research shows access to the coast and sea makes a major contribution to people’s physical and mental wellbeing and cultural identity”. Additionally studies have shown that angling has a social benefit contributing to societies’ overall well-being; in this respect the proposals will have a positive impact as the measures proposed are designed to enhance the angling experience over the long term.

## **Race, Disability, Gender and Other Equality**

48. The proposals have no undue effect on particular racial groups, income groups, gender groups, age groups, people with disabilities, or people with particular religious views. It is not envisaged that any equality issues will arise as a result of Marine Bill policy proposals. In line with the principles of sustainable development, social, economic and environmental considerations will all be taken into account for any decision-making involved in the Bill proposals. The overarching aim of sustainably managing the marine area through the Bill will benefit all of society, as mentioned by several White Paper consultation respondents; “[the marine area] is one of the last places where people can come into direct contact with a truly wild environment without travelling abroad. This also means it provides important access to the wild environment for a very wide range of society, many of whom may have few other opportunities”.
49. Equality impact assessments will be undertaken as necessary to consider the potential impact of setting up the MMO on equality, in terms of employees.
50. Not all measures relating to freshwater and migratory fisheries management will apply universally across England and Wales. Existing legislation excludes the English River Tweed and its English tributaries; but it includes the Scottish Esk and its Scottish tributaries. This is in order that the Border Rivers can be managed as integrated catchments. We are seeking that this arrangement continues, so measures will apply to the Scottish Esk, but not the English Tweed.
51. There is a complex mix within UK waters of devolved and non-devolved legislative powers and executive functions. As a result and the desire of some of the devolved administrations to legislate independently, some measures in the Bill will operate differently in England, Wales, Scotland and Northern Ireland. Inequality may occur as a consequence of devolved administrations opting out the Bill proposals. The Marine Bill proposals are a compromise with the devolved administrations, but are designed not to disproportionately disadvantage those operating in the devolved administrations.

## **Human Rights**

52. The Bill sets out provisions for a new marine management organisation, a new marine planning system, the reform of marine licensing , an update of both

inshore and inland fisheries legislation, enhanced enforcement powers including a range of civil sanctions and the creation of a new network of marine protected areas. We do not consider that any of the provisions of the Bill amount to a breach of Convention rights. A detailed assessment of the impact of the Bill on human rights will be undertaken through the development of the memorandum on the Bill's compatibility with Convention rights which will accompany the Bill.

## **Rural Proofing**

53. Since the proposals apply principally to the marine area and activities that take place there and not in relation to the land, they mainly affect the rights of users of the marine area and the wider public interest of protecting the marine environment. However, these proposals will influence activities on land, and vice versa, since there is some inevitable overlap between marine and land issues. Rural communities will benefit immediately and in the future from many aspects of the Bill, including the efficiency savings and increased certainty that will be generated for marine and coastal developers, better management of marine and coastal resources, increased tourism and more sustainable fishing. The majority of financial benefits that arise from angling and fishing contribute to local communities. As such, the proposals on freshwater and migratory fisheries are designed to enhance these benefits and the value of the fisheries to local communities over the long term.

## Annex 2: Carbon impact test

54. The combination of licensing reforms, marine planning, a single delivery organisation (MMO) and better data management, will all help licensing applications for renewable projects undergo fewer unnecessary delays.
55. In addition to reducing the costs to developers currently arising from delays in the regulatory procedures, there is an additional longer term environmental benefit from accelerating renewable energy generation through the Marine Bill.
56. Under the assumption that the Infrastructure Planning Commission (IPC) is responsible for projects over 100MW and the MMO for those at or below 100MW:
57. Based on our assessment of the development of the market and targets for renewable energy, we have calculated the following projections:
  - IPC decides 7 projects totalling 2,350 MWs per annum (2.35% of supply)
  - MMO decides 7 projects totalling 150 MWs (0.15% of supply)
58. So each year, 150MWs capacity from 100MW and under projects will be consented by the MMO (50 MW wind and 100 MW wave/tidal projects).
59. According to the survey conducted by Defra, offshore renewable projects are delayed at least a year over and above the recommended time required for the application process. We can therefore assume that an effective MMO and streamlined licensing system will bring forward 150MW of capacity by a year, every year. The amount of electricity generated each year can be estimated using capacity factors<sup>85</sup> and the corresponding carbon saving calculated by assuming that each MWh of electricity mitigates 0.351 tonnes of CO<sub>2</sub>. The net value of the carbon savings, brought forward every year from the reduced time required in the licensing application stage, is estimated using the shadow price of carbon<sup>86</sup> at **£72.5million. This is the present value of the net annual benefits over 20 years.**
60. This is for projects below 100MW in England and Wales only.

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85 In Ernst and Young report <http://www.berr.gov.uk/files/file39038.pdf> , in carbon savings file.

86 Shadow Price of Carbon: SPC reflects the damage costs of climate change caused by each additional ton of greenhouse gas emitted – converted into carbon dioxide equivalent (CO<sub>2</sub>e) for ease of comparison. <http://defraweb/environment/climatechange/research/carboncost/step1.htm>



## Annex 3: Marine Nature Conservation – Valuing the Benefits

### Ecosystem goods and services categories

61. The study then used 11 value categories<sup>87</sup> provided by the UK marine environment to inform the estimation of on-site benefits within these MCZs, these are explained below:
- (i) Food provision – Plants and animals taken from the marine environment for human consumption.
  - (ii) Raw materials – The extraction of marine organisms for all purposes, except human consumption.
  - (iii) Leisure and recreation – The refreshment and stimulation of the human body and mind through the perusal and engagement with, living marine organisms in their natural environment.
  - (iv) Nutrient cycling – The storage, cycling and maintenance of availability of nutrients mediated by living marine organism.
  - (v) Bioremediation of waste – Removal of pollutants through storage, dilution, transformation and burial.
  - (vi) Gas and climate regulation – The balance and maintenance of the chemical composition of the atmosphere and oceans by marine living creatures.
  - (vii) Resilience and resistance – The extent to which ecosystems can absorb recurrent natural and human perturbations and continue to regenerate without slowly degrading or unexpectedly flipping to alternate states (Hughes et al. 2005).
  - (viii) Biologically mediated habitat – Habitat which is provided by living marine organisms.
  - (ix) Disturbance prevention and alleviation – The dampening of environmental disturbances by biogenic structures.
  - (x) Cultural heritage and identity – The cultural value associated with the marine environment e.g. for religion, folk lore, painting, cultural and spiritual traditions.
  - (xi) Cognitive values – Cognitive development, including education and research, resulting from marine organisms.

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<sup>87</sup> Categories based on report for Defra by N.J. Beaumont, M.C. Austen, S.C. Mangi, M. Townsend (2006) 'Marine Biodiversity – An Economic Valuation. Building the evidence base for the Marine Bill'. Available online at [www.sciencedirect.com](http://www.sciencedirect.com)

### Translating aggregate UK ecosystem goods and services values into network scenario values

62. Translating aggregate UK ecosystem goods & services values (Beaumont et al 2006) for application to the network scenarios required a 5 step process. Food provision in aphotic reef habitats provides an example of this process:
- Stage 1: The total annual aggregate value of ecosystem good & service ‘food provision’ was split across the 35 different habitat/landscape types<sup>88</sup> to give the total annual benefit of ‘food provision’ for habitat/landscape ‘aphotic reefs’.
  - Stage 2: The above value would give the total value of ‘food provision’ for all ‘aphotic reefs’ in the UK, whereas the 3 network scenarios only cover some proportion of each habitat/landscape type. Therefore, the total value of ‘food provision’ for all ‘aphotic reefs’ that are protected under each network scenario is calculated. If 30% of ‘aphotic reefs’ were protected under network A then the stage 1 figure would be multiplied by 0.3.
  - Stage 3: The above figure would provide the total annual benefit associated with ‘food provision’ and ‘aphotic reefs’ in network A. Now the marginal benefit of applying MCS-MCZ or HR-MCZ is required. In order to do this the timing and extent (i.e. the marginal change brought about by MCS-MCZ or HR-MCZ designation) of the benefit was considered. The marginal value of ‘food provision’ for all ‘aphotic reefs’ in network A under MCS-MCZ was presented as a present value over a 20 year time frame, discounted at 3.5%.
  - Stage 4: The next step to calculate total value of network A was to aggregate the marginal values across all the ecosystem goods & services categories and all the habitat/landscape types of MCS-MCZ being applied across network A, and correspondingly with HR-MCZ.
  - Stage 5: Each network will have some proportion of sites protected under either MCS-MCZ or HR-MCZ. Stage 5 involved multiplying both figures from stage 4 by the proportion each restriction level would be applied respectively. If 10% of network A would be MCS-MCZ, then the aggregate value of all marginal values across all ecosystem goods & services and all the habitats/landscape types of MCS-MCZ being applied across network A would be multiplied by 0.1. Correspondingly, the aggregate figure for HR-MCZ would be multiplied by 0.9. The sum of these values represents the total value for network A.

### Gas and climate regulation

63. Gas and climate regulation has an aggregate annual UK value estimate of £8.2bn, this is significantly higher than the estimates for other ecosystem goods and services. This highlights the important role the marine environment has in

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88 JNCC landscapes and OSPAR TDHs

climate control, partly due to its Green House Gas (GHG) sequestration capacity. The valuation method for Gas and climate regulation is explained below:

- Beaumont et al (2006) figures were substituted for this category of service by the quantity estimate of carbon equivalent emissions valued by the Defra figures for the Carbon Price<sup>89</sup>. It is expected that cost of (tonnes) CO<sub>2</sub> will rise over time, so an average SPC in 2008 prices (£/tCO<sub>2</sub>) for the period 2007 – 2027 was estimated to be £32.1/tCO<sub>2</sub>. To convert this figure into its carbon equivalent it was divided by a conversion factor of 0.2727<sup>90</sup>, giving £117.7/tC.
- Marine living organisms ability to sequester carbon is affected by the biodiversity of marine systems and changes in marine food webs. Phytoplankton is one such organism, therefore the standing stock of Phytoplankton can be assessed at any one time to indicate carbon sequestration capacity. Using the production model devised by Smyth *et al* (2005) Beaumont *et al* (2006) estimated the UK average annual primary production (carbon sequestered by Phytoplankton) to be equivalent to 70m tons of carbon per year<sup>91</sup>.
- Multiplying the SPC with the production capacity gives the overall value of gas and climate regulation of £8.2bn per year. This carbon saving category of service represents 59% of the total aggregate UK annual ecosystem goods and services estimated.

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89 <http://www.defra.gov.uk/environment/climatechange/research/carboncost/index.htm>

90 Carbon comprises 3/11 of the mass of CO<sub>2</sub>

91 Average annual UK primary production: 0.07 +/- 0.004 gigaton carbon/year. (0.07 represents mid-point value).

**Annex 4: Coastal Access Impact Assessment**

## Summary: Intervention & Options

Defra

Impact Assessment of proposals to improve access to the English coast

Stage: Final Draft

Version: 1

Date: 3 April 2008

**Related Publications:** Appraisal of options to improve access to the English coast

**Available to view or download at:**

<http://www.defra.gov.uk/wildlife-countryside/issues/accesscoast.htm>

### What is the problem under consideration? Why is government intervention necessary?

The coast is popular for many forms of recreation – beach activities, enjoying scenery, walking, etc. There are no general rights to use the coast in this way and there can be a mix of legal rights, landowner permissions, or de facto use. In some places the experience can be poor in quality or access is subject to gaps that can prevent an onward journey or entail significant diversions inland. Research has indicated that 30% of the coast currently has no right of access, and a further 20% is poor. Government intervention will ensure a consistent approach, creating secure, good quality access.

### What are the policy objectives and the intended effects?

The objective is to improve access, creating a right to walk around the coast; to address uncertainty arising from lack of consistency, security and clarity in rights of public access to foreshore, beaches and coastal land. The proposal will clarify, simplify and extend access through the creation of a coastal access corridor to which the public has right of access on foot for outdoor recreation. A route will be created and access infrastructure installed to a high standard. In addition to the route there will be access to wider spreading room. Access will be resilient to coastal change.

### What policy options have been considered? Please justify any preferred option.

Four options were considered, plus a 'do nothing' option. These were: use of Highways Act 1980; use of section 3 of the Countryside and Rights of Way Act 2000; voluntary approach to create permissive access; new legislation to create a coastal access corridor. Use of the existing mechanisms would not fulfill Government objectives. The new legislation option is tailored to take the best of existing mechanisms, to offer flexibility to meet the complex circumstances of the coast and to take local interests into account.

**When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?** Benefits and costs will be monitored as implementation is rolled out and will be reviewed within 5 years of completion.

### **Ministerial Sign-off** For Impact Assessments:

*I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.*

Signed by the responsible Minister:



.....Date: 3 April 2008

## Summary: Analysis & Evidence

Policy Option: Implement Legislation

Description: Legislation to create a coastal access corridor in England

<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups'  Costs to public sector for identification, implementation and management of access corridor; costs to owners of property on the coast and users for participation in consultation process; some loss of production to farmers.
	<b>One-off</b> (Transition)	<b>Yrs</b>	
	<b>£ 51m</b>		
	<b>Average Annual Cost</b> (excluding one-off)		
	<b>£ 3.8m</b>		<b>Total Cost (PV)</b> <b>£ 63m</b>
Other <b>key non-monetised costs</b> by 'main affected groups' – potential costs to natural environment eg erosion scars, disturbance to wildlife, loss of peace and tranquility; costs to local residents in some areas from increased traffic.			

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups'  Value to users of the new right of access to the English coast and associated access improvements on up to 2,300 kms of coast. £25.8m represents the annual benefit reached at year 20.
	<b>One-off</b>	<b>Yrs</b>	
	<b>£</b>		
	<b>Average Annual Benefit</b> (excluding one-off)		
	<b>£ 25.8m</b>		<b>Total Benefit (PV)</b> <b>£ 152m</b>
Other <b>key non-monetised benefits</b> by 'main affected groups' users access rights secured over 4,500 kms of coast; benefits to local economies from increased public sector and visitor spending; ability to align access corridor to avoid sensitive environments; reduced occupiers liability for landowners.			

### Key Assumptions/Sensitivities/Risks

The expected increase in number of visits. Unit costs associated with access creation.

Price Base Year 2006	Time Period Years 20	<b>Net Benefit Range</b> (NPV) <b>£ 151.5m (-49 – +254m)</b>	<b>NET BENEFIT</b> (NPV Best estimate) <b>£ 89 m</b>
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What is the geographic coverage of the policy/option?	England			
On what date will the policy be implemented?	2010 – 2020			
Which organisation(s) will enforce the policy?	Access authorities			
What is the total annual cost of enforcement for these organisations?	£ minimal			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	N/A			
What is the value of the proposed offsetting measure per year?	£ N/A			
What is the value of changes in greenhouse gas emissions?	£ minimal			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro N/A	Small N/A	Medium N/A	Large N/A
Are any of these organisations exempt?	No	No	N/A	N/A

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)			(Increase – Decrease)	
Increase of	£ 0	Decrease of	£ 0	<b>Net Impact</b> <b>£ 0</b>

Key: Annual costs and benefits: Constant Prices (Net) Present Value

## Evidence Base (for summary sheets)

### Introduction

1. This final Impact Assessment (IA) has been prepared to accompany the draft Marine Bill. It applies solely to Part 9 of the Bill. It represents the next stage in assessment of the benefits and costs of the proposals for improving access to the English coast and builds on the partial Regulatory Impact Assessment (RIA) published in June 2007 as part of the consultation paper *Consultation on proposals to improve access to the English coast*. Following analysis of responses to the public consultation Ministers announced, in September 2007, that the Government intends to legislate so that people have the right to walk around the English coast.
2. Since publishing the partial RIA no additional research has been undertaken on the assessment of benefits and costs. The independent research project (Asken Ltd report on *Appraisal of Options to Improve Access to the English Coast*) undertook an assessment of benefits and costs of the four options and is considered to be comprehensive and fit for purpose. The partial RIA was published in June 2007 and no changes have been made to the scope of the proposals following the consultation that would require the assessment to be reviewed. Some additional work has been undertaken by Natural England in refining the detail of the costs but not on the overall level. A number of comments on the costs and benefits were made in response to the consultation. These have been considered and are summarised at paragraphs 17-23 below.

### Geographic scope

3. The proposals apply to access to the English coast only.

### Rationale for Government intervention

4. There is a widespread perception that the public has a right to access beaches and the foreshore. A study on public attitudes to coastal access carried out by Ipsos Mori for the Countryside Agency in 2006 found that spontaneously people think that they have a right of access, and should have a right of access, to England's coast and beaches. This is not necessarily the case. People do have access to the beach around much of the coast, but this access is sometimes uncertain and it is often not based on clear legal rights. There is much less access to the coastal land behind the beach, to sand dunes and cliff tops. Even where there is good access along the coast, it can be subject to gaps that can prevent an onward journey or entail significant diversions inland that diminish the quality of the experience. Ipsos Mori found that, with regard to existing access mechanisms, between 6% and 9% of the public said they would go to the English coast more frequently if more access was available or if existing access was better mapped or clearer on the ground. This indicates a demand for provision of improved access to the coast.

5. Research by Natural England found that 30% of the coast had no known access. Of the 70% with some form of access, this was frequently fragmented by the 30% with no known access, or where existing access rights did not join up to allow a continuous route, or where the route was impassable for some other reason. In addition to the 30% with no known access, Natural England estimated that a further 20% of the coast may require some improvements, for example to achieve continuity or improve quality of existing access. The South West coast path for example which has been under development for 40 years still has gaps or stretches where the route passes along a busy road. There is no single definitive measure of the English coast – it varies for example according to whether it is measured at mean high water mark or mean low water mark – but for the purpose of research into the costs and benefits of improving access a figure of 4,870 kms was used. This suggests that new access could be provided or existing access improved on up to 2,300 kms of coast (accepting there will be some exceptions), with access rights clarified and secured on the whole length of the coast.
  
6. The English coastline is a dynamic environment, subject to landslips, erosion and accretion, and the impacts of climate change may increase the rate of change. Where existing access is provided through public rights of way, and where these are subject to erosion, the right of way disappears or may be closed for safety reasons, leaving breaks in the path line. Where the coast is subject to accretion the line of the right of way may, over time, no longer provide a coastal experience. Paths may be renegotiated but this can be a time consuming and costly process, and may not be successful. Current legislation does not allow for a right of way to automatically move inland. Such events are not confined to a single geographic area and have, for example, been recorded in :
  - West Somerset – at Porlock Bay there was a natural breach of the shingle ridge in 1997. The coast path ran along the ridge and had to be closed – it took nearly 10 years to establish a new route;
  - Dorset – in February 2008 the south west coast path was closed at Charmouth due to a landslip. The path had only been reopened for some 18-24 months following a previous closure and subsequent agricultural land purchase which took nearly four years to negotiate;
  - Suffolk – in 2006 the sea washed away a shingle bank between Walberswick and Dunwich, resulting in extensive flooding. As a result, rights of way were significantly affected, including the Suffolk Coast Path;
  - Yorkshire – the Holderness coast is eroding at a rate of 2m per year and up to 6m have been recorded during storm events, affecting coastal rights of way.
  
7. The Government’s vision for the natural environment includes a healthy natural environment for everyone’s well being, health and prosperity, now and in the future: a healthy, resilient, productive and diverse natural environment where the value of the services provided by the natural environment are reflected in



decision-making, and which people enjoy, understand and care for. As part of this it is important to recognise that people value the natural environment for the cultural, spiritual and recreational benefits it provides. People expect access to the countryside and urban green spaces for enjoyment as part of their civic rights, such access is traditionally free at the point of use and the public sector plays a crucial role in providing the infrastructure. Ease of access, the provision of facilities, and the quality of experience contribute significantly to people's ability to experience and enjoy the natural environment, and improving access to the coast will contribute to these objectives.

8. The England Leisure Visits Survey indicates that in 2005 the value of trips made by residents living in England to the English seaside coast alone was estimated at £1.4 billion. A further £4.7 billion was spent on trips to seaside towns and cities. A recent report on coastal towns by the House of Commons Communities and Local Government Committee recognises that tourism continues to be an economically important sector for many coastal towns and it is important that the Government recognises this. The report urges the Government to ensure that action is taken at a national level to promote visiting the English seaside. Evidence from the Ipsos Mori study referred to in paragraph 4 suggests that improving access to the coast will result in increased numbers of visits, with associated spending, although some of this spending may be displaced from other locations. Findings from the small firms impact test suggest that local economies would expect to benefit and that the proposals to improve access would foster job creation in some coastal areas.

## **Policy objectives and intended effects**

9. The Government's central policy objective for this initiative is to improve public access to and enjoyment of the English coastline. We intend to do this by providing a signed and managed route for the public to walk uninterrupted along the length of the English coast and, in addition, by improving or creating public access to coastal land including the foreshore, beaches, cliffs, rocks, and dunes.
10. The coastal access corridor would provide a continuous signed and managed route around the coast wide enough to allow an unconstrained passage (recognizing that there may be some necessary exceptions), and it also would include new areas of spreading room along the coast. This spreading room would encompass land of a classic coastal type including the foreshore, dunes, rocky terrain, and some uncultivated land where appropriate. It would also provide a right of access to beaches.
11. The proposal will address uncertainty resulting from the current lack of consistency, security and clarity in rights of public access to foreshore, beaches and coastal land, and will make the provision of coastal access resilient to coastal change. It will contribute to clarity and certainty for users and landowners. The proposals will demonstrate Government commitment to ensuring more and better access to the countryside for the purpose of outdoor recreation; and to promoting social inclusion and personal well-being through access to the natural environment, open to all and free at the point of use.

## The options

12. The Government's vision for improving access to the coast is:

*“a coastal environment where rights to walk along the length of the English coast lie within a wildlife and landscape corridor that offers enjoyment, understanding of the natural environment and a high quality experience; and is managed sustainably in the context of a changing coastline”.*

13. Four possible ways of improving access were considered. Three of those four options relied on existing delivery mechanisms while one called for a new way of thinking about delivering access, taking into account the specific circumstances of the coast. The options, and some of the advantages and disadvantages of each in meeting the vision are set out below :

- Option 1 – Use of the Highways Act 1980 to create improvements to public rights of way, through creation of public footpaths or bridleways. This option would support the creation of a national trail around the coast, rights of way are well understood by the public and would offer certainty and permanency to landowners and users. However, it would not fulfil the Government's objectives because it would provide linear access only and would not secure access to wider coastal land such as beaches and clifftops, and would not be resilient to coastal change. It would depend on local authorities willingness to act, and would lack national momentum, taking an estimated 20 years to implement.
- Option 2 – Use of the Countryside and Rights of Way (CROW) Act 2000. Section 3 of the Act provides that the definition of open country may be extended by order to include coastal land. It gives a possible definition of coastal land as the foreshore and land adjacent to the foreshore such as cliffs, banks, barriers, dunes, beaches and flats. This option would secure a permanent right of access to specified coastal land types. The access land would be mapped providing clarity for users and landowners. However, based on land types, it would not secure a continuous or managed route around the coast, and would not be flexible to local circumstances. Uncertainty would remain for users as landholders can close access land for a number of days each year and apply for restrictions to access for specified purposes, during which time there may be no available route around the coast.
- Option 3 – Voluntary approach to create permissive access. This option would seek voluntary access agreements with landholders, for example through agri-environment schemes. Agreements could be for linear or area wide access and may form part of a wider environmental improvement package. However, it would not secure access around the whole coast as not all landowners would be persuaded to enter agreements. Funding for agri-environment schemes is limited and scheme continuation is not guaranteed. Individual agreements are time limited so there would be no improvements to clarity or certainty for users, with no permanency.

- Option 4 – New legislation to create a coastal access corridor. This option would create a clearly signalled and managed, continuous route around the coast. There would also be access to wider spreading room where it was appropriate such as beaches, dunes, clifftops and headlands. It would be flexible to local circumstances and existing access would, where necessary, be improved to meet a common standard. Careful design of the route in discussion with local interests would ensure minimum impact on landowners and sensitivity to environmental and heritage features. Access could be restricted for specified purposes but this could be managed in a way which maintained an onward route through wherever possible. However, the access land would not be mapped and would be a new type of access specific to the coast so rights may lack clarity for users and landowners.
14. The proposals for improving access to the coast have been informed by a report *Coastal access Our advice to Government* to Defra by Natural England which carried out research into the existing access situation on the coast in England and the type of access that would be most valuable. Natural England considered the ability of the three existing mechanisms described in paragraph 13 to meet the Government's objectives and concluded that each had strengths to deliver particular aspects but each also had significant weaknesses. None would fully achieve the vision, create the right mix of national momentum and local delivery and design, and future proof coastal access against coastal change. Natural England recommended new legislation to combine the best features of existing mechanisms and to provide flexibility to make sense of the unique and various circumstances of the coast. The detailed proposals for the coastal access corridor were developed in discussion with a full range of stakeholders through individual discussions, stakeholder fora, analysis of four study areas selected to be representative of the English coast, and other research. Before the public consultation was launched in June 2007, Ministers had said that they accepted Natural England's analysis of the existing mechanisms and were attracted by the option for new legislation. From analysis of the consultation responses the Government concluded that the overall weight of the responses supported Natural England's recommendation that new legislation was the best way forward for improving access to the coast, and on 27 September 2007 the Secretary of State announced that the Government intended to legislate so that the public will have the right to walk around the English coast.

## Consultation

15. Consultation within government and with stakeholders, and public attitude research on coastal access in England, were carried out as part of the development of the proposals prior to the publication of the consultation. More detail of this consultation process was published in the partial RIA.
16. The *Consultation on proposals to improve access to the English coast* was issued on 19 June 2007 and closed on 11 September 2007. The consultation set out details from Natural England's advice to Government and sought views on all the options, and in particular on the option for new legislation. The consultation noted that new legislation was recommended by Natural England

as the only option that would fulfil Government objectives in the particular circumstances of the coast, and that Ministers shared Natural England's analysis. 749 responses to the consultation were received and, from analysis of the responses, the Government concluded that the overall weight of the responses to the consultation supported Natural England's recommendation that new legislation was the best way forward for improving coastal access. The Government therefore announced its intention to legislate so that the public will have the right to walk around the English coast for the first time. A summary of responses has been published.

17. A number of issues were raised in the consultation, including on costs, compensation, liability, and rights for other users such as horse riders and cyclists. Comments on these issues were taken into account in developing the detail of the legislation and a summary of these is given below in paragraphs 18-23.
18. Some respondents considered that the estimated £50m implementation cost over a 10 year period was an underestimate. In many cases this was based on the view that as the final costs for implementing open access under the CROW Act had significantly exceeded initial estimates, the same underestimation of the costs by Natural England was likely to happen again for implementing coastal access. However, much of the increase in costs for implementation of open access was due to the unforeseen high cost of the mapping process and related appeals. The current proposals for coastal access do not include a requirement to map all coastal land and the appeals system is being replaced by a less process-heavy representations system. As a result we consider that concerns based on implementation of open access to be unfounded. The cost estimates for implementation of the route and provision of infrastructure reflect the independent consultant's assessment and assumptions. We recognise, however, that because the proposal is for a new form of access past experience offers less of a precedent for estimating costs and benefits and that unforeseen costs may arise. Table 2 shows that estimates have allowed for a range of potential costs, recognising that there is some uncertainty. These costs are in-line with the independent assessment which included further sensitivity analysis described at paragraph 35 below.
19. Some respondents also expressed concern that various costs were not included in the estimates, or queried the basis used for estimating benefits. Much of the detailed information on costs was published separately to the partial RIA and, where appropriate, costs identified by respondents had in fact been included in the calculations. We do not therefore consider these comments justified. For example, a number questioned whether long term maintenance costs were included. The cost estimates do include an assessment of costs for maintenance of infrastructure, on both new and existing access, as shown in Table 3. Natural England will continue to refine the costs estimate as implementation plans are further developed and in the light of experience as implementation commences.

20. In their advice to Government Natural England recommend that there should be a presumption against payment of compensation for the right of access. Many respondents who commented on this agreed with this approach, citing for example the precedent of the CROW Act, but others considered that there were some circumstances in which compensation would be appropriate, for example where agriculture was rolled back to enable access or to reflect any proven loss of property value. The legislation has been drawn up so that implementation of the new right will take account of the interests of landowners and minimise the impact on businesses. The draft legislation requires Natural England and the Secretary of State to aim to strike a fair balance between the interests of the public in acquiring rights of access and the interests of the owner or occupier. Natural England will consult with landowners in deciding the most appropriate alignment of the coastal access corridor and any necessary conditions on access, for example for land management or nature conservation reasons. In addition, Natural England may consider management agreements where access impacts on arable land, which will bring environmental as well as access benefits.
21. There was some concern that there could be significant impacts on existing businesses. We expect the careful and considered identification of the coastal access corridor, which will be undertaken in line with an approved statutory scheme or methodology and in discussion with local interests, to ensure that any impact on business is minimal. Evidence from the small business survey supports the view that local economies overall are expected to benefit.
22. Responses to the consultation included a number in support of including other non-motorised uses such as horse riding and cycling within the new right. Many of these considered that additional benefits would be gained, for both users and local economies, from including other rights. The inclusion of other rights has been considered further following the consultation and we consider that such provision is best achieved through identification of opportunities at the local level. The coast is a complex environment and a blanket approach to include rights for users other than those on foot would not be appropriate in all circumstances.
23. There was considerable support for the proposal that the reduced level of occupiers' liability for CROW access land should apply to coastal access, and many respondents also suggested that the reduced liability should be extended to include other man-made features, recognising the complexity of coastal environments. The Occupiers Liability Acts of 1957 and 1984 mean that occupiers of land owe a duty of care to members of the public on the land and occupiers are required to take reasonable steps to see that a trespasser does not suffer injury. The CROW Act, subject to some safeguards, reduces the level of liability that occupiers owe to members of the public using the right of access to below that currently owed to trespassers. We have considered the points made by respondents and agree that land owners should not be subject to significant new public liability as a result of the right of access. The draft Bill includes a provision that in relation to the coastal access corridor the provisions for reduced liability in CROW should be extended to include all non-natural

features on the land as well as all natural features of the landscape, subject to some conditions. This measure will benefit landowners where there is already access and will minimise any additional costs to landowners where there was no access previously.

## Sectors and groups affected

24. The main sectors and groups affected by the proposal for new legislation are:

- **Users:** Users are those people who make use of the improved access, both local residents and visitors, whether prompted to make an additional visit or choosing to go to the coast rather than elsewhere. Benefits will include the improved health and well-being that access to the natural environment has been shown to bring. A review of recent research, carried out by Asken Ltd, has concluded that the benefit derived from access varies between local residents and visitors. The unit values per visit used for the assessment of benefits is £2.35 for local residents and £6.25 for visitors. More detail is given at paragraph 27 below. The only potential significant cost to users is the risk of injury or drowning, but the risk is small.
- **Owners of property along the coast:** Owners may benefit from improved access themselves. Some farmers are expected to experience a loss of production from agricultural land to which the public have access, and to require an increase in management effort. Some businesses may wish to improve security (e.g. through fencing) and health and safety (e.g. change of procedures), although, conversely, security can be increased by greater public presence. Businesses that rely on exclusive use as a unique selling point may be affected where such land is affected. There may be some residential properties that would command a lower value were public access to be created on or across part of the property.
- **Local economies and society:** The major benefit to the coastal economy is the increased spending in coastal areas that will occur where additional visitors are attracted to the area. Increases in business income and employment will not be large in the context of the total size of the coastal economy, or the national economy, but will make a contribution. Impacts will be most beneficial in areas that are relatively deprived and where improved access encourages additional visits. Analysis of results from studies done in coastal areas and on long distance paths suggest that uplift in spending is £6 – £9 per non-resident day visitor per day and £35 – £45 per tourist (overnight) visit per day. In addition, increased local spending by public sector bodies and by those receiving management agreement payments would boost the coastal economy further. Costs such as loss of tranquillity may be felt from the impacts of additional visitors, and there will be some costs to society for additional rescues.

- **Public sector bodies:** A number of public sector bodies would be affected by the policy proposals. There may be savings to some bodies where payments currently made for permissive access no longer have to be made where it becomes statutory access through implementation of the proposed policy. Costs would fall on Natural England: for identifying the coastal access corridor, including local liaison; and for assessing potential ecological/geological/landscape impacts of improved access, and provision and maintenance of access infrastructure. There would be some costs to the Environment Agency for additional costs of integrating flood and coastal risk management with public access provision. More detail of the estimated costs to public sector bodies is at Table 3.
- **The natural environment:** The proposal to create a coastal access corridor does not envisage unfettered public access: it would operate within environmental legislation and implementation would include consideration of environmental impacts. Improved access can carry with it improved visitor management, which could have important benefits to vulnerable habitats where access is currently unmanaged. Prior to implementing the proposals, Natural England would carry out any necessary environmental assessments. This would include an assessment of individual designated sites, to be undertaken as part of the detailed alignment of the route. Wherever possible access routes would be designed to avoid impacts. Provision would also be made for mitigation measures to be put in place where any adverse impacts were identified, for example from erosion or from disturbance to wildlife such as birds or seals. Natural England would have powers to apply conditions to the right of access, including for nature conservation purposes. Natural England's proposals for the coastal access corridor include proposals that would result in positive management and enhancement of the environment through, for example, supporting the roll back of intensive farming from clifftops.

## **Analysis of benefits and costs of coastal access corridor (Option 4)**

25. A summary of the benefits and costs for the coastal access corridor option which has been developed into the provisions in the draft Bill is set out below. It is based on a detailed assessment in the report *Appraisal of Options to Improve Access to the English Coast*. In appraising the options, it is important to recognise that some of the benefits and costs are not easily monetised and so remain unquantified. The non-monetised benefits include increased health and well-being and the value to local economies of business generated by increased visitor and public sector spending. Non-monetised costs include increased disturbance to local residents from additional visits and the cost to landowners and users of input to local negotiations. The monetised effects have been assessed over a 20-year period, as this is the time it is believed will be necessary for visitor behaviour to adjust to the improvements, even though some of the costs tend to be incurred at the start of this period. In order to

allow differences in timing to be reflected, all values have been adjusted to Net Present Value using a 3.5% discount rate.

26. It is estimated that an additional 2,300 km (range from 2,050 km to 2,560 km) of new or improved access would become available. As well as linear access along a signed and managed route some area access would be created, for example to beaches and dunes and on headlands and clifftops and a range of other land according to local circumstances to allow 'spreading room'. Action would also be taken where necessary to improve existing access provision bringing a total of between 4,000 and 4,870 km of coastal access to meet a common standard. The draft legislation provides for identification of a continuous corridor that is proofed against erosion by the width of the corridor and the ability to 'roll back' and re-align the route of the corridor if necessary. The variable width of the corridor, to meet the specific circumstances of particular stretches of the coast, allows for more wide ranging access and diverse uses. Access infrastructure within the whole corridor (not just new sections) would be built and maintained to a high standard, and this would provide visual guidance to the corridor limits. Environmental improvements would ensure an integrated approach to providing landscape and wildlife benefits.
27. Table 2 shows that the main monetised benefits of the coastal access corridor would fall to users at an estimated PV£152m. The assessment of benefits to users is based on a value of £2.35 per day for residents and £6.25 per day for non residents. Asken's report (see paragraph 2 above) reviewed valuation studies of willingness to pay (WTP) and concluded that the studies identify a mean WTP of £4.70 (residents) and £12.50 (non-residents) per day in relation to seaside recreation. These values were high compared to a number of other valuation studies on countryside recreation, and value would depend on a number of factors including attractiveness of the new access, distance to travel and availability of alternatives. To reflect uncertainty around the values, the figure used for the purpose of calculating the value of use of the new access created by the current proposal is 50% of that suggested in the studies identified by Asken. The upper and lower values used in the tables below reflect -50% and the upper bound of these figures. The same benefit is attributed to both displaced and additional visits, as although intuitively one might consider that additional visits may carry a higher WTP value than a displaced visit, there is no prima facie case for this and no evidence in the literature that would allow the two to be distinguished.
28. The increase in visits to the coast from access improvements created by the proposals is estimated to be between 6 – 10%. The current number of visitors to the coast were obtained from the England Leisure Visits (2006) and VisitBritain (2006) surveys. The number of additional visits that improved access would bring were based on the Ipsos/Mori survey referred to at para 4 above. This survey asked respondents about the impact that improving access would have on their trips to the coast. The study has some limitations – it does not for example ask how many extra visits those saying they would visit more often would make (1 visit a year is assumed for the purpose of the calculations) and it does not ask specifically for views on Option 4 – the coastal access corridor.



However, the study found that for improvements to rights of way (Option 1), 9% of adults said they would make more frequent visits to the coast and, for improvements to area access (Option 2) 6% of adults said they would visit the coast more frequently. Option 4 was not asked about specifically but the calculations used in this assessment take the lower level as 6% for this option but use a slightly higher top estimate of 10% because this option would include both the managed linear route provided by Option 1 and the broader spreading room of Option 2, and therefore may offer attractions to a broader range of users than either offered on their own.

29. Use of the new access right is expected to increase over time as implementation is rolled out and awareness increases and is estimated to meet its maximum potential at year 20 and be stable thereafter. Benefits are derived by multiplying the number of new visits by the value of the visits. Table 1 shows estimated number of visits and monetised user benefits at year 20. More detailed discussion on seaside tourism and the assessment of benefits to users can be found at paragraphs 3.5 – 3.6 and Appendix 2 of Asken’s report.

**Table 1: User benefits at year 20 for option 4 coastal access corridor**

Displaced and additional visits	Visits per year (m)	Unit value (£per visit 2006 value)	Benefit (£m per year 2006 value)
Residents	1.26 (.95 – 1.55)	2.35 (1.18- 4.70)	2.97 (1.11 – 5.46)
Tourists and other day visits	3.66 (2.75 – 4.58)	6.25 (3.18 – 12.5)	22.90 (8.59 – 42-92)
Total	4.92 (3.70 – 6.13)		25.87 (9.70 – 48.38)

30. Table 2 summarises the main monetised costs and benefits. It shows that the main costs would fall to the public sector, estimated at PV£49m. These costs would mainly fall to Natural England and include environmental assessments, identification of the corridor route and spreading room, and provision of access infrastructure. Table 3 gives more detail of estimated additional costs to public sector bodies. There would in addition be costs to landholders, valued at £8m and to users valued at £5m. Costs to landholders include one off costs of the value of time spent in participating in consultations about the alignment of the access corridor, and recurring costs of loss of production where the access affects farmed land. Costs to users include costs associated with the small increase in risk of injury or drowning. Costs to society include the costs of rescue effort where the number of accidents occurring is expected to increase pro-rata with the increase in visits.

**Table 2: Summary of monetised benefits and costs (Yrs 1 – 20)** Figures in brackets show the lower and upper bounds of the range of monetised estimates.

	Benefits		Costs	
	£m (at 2006)	(£m NPV)	£m (at 2006)	(£m NPV)
Users	246 (92 – 460)	152 (57 – 284)	8 (5 – 15)	5 (3 – 9)
Property Owners	1 (<1 – 1)	1 (<1 – 1)	12 (10 – 16)	8 (6 – 11)
Society	0	0	1 (<1 – 1)	<1 (<1 – 1)
Public Sector	0	0	68 (30 – 117)	49 (22 – 85)
<b>Total</b>	<b>247 (92 – 461)</b>	<b>152 (57 – 285)</b>	<b>89 (45 – 149)</b>	<b>63 (31 – 106)</b>

**Table 3: Additional costs to public sector bodies**

<b>Public Body</b>	<b>Additional cost factors</b>	<b>Cost estimate Years 1 – 20 (£'000 at 2006 value)</b>	<b>Total (£'000 at 2006 value)</b>
NE	Promotion	1,800	
NE	Develop Coastal Code	750 (500 – 1,330)	
NE	Creation of Access Corridor	15,525	
NE	Research	400 (300 – 500)	
NE	New infrastructure	16,170 (1,025 – 34,304)	
NE	Re-alignments	1,880	
NE	Maintenance of new infrastructure	18,088 (1,147 – 38,373)	
NE	Maintenance of infrastructure on existing access section	6,107 (4,541 – 7,830)	
<b>Total NE</b>			<b>60,720 (26,718–101,542)</b>
Ministry of Defence	Site assessments	79 (38 – 135)	
Ministry of Defence	Site implementation work	118 (68 – 180)	
<b>Total MoD</b>			<b>197 (106 – 315)</b>
Environment Agency	Risk assessments and community liaison	564	
<b>Total EA</b>			<b>564</b>
Not yet determined	Dispute resolution	2,946 (1,298 – 7,884)	
<b>Total other</b>			<b>2,946 (1,298 – 7,884)</b>
Various bodies	Costs of access to the coast *	3,666 (1,203 – 6,989)	
<b>Total optional costs</b>			<b>3,666 (1,203 – 6,989)</b>
<b>Final total</b>			<b>68,094 (29,888–117,294)</b>

\* costs of improving access to the coast from inland points are optional and will not form part of the core programme but are included in this assessment for the sake of completeness

31. It is important to consider both the monetised and non-monetised effects. Non-monetised benefits, shown in Table 4, include benefits to users from increased health and well being and from security and certainty of access. There would be economic benefits to local economies from increased visitor spending estimated to create an additional 785 – 1733 jobs, and from additional public sector spending. A reduced duty of care to visitors similar to and extending that offered by the Countryside and Rights of Way Act 2000 would benefit landowners where there is already visitor access. The design of the access corridor at a local level would enable routing to avoid impacts on important and sensitive wildlife and direct environmental benefits would be gained as a result of a complementary programme of action proposed by Natural England.
32. There are likely to be some residential properties that would command a lower value were public access rights to be created on or across part of the property. The scale of effect will vary according, for example, to the proximity of the new access to the home. In addition, for some purchasers good access to the surrounding coast will be seen as a benefit while others may see it as a disbenefit and this will be reflected in the perceived value. No data were found to indicate the number of properties which might be affected, but the number is likely to be small and Natural England will work with property owners in aligning the route to avoid any significant impacts.

**Table 4: Summary of non-monetised benefits and costs**

<b>Beneficiary and type of benefit</b>	<b>Non-monetised benefit</b>
Users – health and well-being	Increased health and well-being arising from additional visits per year ( <b>High</b> )
Users – education	Educational benefits ( <b>Low</b> )
Users – security of rights	Access rights secured over around 4,000 km to 4,870 km of coastal corridor ( <b>High</b> )
Users – future proofing against erosion	Access rights are secure against erosion along the full length of coast – 4,000 km to 4,870 km ( <b>High</b> )
Users – access for people with disabilities	Some provision for people with disabilities where additional appropriate infrastructure is provided ( <b>High</b> )
Property Owners – management	Generic benefits over 1,720 km to 2,500 km of coast ( <b>Low</b> )
Property Owners – duty of care	Reduced duty of care to members of the public on their land on the proportion of 1,720 km to 2,500 km of coast which previously experienced de facto public access ( <b>Low</b> )
Public Sector – health costs	£805 for every person who changes from a sedentary to an active lifestyle ( <b>Moderate</b> )

Public sector – permissive payments	Reduced payments for permissive access ( <b>Low</b> )
Public sector – land management costs	Reduced management costs over de facto access ( <b>Low</b> )
Environment	Greater control and education of visitors along those sections of the 1,720 km to 2,500 km of coast with a new access corridor where control is currently minimal/non-existent ( <b>Moderate</b> )
Society/Coastal Economy – employment	1260 (785 to 1,733) potential FTEs as a result of increased visitor spend ( <b>High</b> )
Society/Coastal Economy – business generated from public sector spend	Business generated by public sector spend of £68.1m (£29.9m to £117.3m) ( <b>High</b> )
<b>Bearer and type of costs</b>	<b>Non-monetised cost</b>
Users – process of creation	Costs of involvement in rebutting challenges to the definition of the access corridor ( <b>Moderate</b> for those affected)
Users – loss of freedom over currently unmanaged areas	Greater controls on previously uncontrolled areas, potentially affecting around 2,300 km ( <b>Moderate</b> )  Restrictions to access corridors where restrictions previously did not arise (e.g. in the case of de facto or permissive access – potentially around 2,300 km) ( <b>Low</b> )
Users – greater uncertainty/complexity	Uncertainty from lack of legally-definitive maps along the whole of the 4,000 km to 4,870 km of coastal frontage ( <b>Moderate</b> )  Confusion that may arise from having another set of access rights ( <b>Low</b> )
Users – risk of conflict	Risk of conflict with owners of exclusive coastal property ( <b>Low</b> )
Property Owners – injurious affection	Injurious affection ( <b>Minimal</b> for many, <b>High</b> for a few)
Property Owners – creation of access	Efforts expended by landowners (other than farmers/estate owners) in negotiating over corridor alignments ( <b>Moderate</b> )
Property Owners – costs of safety and security measures	Costs of safety and security measures at coastal properties ( <b>Minimal</b> for many, <b>High</b> for a few)
Property Owners – on-going costs of management	Effort expended by landowners in seeking re-alignments ( <b>Moderate</b> )  Dealing with trespass resulting from uncertainty ( <b>Low</b> )

Property Owners – Duty of Care	Duty of care owed to people coming onto the access corridor where none did before and where no compensation has been paid ( <b>Low</b> )
Property Owners – Other	Costs of conflict between owners of previously exclusive coastal properties and access users ( <b>Low</b> )
Public Sector – creation and review	Costs if any judicial review is required (cost <b>High</b> but likelihood <b>Low</b> )
Public sector – organising rescues	Increased cost to Marine and Coastguard Agency of organising around  38 – 62 additional rescues ( <b>Low</b> )
Public Sector – Liability	Liability to public associated with infrastructure along access corridor ( <b>Low</b> )
Environment – landscape	Landscape: Erosion scars ( <b>Low – Moderate</b> )
Environment – geology	Geology: Erosion scars ( <b>Low</b> )
Environment – biodiversity	Biodiversity: potential disturbance impacts on birds on up to 10,000 ha of SSSI land ( <b>Moderate-High</b> if occurs but mitigation measures are planned to avoid disturbance); trampling of birds nests and trampling of vegetation on up to 10,000 ha of SSSI land ( <b>Moderate</b> )
Environment – culture	Cultural heritage impacts over up to 4,000 ha of Scheduled Monuments ( <b>Low</b> )
Society/Coastal Economy – disruption	Disruption to coastal residents – increased traffic, parking problems ( <b>Moderate</b> )
Society/Coastal Economy – peace and tranquillity	Loss of peace and tranquillity in some areas ( <b>Moderate</b> )
Society/Coastal Economy – other	Some losses to businesses which are dependent on exclusive use of coastal land where alignment cannot be adjusted to fully mitigate problems ( <b>Minimal</b> )

33. As part of the assessment of the benefits and costs, as well as the comparisons using cost-benefit analysis a comparison was made for each option against a framework of criteria considered relevant to meeting the vision and objectives for improving coastal access. The criteria used to help assess some of the benefits and costs offered by each option were extent of access, quality of access, permanency of access arrangements, clarity and certainty of access arrangements, cost effectiveness, monitoring and enforcement, social equity, and wildlife, landscape and quality of enjoyment benefits.

## Comparison with other options

34. A comparison of the monetised costs and benefits for each of the four options considered for improving coastal access is shown at Table 5 and discussed below. Paragraph 35 considers the impacts on costs and benefits where some of the assumptions used in the assessment are varied.

**Table 5: Summary of monetised costs and benefits**

	<b>Option 1 Use of Highways Act to create right of way</b>	<b>Option 2 Use of CROW Act</b>	<b>Option 3 Voluntary approach-permissive access</b>	<b>Option 4 Coastal access corridor</b>
<b>Benefits £m @ PV</b>				
Users	171 (85 – 256)	107 (53 – 160)	34 (17 – 51)	152 (57 – 284)
Landowners	9 (1 – 19)	1 (<1 – 1)	9 (8 – 11)	1 ( <1 – 1)
Sub-total	179 (87 – 275)	107 (53 – 161)	43 (25 – 62)	152 (57 – 285)
<b>Costs £m @ PV</b>				
Users	6 (4 – 9)	4 (3 – 5)	1 (1 – 2)	5 (3- 9)
Landowners	5 (2 – 7)	9 (5 – 18)	6 (4 – 8)	8 (6 – 11)
Society	<1 (<1 – 1)	<1 (<1 – 1)	<1	<1 (<1 – 1)
Public sector	55 (17 – 117)	31 (21 – 52)	16 (14 – 18)	49 (22 – 85)
Sub-total	66 (24 – 134)	44 (29 – 76)	22 (18 – 28)	63 (31 – 106)
<b>Benefit:cost ratio</b>	2.73 (0.65 – 11.45)	2.44 (0.7 – 5.55)	1.95 (0.89 – 3.44)	2.43 (0.54 – 9.19)

- **Option 1** can be regarded as a relatively high cost-high benefit option. However, Option 1 not only has a high absolute cost, but also there is a large difference between the upper and lower limits of estimates. This suggests a high level of uncertainty and so a high level of risks. At the lowest level of estimates, this option offers the best quantified benefit cost ratio.
  - **Option 2** has a lower benefit cost ratio than Option 1 which seems to be optimised around the mid-point (i.e. if lower or upper estimates prove more accurate, the ratio declines). Also, whilst the public sector costs are moderate, they are subject to wide variation, reflecting the uncertainties about costs of mapping.
  - **Option 3** is low cost/low benefit, with a consequent lower level of risk. However, it has the lowest ratio of benefits to costs.
  - **Option 4** provides a benefit cost ratio between Option 2 and 3 at the midpoint level but is more akin to Option 1 in terms of costs devoted to creation of continuous access to a high standard. There is significant variation about the mid-point, largely reflecting uncertainty about the uplift in access use likely to arise under this option.
35. As well as presenting a range within which costs and benefits might fall, additional sensitivity analysis of the 4 options has been carried out reflecting the uncertainty surrounding estimates.
- **Option 1** the level of compensation assumed by Asken Ltd to be paid by Local Highway Authorities to property owners for creation of rights of way is significantly lower than that assumed to be paid in a study on the costs of improving coastal access by Risk and Policy Analysts Ltd carried out on behalf of Natural England. The mid-point values for compensation were £7,550/km (Asken Ltd) and £14,100/km (RPA Ltd). If the RPA mid-point value is used, the benefits to landowners increase to £15.8m (NPV) and costs to public sector bodies increase to £62.0m (PV). The midpoint PV benefit cost ratio in Table 5 changes to 2.56.
  - **Option 2**, Asken assume that there would be little difference in costs of mapping of coastal land from those incurred during the implementation of CROW Part I (with an average cost per ha of £44.05, excluding registered common land). However, if savings of (say) 30% were to be achieved (reducing the average cost to £30.84/ha) then the mid-point public sector cost (in NPV terms) would reduce by £2m and the midpoint benefit cost ratio in Table 5 would improve to 2.55.



- **Option 3** the payment rates for providing access through an agri-environment scheme or equivalent are assumed by Asken to be significantly higher than current rates offered by higher level stewardship schemes with the aim of ensuring a significant take up by land owners. If the current rates were used and uptake by landowners was unaffected, the effect on mid-point values for this option would be to reduce benefits to landowners and costs to public sector bodies by £4.0m (NPV), although the midpoint benefit cost ratio in Table 5 increases to 2.16.
- **Option 4** a key variable under this option, and one for which there is some uncertainty, is the change in visitor numbers that might arise. A 1% shift changes benefits by £28m over the full 20-year period (in PV terms).

## Enforcement, sanctions and monitoring

36. Part 9 of the draft Marine Bill extends the powers provided for in chapter 3 of part 1 of the CROW Act so as to provide for Natural England or the access authority to enter land to identify the coastal access corridor and to install infrastructure and waymark a trail within the corridor as necessary and to provide a new means of access where it is necessary to allow public access to access land. Natural England would also monitor use and any impacts of access, and review the suitability of the route from time to time and identify a revised route if appropriate. Enforcement provisions within the CROW Act are considered fit for purpose and no new powers are sought. Authorities also have the power to serve a notice on a landowner for the removal of an obstruction to a means of access. Where two or more notices have been served, the authority can apply for a court order. Breaking a court order is a criminal offence.
37. Public sector costs in Table 3 reflect management costs and include up to £500,000 to Natural England for research and monitoring. Development of a coastal access code to explain the rights and responsibilities of users and landowners and a publicity programme to explain and promote the coastal access corridor would accompany implementation.

## Implementation and delivery plan

38. The legislation will be supported by a statutory scheme or methodology, agreed by the Secretary of State, to guide identification of the coastal access corridor on the ground. Natural England would work on a regional or county basis with local authorities, landowners, and other local interests to identify the best alignment for the corridor. A report on the proposed route, or sections of it, would then be submitted to the Secretary of State for approval. Identification of the corridor and implementation of associated management works is estimated to take 10 years. Natural England would fund, or undertake themselves, any necessary works to make the corridor accessible. Action would only be taken where a need was identified and Natural England would target areas of most public benefit first. Natural England expects to allocate £5 million per year over 10 years for development and implementation of the corridor, but the timetable for implementation would be flexible to match the availability of resources. Benefits

and costs will be monitored as implementation is rolled out and will be reviewed within 5 years of completion.

## Specific Impact Tests: Checklist

<b>Type of testing undertaken</b>	<b><i>Results in Evidence Base?</i></b>	<b><i>Results annexed?</i></b>
Competition Assessment	No	Yes
Small Firms Impact Test	No	Yes
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	Yes	No
Health Impact Assessment	No	Yes
Race Equality	No	Yes
Disability Equality	No	Yes
Gender Equality	No	Yes
Human Rights	No	Yes
Rural Proofing	No	Yes

### A1 Competition assessment

- A1.1 The competition assessment filter test asks whether the policy measures will affect market structure; impact on costs of some firms substantially more than others; create additional costs for new firms entering the market; or restrict the ability of firms to compete.
- A1.2 The combined effect of the proposals is expected to have a positive impact on local economies and to provide new opportunities for business. Taken as a whole, the proposals will not have a negative competitive impact on existing and new businesses. There may be a negative impact on the small number of businesses which derive competitive benefit from availability of exclusive access, and where that business falls within the access corridor, but careful alignment of the corridor in discussion with local interests would ensure that such areas are not aligned within the corridor where possible or that any impacts are minimised. There would be impacts on farms with a coastal frontage where the access corridor is routed on farmed land. Again, careful alignment of the corridor in discussion with local interests would ensure that such areas are not aligned within the corridor where possible or that any impacts are minimised.

### A2 Small firms impact test

- A2.1 As part of the research on benefits and costs of the options Asken Ltd conducted a survey of small businesses considered to be representative of the sectors that the proposals to improve access to the coast might have an impact on. Three sectors were identified:
- farm businesses along the coast;
  - landowners and others with land-dependent businesses along the coast, which currently have little or no access;
  - operators of tourism-related businesses.

The business operators contacted during the research represent a very small proportion of those likely to be affected by the proposals, but the responses are considered to be representative of the current views and the type of effects that might arise. A summary of the findings is presented below at paragraphs A2.2 to A2.5 and full details can be found in the report. *Appraisal of Options to Improve Access to the English Coast*.

- A2.2 Farmers along the coast, all of whom already had access to at least part of their land, were less likely to envisage commercial opportunities from improved access and those that did also provided holiday accommodation. Some of the farmers reported problems as a result of public access but a small majority said that there was not generally a problem. The majority recognised that local

business overall could benefit, and no adverse impacts on local business were identified.

- A2.3 Landowners on the coast with other businesses (eg golf courses, rural estates, marine harbour) were less optimistic in identifying opportunities arising from access improvements, either for themselves or other local businesses. Most evident among this later group was the view that businesses that rely on coastal visitors are already at capacity and more use of the coast would diminish the experience of existing visitors.
- A2.4 Tourism related business such as accommodation providers, tourist attractions and cafes was the sector that was most likely to view improved access as offering additional commercial opportunities. Respondents in this group overwhelmingly believed that increased access to the coast would increase opportunities for local businesses and the majority also believed it would increase commercial opportunities for their own business. In addition to the survey carried out as part of Asken's research, Defra has also held discussions and undertaken site visits with representatives of the British Holiday and Home Parks Association to explain the proposals in detail and explore how access can be managed at specific examples of caravan sites on the coast.
- A2.5 The findings from the survey suggest that perceptions about the commercial benefits from improved access were divided. The views expressed are not incompatible but appear to point to unevenness in the distribution of benefits with tourism related businesses most likely to envisage new commercial opportunities from greater access. All groups considered that there could potentially be adverse impacts, for example more littering, more traffic, impacts on wildlife. Improved facilities and management were recognised as necessary to mitigate any negative effects and to realise benefits.

### **A3 Health impacts**

- A3.1 Regular physical activity is recognised as playing a role in preventing some illnesses and in ameliorating some existing illnesses. There are also benefits from improved psychological health. There may be health benefits from the proposals to residents in areas where current access provides limited opportunities for physical activity, but it is not possible to quantify the number of people who would become active under new access provision. Asken Ltd identified research that shows a benefit of £805 to the public sector and society for every person who changes from a sedentary to a moderately active lifestyle.

### **A4 Race equality**

- A4.1 Evidence from the England Leisure Visits Survey 2005 suggests that visitors to the seaside coast and seaside towns were more likely to be white. In their study on coastal access Ipsos Mori also concluded that people who are black or Asian are less likely to visit the coast. There may be a corresponding under-representation in the benefits from new access. However, where the improved

access makes journeys shorter or simpler or allows for greater spontaneity, there may be some increased awareness and uptake of opportunities.

- A4.2 In 2008 Defra published *Outdoors for All? An Action Plan to increase the number of people from under-represented groups who access the natural environment*. The Action Plan was developed following research as part of a Diversity Review by the Countryside Agency to investigate what could be done to increase the participation in outdoor recreation of certain under-represented groups – black and ethnic minority communities, the young, the disabled and the socially disadvantaged. The Plan will be taken forward by Natural England, and will include research about the coast to assess key areas for under represented groups. Proposals to improve coastal access are expected to create opportunities for all and to have no adverse impacts on any ethnic communities.

## **A5 Disability equality**

- A5.1 The Disability Discrimination (DDA) Act 1995 (as amended by the DDA 2005) placed a general duty on public bodies to promote disability equality. Under this duty public sector bodies, including those that manage access, are required to have due regard to the need to eliminate unlawful discrimination and disability-related harassment; to promote equality of opportunity for disabled people taking steps to take account of disabled people's disabilities; to promote positive attitudes towards disabled people; and to promote participation by disabled people in public life.
- A5.2 The coast is a complex and varied environment and not all terrain will be suitable for use by the less able. Where reasonably possible infrastructure to facilitate public access should be constructed to a standard high enough for use by those with disabilities and where Natural England will be responsible for installing means of access as part of implementation of the coastal access proposals they would in all cases consider installing suitable furniture wherever appropriate. As part of the corridor identification process there would also be scope to identify opportunities at the local level to improve access provision for the less able, for example through the provision of suitable surfacing. We therefore consider that the proposals would provide some additional access opportunities for the less able and would have no adverse impacts.

## **A6 Gender equality**

- A6.1 Evidence from the England Leisure Visits Survey 2005 suggests that, in terms of their profile by age and sex, leisure trip takers were generally fairly similar to the adult population as a whole. Trip takers to the seaside coast specifically were 50% male and 50% female and the proposals to improve access to the coast are not expected to have a differential impact on men and women.

## **A7 Human rights**

A7.1 The Bill sets out provisions to secure public access to the coast and consideration has been given to whether the proposals are compatible with the European Convention on Human Rights. The provisions were considered in relation Articles 1, 6, 8 and 14 of the Convention. We do not consider that any of the coastal access provisions of the Bill amount to a breach of Convention rights. A detailed assessment of the impact of these provisions on human rights will be provided in the memorandum on the Bill's compatibility with Convention rights which will accompany the Bill.



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