

*These notes refer to the Marine Act (Northern Ireland) 2013
(c.10) which received Royal Assent on 17 September 2013*

Marine Act (Northern Ireland) 2013

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Marine Planning

Section 4: Marine plans for Northern Ireland inshore region

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

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

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

Subsection (3) defines a marine plan, and requires that a marine plan must be prepared and adopted by the Department in accordance with the process set out in Schedule 1; state the policies of the “relevant Northern Ireland departments” (see subsection (11)); and state that it is a marine plan prepared and adopted for the purpose of section 4.

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

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and published by the Department (under Schedule 5 to the Marine and Coastal Access Act 2009), has not been replaced or withdrawn and the Department has not withdrawn from it.

Section 6: Withdrawal of marine plans

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 When a marine plan is withdrawn the Department must bring the withdrawal to the attention of anyone likely to be interested in or affected by it, as well as members of the general public, and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

This section also allows the Secretary of State to withdraw his agreement to a plan (if his agreement was required to the plan's adoption). If the Secretary of State decides to withdraw agreement to the plan, he must give notice to the Department, which then has 7 days to withdraw the plan by publishing a notice in the Belfast Gazette (the notice will also be put on the Departmental website).

Section 7: Duty to keep relevant matters under review

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

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

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

Section 8: Decisions affected by a marine plan

This section makes provision about the effect which "any appropriate marine plans" (subsections (6) & (7)) are to have on the taking of certain decisions by "a public authority" (section 48).

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

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

Subsection (4) defines authorisation or enforcement decisions. These decisions relate to the licensing (or other authorisation) of particular activities which affect, or might affect, the Northern Ireland inshore region; the conditions attached to those authorisations; and the enforcement action to be taken with a

view to securing that any such activities are carried out only under licence, and in accordance with any conditions attached to the licence, and not in breach of any prohibition or restriction.

Subsections (6) and (7) describe when a marine plan will be an appropriate marine plan and, therefore, affect decisions. The effect of subsection (6) is that any marine plan for an area is an appropriate marine plan for the purposes of decisions relating to that area, subject to subsection (7). The effect of subsection (7) is that a marine plan for an area in the Northern Ireland inshore region is not an appropriate marine plan for the purposes of decisions relating to the exercise of “retained functions” (defined in section 60 of the Marine and Coastal Access Act 2009) unless the marine plan states that it includes provisions for retained functions; it was adopted with the agreement of the Secretary of State; and it was prepared and adopted whilst a MPS governed marine planning for the Northern Ireland inshore region.

Section 9: Monitoring of, and periodical reporting on, marine plans

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

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

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

Section 10: Validity of marine plans

This section sets out how and when people may challenge a marine plan or an amendment to a marine plan by way of a standard judicial review. The main grounds for challenge are that the plan, or amendment to the plan, is not within the appropriate powers, or that a procedural requirement has not been complied with. A challenge must be brought within 12 weeks of publication.

Section 11: Powers of the High Court on an application under section 10

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

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

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

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

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

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