



## EXPLANATORY NOTES

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### Marine Act (Northern Ireland) 2013

#### Chapter 10

£5.75

## **MARINE ACT (NORTHERN IRELAND) 2013**

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### **EXPLANATORY NOTES**

#### **INTRODUCTION**

1. These Explanatory Notes have been prepared by the Department of the Environment (the Department) in order to assist the reader of the Marine Act (Northern Ireland) 2013 (the Act). The Notes do not form part of the legislation and have not been endorsed by the Assembly.
2. The Notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section or Schedule does not seem to require an explanation or comment, none is given.

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

3. It is accepted that the United Kingdom's marine environment is not a limitless resource, and that the potential for competition and conflict between the various activities which take place there is increasing. Those activities, both separately and cumulatively, may also have environmental impacts in the long term which would require mitigation.
4. In addition, the framework of domestic and international legislation used to manage the United Kingdom's seas had evolved over a number of years and was complex and potentially confusing.
5. In recognition of this situation, the United Kingdom Government and devolved Administrations committed jointly to the introduction of new marine legislation based on sustainable development principles.
6. This commitment was first formalised by the Northern Ireland Executive in March 2008 when it agreed to new marine legislation being introduced in Northern Ireland. The aim was to establish a new framework for the marine environment based on a strategic system of marine planning that would balance environmental, social and economic needs and therefore, contribute to the sustainable development of Northern Ireland's marine waters.
7. Due to the nature of the devolution settlement for Northern Ireland, and the complex mix of devolved and non-devolved functions, this framework has been achieved in Northern Ireland through three interlocking pieces of legislation:
  - the Marine and Coastal Access Act 2009 (c.23), which received Royal Assent on 12 November 2009;
  - United Kingdom-wide Marine Strategy Regulations 2010 (No.1627), which came into operation on 15 July 2010, and which transpose the Marine Strategy Framework Directive (2008/56/EC); and
  - the Marine Act (Northern Ireland) 2013.

8. The Marine Act (Northern Ireland) 2013 builds on the provisions set out in the Marine and Coastal Access Act 2009 (the 2009 Act). It establishes a strategic system of marine planning in Northern Ireland's inshore region (out to 12 nautical miles) that will be proactive, co-ordinated and responsive; assists in the delivery of a modernised licensing and enforcement regime that is streamlined, consistent and promotes integrated decision making; and contributes to the delivery of the United Kingdom's aim of establishing an "ecologically coherent network of Marine Protected Areas", so that marine biodiversity is protected and international and European commitments are met.
9. It will contribute ultimately to the United Kingdom's vision of clean, healthy, safe, productive and biologically diverse oceans and seas.
10. Sustainable development is at the heart of the Marine Act (Northern Ireland) 2013. The Northern Ireland (Miscellaneous Provisions) Act 2006 places a duty on all public authorities in respect of sustainable development.
11. The aims of this duty are further explained in the Executive's Sustainable Development Strategy entitled 'Everyone's Involved', which was published in April 2010.
12. The sustainable development aims for the marine environment were set out in the High Level Marine Objectives which were published jointly by all the UK Administrations in April 2009. This document laid the foundation for the development of the Marine Policy Statement and ultimately marine plans.
13. The Sustainable Development Strategy makes a strong connection to the importance of adapting to and mitigating climate change, and the UK Climate Change Act 2008 places a duty on the Department to develop a programme for adaptation to climate change. Both the effects and mitigation in respect of climate change are reflected in the High Level Marine Objectives and the Marine Policy Statement, which form the framework for marine planning.
14. The policies reflected in the Act have been informed by a series of consultation exercises undertaken over a number of years, including the 2004 Marine Spatial Planning Project in the Irish Sea.
15. There was also a United Kingdom-wide consultation on proposals for a United Kingdom Marine Act in March 2006, the responses from which provided a significant evidence base that contributed to further assessment of the proposals and led to the publication of a United Kingdom Marine Act White Paper in 2007. This was followed by consultation on a draft United Kingdom Marine Act in 2008, and ultimately introduction of the Marine and Coastal Access Act 2009.
16. The Department has been closely associated with each of these consultations and a number of associated stakeholder events, all of which helped inform its consultation on the policy proposals for the Act.

17. The Department consulted on those policy proposals between 10 April and 9 July 2010, receiving 41 responses from a variety of interests. All those who provided responses were supportive of the policy proposals, and no substantive changes were sought.
18. Responses emphasised the importance of widespread stakeholder engagement; called for flexible, simple and clear processes; and sought assurances that, in keeping with the principles of sustainable development, the optimum environmental, social and economic benefits would be achieved for Northern Ireland.
19. The Bill was introduced to the Northern Ireland Assembly on 21 February 2012. Following the Second Stage debate on 5 March 2012, the Bill was referred to the Environment Committee. Following extensive consideration the Committee published its report (on 5 July 2012) and two addendum reports, before the Bill returned to the Assembly for Consideration Stage on 30 April 2013. The Bill passed to Further Consideration Stage on 13 May 2013 and received the agreement of the Assembly at Final Stage on 21 May 2013. The Marine Act (Northern Ireland) 2013 received Royal Assent on 17 September 2013.

## **KEY TERMS**

20. There are a number of existing terms which are used throughout the Act to describe the area to which it applies. These are set out below.

### *Baseline*

The marine area is measured from a “baseline”. This is usually the low water mark around the coast. However, there may be straight baselines around the mouths of bays, and all rocks and reefs above the sea at low water but submerged at other times extend the baselines if they are within 12 nautical miles 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).

### *Territorial Sea*

The UK territorial sea is defined by the Territorial Sea Act 1987 as the sea extending 12 nautical miles from the baseline. The UK territorial sea is divided into areas which form parts of Scotland, Wales and Northern Ireland for the purpose of exercising devolved functions. Northern Ireland is defined in section 98 of the Northern Ireland Act 1998 as including so much of the internal waters (those landward of the baseline) and the territorial sea of the United Kingdom as are adjacent to Northern Ireland.

### *British Fishery Limits*

British fishery limits currently extend 200 nautical miles from the baseline. As with the territorial sea, Scotland and Northern Ireland have their own areas within British fishery limits. In the case of Northern Ireland this area (which includes the territorial sea) is defined in the Adjacent Waters Boundaries (Northern Ireland) Order 2002 and is known as the Northern Ireland zone.

The Marine and Coastal Access Act 2009 provided for equivalent arrangements for Wales through the designation of a Welsh zone for fisheries matters by an Order in Council.

## **OVERVIEW**

21. The Act sets out a new framework for Northern Ireland's seas based on: a system of marine planning that will balance conservation, energy and resource needs; improved management for marine nature conservation; and streamlining of marine licensing for some electricity projects. It consists of 50 sections, 5 Parts and 2 Schedules.

Part 1: Preliminary.

Part 2: Marine Planning.

Part 3: Marine Protection.

Part 4: Marine Licensing: Generating Stations.

Part 5: Supplementary.

Schedule 1: Marine plans: preparation and adoption.

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

### **Part 1: Preliminary**

22. Part 1 reiterates the sustainable duty contained in the Northern Ireland (Miscellaneous Provisions) Act 2006; defines the Northern Ireland inshore region, which is the area to which the Act applies; and enables the Department to enter into arrangements with other public authorities in order to promote the effective co-ordination of their respective functions in the Northern Ireland inshore region.

### **Part 2 Marine Planning**

23. Under Part 2 of the Act, the Department may prepare a marine plan for all or part of the Northern Ireland inshore region. A marine plan will bring together information and policies on the multiple uses of the marine area, together with spatial and temporal data (e.g. seasonal changes) for the water column and the seabed, using maps where appropriate. As a strategic tool, it will allow decisions to be made about the best use of the marine area, in order to maximise compatibility of activities and achieve sustainable development.
24. The Northern Ireland inshore region overlaps with the area covered by terrestrial planning, which extends to the low water mark; therefore the Department must take all reasonable steps to ensure compatibility between a marine plan and any related terrestrial development plan.
25. The Act details the procedure by which the Department must prepare, consult on, and publish a marine plan. This procedure requires the publication of a Statement of Public Participation, which will set out how interested parties will be involved in the planning process.

### **Part 3 Marine Protection**

26. The Act allows the Department to designate areas as marine conservation zones (MCZs), with the agreement of the Secretary of State. Designation may be carried out for certain circumstances (e.g. conserving species of marine flora and fauna), having regard to any economic, cultural or social consequences of designation. Islands may be included within an MCZ, and adjacent areas of the seashore may also be included if certain conditions apply.

27. The Department must publicise proposals for MCZ designation, and must consult the Secretary of State and interested parties before making a designation order.

#### **Part 4 Marine Licensing**

28. Part 4 of the UK Marine and Coastal Access Act 2009 introduced a new system of marine licensing which extended to Northern Ireland. The 2009 Act allowed for the use of special procedures in respect of certain electricity works in parts of the UK. The Marine Act (Northern Ireland) 2013 contains a provision amending the 2009 Act to provide for the application of equivalent special procedures, for applications relating to certain electricity works, in the Northern Ireland inshore region.

#### **Part 5 Supplementary**

29. Part 5 contains supplementary provisions, including how subordinate legislation should be made and definitions for key terms used throughout the Act.

### **COMMENTARY ON SECTIONS**

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

## **PART 1: PRELIMINARY**

### **Section 1: Sustainable Development**

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

### **Section 2: The Northern Ireland inshore region**

This section defines the geographical area to which the Act applies. The Northern Ireland inshore region comprises the sea and seabed within the territorial sea (out to 12 nautical miles) adjacent to Northern Ireland, and the landward limit of the region is also defined. The Northern Ireland inshore region includes tidal rivers and all the sea loughs (including Lough Foyle and Carlingford Lough). This also includes areas that would be open to the tide, apart from the fact that they are generally isolated from it by an artificial barrier, such as a closed weir, but where seawater may flow or be caused to flow (e.g. the Lagan Weir).

### **Section 3 Arrangements to promote co-ordination of functions in Northern Ireland inshore region**

This section enables the Department to enter into arrangements with a ‘relevant public authority’ in order to promote the co-ordination of their functions. The Department is required to keep any such arrangements under review, to publish details of any arrangements and to lay a report on their effectiveness in the Assembly within three years of Royal Assent.

Any arrangements would be made with the agreement of both parties and within the existing legislative arrangements - for example, those relating to the cross-border body, the Loughs Agency.

## **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.

### **PART 3: MARINE PROTECTION**

#### **Section 13: Designation of marine conservation zones**

This section gives the Department power to designate areas as marine conservation zones (MCZs) by means of an administrative order.

Subsections (2) and (3) identify those areas within which an MCZ may be designated and further qualify the Northern Ireland inshore region as defined in section 2.

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

#### **Section 14: Grounds for designation of MCZ**

This section sets out the circumstances in which the Department may designate an MCZ. This would be for the purpose of conserving species of marine flora or fauna, particularly if they are rare or threatened, or for conserving the diversity of marine flora or fauna, habitat, or features of geological or geomorphological interest whether or not they are considered rare or threatened (subsections (1), (4) and (5)). Identification of potential MCZs will be based upon the use of best available evidence.

Subsection (2) provides that the order designating the MCZ must state both the protected feature(s) and the conservation objectives for the MCZ. The level of protection for an MCZ will depend on the site's conservation objectives, which must have regard to relevant social, cultural and economic considerations. The conservation objectives will

be clear to ensure that all public authorities understand the implications of the duties placed on them by sections 22 and 23.

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

The Department must have regard, so far as possible, to the extent to which any licensable marine activity or fishing for or taking animals or plants from the sea is likely to be prohibited or significantly restricted within any proposed MCZ; and consideration should be given to the likely environmental impact within that area were it not to be designated (and consequently no such restrictions would apply), or elsewhere in the Northern Ireland marine area as a result of such an activity being displaced.

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

### **Section 15: Further provisions as to orders designating MCZs**

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

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

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

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

### **Section 16: Consultation before designation**

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

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

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

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

### **Section 17: Publication of orders**

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

### **Section 18: Hearings**

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

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

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

### **Section 19: Review of orders**

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

### **Section 20: Creation of network of conservation sites**

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

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

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

Subsection (4) provides that the network of “relevant conservation sites” can include sites designated under other regimes such as European sites notified under the EC Wild Birds and Habitats Directives, Areas of Special Scientific Interest and wetland sites designated under the Ramsar Convention.

Subsection (5) requires the Department to have regard to relevant obligations under EU and international law when complying with the duty in subsection (1). Subsection (6) refers explicitly to the obligations of Article 3 of the Wild Birds Directive.

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

## **Section 21: Reports**

This section requires the Department to report to the Assembly on the extent to which the network aims as described in section 20(2) of the Act have been achieved and any further steps required. Subsection (2) sets out the information that must appear in the report.

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

This section places a general duty on a public authority (defined in section 48) to carry out its functions in the manner that it considers best furthers – or, where that is not possible, least hinders - the conservation objectives set for MCZs. The duty only applies so far as is consistent with the proper exercise of a public authority’s functions and only where such functions may have a more than insignificant effect on the MCZ.

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

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

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

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

Subsection (11) requires a public authority to have regard to any advice issued by the Department under section 24.

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

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

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

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

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

Subsection (10) requires a public authority to have regard to any advice or guidance given by the Department under section 24.

### **Section 24: Advice and guidance by the Department**

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

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

### **Section 25: Failure to comply with duties, etc.**

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

## **Section 26: Byelaws for protection of MCZs**

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

Byelaws will be site specific and be made on a case-by-case basis with the level of restriction depending on the features being protected. Byelaws will be drafted so as only to control aspects of the activity that are likely to be damaging.

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

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

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

## **Section 27: Byelaws: procedure**

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

The provision of byelaws will be at a level appropriate to meet the objectives of an MCZ, but will not exceed that which is required.

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

## **Section 28: Emergency byelaws**

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

The Department must publish a notice that an emergency byelaw has been made (subsection (3)). Those affected may then make representations to the Secretary of State – who has the power to revoke emergency byelaws.

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

## **Section 29: Interim byelaws for MCZ**

This section enables the Department to make interim byelaws to protect a feature(s) in an area where the Department considers there may be reasons to designate an MCZ and where there is an urgent need for protection. Delay in providing protection through byelaws could otherwise result in harm to the site. Byelaws under this section are essentially the same as emergency byelaws made by virtue of section 26 except that they apply to areas which are not yet designated as MCZs.

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

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

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

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

## **Section 30: Byelaws: supplementary**

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

## **Section 31: Hearings**

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

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

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

Subsection (5) requires representations to be reported back to the Secretary of State or the Department, as appropriate.

### **Section 32: Offence of contravening byelaws**

This section provides that breaching byelaws is an offence. Subsection (2) sets out the level of fine for a person guilty of the offence. A level 5 fine is one of up to £5,000 (based on the current standard scale).

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

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

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

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

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

### **Section 34: Exceptions**

This section sets out the circumstances in which a person will not be guilty of an offence under sections 32 or 33.

Subsection (1) sets out a number of exceptions. Subsection (3) provides that a person is not guilty of contravening byelaws by virtue of doing anything that would make that person guilty of the general offence. Subsection (4) provides a defence for a person charged with an offence under section 33 where the accused person can prove the relevant act was done in the course of sea fishing and the damage could not reasonably have been avoided. If damage were caused - for example, by the use of illegal fishing gear where it would not have been caused had legal fishing gear been used - then this defence would not be available. Such damage could reasonably have been avoided by using legal fishing gear, and therefore the person would not have met the condition in paragraph (4)(b).

Subsection (5) provides a power for the Department to restrict or remove the defence set out in subsection (4). This can only be done by an order, which would be subject to draft affirmative resolution in the Assembly. In addition, the power would have to be exercised within any relevant constraints of the Common Fisheries Policy.

### **Section 35: Fixed monetary penalties**

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

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

Subsection (4) provides for the maximum fixed financial penalty, which would be £200 (based on the current standard scale of a level 1 fine). This level of fine reflects the nature of the probable offences, which are likely to be minor breaches of byelaws.

### **Section 36: Fixed monetary penalties: procedure**

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

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

### **Section 37: Fixed monetary penalties: further provision**

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

### **Section 38: Enforcement officers**

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

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

Such powers may be exercised in the Northern Ireland inshore region and in any other part of Northern Ireland. The powers may not be exercised in relation to any British warship (as defined in section 244 of the Marine and Coastal Access Act 2009).

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

### **Section 39: The common enforcement powers**

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

### **Section 40: Repeals, amendments and transitional provisions**

This section makes the repeals and transitional amendments relating to this Part of the Act.

It ensures that there is consistency of enforcement, and includes the application of byelaw-making powers contained in the Act to European marine sites designated under the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995.

### **Section 41: Interpretation of this Part**

This section contains definitions for words or expressions used in this Part of the Act.

## **PART 4: MARINE LICENSING: GENERATING STATIONS**

### **Section 42: Special procedure for applications relating to generating stations**

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

In such cases the Department of Enterprise, Trade and Investment is responsible for determining the consent under Article 39 of the Electricity (Northern Ireland) Order 1992 and, in conjunction with the Department, may issue a notice to the applicant stating that both the application for an Article 39 consent and the application for a marine licence will be subject to the same administrative procedure. This procedure will ensure that the two related applications for the two different permissions are dealt with in parallel and at the same time, rather than in sequence.

In cases where only one of the applications has been received, that application must not be dealt with until the other application is received. When both applications have been received the process that the applications will go through is that which is to be determined by the Department in any order made under subsection (6). That order may disapply any provision of the marine licensing process to the marine licence application, apply the

process specified in the Electricity (Northern Ireland) Order 1992 to that application instead and modify that process in its application to the marine licence application.

## **PART 5: SUPPLEMENTARY**

### **Section 43: Regulations and orders**

This section contains general provisions for making regulations and orders under the Act.

### **Section 44: Offences: companies, etc**

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

### **Section 45: Disapplication of requirement for consent to certain prosecutions**

Section 3 of the Territorial Waters Jurisdiction Act 1878 provides that a person who is not a British subject may not be prosecuted for an indictable offence committed in the territorial sea without the consent of the Secretary of State. This section has the effect of disapplying section 3 of the 1878 Act in relation to proceedings for offences committed under the Marine Act (Northern Ireland) 2013.

### **Section 46: Supplementary, incidental, consequential, transitional provision etc.**

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

### **Section 47: Crown application**

The section states that the Crown is bound by the provisions of the Act.

### **Section 48: Interpretation**

This section contains definitions of expressions used in the Act.

## **SCHEDULES**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Paragraph 10 requires that the Department undertakes a sustainability appraisal for the policies proposed for inclusion in the plan. The Department is required to produce a report of the results of the appraisal, which is to be published at the same time as the consultation draft. The results of the appraisal are to inform which proposals the

Department takes forward, and these should only be included where the results indicate that it is appropriate to do so.

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

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

Paragraph 13 requires the Department to consider holding an independent investigation into the consultation draft. Sub-paragraph (2) sets out the factors to which the Department must have regard when deciding whether to hold an independent investigation. Sub-paragraph (3) requires the investigator to make recommendations and give reasons for them, and in order to ensure timely conclusion of an investigation, to require a report on the investigation within a period of 6 months from the date of appointment, or a longer period with the agreement of the Department.

Sub-paragraph (4) requires the Department to publish the recommendations and reasons given by the investigator.

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

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

Paragraph 16 is a savings provision which ensures that any preparatory work undertaken in accordance with paragraphs 1-10 prior to the commencement of the Act will remain valid after commencement.

## **Schedule 2: Further provision about fixed monetary penalties under section 35**

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

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

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

Paragraph 3 makes provisions for appeals.

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

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

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

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

Paragraph 6 requires that where the Department makes an order enabling the imposition of fixed monetary penalties in relation to an offence, the Department must prepare and publish guidance regarding the manner in which the offence can be enforced (“enforcement guidance”). The enforcement guidance must set out the sanctions for committing an offence, the action the Department may take and the circumstances in which the Department is likely to take such action.

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

Paragraph 8 permits those persons listed in sub-paragraph (2) to disclose information to the Department. Information may only be disclosed where the person listed has an enforcement function in relation to offences and for the purposes of the Department exercising the powers in section 35.

The police will not have access to the new enforcement powers, however if, for example, they have begun a criminal investigation but consider that it no longer merits a criminal prosecution, this provision would allow them to pass information to the Department so that it could determine whether to issue an alternative sanction.

## HANSARD REFERENCES

31. The following table sets out the dates and Hansard references for each stage of the Marine Act's passage through the Northern Ireland Assembly and subsequent Royal Assent.

| <b>Stage</b>                | <b>Date</b>                                       | <b>Hansard Reference</b> |
|-----------------------------|---|--------------------------|
| Introduction                | 21 February 2012                                  | Vol. 72 No.6             |
| Second Reading              | 5 March 2012                                      | Vol 82 No.8              |
| Committee Stage             | 5 July 2012<br>Report<br>Addendum 1<br>Addendum 2 | NIA 57/11-15             |
| Consideration Stage         | 30 April 2013                                     | Vol. 84 No. 6            |
| Further Consideration Stage | 13 May 2013                                       | Vol. 85 No. 1            |
| Final Stage                 | 21 May 2013                                       | Vol. 85 No. 4            |
| Royal Assent                | 17 September 2013                                 | NIA Bill 5/11-15         |

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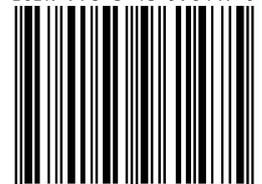
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