

## Schedules

### Schedule 1

Section 4.

#### Marine plans: preparation and adoption

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

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

(2) The “relevant authorities” are—

- (a) the Secretary of State;
- (b) the Scottish Ministers;
- (c) any district council whose district adjoins or is adjacent to the marine plan area;
- (d) the department of the Government of Ireland with responsibility for marine planning in any area adjoining or adjacent to the marine plan area.

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

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

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

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

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

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

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

- (a) the marine plan for any marine plan area (whether or not within the Northern Ireland inshore region) which is related to that area;
- (b) the development plan under Article 4 of the Planning (Northern Ireland) Order 1991 for any area which is related to the marine plan area.

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

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

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

*Consultation with other relevant Northern Ireland departments.*

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

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

*Statement of public participation.*

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

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

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

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

- (a) must state that that is the case, and

---

*Status: This is the original version (as it was originally enacted).*

---

- (b) may be published only with the agreement of the Secretary of State.
- (5) An SPP must invite the making of representations in accordance with the SPP as to matters to be included in the proposed marine plan.
- (6) The Department must publish the SPP in a way calculated to bring it to the attention of interested persons.
- (7) The Department must take all reasonable steps to comply with the SPP.
- (8) In this paragraph “interested persons” means—
  - (a) any persons appearing to the Department to be likely to be interested in, or affected by, policies proposed to be included in the marine plan, and
  - (b) members of the general public.

*Further provision about the content of an SPP.*

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

*Review and revision of the SPP*

- 7.—(1) The Department must keep the SPP under review..

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

*Advice and assistance.*

- 8.—**(1) In connection with the preparation of a marine plan, or of any proposals for a marine plan, the Department may seek advice or assistance from any body or person in relation to any matter in which that body or person has particular expertise.
- (2) The steps that the Department may take for the purpose of facilitating the involvement of interested persons in—
  - (a) the development of proposals for inclusion in a proposed marine plan, or
  - (b) consultation in connection with such proposals,include the convening of groups of persons for such purposes, and in such manner, as the Department considers appropriate.
- (3) In this paragraph “interested persons” has the same meaning as in paragraph 5.

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

- 9.—**(1) The matters to which the Department is to have regard in preparing a marine plan include each of the matters in sub-paragraph (2).E+W+S+N.I.
- (2) Those matters are—
  - (a) the requirement under section 4(5)(a) for a marine plan to be in conformity with any marine policy statement which governs marine planning for the marine plan area, unless relevant considerations indicate otherwise,
  - (b) the duties imposed by paragraph 3(1) with respect to securing compatibility with marine plans or development plans for areas which are related to the marine plan area,

---

*Status: This is the original version (as it was originally enacted).*

---

- (c) the effect which any proposal for inclusion in the plan is likely to have on any area which is related to the marine plan area,
- (d) the results of the review required by section 7,
- (e) the SPP,
- (f) any representations made in response to the invitation issued under paragraph 5(5),
- (g) any advice received under paragraph 8(1),
- (h) any plan (not falling within paragraph 3(1)) prepared by a public authority in connection with the management or use of the sea or the coast, or of marine or coastal resources, in the marine plan area or in any adjoining or adjacent area in Northern Ireland or the UK marine area (within the meaning given by section 42 of the 2009 Act),
- (i) the powers and duties of the Crown Estate Commissioners under the Crown Estate Act 1961,

and such other matters as the Department considers relevant.

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

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

#### *Sustainability appraisal.*

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

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

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

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

#### *Preparation and publication of a consultation draft.*

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

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

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

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

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

*Representations about the consultation draft.*

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

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

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

*Independent investigation*

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

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

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

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

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

and such other matters as the Department considers relevant.

(3) Any person so appointed must—

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

(b) make recommendations, and

(c) give reasons for the recommendations.

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

---

*Status: This is the original version (as it was originally enacted).*

---

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

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

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

*Adoption and publication of a marine plan.*

**15.—(1)** A marine plan is “adopted” by the Department when the Department has decided to publish the plan (and “adopt” and related expressions are to be read accordingly).E+W+S+N.I.

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

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

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

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

- (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 13 have not been implemented in the marine plan, the reasons why those recommendations have not been implemented.

*Action taken by the Department before commencement*

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

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

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

## Schedule 2

Section 37.

## Further provision about fixed monetary penalties under section 35

*Fixed monetary penalties: other sanctions*

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

*Monetary penalties*

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

*Appeals*

- 3.—(1) An order under section 35 may not provide for the making of an appeal other than to a tribunal created under a statutory provision.
- (2) In sub-paragraph (1) “tribunal” does not include an ordinary court of law.

- (3) An order under section 35 which makes provision for an appeal in relation to the imposition of any requirement or service of any notice may include—
- (a) provision suspending the requirement or notice pending determination of the appeal;
  - (b) provision as to the powers of the tribunal to which the appeal is made;
  - (c) provision as to how any sum payable in pursuance of a decision of that tribunal is to be recoverable.
- (4) The provision referred to in sub-paragraph (3)(b) includes provision conferring on the tribunal to which the appeal is made power—
- (a) to withdraw the requirement or notice;
  - (b) to confirm the requirement or notice;
  - (c) to take such steps as the Department could take in relation to the act giving rise to the requirement or notice;
  - (d) to remit the decision whether to confirm the requirement or notice, or any matter relating to that decision, to the Department;
  - (e) to award costs.

#### *Consultation*

- 4.—(1) Before making an order under section 35, the Department must consult the following—
- (a) such organisations as appear to the Department to be representative of persons substantially affected by the proposals, and
  - (b) such other persons as the Department considers appropriate.
- (2) If, as a result of any consultation required by sub-paragraph (1), it appears to the Department that it is appropriate substantially to change the whole or any part of the proposals, the Department must undertake such further consultation with respect to the changes as it considers appropriate.
- (3) If, before the day on which this Schedule comes into operation, any consultation was undertaken which, had it been undertaken after that day, would to any extent have satisfied the requirements of this paragraph, those requirements may to that extent be taken to have been satisfied.

#### *Guidance as to use of fixed monetary penalties*

- 5.—(1) An order under section 35 must secure the results in sub-paragraph (2).
- (2) Those results are that—
- (a) the Department must publish guidance about its use of the fixed monetary penalty,

- (b) the guidance must contain the relevant information,
  - (c) the Department must revise the guidance where appropriate,
  - (d) the Department must consult such persons as the order may specify before publishing any guidance or revised guidance, and
  - (e) the Department must have regard to the guidance or revised guidance in exercising its functions.
- (3) The relevant information referred to in sub-paragraph (2)(b) is information as to—
- (a) the circumstances in which the fixed monetary penalty is likely to be imposed,
  - (b) the circumstances in which it may not be imposed,
  - (c) the amount of the penalty,
  - (d) how liability for the penalty may be discharged and the effect of discharge, and
  - (e) rights to make representations and objections and rights of appeal.

*Guidance as to enforcement of offences*

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

*Publication of enforcement action*

- 7.—(1) An order under section 35 must secure the result in sub-paragraph (2) unless the Department considers that it would be inappropriate to do so.
- (2) That result is that the Department must from time to time publish reports specifying—

---

*Status: This is the original version (as it was originally enacted).*

---

- (a) the cases in which a fixed monetary penalty has been imposed, and
  - (b) the cases in which liability to the penalty has been discharged pursuant to section 36(2)(b).
- (3) In sub-paragraph (2)(a), the reference to cases in which a fixed monetary penalty has been imposed does not include cases where a penalty has been imposed but overturned on appeal.

*Disclosure of information*

- 8.—**(1) Information held by or on behalf of a person mentioned in sub-paragraph (2) may be disclosed to the Department where—
- (a) the person has an enforcement function in relation to an offence, and
  - (b) the information is disclosed for the purpose of the exercise by the Department of any powers conferred on it under section 35 in relation to that offence.
- (2) The persons are—
- (a) the Public Prosecution Service for Northern Ireland, or
  - (b) a member of the Police Service of Northern Ireland.
- (3) It is immaterial for the purposes of sub-paragraph (1) whether the information was obtained before or after the coming into operation of this paragraph.
- (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—
- (a) the Data Protection Act 1998, or
  - (b) Part 1 of the Regulation of Investigatory Powers Act 2000.
- (6) This paragraph does not affect a power to disclose which exists apart from this paragraph.