

*Status: Point in time view as at 24/02/2011.*

*Changes to legislation: There are currently no known outstanding effects for the Marine (Scotland) Act 2010. (See end of Document for details)*

PROSPECTIVE

## SCHEDULE 1

*(introduced by sections 5(1) and 8(2))*

### PREPARATION, ADOPTION ETC. OF MARINE PLANS OR ANY AMENDMENT

#### *Scottish Ministers to notify decision to prepare any marine plan*

- 1 (1) Where the Scottish Ministers decide to prepare a national marine plan they must, before beginning to prepare the plan, give notice of their intention to do so—
- (a) to any planning authority the district of which adjoins the Scottish marine area,
  - (b) to the Secretary of State,
  - (c) to the Department of the Environment in Northern Ireland.
- (2) Where the Scottish Ministers decide to prepare a regional marine plan they must, before beginning to prepare the plan, give notice of their intention to do so—
- (a) to any planning authority the district of which adjoins the Scottish marine region to which the plan is to apply,
  - (b) where the Scottish marine region to which the plan is to apply adjoins the area of sea within the seaward limits of the territorial sea of the United Kingdom adjacent to England, to the Secretary of State,
  - (c) where the Scottish marine region to which the plan is to apply adjoins the area of sea within the seaward limits of the territorial sea of the United Kingdom adjacent to Northern Ireland, to the Department of the Environment in Northern Ireland.
- (3) In this paragraph—
- “adjacent to England” and “adjacent to Northern Ireland”, in relation to areas of sea within the seaward limits of the territorial sea of the United Kingdom, are to be construed in accordance with subsections (4) to (9) of section 322 of the 2009 Act,
- “planning authority” and “the district” of a planning authority have the same meaning as in section 1(1) of the Town and Country Planning (Scotland) Act 1997 (c.8).

#### *Interpretation*

- 2 In this schedule—
- “consultation draft” is to be read in accordance with paragraph 9,
- “interested persons” means—
- (a) any persons appearing to the Scottish Ministers to be likely to be interested in, or affected by, policies proposed to be included in the national marine plan or (as the case may be) the regional marine plan,
  - (b) members of the general public,
- “SPP” means a statement of public participation under paragraph 4 and includes an SPP revised under paragraph 6.

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*Regional marine plans to be compatible with certain other plans*

- 3 (1) In preparing or amending a regional marine plan for a Scottish marine region (“area A”), the Scottish Ministers must take all reasonable steps to secure that the plan is compatible with any regional marine plan for any Scottish marine region which adjoins area A.
- (2) They must also take all reasonable steps to secure that any regional marine plan is compatible with the development plan for any area which adjoins area A.
- (3) In this paragraph, “development plan” is to be read in accordance with section 24 of the Town and Country Planning (Scotland) Act 1997.

*Statement of public participation*

- 4 (1) Before preparing a national marine plan or a regional marine plan, the Scottish Ministers must prepare and publish a statement of public participation in relation to each such category of plan (an “SPP”).
- (2) An SPP is a statement of the policies settled by the Scottish Ministers as to when consultation is likely to take place and with whom, its likely form, and the steps to be taken to involve the general public in the stages of preparation or review of the proposed national marine plan or (as the case may be) the proposed regional marine plan.
- (3) An SPP must invite the making of representations in accordance with it as to matters to be included in the proposed marine plan.
- (4) The Scottish Ministers must publish an SPP in such manner as they consider is most likely to bring it to the attention of interested persons.
- (5) The Scottish Ministers must take all reasonable steps to comply with an SPP.

*Further provision about content of an SPP*

- 5 (1) An SPP must include a proposed timetable.
- (2) The proposed timetable must include such provision as the Scottish Ministers consider reasonable for each of the following—
- (a) the preparation and publication of a consultation draft under paragraph 9,
  - (b) the making of representations about the consultation draft,
  - (c) the settling of the text of a national marine plan or (as the case may be) a regional marine plan with a view to adoption and publication under paragraph 14,
  - (d) laying a draft of a proposed national marine plan before the Parliament under paragraph 13,
  - (e) the adoption and publication of a national marine plan or (as the case may be) a regional marine plan under paragraph 14.
- (3) An SPP may include provision for or in connection with the holding of public meetings about a consultation draft.
- (4) An SPP must include provision about the making of—

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- (a) representations in response to the invitation issued under paragraph 4(3) about the matters to be included in a proposed national marine plan or (as the case may be) a proposed regional marine plan,
  - (b) representations under paragraph 10 about a consultation draft.
- (5) Provision to be made under sub-paragraph (4) includes provision about—
- (a) the manner in which representations may be made,
  - (b) the time within which representations must be made.

*Review and revision of an SPP*

- 6
- (1) The Scottish Ministers must keep an SPP under review.
  - (2) If at any time the Scottish Ministers consider it necessary or expedient to revise an SPP they must do so.
  - (3) Where the Scottish Ministers revise an SPP they must publish the SPP as revised.

*Advice and assistance*

- 7
- (1) In connection with the preparation of a national marine plan or (as the case may be) a regional marine plan, or of any proposals for any such plan, the Scottish Ministers may seek advice or assistance from any body or person in relation to any matter in which the body or person has particular expertise.
  - (2) The steps that the Scottish Ministers may take for the purposes of facilitating the involvement of interested persons in—
    - (a) the development of proposals for inclusion in a proposed national marine plan or regional marine plan,
    - (b) consultation in connection with such proposals,include the convening of groups of persons for such purposes and in such manner as the Scottish Ministers consider appropriate.

*Matters to which Scottish Ministers to have regard in preparing marine plans*

- 8
- (1) The matters to which the Scottish Ministers are to have regard in preparing—
    - (a) a national marine plan include the matters in sub-paragraph (2),
    - (b) a regional marine plan include the matters in sub-paragraph (3).
  - (2) The matters, as regards a national marine plan, are—
    - (a) the requirement under section 6(1) for a national marine plan to be in conformity with any marine policy statement currently in effect for the Scottish marine area unless relevant considerations indicate otherwise,
    - (b) the effect which any proposal for inclusion in the plan is likely to have on any area which adjoins the Scottish marine area,
    - (c) the results of the review required by section 11,
    - (d) the SPP relating to preparation of the plan,
    - (e) any representations made in response to the invitation issued in pursuance of paragraph 4(3),
    - (f) any advice received in pursuance of paragraph 7(1),
    - (g) any plan (not falling within paragraph 3(1) or (2)) prepared by a public or local authority in connection with the management or use of the sea or the

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- coast or of marine or coastal resources, in the Scottish marine area or in any adjoining or adjacent area in the United Kingdom or the UK marine area,
- (h) the powers and duties of the Crown Estate Commissioners under the Crown Estate Act 1961 (c.55),
- [<sup>F1</sup>(ha) the powers and duties of a relevant person,]
- (i) such other matters as the Scottish Ministers consider relevant.
- (3) The matters, as regards a regional marine plan, are—
- (a) the requirement under section 6(1) for a regional marine plan to be in conformity with any marine policy statement currently in effect for the Scottish marine area unless relevant considerations indicate otherwise,
- (b) the requirement under section 6(2) for a regional marine plan to be in conformity with any national marine plan currently in effect, unless relevant considerations indicate otherwise,
- (c) the effect which any proposal for inclusion in the plan is likely to have on any area which adjoins the Scottish marine region to which the plan is to apply,
- (d) the results of the review required by section 11,
- (e) the SPP relating to the plan,
- (f) any representations made in response to the invitation issued in pursuance of paragraph 4(3),
- (g) any advice received under paragraph 7(1),
- (h) any plan (not falling within paragraph 3(1) or (2)) 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 Scottish marine region to which the plan is to apply or in any adjoining or adjacent area in the United Kingdom or the UK marine area,
- (i) the powers and duties of the Crown Estate Commissioners under the Crown Estate Act 1961,
- [<sup>F2</sup>(ia) the powers and duties of a relevant person,]
- (j) such other matters as Scottish Ministers consider relevant.
- [<sup>F3</sup>(4) In this paragraph, “relevant person”, in relation to any property, rights or interests to which section 90B(5) of the Scotland Act 1998 applies, means the person who manages that property or those rights or interests.]

#### Textual Amendments

- F1** Sch. 1 para. 8(2)(ha) inserted (1.4.2017) by [The Crown Estate Transfer Scheme 2017 \(S.I. 2017/524\)](#), art. 1(2), **Sch. 5 para. 42(a)**
- F2** Sch. 1 para. 8(3)(ia) inserted (1.4.2017) by [The Crown Estate Transfer Scheme 2017 \(S.I. 2017/524\)](#), art. 1(2), **Sch. 5 para. 42(b)**
- F3** Sch. 1 para. 8(4) inserted (1.4.2017) by [The Crown Estate Transfer Scheme 2017 \(S.I. 2017/524\)](#), art. 1(2), **Sch. 5 para. 42(c)**

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

- 9 (1) The Scottish Ministers must publish in such manner as they consider appropriate a draft containing their proposals for inclusion in a national marine plan or (as the case may be) a regional marine plan (a “consultation draft”).

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- (2) The Scottish Ministers must also take such steps as they consider appropriate to secure that the proposals contained in a consultation draft are brought to the attention of interested persons.

*Representations about a consultation draft*

- 10 (1) Any person may make representations about a consultation draft.
- (2) Any such representations are to be made in accordance with the SPP applicable to the draft.
- (3) If any representations are made about a consultation draft, the Scottish Ministers must consider them in the course of settling the text of the national marine plan or (as the case may be) the regional marine plan with a view to adoption and publication under paragraph 14.

*Independent investigation*

- 11 (1) Where the Scottish Ministers have published a consultation draft in accordance with paragraph 9, they must consider appointing an independent person to investigate the proposals contained in the draft and to report on them.
- (2) In deciding whether to appoint such a person, the Scottish Ministers must have regard to—
- (a) any representations received about the matters to be included in the proposed national marine plan or (as the case may be) the proposed regional marine plan in response to the invitation issued in pursuance of paragraph 4(3),
  - (b) any representations received about the proposals published in the consultation draft,
  - (c) such other matters as Scottish Ministers consider relevant.
- (3) The person so appointed must—
- (a) make recommendations,
  - (b) give reasons for the recommendations.
- (4) The Scottish Ministers must publish the recommendations and the reasons given for them in the report.

*Matters to which Scottish Ministers are to have regard in settling text with a view to adoption etc.*

- 12 The Scottish Ministers, in settling the text of a national marine plan or (as the case may be) a regional marine plan with a view to adoption and publication under paragraph 14, must have regard to—
- (a) any recommendations made by any person appointed under paragraph 11,
  - (b) the reasons given by any such person for any such recommendations,
  - (c) such other matters as the Scottish Ministers consider relevant.

*Laying settled text of draft national marine plan before the Parliament*

- 13 (1) The Scottish Ministers must not adopt a national marine plan unless they have complied with the requirements of this paragraph.

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- (2) The Scottish Ministers must lay before the Parliament a copy of the draft plan containing the text settled in accordance with paragraph 12.
- (3) If, during the period for Parliamentary consideration the Parliament passes a resolution with regard to the draft, the Scottish Ministers must lay before the Parliament a statement setting out their response to the resolution.
- (4) In this paragraph, “the period for Parliamentary consideration” means the period of 40 days beginning on the day on which a copy of the draft plan is laid before the Parliament under sub-paragraph (2); and in reckoning that period no account is to be taken of any time during which the Parliament is—
  - (a) dissolved,
  - (b) in recess for more than 4 days.

*Adoption and publication of marine plan*

- 14
- (1) A national marine plan or (as the case may be) a regional marine plan is adopted by the Scottish Ministers when they decide to publish the plan.
  - (2) A national marine plan which the Scottish Ministers decide to publish may be—
    - (a) the same as the draft laid before the Parliament under paragraph 13,
    - (b) that draft with such modifications as the Scottish Ministers consider appropriate.
  - (3) A regional marine plan which the Scottish Ministers decide to publish may be—
    - (a) the same as the proposals published in the consultation draft relating to it, or
    - (b) those proposals with such modifications as the Scottish Ministers consider appropriate.
  - (4) Where the Scottish Ministers adopt a national marine plan or a regional marine plan, they must publish it 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 for the plan,
    - (b) the reasons for those modifications,
    - (c) if any recommendations made by any independent person appointed under paragraph 11 have not been implemented in the plan, the reasons why any such recommendations have not been implemented,
    - (d) if any matter in a resolution of the Parliament in pursuance of paragraph 13 has not been implemented in a national marine plan published under this paragraph, the reasons why any such matter has not been implemented.
  - (5) The Scottish Ministers must lay a copy of the adopted national marine plan before the Parliament as soon as is reasonably practicable after the plan's adoption.

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VALID FROM 06/04/2011

## SCHEDULE 2

*(introduced by section 50)*

### FURTHER PROVISION ABOUT CIVIL SANCTIONS UNDER PART 4 (MARINE LICENSING)

#### **Modifications etc. (not altering text)**

- C1** Sch. 2 applied (9.11.2020) by [The Marine Licensing \(Exempted Activities\) \(Scottish Inshore Region\) Amendment Order 2020 \(S.S.I. 2020/316\)](#), arts. 1, **14**

## SCHEDULE 3

*(introduced by section 137(3))*

### WARRANTS ISSUED UNDER SECTION 137

#### **Modifications etc. (not altering text)**

- C2** Sch. 3 excluded (31.12.2010) by [The Marine \(Scotland\) Act 2010 \(Consequential Provisions\) Order 2010 \(S.I. 2010/2870\)](#), arts. 1, **10**

PROSPECTIVE

#### *Introductory*

- 1 (1) This schedule has effect in relation to the issue to marine enforcement officers of warrants under section 137.
- (2) Entry into a dwelling under such a warrant is unlawful unless it complies with the provisions of this schedule.

PROSPECTIVE

#### *Applications for warrants*

- 2 (1) Where a marine 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 dwelling which it is desired to enter and inspect,
  - (d) identify, so far as is practicable, the purpose for which entry is desired.

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- (2) An application for a warrant must be made without notice and must be supported by evidence on oath.
- (3) The officer must answer on oath any question that the justice hearing the application asks the officer.

PROSPECTIVE

*Safeguards in connection with power of entry conferred by warrant*

- 3 A warrant authorises entry on one occasion only.
- 4 (1) A warrant must specify—
  - (a) the name of the person who applies for it,
  - (b) the date on which it is issued,
  - (c) the enactment under which it is issued,
  - (d) the dwelling to be entered.
- (2) A warrant must identify, so far as is practicable, the purpose for which entry is desired.
- 5 (1) 2 copies are to be made of a warrant.
- (2) The copies must be clearly certified as copies.

PROSPECTIVE

*Execution of warrants*

- 6 A warrant may be executed by any marine enforcement officer.
- 7 (1) A warrant may authorise persons to accompany any marine 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.
- 8 (1) Execution of a warrant must be within 3 months from the date of its issue.
- (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.
- 9 (1) Where the occupier of a dwelling that is to be entered under a warrant is present at the time when a marine enforcement officer seeks to execute the warrant, the following requirements must be satisfied—
  - (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 a marine enforcement officer,
  - (c) the officer must produce the warrant to the occupier,



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- (d) the officer must supply the occupier with a certified copy of it.
- (2) Where—
- (a) the occupier of a dwelling that is to be entered under a warrant is not present when a marine 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.
- (3) If there is no person present who appears to the marine enforcement officer to be in charge of the dwelling, the officer must leave a certified copy of the warrant in a prominent place there.

PROSPECTIVE

#### *Return of warrants*

- 10 (1) A warrant which—
- (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—
- (a) in the case of a warrant issued by a sheriff, the sheriff clerk,
  - (b) in the case of a warrant issued by a justice of the peace or stipendiary magistrate, 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.
- (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.

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## SCHEDULE 4

(introduced by section 167)

### CONSEQUENTIAL MODIFICATIONS

VALID FROM 06/04/2011

#### PART 1

##### MARINE LICENSING

*Coast Protection Act 1949 (c.74)*

- 1 In the Coast Protection Act 1949—
- (a) Part II is repealed,
  - (b) in section 49, subsection (2A) is repealed.

*Merchant Shipping Act 1988 (c.12)*

- 2 Section 36 of the Merchant Shipping Act 1988 is repealed.

*Energy Act 2004 (c.20)*

- 3 In section 99 of the Energy Act 2004, subsections (4) and (5) are repealed.

#### PART 2

##### MARINE PROTECTION AND ENHANCEMENT: THE SCOTTISH MARINE PROTECTION AREA

VALID FROM 01/11/2013

*Protection of Wrecks Act 1973 (c.33)*

- 4 Section 1 of the Protection of Wrecks Act 1973 is repealed.

*Wildlife and Countryside Act 1981 (c.69)*

- 5 In the Wildlife and Countryside Act 1981—
- (a) in the italic heading immediately preceding section 34A, the words “, marine nature reserves” are repealed,
  - (b) sections 36 and 37 are repealed,
  - (c) in section 67, in subsection (2), the words “, 36” are repealed,
  - (d) Schedule 12 is repealed.

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**Commencement Information**

**I1** Sch. 4 para. 5 in force at 1.7.2010 by S.S.I. 2010/230, art. 2(h)

*Territorial Sea Act 1987 (c.49)*

- 6 In the Territorial Sea Act 1987—
- (a) in section 3, in subsection (2), paragraph (b) is repealed,
  - (b) in Schedule 1, paragraph 6 is repealed.

**Commencement Information**

**I2** Sch. 4 para. 6 in force at 1.7.2010 by S.S.I. 2010/230, art. 2(h)

*Local Government (Wales) Act 1994 (c.19)*

- 7 In the Local Government (Wales) Act 1994, in Schedule 16, in paragraph 65, sub-paragraphs (4) and (10) are repealed.

**Commencement Information**

**I3** Sch. 4 para. 7 in force at 1.7.2010 by S.S.I. 2010/230, art. 2(h)

*Local Government etc.(Scotland) Act 1994 (c.39)*

- 8 In the Local Government etc. (Scotland) Act 1994, in Schedule 13, in paragraph 125, sub-paragraph (3) is repealed.

**Commencement Information**

**I4** Sch. 4 para. 8 in force at 1.7.2010 by S.S.I. 2010/230, art. 2(h)

*Water Industry (Scotland) Act 2002 (asp 3)*

- 9 In the Water Industry (Scotland) Act 2002, in schedule 7, in paragraph 11, sub-paragraph (3) is repealed.

**Commencement Information**

**I5** Sch. 4 para. 9 in force at 1.7.2010 by S.S.I. 2010/230, art. 2(h)

**PART 3**

PROSPECTIVE

Sea fisheries

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*Sea Fisheries Act 1968*

- 10 In the Sea Fisheries Act 1968 (c.77), in section 15 (amendments of Sea Fisheries (Shellfish) Act 1967), subsection (2A) is repealed.

**Commencement Information**

**I6** Sch. 4 para. 10 in force at 24.2.2011 by S.S.I. 2011/58, art. 2(b) (with art. 5)

*Fisheries Act 1981*

- 11 (1) The Fisheries Act 1981 (c.29) is modified as follows.
- (2) The following provisions are repealed—
- (a) section 19(2)(c),
  - (b) section 22(2)(a) and (3),
  - (c) section 28.
- (3) In paragraph 33 of Part 2 of Schedule 4 (offences to which section 33(5) applies)—
- (a) for “Sea Fisheries (Conservation) Act 1967” substitute “ Sea Fish (Conservation) Act 1967 ”,
  - (b) for “smaller than the prescribed size” substitute “ which do not meet the prescribed size requirements ”.

**Commencement Information**

**I7** Sch. 4 para. 11 in force at 24.2.2011 by S.S.I. 2011/58, art. 2(b)

*Sea Fish (Conservation) Act 1992*

- 12 In the Sea Fish (Conservation) Act 1992 (c.60), paragraph (b) of section 5 is repealed.

**Commencement Information**

**I8** Sch. 4 para. 12 in force at 24.2.2011 by S.S.I. 2011/58, art. 2(b)

*Criminal Justice and Public Order Act 1994*

- 13 In the Criminal Justice and Public Order Act 1994 (c.33), in Part 1 of Schedule 8 (increase in penalties), the entry relating to section 7(4) of the Sea Fisheries (Shellfish) Act 1967 is repealed.

**Commencement Information**

**I9** Sch. 4 para. 13 in force at 24.2.2011 by S.S.I. 2011/58, art. 2(b)

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## SCHEDULE 5

(introduced by section 166(2))

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**Status:**

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**Changes to legislation:**

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