

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

Marine Act (Northern Ireland) 2013

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 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.