

*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

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.