



2013 CHAPTER 10

Part 3

Marine protection

Modifications etc. (not altering text)

- C1 Pt. 3 applied (with modifications) by S.R. 1995/380, reg. 31(1)(2) (as substituted (18.9.2013) by [Marine Act \(Northern Ireland\) 2013 \(c. 10\)](#), ss. [40\(5\)](#), [49](#) (with ss. [1\(1\)](#), [46\(3\)](#), [47](#)))

Designation of MCZs

Designation of marine conservation zones

13.—(1) The Department may by order designate any area of sea falling within the Northern Ireland inshore region as a marine conservation zone (an “MCZ”).

(2) For the purposes of this Part “the Northern Ireland inshore region” and “the sea” do not include any waters upstream of the fresh-water limit of estuarial waters.

(3) In this Part “estuarial waters” means any waters within the limits of transitional waters, within the meaning of the Water Framework Directive (that is to say, Directive [2000/60/EC](#) of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy).

(4) The reference in subsection (1) to an area of sea includes a reference to any island in the sea, whether or not any part of it lies above mean high water spring tide.

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(5) The Department may not designate any area of sea under this section without the agreement of the Secretary of State.

MCZs

Grounds for designation of MCZ

14.—(1) The Department may make an order under section 13 designating an area as an MCZ if it thinks that it is desirable to do so for the purpose of conserving—

- (a) marine flora or fauna;
- (b) marine habitats or types of marine habitat;
- (c) features of geological or geomorphological interest.

(2) The order must state—

- (a) the protected feature or features;
- (b) the conservation objectives for the MCZ.

(3) Any reference in this Part to the conservation objectives stated for an MCZ is a reference to the conservation objectives stated for the MCZ under subsection (2)(b).

(4) The reference in subsection (1)(a) to conserving marine flora or fauna includes, in particular, a reference to conserving any species that is rare or threatened because of—

- (a) the limited number of individuals of that species, or
- (b) the limited number of locations in which that species is present.

(5) The references in subsection (1)(a) and (b) to conserving marine flora or fauna or habitat include references to conserving the diversity of such flora, fauna or habitat, whether or not any or all of them are rare or threatened.

(6) Any reference in this Part to conserving a thing includes references to—

- (a) assisting in its conservation;
- (b) enabling or facilitating its recovery or increase.

(7) In considering whether it is desirable to designate an area as an MCZ, the Department must have regard to any economic, cultural or social consequences of designating that area and, so far as possible, to—

- (a) the extent to which any of the following activities are likely to be prohibited or significantly restricted within that area if it is designated—
 - (i) any licensable marine activity (within the meaning of Part 4 of the 2009 Act);
 - (ii) fishing for or taking animals or plants from the sea;

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- (b) the likely impact on the environment within that area if that area is not designated;
- (c) the likely impact on the environment elsewhere in the Northern Ireland inshore region as a result of any activity mentioned in paragraph (a) being displaced from that area if it is designated.

(8) The reference in subsection (7) to any social consequences of designating an area as an MCZ includes a reference to any consequences of doing so for any sites in that area (including any sites comprising, or comprising the remains of, any vessel, aircraft or marine installation) which are of historic or archaeological interest.

Further provision as to orders designating MCZs

15.—(1) An order under section 13 designating an area as an MCZ must identify the boundaries of the area designated.

(2) The boundary of an MCZ may be determined by, or by reference to, mean high water spring tide.

(3) An MCZ may (in addition to an area of sea) include an area of the seashore lying above mean high water spring tide if—

- (a) the area of seashore adjoins the area of sea; and
- (b) any of the conditions in subsection (4) is satisfied.

(4) The conditions are that—

- (a) the protected feature or features leading to the designation of the area of sea is or are also present in the area of seashore;
- (b) the area of sea is designated for the purpose of conserving marine flora or fauna which are dependent (wholly or in part) on anything which takes place in, or is present in, the area of seashore;
- (c) without the inclusion of the area of seashore, the identification of the boundary of the MCZ (either in the order designating the area or on the ground for the purposes of exercising functions in relation to it) would be impossible or impracticable.

(5) An order under section 13 designating an area as an MCZ—

- (a) must designate an area of land (whether or not that land is covered by water), and
- (b) may designate some or all of the water covering that land.

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Designation procedure

Consultation before designation

16.—(1) Before making an order under section 13, the Department must comply with subsections (2) to (4).

(2) The Department must publish notice of its proposal to make the order.

(3) The notice under subsection (2) must—

(a) be published in such manner as the Department thinks is most likely to bring the proposal to the attention of any persons who are likely to be affected by the making of the order;

(b) contain a statement of the terms of the proposed order.

(4) The Department must consult—

(a) the Secretary of State; and

(b) any other persons who the Department thinks are likely to be interested in, or affected by, the making of the order.

(5) If the Department fails to make the order before the end of the period of 12 months beginning with the date on which notice was published under subsection (2), then anything done by the Department for the purposes of complying with subsections (2) to (4) of this section is, for those purposes, to be treated as not having been done.

(6) In a case where the Department thinks that there is an urgent need to protect the area proposed to be designated as an MCZ, the Department need not comply with subsections (2), (3) and (4)(b).

(7) In such a case, the order designating the area as an MCZ remains in operation for a period not exceeding two years, unless the Department makes a further order before the end of that period confirming the designation.

(8) Before making such an order, the Department must comply with subsections (2) to (4) (and subsection (5) applies accordingly).

Publication of orders

17.—(1) This section applies where an order has been made under section 13.

(2) The Department must publish notice of the making of the order.

(3) The notice under subsection (2) must—

(a) be published in such manner as the Department thinks is most likely to bring the order to the attention of any persons who are likely to be affected by the making of it;

(b) give an address at which a copy of the order may be inspected.

(4) The Department must—

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- (a) make a copy of the order available for inspection at the address specified under subsection (3)(b) at all reasonable hours without payment;
 - (b) provide a copy of the order to any person who requests one.
- (5) The Department may charge a fee, not exceeding its costs, for providing a copy under subsection (4)(b).

Hearings

18.—(1) This section applies where the Department has the function of deciding whether to make an order under section 13 designating an area as an MCZ.

(2) The Department may, before making that decision, give to any person the opportunity of—

- (a) appearing before and being heard by a person appointed for that purpose;
- (b) providing written representations to such a person.

(3) The Department may make regulations providing for the procedure to be followed (including decisions as to costs) at hearings held under subsection (2).

(4) A person appointed under subsection (2) must make a report to the Department of any oral or written representations made under that subsection.

Review of orders

19. The Department must review any order it has made under section 13 if the Department receives representations that the order should be amended or revoked from—

- (a) the Secretary of State,
- (b) the Scottish Ministers, or
- (c) the department of the Government of Ireland with responsibility for marine conservation in any area adjoining or adjacent to the area designated by the order.

Duties of Department

Creation of network of conservation sites

20.—(1) In order to contribute to the achievement of the objective in subsection (2), the Department must designate MCZs under section 13.

(2) The objective is that the MCZs designated by the Department, taken together with—

- (a) any marine conservation zones designated under section 116 of the 2009 Act;

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- (b) any nature conservation marine protected areas designated under section 67 of the Marine (Scotland) Act 2010; and
 - (c) any relevant conservation sites in the UK marine area,
- form a network which satisfies the conditions in subsection (3).

(3) The conditions are—

- (a) that the network contributes to the conservation or improvement of the marine environment in the UK marine area;
- (b) that the features which are protected by the sites comprised in the network represent the range of features present in the UK marine area;
- (c) that the designation of sites comprised in the network reflects the fact that the conservation of a feature may require the designation of more than one site.

(4) For the purposes of subsection (2), the following are “relevant conservation sites”—

- (a) a European marine site within the meaning of the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995;
- (b) a European offshore marine site within the meaning of the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007;
- (c) the whole or part of any area of special scientific interest within the meaning of Part 4 of the Environment (Northern Ireland) Order 2002;
- (d) the whole or part of any Ramsar site, that is to say any site designated under the Convention on Wetlands of International Importance especially as Waterfowl Habitat signed at Ramsar on 2nd February 1971, as amended by—
 - (i) the Protocol known as the Paris Protocol done at Paris on 3rd December 1982; and
 - (ii) the amendments known as the Regina Amendments adopted at the Extraordinary Conference of the Contracting Parties held at Regina, Saskatchewan, Canada, between 28th May and 3rd June 1987; and
 - (iii) any further amendments coming into force from time to time.

(5) When complying with the duty imposed by subsection (1), the Department must have regard to any obligations under EU or international law that relate to the conservation or improvement of the marine environment.

(6) In subsection (3)(a) the reference to “the conservation or improvement of the marine environment” includes the preservation, maintenance and re-establishment of a sufficient diversity and area of habitat for wild birds in Northern Ireland in implementation of Article 3 of the Wild Birds Directive (including by means of the upkeep, management and creation of such habitat, as appropriate), having regard to the requirements of Article 2 of that Directive.

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(7) Before the end of the period of 2 months beginning with the date on which this section comes into operation, the Department must—

- (a) prepare a statement setting out such principles relating to the achievement of the objective in subsection (2) as the Department intends to follow when complying with the duty imposed by subsection (1), and
- (b) lay a copy of the statement before the Assembly.

(8) A statement prepared by the Department under this section may also set out other matters relating to the achievement of that objective which the Department intends to take into account when complying with the duty imposed by subsection (1).

(9) The Department must—

- (a) keep under review any statement it has prepared under this section, and
- (b) if it considers it appropriate in consequence of a review, prepare a revised statement of the principles referred to in subsection (7) and lay a copy of it before the Assembly.

(10) In this section—

“feature” means anything falling within paragraphs (a) to (c) of section 14(1);

“UK marine area” has the meaning given by section 42 of the 2009 Act;

“the Wild Birds Directive” means Directive [2009/147/EC](#) of the European Parliament and of the Council on the conservation of wild birds.

Reports

21.—(1) Before the end of every relevant period, the Department must lay before the Assembly a report setting out—

- (a) the extent to which, in the opinion of the Department, the objective in section 20(2) has been achieved;
- (b) any further steps which, in the opinion of the Department, are required to be taken in order to contribute to the achievement of that objective.

(2) The report must also contain the following information—

- (a) the number of MCZs which the Department has designated during the relevant period;
- (b) in relation to each such MCZ—
 - (i) the size of the MCZ, and
 - (ii) the conservation objectives stated for the MCZ;
- (c) the number of MCZs designated by the Department in which the following activities are prohibited or significantly restricted—
 - (i) any licensable marine activity;
 - (ii) fishing for or taking animals or plants from the sea;

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- (d) information about any amendments which the Department has made to any orders made under section 13;
 - (e) the extent to which, in the opinion of the Department, the conservation objectives stated for each MCZ which it has designated have been achieved;
 - (f) any further steps which, in the opinion of the Department, are required to be taken in relation to any MCZ in order to achieve the conservation objectives stated for it.
- (3) In this section—
- “licensable marine activity” has the same meaning as in Part 4 of the 2009 Act;
 - “relevant period” means—
- (a) the period beginning on the date on which this section comes into operation and ending on 31 December 2018;
 - (b) each subsequent period of 6 years.

Duties of public authorities

General duties of public authorities in relation to MCZs

22.—(1) This section applies to any public authority having any function the exercise of which is capable of affecting (other than insignificantly)—

- (a) the protected features of an MCZ;
- (b) any ecological or geomorphological process on which the conservation of any protected feature of an MCZ is (wholly or in part) dependent.

(2) Every public authority to which this section applies must (so far as is consistent with their proper exercise)—

- (a) exercise its functions in the manner which the authority considers best furthers the conservation objectives stated for the MCZ;
- (b) where it is not possible to exercise its functions in a manner which furthers those objectives, exercise them in the manner which the authority considers least hinders the achievement of those objectives.

(3) If a public authority (other than the Department) considers that any of its functions is such that the exercise of the function would or might significantly hinder the achievement of the conservation objectives stated for the MCZ, it must inform the Department of that fact.

(4) Subject to subsection (6), subsection (5) applies in any case where a public authority (other than the Department) intends to do an act which is capable of affecting (other than insignificantly)—

- (a) the protected features of an MCZ;

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- (b) any ecological or geomorphological process on which the conservation of any protected feature of an MCZ is (wholly or in part) dependent.
- (5) If the authority believes that there is or may be a significant risk of the act hindering the achievement of the conservation objectives stated for the MCZ, the authority must notify the Department of that fact.
- (6) Subsection (5) does not apply where—
 - (a) the Department has given the authority advice or guidance under section 24 in relation to acts of a particular description,
 - (b) the act which the authority intends to do is an act of that description, and
 - (c) the advice or guidance has not ceased to apply.
- (7) Where the authority has given notification under subsection (5), it must wait until the expiry of the period of 28 days beginning with the date of the notification before deciding whether to do the act.
- (8) Subsection (7) does not apply where—
 - (a) the Department notifies the authority that it need not wait until the end of the period referred to in that subsection, or
 - (b) the authority thinks that there is an urgent need to do the act.
- (9) If a public authority (other than the Department) considers that a relevant event has occurred, it must inform the Department of that fact.
- (10) A “relevant event” is any act—
 - (a) in relation to which the public authority exercises functions,
 - (b) which the authority believes to be an offence, and
 - (c) which the authority considers will or may significantly hinder the achievement of the conservation objectives for an MCZ.
- (11) In carrying out its duties under this section a public authority must have regard to any advice or guidance given by the Department under section 24.

Duties of public authorities in relation to certain decisions

- 23.—**(1) This section applies where—
- (a) a public authority (other than the Department) has the function of determining an application (whenever made) for authorisation of the doing of an act, and
 - (b) the act is capable of affecting (other than insignificantly)—
 - (i) the protected features of an MCZ;
 - (ii) any ecological or geomorphological process on which the conservation of any protected feature of an MCZ is (wholly or in part) dependent.

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(2) If the authority believes that there is or may be a significant risk of the act hindering the achievement of the conservation objectives stated for the MCZ, the authority must notify the Department of that fact.

(3) Where the authority has given notification under subsection (2), it must wait until the expiry of the period of 28 days beginning with the date of the notification before deciding whether to grant authorisation for the doing of the act.

(4) Subsection (3) does not apply where—

- (a) the Department notifies the authority that it need not wait until the end of the period referred to in that subsection, or
- (b) the authority thinks that there is an urgent need to grant authorisation for the doing of the act.

(5) The authority must not grant authorisation for the doing of the act unless the condition in subsection (6) or the condition in subsection (7) is met.

(6) The condition in this subsection is that the person seeking the authorisation satisfies the authority that there is no significant risk of the act hindering the achievement of the conservation objectives stated for the MCZ.

(7) The condition in this subsection is that, although the person seeking the authorisation is not able to satisfy the authority as mentioned in subsection (6), that person satisfies the authority that—

- (a) there is no other means of proceeding with the act which would create a substantially lower risk of hindering the achievement of conservation objectives stated for the MCZ,
- (b) the benefit to the public of proceeding with the act clearly outweighs the risk of damage to the environment that will be created by proceeding with it, and
- (c) the person seeking the authorisation will undertake, or make arrangements for the undertaking of, measures of equivalent environmental benefit to the damage which the act will or is likely to have in or on the MCZ.

(8) The reference in subsection (7)(a) to other means of proceeding with an act includes a reference to proceeding with it—

- (a) in another manner, or
- (b) at another location.

(9) In a case falling within subsection (7), the authority must, if it has power to grant the authorisation subject to conditions, exercise that power so as to make it a condition of the authorisation that the measures mentioned in subsection (7) (c) are undertaken.

(10) In carrying out its duties under this section a public authority must have regard to any advice or guidance given by the Department under section 24.

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(11) In this section—

“authorisation” means any approval, confirmation, consent, licence, permission or other authorisation (however described), whether special or general;

“damage” includes the prevention of an improvement.

Advice and guidance by the Department

24.—(1) The Department may give advice and guidance as to—

- (a) the matters which are capable of damaging or otherwise affecting any protected feature or features of an MCZ;
- (b) the matters which are capable of affecting any ecological or geomorphological process on which the conservation of any protected feature or features is (wholly or in part) dependent;
- (c) how any conservation objectives stated for an MCZ may be furthered, or how the achievement of any such objectives may be hindered;
- (d) how the effect of any activity or activities on any MCZ, or such zones generally, may be mitigated;
- (e) which activities are, or are not, of equivalent environmental benefit (for the purposes of section 23(7)(c)) to any particular damage to the environment (within the meaning of that provision).

(2) Advice or guidance may be given—

- (a) either in relation to a particular MCZ or such zones generally;
- (b) either to a particular public authority or public authorities generally.

(3) The Department must give advice to any other public authority if the authority requests it.

Failure to comply with duties, etc.

25.—(1) This section applies if, in the opinion of the Department, any other public authority has failed—

- (a) to comply with the duty imposed by section 22(2) or the duty imposed by section 23(5);
- (b) to act in accordance with advice or guidance given by the Department under section 24.

(2) Where this section applies—

- (a) the Department must request from the public authority an explanation for the failure; and

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- (b) the public authority must provide the Department with such an explanation in writing within the period of 28 days from the date of the request under paragraph (a) or such longer period as the Department may allow.

Byelaws

Byelaws for protection of MCZs

26.—(1) The Department may make byelaws for the purpose of furthering the conservation objectives stated for an MCZ.

(2) Byelaws under this section may be made so as to apply to any area in the Northern Ireland inshore region or in any other part of Northern Ireland.

(3) The provision that may be made by byelaws under this section includes, in particular, provision—

- (a) prohibiting or restricting entry into, or any movement or other activity within, the MCZ by persons or animals;
- (b) prohibiting or restricting entry into, or any movement or other activity within, the MCZ by vessels or (where appropriate) vehicles;
- (c) restricting the speed at which any vessel may move in the MCZ or in any specified area outside the MCZ where that movement might hinder the conservation objectives stated for the MCZ;
- (d) prohibiting or restricting the anchoring of any vessel within the MCZ;
- (e) prohibiting or restricting the killing, taking, destruction, molestation or disturbance of animals or plants of any description in the MCZ;
- (f) prohibiting or restricting the doing of anything in the MCZ which would interfere with the sea bed or damage or disturb any object in the MCZ.

(4) The provision that may be made by byelaws under this section also includes provision prohibiting or restricting entry into, or any movement or other activity on, any part of the seashore that adjoins the MCZ by persons, animals or vehicles.

(5) Byelaws under this section may provide for the Department to issue permits authorising anything which would, apart from such a permit, be unlawful under the byelaws.

(6) The Department may attach to a permit under subsection (5) any condition which the Department thinks appropriate to attach to that permit.

(7) Byelaws under this section may be made subject to specified exceptions.

(8) Byelaws under this section may make different provision for different cases, including (in particular)—

- (a) different parts of the MCZ;
- (b) different times of the year;

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(c) different means or methods of carrying out any activity.

(9) In this section “specified” means specified in the byelaws.

Byelaws: procedure

27.—(1) Subject to subsection (10), before making any byelaws under section 26, the Department must comply with subsections (2) to (6).

(2) The Department must place a copy of a draft of the byelaws in such place or places as the Department thinks is or are likely to be most convenient for the purpose of enabling the draft to be inspected by persons likely to be affected by the making of the byelaws.

(3) The Department must provide a copy of a draft of the byelaws to any person who requests one.

(4) The Department may charge a fee, not exceeding its costs, for providing a copy under subsection (3).

(5) The Department must publish notice of its proposal to make the byelaws.

(6) The notice under subsection (5) must—

- (a) be published in such manner as the Department thinks is most likely to bring the proposal to the attention of any persons who are likely to be affected by the making of the byelaws;
- (b) state where the copy or copies of the draft byelaws have been placed by the Department in accordance with subsection (2);
- (c) state the time within which representations about the byelaws must be made to the Department.

(7) Byelaws made under section 26 do not have effect until they are confirmed by the Secretary of State; and byelaws which are confirmed come into operation—

- (a) on such date as may be determined by the Secretary of State, or
- (b) if no such date is determined, one month after the date on which they are confirmed.

(8) As soon as is reasonably practicable after the confirmation of byelaws made under section 26, the Department must publish notice of the making of the byelaws.

(9) The notice under subsection (8) must—

- (a) be published in such manner as the Department thinks is most likely to bring the byelaws to the attention of any persons who are likely to be affected by the making of the byelaws;
- (b) state that a copy of the byelaws may be inspected at the offices of the Department.

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(10) Nothing in this section applies where the Department thinks that there is an urgent need to protect an MCZ.

Emergency byelaws

28.—(1) Where the Department thinks that there is an urgent need to protect an MCZ, byelaws made by it for that purpose have effect without being confirmed by the Secretary of State.

(2) Byelaws that have effect by virtue of this section (“emergency byelaws”)

- (a) come into operation on a date specified in the byelaws, and
- (b) remain in operation (unless revoked) for such period, not exceeding 12 months, as is specified in the byelaws.

(3) The Department must publish notice of the making of emergency byelaws.

(4) The notice under subsection (3) must—

- (a) be published in such manner as the Department thinks is most likely to bring the byelaws to the attention of any persons who are likely to be affected by the making of the byelaws;
- (b) state that a copy of the byelaws may be inspected at the offices of the Department;
- (c) state that the Secretary of State has power to revoke the byelaws and that any person affected by the making of the byelaws may make representations to the Secretary of State.

(5) The Secretary of State may revoke emergency byelaws.

(6) The Department must keep under review the need for emergency byelaws to remain in operation.

(7) The Department may, by further byelaws, provide that emergency byelaws are to remain in operation for such period beyond that specified under subsection (2)(b) as is specified in the further byelaws.

(8) The Department may not make byelaws under subsection (7) unless—

- (a) it intends to make byelaws under section 26 in respect of the MCZ in accordance with section 27 (“the permanent byelaws”), and
- (b) it has, in respect of the permanent byelaws, complied with section 27(5).

(9) A period specified under subsection (7) may not exceed 6 months.

Interim byelaws for MCZ

29.—(1) The Department may make byelaws for the purpose of protecting any feature in an area in Northern Ireland if the Department thinks—

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- (a) that there are or may be reasons for the Department to consider whether to designate the area as an MCZ, and
 - (b) that there is an urgent need to protect the feature.
- (2) In this Part “interim byelaws” means byelaws made under subsection (1).
- (3) Interim byelaws must contain a description of the boundaries of the area to which they apply (which must be no greater than is necessary for the purpose of protecting the feature in question).
- (4) Subsections (2) to (9) of section 26 apply to interim byelaws as they apply to byelaws made under that section, except that any reference to an MCZ is to be read as a reference to the area to which the interim byelaws apply.
- (5) Interim byelaws—
- (a) come into operation on a date specified in the byelaws, and
 - (b) remain in operation (unless revoked) for such period, not exceeding 12 months, as is specified in the byelaws.
- (6) The Department must publish notice of the making of interim byelaws.
- (7) The notice under subsection (6) must—
- (a) be published in such manner as the Department thinks is most likely to bring the byelaws to the attention of any persons who are likely to be affected by the making of the byelaws;
 - (b) state that a copy of the byelaws may be inspected at the offices of the Department;
 - (c) state that the Secretary of State has power to revoke the byelaws and that any person affected by the making of the byelaws may make representations to the Secretary of State.
- (8) The Secretary of State may revoke interim byelaws.
- (9) The Department must keep under review the need for interim byelaws to remain in operation.
- (10) The Department may by further byelaws extend the period for which interim byelaws remain in operation; but interim byelaws may not by virtue of this subsection remain in operation for an aggregate period exceeding 12 months.
- (11) If, while interim byelaws are in operation, the Department gives notice of a proposal to make an order under section 13 designating any part of the area in question as an MCZ, the Department may direct that interim byelaws are to remain in operation—
- (a) until the Department has decided whether to make the order under section 13;
 - (b) if the Department decides to make such an order, until that order comes into effect.

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(12) The Department must publish a direction under subsection (11) in such manner as the Department thinks is most likely to bring the direction to the attention of any persons who are likely to be affected by the making of it.

(13) In this section “feature” means any flora, fauna, habitat or feature which could be a protected feature if the area in question were designated as an MCZ.

Byelaws: supplementary

30.—(1) This section applies to byelaws made under section 26 or 29.

(2) The Department must—

(a) make a copy of any byelaws to which this section applies available for inspection at its offices at all reasonable hours without payment;

(b) provide a copy of any such byelaws to any person who requests one.

(3) The Department may charge a fee, not exceeding its costs, for providing a copy under subsection (2)(b).

(4) In the case of byelaws made under section 26 in accordance with section 27, subsections (2) and (3) apply only after the byelaws have been confirmed under section 27(7).

(5) Byelaws to which this section applies are not statutory rules for the purposes of the Statutory Rules (Northern Ireland) Order 1979.

Hearings

31.—(1) This section applies where the Secretary of State has the function of—

(a) deciding (under section 27(7)) whether to confirm byelaws made under section 26;

(b) deciding (under section 28(5)) whether to revoke emergency byelaws;

(c) deciding (under section 29(8)) whether to revoke interim byelaws.

(2) This section also applies where the Department has the function of—

(a) deciding whether to make byelaws under section 26;

(b) deciding whether to make interim byelaws under section 29.

(3) The Secretary of State or (as the case may be) the Department may, before making that decision, give to any person the opportunity of—

(a) appearing before and being heard by a person appointed for that purpose;

(b) providing written representations to such a person.

(4) The Department may make regulations providing for the procedure to be followed (including decisions as to costs) at hearings held under subsection (3).

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(5) A person appointed under subsection (3) must make a report to the Secretary of State or (as the case may be) the Department of any oral or written representations made under that subsection.

Offences

Offence of contravening byelaws

32.—(1) It is an offence for a person to contravene any byelaws made under section 26 or 29.

(2) A person who is guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) Proceedings for an offence under this section may be taken, and the offence may for all incidental purposes be treated as having been committed, in any part of Northern Ireland.

Offence of damaging, etc. protected features of MCZ

33.—(1) A person is guilty of an offence under this section if—

- (a) the person without lawful excuse does a prohibited act,
- (b) at the time of doing that act, the person knows, or ought to have known, that the feature to which the act relates is in, or forms part of, an MCZ, and
- (c) the act has significantly hindered, or may significantly hinder, the achievement of the conservation objectives stated for the MCZ.

(2) For the purposes of subsection (1), a person does a prohibited act if the person—

- (a) intentionally or recklessly kills or injures any animal in an MCZ which is a protected feature of that MCZ,
- (b) intentionally picks or collects, or intentionally or recklessly cuts, uproots or destroys, any plant in an MCZ which is a protected feature of that MCZ,
- (c) intentionally or recklessly takes anything from an MCZ which is, or forms part of, a protected feature of that MCZ, or
- (d) intentionally or recklessly destroys or damages any habitat or feature which is a protected feature of an MCZ.

(3) For the purposes of determining whether anything done by a person in relation to a protected feature is a prohibited act for the purposes of subsection (1), it is immaterial whether the person knew, or ought to have known, that the feature was a protected feature.

(4) A person who is guilty of an offence under this section is liable—

- (a) on summary conviction, to a fine not exceeding £50,000;

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(b) on conviction on indictment, to a fine.

(5) In determining the amount of any fine to be imposed on a person convicted of an offence under this section, the court must in particular have regard to any financial benefit which has accrued or appears likely to accrue to the person in consequence of the offence.

(6) Proceedings for an offence under this section may be taken, and the offence may for all incidental purposes be treated as having been committed, in any part of Northern Ireland.

Exceptions

34.—(1) A person is not guilty of an offence under section 32 or 33 if the act which is alleged to constitute the offence—

- (a) was done in accordance with section 22(2) by a public authority;
- (b) was expressly authorised by an authorisation granted in accordance with section 23, or was necessarily incidental to such an act;
- (c) was done in accordance with a permit issued by the Department (whether under section 26(5) or otherwise);
- (d) was necessary in the interests of the prevention or detection of crime, or was necessary for securing public health;
- (e) was necessary for the purpose of securing the safety of any vessel, aircraft or marine installation;
- (f) was done for the purpose of saving life.

(2) Subsection (1)(e) does not apply where the necessity was due to the fault of the person or of some other person acting under the person's direction or control.

(3) A person is not guilty of an offence under section 32 by reason of doing anything that is an offence under section 33.

(4) It is a defence for a person who is charged with an offence under section 33 to show that—

- (a) the act which is alleged to constitute the offence was—
 - (i) an act done for the purpose of, and in the course of, sea fishing, or
 - (ii) an act done in connection with such an act, and
- (b) the effect of the act on the protected feature in question could not reasonably have been avoided.

(5) The Department may by order amend this section so as to remove, or restrict the application of, the defence provided by subsection (4).

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Fixed monetary penalties

Fixed monetary penalties

35.—(1) The Department may by order make provision to confer on the Department the power by notice to impose a fixed monetary penalty on a person in relation to an offence under section 32.

(2) Provision under this section may only confer such a power in relation to a case where the Department is satisfied beyond reasonable doubt that the person has committed the offence.

(3) For the purposes of this Part a “fixed monetary penalty” is a requirement to pay to the Department a penalty of a prescribed amount.

(4) The amount of the fixed monetary penalty that may be imposed in relation to an offence may not exceed level 1 on the standard scale.

(5) In this section “prescribed” means prescribed in an order made under this section.

Fixed monetary penalties: procedure

36.—(1) Provision under section 35 must secure the results in subsection (2).

(2) Those results are that—

(a) where the Department proposes to impose a fixed monetary penalty on a person, the Department must serve on that person a notice of what is proposed (a “notice of intent”) which complies with subsection (3),

(b) the notice of intent also offers the person the opportunity to discharge the person's liability for the fixed monetary penalty by payment of a prescribed sum (which must be less than or equal to the amount of the penalty),

(c) if the person does not so discharge liability—

(i) the person may make written representations and objections to the Department in relation to the proposed imposition of the fixed monetary penalty, and

(ii) the Department must at the end of the period for making representations and objections decide whether to impose the fixed monetary penalty,

(d) where the Department decides to impose the fixed monetary penalty, the notice imposing it (“the final notice”) complies with subsection (5), and

(e) the person on whom a fixed monetary penalty is imposed may appeal against the decision to impose it.

(3) To comply with this subsection the notice of intent must include information as to—

(a) the grounds for the proposal to impose the fixed monetary penalty,

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- (b) the effect of payment of the sum referred to in subsection (2)(b),
 - (c) the right to make representations and objections,
 - (d) the circumstances in which the Department may not impose the fixed monetary penalty,
 - (e) the period within which liability to the fixed monetary penalty may be discharged, which must not exceed the period of 28 days beginning with the day on which the notice of intent is received, and
 - (f) the period within which representations and objections may be made, which must not exceed the period of 28 days beginning with the day on which the notice of intent is received.
- (4) Provision pursuant to subsection (2)(c)(ii)—
- (a) must secure that the Department may not decide to impose a fixed monetary penalty on a person where the Department is satisfied that the person would not, by reason of any defence, be liable to be convicted of the offence in relation to which the penalty is proposed to be imposed, and
 - (b) may include provision for other circumstances in which the Department may not decide to impose a fixed monetary penalty.
- (5) To comply with this subsection the final notice referred to in subsection (2)(d) must include information as to—
- (a) the grounds for imposing the penalty,
 - (b) how payment may be made,
 - (c) the period within which payment must be made,
 - (d) any early payment discounts or late payment penalties,
 - (e) rights of appeal, and
 - (f) the consequences of non-payment.
- (6) Provision pursuant to subsection (2)(e) must secure that the grounds on which a person may appeal against a decision of the Department include the following—
- (a) that the decision was based on an error of fact;
 - (b) that the decision was wrong in law;
 - (c) that the decision was unreasonable.
- (7) In this section “prescribed” means prescribed in an order made under section 35.

Fixed monetary penalties: further provision

37. Schedule 2 (which makes further provision about fixed monetary penalties) has effect.

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Enforcement powers

Enforcement officers

38.—(1) The Department may appoint persons for the purposes of enforcing—

- (a) Articles 4, 6, 7, 10, 12, 13, 14, 15 and 15A of the Wildlife (Northern Ireland) Order 1985;
- (b) regulations 34, 36 and 38 of the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995;
- (c) any byelaws made by virtue of regulations 23 or 31 of those Regulations;
- (d) Article 46 of the Environment (Northern Ireland) Order 2002;
- (e) any byelaws made under section 26 or 29 of this Act; and
- (f) section 33 of this Act.

(2) For the purposes of enforcing those provisions, a person appointed under this section has the common enforcement powers (see section 39).

(3) Subject as follows, those powers may be exercised in the Northern Ireland inshore region and in any other part of Northern Ireland.

(4) Those powers may not be exercised in relation to any ship belonging to Her Majesty and forming part of the armed forces.

(5) Those powers may not be exercised in relation to any vessel within subsection (6) unless, in the case of a third country vessel (other than a vessel falling within paragraph (b) or (c) of that subsection), the United Kingdom is entitled under international law to exercise those powers without the consent of the flag state.

(6) The vessels are—

- (a) a third country vessel;
- (b) a warship that is being used by the government of a State other than the United Kingdom;
- (c) any other vessel that is being used by such a government for any non-commercial purpose.

(7) In this section—

“flag state”, in relation to a vessel, means the State whose flag the vessel is flying or is entitled to fly;

“third country vessel” means a vessel which—

- (a) is flying a flag of, or is registered in, any State or territory (other than Gibraltar) which is not a member State; and
- (b) is not registered in a member State.

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(8) Sections 289 to 292 of the 2009 Act (which provide for the identification, liability and protection of enforcement officers under that Act) apply to a person appointed under this section as they apply to such enforcement officers, but with the substitution—

- (a) for references to any power conferred by Part 8 of the 2009 Act of references to any of the common enforcement powers conferred by subsection (2);
- (b) for references to functions under that Act of references to functions under this Part; and
- (c) for the reference in section 292(10) to the United Kingdom of a reference to Northern Ireland.

The common enforcement powers

39.—(1) For the purposes of this Part, the common enforcement powers are the powers set out in Chapter 2 of Part 8 of the 2009 Act.

(2) Accordingly, that Chapter applies (with any appropriate modifications) where those powers are conferred by section 38(2) as it applies where those powers are conferred by the 2009 Act.

Supplementary

Repeals, amendments and transitional provisions

40.—(1) The following provisions (which relate to marine nature reserves) are repealed—

- (a) in the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985—
 - (i) Articles 20 and 21;
 - (ii) in Article 31 “21” (wherever it occurs); and
 - (iii) Part 2 of Schedule 3;
- (b) in the Territorial Sea Act 1987—
 - (i) section 3(2)(c); and
 - (ii) in Schedule 1, paragraph 9.

(2) Any area which, immediately before the day on which this section comes into operation, is designated by an order under Article 20 of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985 as a marine nature reserve is to be treated, on and after that day, as if it were a marine conservation zone designated by an order under section 13.

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(3) The designation having effect by virtue of subsection (2) includes (in accordance with section 15(5)(b)) the area of land designated by the order under Article 20, together with all of the water covering that land.

(4) Any byelaws which, immediately before the day on which this section comes into operation, are in operation under Article 21 of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985 for the protection of any area designated as a marine nature reserve have effect, on and after that date, as if they were byelaws made under section 26.

(5) In regulation 31 of the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (byelaws for protection of European marine site) for paragraphs (1) and (2) substitute—

“(1) The Department may make byelaws for the protection of a European marine site under section 26 of the Marine Act (Northern Ireland) 2013 (byelaws for protection of marine conservation zones).

(2) The provisions of Part 3 of that Act relating to byelaws under section 26 apply, with the following modifications, in relation to byelaws made by virtue of paragraph (1) of this regulation—

(a) any reference to an MCZ is to be read as a reference to a European marine site;

(b) in section 26(1) the reference to furthering the conservation objectives of an MCZ is to be read as a reference to protecting a European marine site;

(c) the reference in section 26(3)(c) to hindering the conservation objectives stated for an MCZ is to be read as a reference to damaging a European marine site.”.

(6) Regulation 66 of those Regulations shall cease to have effect in relation to byelaws under Article 21 of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985.

Interpretation of this Part

41. In this Part—

“animal” includes any egg, larva, pupa, or other immature stage of an animal;

“emergency byelaws” has the meaning given by section 28;

“interim byelaws” means byelaws made under section 29;

“marine installation” means any artificial island, installation or structure;

“MCZ” means a marine conservation zone designated by an order under section 13;

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“protected feature”, in relation to an MCZ or proposed MCZ, means any flora, fauna, habitat or feature which is sought to be conserved by the making of the order designating the zone;

“seashore” means—

- (a) the foreshore, that is to say, land which is covered and uncovered by the ordinary movement of the tide, and
- (b) any land, whether or not covered intermittently by water, which is in apparent continuity (determined by reference to the physical characteristics of that land) with the foreshore, as far landward as any natural or artificial break in that continuity;

“vehicles” includes—

- (a) bicycles and other non-motorised forms of transport, and
- (b) hovercraft;

“vessels” includes—

- (a) hovercraft,
- (b) aircraft capable of landing on water, and
- (c) any other craft capable of travelling on, in or under water, whether or not capable of carrying any person.

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 20(11) inserted by [S.I. 2019/112 reg. 2\(2\)\(b\)](#)
- s. 38(7)(a) words substituted by [S.I. 2019/112 reg. 2\(3\)\(a\)](#)
- s. 38(7)(b) words substituted by [S.I. 2019/112 reg. 2\(3\)\(b\)](#)