

EXPLANATORY MEMORANDUM TO

The Marine Conservation (Fixed Monetary Penalties) Order (Northern Ireland) 2015

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Department of the Environment to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under sections 31 and 46(1) of the Marine Act (Northern Ireland) 2013 and is subject to the draft affirmative resolution procedure.

2. Purpose

- 2.1. The purpose of the Statutory Rule is to provide for the use of a civil sanction in the form of a fixed monetary penalty (FMP), where byelaws, developed to further the conservation objectives of Marine Conservation Zones (MCZs) and European Marine Sites (EMS), have been contravened.
- 2.2. The Statutory Rule will enable a FMP of £100 to be applied to an individual and £200 in any other case (companies) for low level offences where the contravention of a byelaw has resulted in minimal or no environmental damage. In each instance, 50% discount for prompt payment and a 50% surcharge for late payment have been included in the legislation. The FMP will be applied for the offence of the contravention of a requirement stipulated in a byelaw made for a protected location (MCZ or EMS) within Northern Ireland's territorial waters.
- 2.3. The use of FMPs is being provided to more effectively protect and manage Northern Ireland's MCZ & EMS. It will enable the Department to have a targeted and proportionate response to low level infringements of a condition of a byelaw, without those sanctioned gaining a criminal record.

3. Background

- 3.1. Under Article 13(4) of the Marine Strategy Framework Directive (MSFD), the UK Government is committed to establishing a network of Marine Protected Areas (MPAs) by 2016. Northern Ireland is developing its own MPA network which will form a component part of the UK network. As with the UK network, the NI network will comprise MCZs, EMS, including Special Protection Areas (SPAs) and Special Areas of Conservation (SACs), the marine parts of Ramsar sites and Areas of Special Scientific Interest (ASSI).
- 3.2. The Marine Act (Northern Ireland) 2013 gave the Department new powers (section 13) to designate MCZs and to make byelaws in order to further the conservation objectives of those MCZs (sections 26 & 29). Section 32 of the Act makes it an offence to contravene a condition of a byelaw and section 35 gives the Department the power to impose a FMP. Section 40

extends the application of FMPs to protected areas designated under European directives and transposing legislation (SACs & SPAs).

4. Consultation

- 4.1. The consultation document “Draft legislation to introduce fixed monetary penalties for the enforcement of byelaws protecting Marine Conservation Zones and European marine sites” was issued for consultation on 9 June 2014 for a period of 12 weeks, closing on 5 September 2014.
- 4.2. The Department received 13 responses. Respondents commented on the questions posed in the consultation document and a number of related issues. The topics discussed include the level of the penalty, the details of the processes to be used in the application of a civil sanction, and the designation of the Water Appeals Commission as the appeals body.
- 4.3. In general, respondents were supportive of the concept of a civil sanction in the form of a FMP and the procedures that have been proposed. Criticism was made of the monetary value of the FMP, in that it was considered to be too low, and its ability to have a dissuasive effect on those likely to infringe the conditions of a byelaw. However, the value of the FMP is set by section 35(4) of the Marine (NI) Act 2013. This limits the fine to the maximum of level 1 on the standard scale, currently £200. This is similar to the level of fine applied by similar legislation, such as the Marine Licensing (Civil Sanctions) Order 2011 and the Clean Neighbourhoods and Environment Act(NI) 2011, and takes account of the need to be proportionate and the nature of the offences.
- 4.4. After consideration of the responses, the Department is proposing to proceed with the making of the legislation without amendment.

5. Equality Impact

- 5.1. In accordance with section 75 of the Northern Ireland Act 1998, a screening analysis was undertaken. This indicated that there is no evidence of higher or lower participation or uptake by different groups within the nine Section 75 groups or any apparent opportunity to promote equality of opportunity, beyond the opportunity and benefits applicable to society as a whole. It is considered that there are no significant implications for equality of opportunity arising from the legislation. The Department concluded there is no requirement for a full EQIA.

6. Regulatory Impact

- 6.1. A Regulatory Impact Assessment was completed, which indicated that the benefits associated with the introduction of the new FMP would outweigh the costs. Proportionate use of FMP would provide a useful tool for the protection of a valuable asset that is the marine environment. A civil sanctions regime has already been put in place for marine licensing in Northern Ireland under the Marine and Coastal Access Act 2009.
- 6.2. The Department has been cognisant of the potential negative impact on small and medium-sized enterprises (SMEs). However the draft Order would only have effect on byelaws within the designated areas of MCZs and EMS that have gone through a full consultation process with those impacted given an opportunity to comment. If a SME is sanctioned, it will

be because they have caused or are likely to cause environmental damage and have indulged in poor practice.

7. Financial Implications

- 7.1. The financial implications of the Statutory Rule are minimal. The cost of imposing a FMP is low. The Department considers it unlikely that a high volume of appeals would be made. The use of the Water Appeals Commission as the appeals body will ensure effective and efficient use of public money as the set-up costs of the appeals procedure will be minimal.

8. Section 24 of the Northern Ireland Act 1998

- 8.1. The Statutory Rule is deemed to comply with the requirements of section 24 of the Northern Ireland Act 1998.

9. EU Implications

- 9.1. There is no direct transposition issue, but the new legislation will add to the overall enforcement package available to the Department that can be used to protect MCZs and EMS. This will enhance Northern Ireland's ability to meet its commitments under European environmental legislation.

10. Parity or Replicatory Measure

- 10.1. There is currently no equivalent legislation in the other Administrations, although powers for FMPs are provided for in both the Marine and Coastal Access Act 2009 and the Marine (Scotland) Act 2010. The Administrations in Scotland, Wales and England have advised that they are either in the early stages of policy development or have not yet progressed this matter.
- 10.2. A civil sanctions regime has already been put in place in respect of marine licensing in Northern Ireland by way of the Marine Licensing (Civil Sanctions) Order (Northern Ireland) 2011.

11. Additional Information

- 11.1. Not applicable.