



# Marine and Coastal Access Act 2009

## 2009 CHAPTER 23

### PART 3

#### MARINE PLANNING

### CHAPTER 4

#### IMPLEMENTATION AND EFFECT

##### *Decisions affected by an MPS or marine plan*

#### **58 Decisions affected by marine policy documents**

- (1) A public authority must take any authorisation or enforcement decision in accordance with the appropriate marine policy documents, unless relevant considerations indicate otherwise.
- (2) If a public authority takes an authorisation or enforcement decision otherwise than in accordance with the appropriate marine policy documents, the public authority must state its reasons.
- (3) A public authority must have regard to the appropriate marine policy documents in taking any decision—
  - (a) which relates to the exercise of any function capable of affecting the whole or any part of the UK marine area, but
  - (b) which is not an authorisation or enforcement decision.
- (4) An “authorisation or enforcement decision” is any of the following—
  - (a) the determination of any application (whenever made) for authorisation of the doing of any act which affects or might affect the whole or any part of the UK marine area,
  - (b) any decision relating to any conditions of such an authorisation,

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- (c) any decision about extension, replacement, variation, revocation or withdrawal of any such authorisation or any such conditions (whenever granted or imposed),
- (d) any decision relating to the enforcement of any such authorisation or any such conditions,
- (e) any decision relating to the enforcement of any prohibition or restriction (whenever imposed) on the doing of any act, or of any act of any description, falling within paragraph (a),

but does not include any decision on an application for an order granting development consent under the Planning Act 2008 (c. 29) (in relation to which subsection (3) has effect accordingly).

- (5) In section 104(2) of the Planning Act 2008 (matters to which Panel or Council must have regard in deciding application for order granting development consent) after paragraph (a) insert—
  - “(aa) the appropriate marine policy documents (if any), determined in accordance with section 59 of the Marine and Coastal Access Act 2009;”.

- (6) In this section—
  - “act” includes omission;
  - “appropriate marine policy document” is to be read in accordance with section 59;
  - “authorisation” means any approval, confirmation, consent, licence, permission or other authorisation (however described), whether special or general.

## **59 The appropriate marine policy documents**

- (1) This section has effect for the purpose of determining what are the appropriate marine policy documents for a public authority taking a decision falling within subsection (1) or (3) of section 58.
- (2) For that purpose—
  - (a) subsection (3) has effect, subject to subsection (4), for determining whether any marine plan is an appropriate marine policy document, and
  - (b) subsection (5) has effect for determining whether an MPS is an appropriate marine policy document.
- (3) To the extent that the decision relates to a marine plan area, any marine plan which is in effect for that area is an appropriate marine policy document.
- (4) A marine plan for an area in a devolved marine planning region is an appropriate marine policy document in relation to the exercise of retained functions by a public authority only if—
  - (a) it contains a statement under section 51(8) that it includes provision relating to retained functions,
  - (b) it was adopted with the agreement of the Secretary of State under paragraph 15(2) of Schedule 6, and
  - (c) it was prepared and adopted at a time when an MPS was in effect which governed marine planning for the marine planning region.

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- (5) Any MPS which is in effect is an appropriate marine policy document for each of the following public authorities—
- (a) any Minister of the Crown;
  - (b) any government department;
  - (c) if a devolved policy authority has adopted the MPS, the devolved policy authority and any primary devolved authority related to it;
  - (d) any non-departmental public authority, so far as carrying out functions in relation to the English inshore region or the English offshore region;
  - (e) any non-departmental public authority, so far as carrying out retained functions in relation to a devolved marine planning region;
  - (f) any non-departmental public authority, so far as carrying out secondary devolved functions in relation to a marine planning region whose marine plan authority is a policy authority which adopted the MPS.
- (6) For the purposes of subsection (5)(f)—
- (a) the Scottish Ministers are to be treated as if they were the marine plan authority for the Scottish inshore region, and
  - (b) the Department of the Environment in Northern Ireland is to be treated as if it were the marine plan authority for the Northern Ireland inshore region.
- (7) In this section—
- “adopted”, in relation to an MPS, means adopted and published in accordance with Schedule 5 (but see also section 48(4));
- “Counsel General” means the Counsel General to the Welsh Assembly Government;
- “devolved marine planning region” means any marine planning region other than—
- (a) the English inshore region, and
  - (b) the English offshore region;
- “devolved policy authority” means—
- (a) the Scottish Ministers;
  - (b) the Welsh Ministers;
  - (c) the Department of the Environment in Northern Ireland;
- “First Minister” has the same meaning as in the Government of Wales Act 2006 (c. 32);
- “non-departmental public authority” means any public authority other than—
- (a) a Minister of the Crown or government department;
  - (b) the Scottish Ministers;
  - (c) the Welsh Ministers, the First Minister or the Counsel General;
  - (d) a Northern Ireland Minister or a Northern Ireland department;
- “Northern Ireland Minister”—
- (a) has the same meaning as in the Northern Ireland Act 1998 (c. 47), but
  - (b) includes a reference to the First Minister and the deputy First Minister, within the meaning of that Act;
- “primary devolved authority”, in relation to a devolved policy authority, means—

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- (a) in the case of the Welsh Ministers, the First Minister or the Counsel General;
  - (b) in the case of the Department of the Environment in Northern Ireland, a Northern Ireland Minister or a Northern Ireland department;
- “retained functions” is defined for the purposes of this Part in section 60;  
“secondary devolved functions” has the same meaning as in section 60.

## 60 Meaning of “retained functions” etc

- (1) For the purposes of this Part, the functions of a public authority which are “retained functions” as respects any marine planning region are those functions of the public authority which, as respects that region, are not any of the following—
- (a) Scottish Ministerial functions (see subsection (2));
  - (b) Welsh Ministerial functions (see subsection (2));
  - (c) Northern Ireland government functions (see subsection (2));
  - (d) secondary devolved functions (see subsection (3));
  - (e) relevant ancillary functions (see subsection (5)).
- (2) In this section—
- “Northern Ireland government functions” means—
- (a) any functions exercisable by a Northern Ireland Minister or a Northern Ireland department, other than joint functions and concurrent functions (see subsection (9));
  - (b) any concurrent functions, so far as exercised by a Northern Ireland Minister or a Northern Ireland department;
  - (c) the function exercised by a Northern Ireland Minister or a Northern Ireland department when exercising a joint function;
- “Scottish Ministerial functions” means—
- (a) any functions exercisable by the Scottish Ministers, other than joint functions and concurrent functions;
  - (b) any concurrent functions, so far as exercised by the Scottish Ministers;
  - (c) the function exercised by the Scottish Ministers when exercising a joint function;
- “Welsh Ministerial functions” means—
- (a) any functions exercisable by the Welsh Ministers, the First Minister or the Counsel General, other than joint functions and concurrent functions;
  - (b) any concurrent functions, so far as exercised by the Welsh Ministers, the First Minister or the Counsel General;
  - (c) the function exercised by the Welsh Ministers, the First Minister or the Counsel General when exercising a joint function.
- (3) “Secondary devolved functions” means—
- (a) as respects the Scottish inshore region or the Scottish offshore region, any secondary devolved Scottish functions;
  - (b) as respects the Welsh inshore region or the Welsh offshore region, any secondary devolved Welsh functions;
  - (c) as respects the Northern Ireland inshore region or the Northern Ireland offshore region, any secondary devolved Northern Ireland functions.

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See subsection (4) for the definition of each of those descriptions of secondary devolved functions.

(4) In this section—

“secondary devolved Northern Ireland functions” means any of the following—

- (a) any functions exercisable by a Northern Ireland non-departmental public authority;
- (b) any functions exercisable by any other non-departmental public authority, so far as relating to transferred or reserved matters (within the meaning of the Northern Ireland Act 1998 (c. 47));

“secondary devolved Scottish functions” means any of the following—

- (a) any functions exercisable by a Scottish non-departmental public authority;
- (b) any functions exercisable by any other non-departmental public authority, so far as not relating to reserved matters (within the meaning of the Scotland Act 1998 (c. 46));

“secondary devolved Welsh functions” means any of the following—

- (a) any functions exercisable by a Welsh non-departmental public authority;
- (b) any functions conferred or imposed on a non-departmental public authority by or under a Measure or Act of the National Assembly for Wales;
- (c) any functions exercisable by a non-departmental public authority, so far as <sup>[F1]</sup>they are capable of being conferred by provision falling within] the legislative competence of the National Assembly for Wales;

but the definitions in this subsection are subject to subsection (6) (which excludes certain functions in relation to which functions are exercisable by a Minister of the Crown or government department).

(5) “Relevant ancillary functions” means any functions exercisable by a non-departmental public authority in relation to any of the following—

- (a) a Scottish Ministerial function;
- (b) a Welsh Ministerial function;
- (c) a Northern Ireland government function;
- (d) a secondary devolved function;

but this subsection is subject to subsection (6).

(6) Where functions are exercisable by a Minister of the Crown or government department in relation to a function of a non-departmental public authority, the function of the non-departmental public authority is not—

- (a) a secondary devolved Scottish function;
- (b) a secondary devolved Welsh function;
- (c) a secondary devolved Northern Ireland function;
- (d) a relevant ancillary function;

but this subsection is subject to subsection (7).

(7) Functions are not to be regarded as exercisable by a Minister of the Crown or government department in relation to functions of a non-departmental public authority merely because—

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- (a) the agreement of a Minister of the Crown or government department is required to the exercise of a function of the non-departmental public authority;
  - (b) a Minister of the Crown or government department must be consulted by the non-departmental public authority, or by a primary devolved authority, about the exercise of a function of the non-departmental public authority;
  - (c) a Minister of the Crown or government department may exercise functions falling within subsection (8) in relation to functions of the non-departmental public authority.
- (8) The functions mentioned in subsection (7)(c) are—
- <sup>F2</sup>(a) .....
  - <sup>F3</sup>(b) functions under section 58 of the Scotland Act 1998 (c. 46) (international obligations);
  - (c) functions under section 26 or 27 of the Northern Ireland Act 1998 (c. 47) (international obligations and quotas for international obligations);
  - (d) functions by virtue of section 80(3) of <sup>F4</sup>... the Government of Wales Act 2006 (c. 32) [<sup>F5</sup>(<sup>F6</sup>assimilated) obligations] or under section 82 of that Act (international obligations etc);
  - (e) functions under section 152 of that Act (intervention in case of functions relating to water etc).
- (9) In this section—
- “concurrent function” means a function exercisable concurrently with a Minister of the Crown or government department;
  - “Counsel General” means the Counsel General to the Welsh Assembly Government;
  - “devolved policy authority” means—
    - (a) the Scottish Ministers;
    - (b) the Welsh Ministers;
    - (c) the Department of the Environment in Northern Ireland;
  - “First Minister” has the same meaning as in the Government of Wales Act 2006 (c. 32);
  - “joint function” means a function exercisable jointly with a Minister of the Crown or government department;
  - “non-departmental public authority” has the same meaning as in section 59;
  - “Northern Ireland Minister”—
    - (a) has the same meaning as in the Northern Ireland Act 1998 (c. 47), but
    - (b) includes a reference to the First Minister and the deputy First Minister, within the meaning of that Act;
  - “Northern Ireland non-departmental public authority” means any non-departmental public authority so far as exercising functions in relation to which functions are exercisable by a Northern Ireland Minister or a Northern Ireland department;
  - “primary devolved authority” means any of the following—
    - (a) the Scottish Ministers;
    - (b) the Welsh Ministers, the First Minister or the Counsel General;
    - (c) a Northern Ireland Minister or a Northern Ireland department;

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“Scottish non-departmental public authority” means any non-departmental public authority so far as exercising functions in relation to which functions are exercisable by the Scottish Ministers;

“Welsh non-departmental public authority” means any non-departmental public authority so far as exercising functions in relation to which functions are exercisable by the Welsh Ministers, the First Minister or the Counsel General.

#### Textual Amendments

- F1** Words in s. 60(4) substituted (1.4.2018) by Wales Act 2017 (c. 4), s. 71(4), **Sch. 6 para. 79** (with Sch. 7 paras. 1, 6); S.I. 2017/1179, reg. 3(r)
- F2** S. 60(8)(a) omitted (31.12.2020) by virtue of The Marine Environment (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1399), regs. 1, **2(2)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F3** S. 60(8)(b) substituted (31.12.2020) by The Marine Environment (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1399), regs. 1, **2(2)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F4** Words in s. 60(8)(d) omitted (31.12.2020) by virtue of The Marine Environment (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1399), regs. 1, **2(2)(c)(i)**; 2020 c. 1, Sch. 5 para. 1(1)
- F5** Words in s. 60(8)(d) substituted (31.12.2020) by The Marine Environment (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1399), regs. 1, **2(2)(c)(ii)**; 2020 c. 1, Sch. 5 para. 1(1)
- F6** Word in s. 60(8)(d) substituted (1.1.2024) by The Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendment) Regulations 2023 (S.I. 2023/1424), reg. 1(2), **Sch. para. 70(2)(b)**

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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. 72A(2A) inserted by [2023 c. 55 s. 232\(2\)\(d\)](#)
- s. 72A(6)(a) words in s. 72A(6) renumbered as s. 72A(6)(a) by [2023 c. 55 s. 232\(2\)\(f\)\(i\)](#)
- s. 72A(6)(a) words inserted by [2023 c. 55 s. 232\(2\)\(f\)\(ii\)](#)
- s. 72A(6)(b) and word inserted by [2023 c. 55 s. 232\(2\)\(f\)\(iii\)](#)
- Sch. 6 para. 1(2)(da) inserted by [2023 c. 55 Sch. 8 para. 31\(2\)\(a\)](#)