

MARINE AND COASTAL ACCESS ACT 2009

EXPLANATORY NOTES

SUMMARY AND BACKGROUND

Part 1: Marine Management Organisation

Chapter 2: Transfer of Functions to the MMO

52. This Chapter provides for the transfer of a number of existing functions to the MMO.

Sea Fish (Conservation) Act 1967

53. This Act and orders made under it regulate fishing for, and landing of, sea fish and the commercial use of sea fish.

Section 4: Licensing of fishing boats

54. Section 4 of the Sea Fish (Conservation) Act 1967 and legislation made under that section prohibit fishing boats from fishing for sea fish in certain areas within British fishery limits without a licence. This section transfers to the MMO the function of the Secretary of State in relation to the granting of licences. The function transferred includes the administration (granting, variation, revocation, suspension) of licences. This section also ensures that licences previously issued by the Secretary of State are treated as though they were issued by the MMO.

55. *Section 4* also provides for the MMO and the Scottish Ministers to make arrangements to exercise functions on each other's behalf. This is limited to licensing functions under section 4 of the Sea Fish (Conservation) Act 1967.

Section 5: Restrictions on time spent at sea: appeals

56. Section 4AA of the Sea Fish (Conservation) Act 1967 establishes the Sea Fish Licence Tribunal. It provides for an appeal to this tribunal in relation to certain provisions in fishing boat licences that restrict the amount of time that a vessel may spend at sea. The fishing boat licence must be varied to give effect to any decision of the tribunal. Section 5 provides for the MMO to be subject to this duty to vary a licence in respect of licences that it granted, or that the Secretary of State granted.

Section 6: Trans-shipment licences for vessels

57. Section 4A of the Sea Fish (Conservation) Act 1967 and legislation made under that section prohibits a vessel within British fishery limits (except the Scottish zone) from receiving, without a licence, fish that is trans-shipped from another vessel. This section transfers to the MMO the functions of the Secretary of State in licensing vessels involved in the trans-shipment of fish.

Section 7: Regulations supplementary to sections 4 and 4A

58. This section is supplementary to sections 4 and 6 and flows from the transfer of functions of granting fishing boat licences from the Secretary of State to the MMO. Where secondary legislation has been made to set out the procedure for granting licences, any existing references to the Secretary of State in that legislation are to be treated as references to the MMO.

Section 8: Exemptions for operations for scientific and other purposes

59. Section 1 of the Sea Fish (Conservation) Act 1967 prohibits the landing of certain descriptions of sea fish below a certain size. Section 9 of that Act creates an exemption to this prohibition in the case of fish landed for the purposes of scientific investigation.
60. This section transfers to the MMO the functions of the Secretary of State relating to the authorisation of fishing operations that are conducted for these purposes.

Nature conservation

Section 9: Licences to kill or take seals

61. The Conservation of Seals Act 1970 provides for the protection and conservation of seals in Great Britain and the adjacent territorial waters. This Act makes it an offence to kill or take seals during the close season or in an area specified in a conservation order without a licence granted by the Secretary of State. The function of granting licences in England is currently exercised by Natural England.
62. This section transfers to the MMO the functions of the Secretary of State in granting licences in England and the English inshore region. (In a small number of cases each year it is necessary to issue licences to kill or take seals in freshwaters; the MMO will transfer this function to Natural England using the agreements under section 15).

Section 10: Wildlife and Countryside Act 1981

63. The Wildlife and Countryside Act 1981 applies both terrestrially and at sea out to 12 nautical miles to protect wild birds, animals and plants.
64. Sections 1, 3, 5, 6(1), (2) and (3), 7 and 8 of that Act create offences related to the protection of birds, including an offence of killing or injuring wild birds.
65. Sections 9(1), (2), (4), (4A) and (5) and 11(1), (2) and (3C)(a) of that Act create offences related to the protection of animals, including offences of killing or injuring any wild animal or destroying any place of shelter of any wild animal.
66. Section 13(1) and (2) of that Act creates offences related to the protection of wild plants, including intentionally picking or selling any wild plant specified in the Act.
67. Sections 14 and 14ZA of that Act create offences related to the introduction of new species into the wild and the sale of invasive non-native species.
68. That Act includes powers under section 16 for the Secretary of State and Natural England to issue licences to authorise these activities in certain circumstances (for example, in the case of some of the activities, if they are done for scientific, research or educational purposes). Where a licence has been granted and the activity is carried out in accordance with the terms of the licence, no offence is committed.
69. This section provides that the powers under section 16(1), (2), (3) and (4) of that Act to grant such licences are to be exercised by the MMO, instead of the Secretary of State or Natural England, in the case of any such activities in the sea adjacent to England that lies seaward of mean low water mark out to 12 nautical miles.

Section 11: Sea Fisheries (Wildlife Conservation) Act 1992

70. This Act places the Secretary of State under a duty when discharging any sea fisheries functions to “have regard to the conservation of marine flora and fauna” and to try to achieve a reasonable balance between this consideration and any other considerations to which he is required to have regard.
71. This section places the MMO under the same duty as the Secretary of State under this Act; when discharging any sea fisheries functions the MMO must “have regard to the conservation of marine flora and fauna” and to try to achieve a reasonable balance between this consideration and any other considerations to which it is required to have regard.

Generating and renewable energy installations

Section 12: Certain consents under section 36 of the Electricity Act 1989

72. This section transfers to the MMO certain of the functions of the Secretary of State in issuing consents under section 36 of the Electricity Act 1989.
73. The functions transferred are listed in *subsections (2) to (5)* and relate to the construction, extension and use of offshore generating stations and the subsequent enforcement of any consents issued.
74. The MMO will assume the Secretary of State’s responsibility as competent authority for assessing environmental impacts on protected European Sites (*subsection (5)(c)*) and for satisfying requirements relating to environmental impact assessments (*subsection (5)(d)*).
75. The MMO will only exercise these functions for offshore generating stations that are not, or in the case of extensions, would not be after the extension has taken place, nationally significant infrastructure projects. Sections 14 and 15 of the Planning Act 2008 define offshore generating stations as nationally significant infrastructure projects if they have a generating capacity over 100 megawatts. The MMO will also not exercise these functions in Scottish waters or in the Scottish part of the renewable energy zone, where Scottish Ministers will continue to perform that role. “Scottish waters”, “Scottish part” and “renewable energy zone” are defined in section 95 of the Energy Act 2004.

Section 13: Safety zones: functions under section 95 of the Energy Act 2004

76. Under section 12 the MMO will be responsible for issuing consents under section 36 of the Electricity Act 1989 for certain offshore generating stations. By virtue of section 13 it will also be able to issue notices under section 95 of the Energy Act 2004 declaring safety zones around those offshore generating stations (here described as renewable energy installations) for which it issues those consents.
77. The MMO will be able to declare safety zones for any purpose given in section 95 of the Energy Act 2004. But it will not have the power to do this in respect of renewable energy installations located in Scottish waters or in the Scottish part of the renewable energy zone.
78. Where any part of a safety zone that the MMO is declaring is in Scottish waters, by virtue of subsection (5) of section 95 of the Energy Act 2004, the MMO will have to consult the Scottish Ministers before issuing a safety notice.