

MARINE AND COASTAL ACCESS ACT 2009

EXPLANATORY NOTES

SUMMARY AND BACKGROUND

Part 1: Marine Management Organisation

Chapter 4: Miscellaneous, General and Supplemental Provisions

102. This Chapter gives the MMO general powers and duties, makes financial provisions for the MMO and sets out how the Secretary of State may give it guidance and directions. It also provides for the transfer of property, rights and liabilities to the MMO.

Section 23: MMO's role in relation to applications for development consent

103. This section amends certain sections of the Planning Act 2008 to set out the MMO's role in relation to development consents. It inserts a reference to the MMO into section 42 of the Planning Act 2008 as a body that must be consulted in any case where the proposed development would affect, or would be likely to affect, any of the areas where the MMO operates and where the Infrastructure Planning Commission (IPC) also operates. The areas in question are waters in or adjacent to England and waters in the renewable energy zone, the exclusive economic zone or the continental shelf (but not where Scottish Ministers have functions).
104. This section also inserts references to the MMO into section 56 of the Planning Act 2008 as a body that must be notified, and into section 102 of that Act as an interested party, for any case where an application has been accepted by the IPC for a development that involves an activity in the areas where the MMO operates and where the IPC also operates. This ensures that the MMO is notified of accepted applications and may then be involved throughout the examination of those applications.
105. *Subsection (7)* places a duty on the Secretary of State to issue guidance to the MMO on the kind of representations it may make in the cases above.

General Powers and Duties

Section 24: Research

106. This section gives the MMO powers to undertake research on matters relevant to its functions or its general objective, either by itself or in association with others, and to commission or support others to undertake such research. The MMO must make the results of this research available on request, unless it is the kind of information that could be withheld under the Freedom of Information Act 2000, the Environmental Information Regulations 2004 or any other legislation.

Section 25: Advice, assistance and training facilities

107. This section specifies the MMO's duties and powers to provide advice and assistance, and the use of training facilities, to the Secretary of State, public bodies and any other person.

Section 26: Provision of information etc

108. This section enables the MMO to publish documents and provide information about anything relating to its general objective or any of its functions.

Section 27: Power to charge for services

109. This section enables the MMO to make a reasonable charge for any services it provides (on a cost-recovery basis). *Subsection (2)* makes specific provision for the MMO to charge fees in respect of functions it might exercise on behalf of the Welsh Ministers or a Northern Ireland department. Examples of other types of service for which the MMO may charge are set out in *subsection (3)*.

Section 28: Provision of information by the MMO to the Secretary of State

110. The MMO will be accountable to the Secretary of State, who will from time to time require, in writing, information from the MMO relating to the performance of its functions. This includes information which the MMO may reasonably be required to obtain from others. *Subsection (1)* of this section places the MMO under an obligation to provide the Secretary of State with this information.

Section 29: Power to bring proceedings

111. The MMO will have responsibilities for enforcement in the marine area, including bringing prosecutions where appropriate. This section makes provision with respect to the powers of the MMO to pursue criminal proceedings and proceedings for the recovery of monetary penalties imposed under this Act.
112. This section also allows the MMO to designate non-legally qualified staff to conduct certain types of litigation in magistrates' courts and to exercise certain rights of audience in magistrates' court proceedings.

Section 30: Continuation of certain existing prosecutions

113. This section allows the MMO to continue prosecutions that have already been started by the Secretary of State (including prosecutions started by the Marine and Fisheries Agency) where those prosecutions are for offences related to functions transferred to the MMO or are for offences under fisheries legislation.

Section 31: Incidental powers

114. This section allows the MMO to take action which will help it to exercise its functions and meet its general objective. The section sets out some of the particular activities that the MMO may need to undertake such as borrowing money, holding property, and investing money.

Financial Provisions

115. These sections put in place the financial arrangements needed to enable the MMO to carry out its responsibilities.

Section 32: Grants

116. This section enables the Secretary of State to make the appropriate funds available to the MMO by way of grant.

Section 33: Borrowing powers

117. This section allows the MMO to borrow money as necessary to enable it to carry out its functions. The money may be borrowed from the Secretary of State or from others with

*These notes refer to the Marine and Coastal Access Act 2009
(c.23) which received Royal Assent on 12th November 2009*

the agreement of the Secretary of State. The Secretary of State may make his agreement conditional on, for example, the MMO repaying the loan by a certain date.

Section 34: Limit on borrowing

118. This section limits the MMO's ability to borrow to £20 million, although the Secretary of State may increase this (up to £80 million) by order, subject to approval by the House of Commons.

Section 35: Government loans

119. This section enables the Secretary of State to lend money to the MMO and makes the loan subject to any appropriate repayment conditions. It requires the Secretary of State to keep an account of the amounts loaned and received, and to make this available to the Comptroller and Auditor General for audit purposes. Both the account and the auditor's report must be laid before Parliament. In accordance with Government financial procedural requirements, the Secretary of State is required to pay into the Consolidated Fund any repayments of principal, and any payments of interest, made by the MMO.

Section 36: Government guarantees

120. This section allows the Secretary of State to guarantee loans, interest and other financial obligations of the MMO.
121. If a guarantee is given under the section, the Secretary of State must lay a statement before each House of Parliament.
122. If any sum is paid out in fulfilment of such a guarantee, the Secretary of State must also lay a statement before each House of Parliament and the MMO must make such payments to the Secretary of State towards repayment of the sum, or by way of interest on the outstanding balance, as the Secretary of State may direct.

Directions and guidance

123. Whilst the MMO is intended to operate free from Ministerial interference in its day to day affairs, Ministers may need to issue guidance or directions to the MMO. Such guidance or directions are likely to change over time in order to take account of any alterations to the functions of the MMO, or changing priorities in relation to the marine environment, and may be used to ensure that the MMO does not act in a way that is inconsistent with its functions or general objective.

Section 37: Directions by the Secretary of State

124. This section enables the Secretary of State, following consultation, to give general or specific directions to the MMO regarding the exercise of its functions. This includes directions in relation to international agreements to which the United Kingdom or European Union is a party, as several such agreements relate to the marine area and may be relevant to the way in which the MMO is to exercise its functions. The MMO must comply with these directions. The Secretary of State must publish notice of any directions given to the MMO. The MMO must make copies of any directions available to the public, for which it may charge a reasonable fee.

Section 38: Guidance by the Secretary of State

125. This section provides for the Secretary of State to issue guidance to the MMO regarding the exercise of its functions. The MMO must have regard to any guidance issued (including guidance on its general objective under section 2). Before issuing guidance, the Secretary of State must consult the MMO and any other body that the Secretary of State considers appropriate.

Transfer schemes etc

Section 39: Transfer schemes

126. This section enables the Secretary of State to make schemes to transfer to the MMO property, rights and liabilities of Defra (including those of the Marine and Fisheries Agency), other Government Departments, Ministers and statutory bodies.
127. This section also allows the transfer of any property, rights and liabilities from the MMO to Ministers, Government Departments and statutory bodies.
128. This section allows transfers to take place when the MMO is established and when functions are transferred to it. The Secretary of State may also make schemes on other occasions to transfer property, rights or liabilities to and from the Secretary of State and the MMO: it might, for example, be necessary in the future for the MMO to hold property in its own right, and a transfer scheme would be needed to transfer this property between bodies.
129. The MMO will be undertaking new functions created by the Act but is also taking over existing functions currently discharged by the Marine and Fisheries Agency, Defra, the Department of Energy and Climate Change and the Department for Transport. This section enables resources (including staff) currently being deployed to discharge these functions to be transferred to the MMO.
130. Reference is made to Schedule 3 where further provisions relating to transfer schemes are set out.

Section 40: Interim arrangements

131. This section allows the Secretary of State to require a Government Department, Minister or other statutory body to make staff, premises or other facilities available to the MMO on a temporary basis. This is intended to cover any period of transition between the MMO taking on functions previously discharged by that body and any transfer scheme taking effect.