

# MARINE AND COASTAL ACCESS ACT 2009

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## EXPLANATORY NOTES

### SUMMARY AND BACKGROUND

#### **Part 3: Marine Planning**

#### *Chapter 4: Implementation and Effect*

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

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

187. This section makes provision about the effect which “the appropriate marine policy documents” are to have on the taking of certain decisions by public authorities. The documents that may be appropriate marine policy documents are the MPS and any marine plans. The rules for determining whether the MPS or any particular marine plan is an appropriate marine policy document in any article case are set out in section 59 (as read with section 60).
188. *Subsection (1)* provides that all authorisation and enforcement decisions must be taken in accordance with any relevant MPS and plans, unless relevant considerations indicate otherwise. *Subsection (2)* requires that public authorities give their reasons if they make decisions which do not follow the MPS or plans.
189. *Subsection (3)* requires that public authorities have regard to any relevant MPS or plans when taking any decision which relates to a function capable of affecting the UK marine area (other than an authorisation or enforcement decision).
190. *Subsection (4)* defines “authorisation or enforcement decisions”. These decisions relate to the licensing (or other authorisation) of particular activities which affect, or might affect, the whole or any part of the UK marine area, the conditions attached to those authorisations, and the enforcement action to be taken with a view to securing that any such activities are carried out only under a licence, and in accordance with any conditions attached to the licence, and not in breach of any prohibition or restriction. The closing words provide that decisions under the Planning Act 2008 on applications for development consent for nationally significant infrastructure projects are not “authorisation or enforcement decisions”. As such, they are decisions within the scope of *subsection (3)*, which requires public authorities to have regard to marine policy documents when making decisions.
191. *Subsection (5)* inserts a new paragraph into section 104(2) of the Planning Act 2008, requiring the Infrastructure Planning Commission (established under that Act) to have regard to “the appropriate marine policy documents” when making decisions on applications for nationally-significant infrastructure projects.
192. *Subsection (6)* includes some further definitions of terms used in this section.

**Section 59: The appropriate marine policy documents**

193. This section sets out the rules for determining whether an MPS or plan applies to a particular decision.
194. *Subsections (3) and (4)* relate to the effect of marine plans on decisions. The effect of *subsection (3)* is that a marine plan applies to any decision which relates to the area covered by the marine plan, unless *subsection (4)* applies. The effect of *subsection (4)* is that a marine plan for an area in the Northern Ireland, Scottish or Welsh offshore region, or the Welsh inshore region, is not an appropriate marine policy document for decisions relating to the exercise of retained functions (that is, functions which are not devolved) unless the marine plan states that:
- it includes provision for retained functions;
  - it was adopted with the agreement of the Secretary of State; and
  - it was prepared and adopted whilst an MPS governed planning for the part of the marine area to which the plan relates.
195. *Subsection (5)* relates to the effect of an MPS on decisions. Since an MPS will always have been adopted by the Secretary of State, it will be relevant to all decisions relating to the English inshore or offshore region, and those relating to the exercise of retained functions in the other marine planning regions. An MPS will also be relevant to decisions relating to the exercise of devolved functions in the other marine planning regions if the marine plan authority for the region has adopted the MPS in its capacity as a policy authority.
196. An MPS adopted by the Scottish Ministers or Department of the Environment in Northern Ireland will also be relevant to decisions relating to their respective inshore regions, even though there are no “marine plan authorities” for those regions. For this reason, *subsection (6)* provides that, for the purposes of *subsection (5)(f)*, the Scottish Ministers and DoENI are to be treated as the marine plan authorities for the Scottish inshore region and the Northern Ireland inshore region respectively.
197. *Subsection (7)* defines some of the terms used in this section.

**Section 60: Meaning of “retained functions” etc.**

198. This section provides that, unless a function falls into one of three categories set out in *subsection (1)(a) to (e)*, it is a retained function.
199. The first category consists of functions exercisable by Ministers in the devolved administrations or by Northern Ireland departments (see *subsections (1)(a) to (c)* and *(2)*). These functions include functions which are exercisable concurrently or jointly with the Secretary of State insofar as they are in fact exercised by those Ministers or departments. (To the extent that such functions are exercised by the Secretary of State, they are retained functions.)
200. The second category consists of “secondary devolved functions” (see *subsections (1)(d), (3) and (4)*). This category consists of functions exercisable in relation to each devolved marine planning region by public authorities other than the policy authorities or other ‘government-level’ bodies (hence secondary). These public authorities are collectively labelled “non-departmental public authorities”.
201. The definition of “secondary devolved functions” is slightly different for each devolved administration, reflecting the variations in the devolution settlements (*subsection (4)*). In particular, it needs to take account of executively devolved functions, where the power to exercise a function may have been devolved but the relevant devolved legislature does not have the power to legislate in respect of it. For example, Scottish Ministers have the power under the Marine and Coastal Access Act to prepare marine

plans for the Scottish offshore region, but the Scottish Parliament cannot legislate for marine planning in the offshore area.

202. When a non-departmental public authority is carrying out functions under the oversight or control of the relevant devolved Ministers (or NI department), it becomes a “Scottish”, “Northern Ireland” or “Welsh non-departmental public authority” (defined in *subsection (10)*). For example, when exercising functions in relation to the Welsh marine region, the Environment Agency would be a “Welsh non-departmental public authority” to the extent that its exercise of those functions is subject to direction by the Welsh Ministers.
203. “Secondary devolved functions” are therefore defined for each region by reference to:
- Functions carried out under the control of the devolved administration (whether or not the relevant legislature would have competence); and
  - Functions relating to matters which are within the competence of the relevant devolved legislature.
204. The final category of functions which are not retained functions are “relevant ancillary functions” (see *subsections (1)(e)* and *(5)*).
205. This final category covers functions exercised by non-departmental public authorities in relation to other devolved functions. These are predominantly advisory functions (for example many public authorities have functions of giving advice to ministers and other public authorities on how to carry out their functions). This provision ensures that any such advice is given on the same basis as the actual substantive function to which it relates. For example, when the Environment Agency provides advice to the Welsh Ministers in relation to their functions, the Environment Agency will be a “Welsh non-departmental public authority”.
206. However, functions will not be treated either as secondary devolved functions or as ancillary functions if the UK government has substantive functions in relation to them (*subsection (6)*). Where the UK government only has relatively minor functions (for example giving consent to, or being consulted about, the exercise of a devolved function – *subsections (7)* and *(8)*) then that is not sufficient to stop it being devolved – insofar as it is exercised by the devolved public authority. (The UK function of giving that consent, or responding to the consultation is of course not devolved.)
207. *Subsection (9)* contains additional definitions of some of the terms used in this section.

## **Monitoring and reporting**

### ***Section 61: Monitoring of, and periodical reporting on, implementation***

208. *Subsection (1)* sets out in summary the duties imposed on marine plan authorities by this section. First, each marine plan authority is to monitor and report on the effects and effectiveness of its existing plans, and second, it is to report every six years until 2030 on the way it has used, and intends to use, its marine planning powers.
209. *Subsections (2)* and *(3)* set out the scope of the duty of marine plan authorities to keep the effects, and effectiveness, of marine plans under review. Such reports must also cover any progress towards achieving any objectives set out for that region in the MPS.
210. *Subsections (4)* to *(8)* require marine plan authorities to report on this review at least every three years after each plan is adopted, and decide after each report whether or not the plan needs to be amended or replaced. Reports under this subsection must be laid before the appropriate legislature.
211. *Subsection (9)* makes clear that “replacing” a plan means preparing and adopting a new plan and withdrawing the existing one.

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

212. *Subsections (10) to (13) impose the second reporting duty, requiring marine plan authorities to report at least every six years until 2030 on the marine plans they have prepared, and their intentions as to the amendment of existing plans or preparation of additional plans. Again, these reports must be laid before the appropriate legislature.*
213. *Subsection (14) defines the appropriate legislatures.*