

# MARINE AND COASTAL ACCESS ACT 2009

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## EXPLANATORY NOTES

### INTRODUCTION

1. These Explanatory Notes relate to the Marine and Coastal Access Act 2009 which received Royal Assent on 12th November 2009. They have been prepared by the Department for Environment, Food and Rural Affairs in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.

2. The Notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

### SUMMARY AND BACKGROUND

#### *Overview of the Act*

3. The Act introduces a new system of marine management. This includes a new marine planning system, which makes provision for a statement of the Government's general policies, and the general policies of each of the devolved administrations, for the marine environment, and also for marine plans which will set out in more detail what is to happen in the different parts of the areas to which they relate. The Act includes provision changing the system for licensing the carrying on of activities in the marine environment. It also provides for the designation of conservation zones. It changes the way marine fisheries are managed at a national and a local level and modifies the way licensing, conservation and fisheries rules are enforced. It allows for designation of an Exclusive Economic Zone for the UK, and for the creation of a Welsh Zone in the sea adjacent to Wales. The Act also amends the system for managing migratory and freshwater fish, and enables recreational access to the English and Welsh coast.

#### *Background*

4. In 2002, the Government published its Marine Stewardship Report<sup>1</sup> which set out a "vision for the marine environment". A number of other reports and reviews followed, suggesting that a new approach to managing all marine activities was needed, together with legislation to implement it.

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<sup>1</sup> <http://www.defra.gov.uk/environment/water/marine/uk/stewardship/index.htm>.

5. In March 2006, the Government published a consultation document on the aims and scope of a Marine Bill.<sup>2</sup> A summary of responses to the consultation was published in October 2006<sup>3</sup>.

6. In March 2007, the Government published a Marine Bill White Paper<sup>4</sup> putting forward proposals for legislative measures to introduce new arrangements for the sustainable management of activities and protection of resources in the UK's marine area.

7. The White Paper set out proposals covering:

- a) a new marine planning system
- b) a new system for licensing marine developments
- c) a flexible mechanism to protect natural resources, including marine conservation zones with clear objectives
- d) changes to the management of marine fisheries
- e) a Marine Management Organisation to discharge these and other marine functions on behalf of UK Government

8. The provisions on migratory and freshwater fisheries were developed from recommendations made to Government by the Salmon and Freshwater Review Group in 2000, which received input from a large number of interested individuals and organisations. Provisions to improve access to the coast were consulted on by Government during 2007.<sup>5</sup>

9. In April 2008, the Government published the draft Marine Bill for public consultation and pre-legislative scrutiny.<sup>6</sup>

10. The draft Bill was scrutinised by a Joint Committee of the House of Commons and the House of Lords. The coastal access provisions were also scrutinised by the House of Commons Environment, Food and Rural Affairs Committee. The EFRA Committee<sup>7</sup> reported on 22 July with 23 recommendations, and the Joint Committee<sup>8</sup> reported on 30 July with 96 recommendations. The Government's response to these recommendations was published on 25 September 2008.<sup>9</sup>

11. Alongside the pre-legislative scrutiny, the draft Bill and an accompanying policy paper and Impact Assessment were published for public consultation. The consultation ran from 3 April to 26 June. The Government's summary of consultation responses was published on 25 September 2008.<sup>10</sup>

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<sup>2</sup> <http://www.defra.gov.uk/marine>.

<sup>3</sup> <http://www.defra.gov.uk/marine>.

<sup>4</sup> <http://www.defra.gov.uk/marine> Cm 7047.

<sup>5</sup> <http://www.defra.gov.uk/corporate/consult/coast-access/index.htm>.

<sup>6</sup> <http://www.defra.gov.uk/marine>.

<sup>7</sup> <http://www.publications.parliament.uk/pa/cm200708/cmselect/cmenvfru/656/65602.htm>.

<sup>8</sup> <http://www.publications.parliament.uk/pa/jt200708/jtselect/jtmarine/159/15902.htm>.

<sup>9</sup> <http://www.defra.gov.uk/marine>.

<sup>10</sup> <http://www.defra.gov.uk/marine>.

***Summary of the Act***

12. Part 1 establishes an independent body, the Marine Management Organisation (MMO). The MMO is to discharge a number of marine functions on behalf of UK Government. Its general objective is to do this with the objective of making a contribution to the achievement of sustainable development, taking into account all relevant facts and matters and any effect that decisions in one area will have on any other area. As a Non-Departmental Public Body (NDPB), the MMO will report formally to Parliament through the Secretary of State. It is intended that the MMO will be given responsibility for drawing up marine plans for the purposes of the new planning regime. It will also administer marine environmental licensing and harbours regimes on behalf of the Secretary of State, manage marine fisheries, undertake nature conservation functions and use enforcement powers set out in Part 8 of this Act to enforce fisheries, licensing and nature conservation legislation.

13. Part 2 defines the UK marine area, used by subsequent Parts of the Act to describe areas where activities take place. It also allows an Exclusive Economic Zone to be designated (see paragraph 34) and creates the Welsh zone, the boundaries of which are to be set by an order made by the Secretary of State or an Order in Council made by Her Majesty. Functions relating to fisheries will be transferred to the Welsh Ministers in relation to the Welsh zone. Other provisions in the Act make provision for certain other functions to be conferred on the Welsh Ministers in relation to the Welsh zone (for example, drawing up marine plans).

14. Part 3 introduces a new system of marine planning. At present, marine policy is developed sector by sector, which makes it difficult for decision-makers and users of the sea to know what the relative priorities are. The planning provisions provide for the preparation of a Marine Policy Statement to articulate the priorities and objectives of the UK Government, the Welsh Assembly Government, the Scottish Executive and the Department of the Environment in Northern Ireland in their marine areas. It also provides for the preparation of marine plans for the UK marine area which take account of the Marine Policy Statement.

15. The marine licensing provisions in Part 4 will replace the licensing and consent controls currently exercised under Part II of the Food and Environment Protection Act 1985 and Part II of the Coast Protection Act 1949 (excluding Scottish inshore region). This Part also removes the consent requirements of the electronic communications code set out in Schedule 2 to the Telecommunications Act 1984. The considerations built into these regimes are merged into the new regime, with some modifications. This Part amends the relationship between marine licensing and certain other legislation governing activities in the marine area, including the Petroleum Act 1998 and the Electricity Act 1989. Additionally, it provides for the mechanisms and powers for enforcing the licensing regime.

16. Part 5 of the Act provides a power, across most of UK waters, to designate new Marine Conservation Zones ("MCZs"), in place of the current power under the Wildlife and Countryside Act 1981 to designate Marine Nature Reserves. Existing Marine Nature Reserves will be converted into MCZs. There will be a duty to designate MCZs so as to contribute to a UK network of marine sites, MCZs complementing the Natura 2000 network of European sites, Sites of Special Scientific Interest and wetlands protected under the

Ramsar Convention. This will help the Government to fulfil the UK's commitment, under the Convention for the Protection of the Marine Environment of the North East Atlantic (OSPAR), to establish an ecologically coherent network of marine protected areas. The Act provides for new duties on public bodies to exercise their functions in ways that further the conservation objectives set for MCZs, and not to authorise activities or development which carry a significant risk of hindering those conservation objectives. There will also be powers to make byelaws or orders, and interim byelaws or orders, to protect sites, and potential sites, from otherwise unregulated activities which may cause harm.

17. Part 6 changes the legislation relating to the establishment, organisation and responsibilities of Sea Fisheries Committees, establishing in England new bodies called Inshore Fisheries and Conservation Authorities (IFCAs). It imposes on IFCAs duties in relation to fisheries and nature conservation, and confers on them the power to make byelaws. The membership and funding arrangements of IFCAs are also set out.

18. Part 7 contains several Chapters amending existing legislation relating to marine and freshwater fisheries. It amends the Sea Fish (Conservation) Act 1967 to provide new powers in relation to the regulation of commercial and recreational fishing. It also amends the Sea Fisheries (Shellfish) Act 1967 to modify the way that Several and Regulating Orders, which are used to establish and manage shellfisheries, are made and operated. In addition, this Part amends legislation relating to migratory and freshwater fish. It gives new powers to the Environment Agency to conserve and manage migratory fish, including powers to make emergency byelaws to respond to unforeseen threats to fish stocks and powers to introduce a new regulatory system for the movement of live fish where necessary to protect national and local biodiversity. This Part also modifies the fishing licensing regime, introduces an authorisation regime for some fishing activities, and deals with offences relating to fishing and with the powers and duties of the Environment Agency. Finally, this Part repeals some redundant fisheries legislation.

19. Part 8 provides for the appointment of enforcement officers and for a set of common enforcement powers for enforcing requirements across licensing, nature conservation and fishing in the marine area. It provides new powers that may be exercised for the purposes of enforcing sea fisheries legislation.

20. Part 9 introduces new powers to extend recreational access to the English coast and to enable the creation, as far as is possible, of a continuous route around the coast wide enough to allow unconstrained passage on foot and recreational space. It also contains provisions enabling the National Assembly for Wales to create a coastal path around the Welsh coast.

21. Part 10 amends legislation in relation to Natural England and the Countryside Council for Wales and modifies the regime governing harbours set out in the Harbours Act 1964. It also introduces navigational controls into the Energy Act 2008 in lieu of those currently contained in the Coast Protection Act 1949.

22. The final Part of the Act, Part 11, contains supplementary provisions including commencement arrangements and repeals.

***Terminology describing marine areas***

23. There are a number of existing terms which are used throughout the Act to describe different parts of the UK marine area. These are set out below. The Act also defines additional terms to refer to specific parts of the UK marine area.

***Baseline***

24. The marine area around the UK coast is sub-divided into a number of zones. These are measured from a “baseline”. This is usually the low water mark around the coast. But there may be straight baselines across the mouths of bays, and all rocks, reefs etc above the sea at low water but submerged at other times extend the baseline if they are within 12 nautical miles (“nm”) of the mainland or an island. The UK baseline is delineated in the Territorial Waters Order in Council 1964 (as amended by the Territorial Sea (Amendment) Order 1998, SI 1998/2564).

***Internal Waters***

25. Marine waters to the landward side of the baseline are known as internal waters.

***Territorial Sea***

26. The UK territorial sea is defined by the Territorial Sea Act 1987 as the sea extending 12nm from the baseline. For the most part the territorial sea of the UK does not adjoin that of any other state. Where it does do so in the English Channel, the Territorial Sea (Limits) Order 1989 (SI 1989/482) sets out the limits of the territorial sea in the Straits of Dover in accordance with an agreement between the UK and France. In relation to the delineation of the territorial sea between the UK and the Republic of Ireland, the situation is more complex, with no boundary having been agreed between the two states. Instead arrangements have been put in place under the Belfast Agreement for joint management of the Loughs that form the border (the Foyle, Carlingford and Irish Lights Commission’s Loughs Agency).

27. Within the territorial sea, the UK has jurisdiction for the sea itself, the seabed subjacent and the air above. This is subject to the right of innocent passage by ships of all other states.

28. Parts of the UK territorial sea form part of Scotland, Northern Ireland and Wales for the purpose of exercising devolved functions. The Scotland Act 1998 defines “Scotland” as including so much of the internal waters and territorial sea of the United Kingdom as are adjacent to Scotland (section 126(1)). Similarly, section 98 of the Northern Ireland Act 1998 defines Northern Ireland as including so much of the internal waters and territorial sea of the United Kingdom as are adjacent to Northern Ireland. The Government of Wales Acts 1998 and 2006 provide that “Wales” includes the sea adjacent to Wales out as far as the seaward boundary of the territorial sea (see section 158(1) of the 2006 Act). The extent of the “English” territorial sea is normally assumed to be that part of the territorial sea that has not been assigned to another part of the United Kingdom but was defined in section 32M of the Electricity Act 1989, inserted by section 37 of the Energy Act 2008.

***UK Continental Shelf***

29. References to areas of the sea within the UK sector of the continental shelf are always references to the area of sea outside the UK territorial sea but within an area specified in an

order having effect under section 1(7) of the Continental Shelf Act 1964. Rights in the continental shelf extend to mineral and other non-living resources of the seabed and subsoil together with living organisms belonging to sedentary species.

#### *British Fishery Limits*

30. British fishery limits currently extend 200 nm from the baseline. Similar to the apportioning of the territorial seas, Scotland and Northern Ireland have their own areas within the British fishery limits, known as the Scottish and Northern Ireland Zones. The Northern Ireland Zone is defined as being the sea within British fishery limits which is adjacent to Northern Ireland. This may be thought of as being the area of British fishery limits lying between the territorial sea around Northern Ireland and that of the Isle of Man. The Act amends the definition of British fishery limits in the Fishery Limits Act 1976 by reference to the exclusive economic zone (EEZ) to be designated under Part 2.

31. The Scottish Zone is defined as that part of the sea within the British fishery limits established under the Fishery Limits Act 1976 which is adjacent to Scotland. The boundaries of both the Northern Ireland Zone and the Scottish Zone are defined by Order in Council.

32. This Act also includes provision for the designation of a Welsh Zone for fisheries matters. This will be defined by Order in Council but may be thought of as comprising that part of the sea within British fishery limits which is adjacent to Wales.

#### *Renewable Energy Zone/ UK pollution zone*

33. The Renewable Energy Zone was declared under section 84 of the Energy Act 2004. It extends up to a maximum of 200 nautical miles from the baseline. The UK has claimed exclusive rights in this area with respect to production of energy from water or winds, within an area to be designated by Order in Council. The UK has also claimed rights in relation to a similar area (the UK pollution zone) in relation to the protection and preservation of the marine environment, under the Merchant Shipping (Prevention of Pollution) (Law of the Sea Convention) Order 1996. As in the case of British fishery limits, the Act amends this legislation so that these zones are designated by reference to the exclusive economic zone as declared under Part 2 of the Act.

#### *Exclusive Economic Zone*

34. This Act includes a section allowing an Exclusive Economic Zone to be declared by Order in Council. This will occur once the precise boundaries of the Zone are finally determined following negotiations with neighbouring States. By their nature, such zones are capable of extending to 200nm from baselines and it may be expected that the extent of the zone will be similar to that adopted for the existing zones (or indeed British fishery limits).

#### *Other terminology*

35. “Inland waters” is a term usually used to refer to freshwater rivers, lakes, streams and groundwaters.



## **PART 1: MARINE MANAGEMENT ORGANISATION**

### **Chapter 1: Establishment**

#### ***Section 1: The Marine Management Organisation***

36. This section establishes a body to be known as the Marine Management Organisation (MMO).

37. The MMO is to exercise those functions that are conferred on it by the Act and through other legislation.

38. There are a number of ways in which the Act provides for the MMO to take on functions.

39. Firstly, a number of existing functions are directly transferred to the MMO under Chapter 2 of this Part. Sections 4 to 11 transfer existing sea fisheries and nature conservation functions currently performed by the Secretary of State (some of them through the Marine and Fisheries Agency) or by Natural England directly to the MMO. Sections 12 and 13 also transfer functions to the MMO relating to electricity generating and renewable energy installations.

40. Secondly, the Act confers new functions on the MMO. Under Part 5 (marine conservation zones) the MMO is given the power, following consultation, to make byelaws to further the conservation objectives of any designated marine conservation zone in England (section 129). Such byelaws may, amongst other things, prohibit anything that will interfere with the sea bed. Under section 131, the MMO is given power to make emergency byelaws if it thinks there is an urgent need to protect a marine conservation zone in England. The MMO may also make interim byelaws (section 132) in relation to potential new marine conservation zones.

41. Under Part 6 of the Act, which relates to inshore fisheries and conservation authorities (IFCAs), the MMO is to be consulted in relation to the making of orders establishing inshore fisheries and conservation districts in England (section 149). Each such district is to have an inshore fisheries and conservation authority, the membership of which is to include some people appointed by the MMO (section 151).

42. Under Part 7 of the Act, an amendment to the Sea Fisheries (Shellfish) Act 1967 gives the MMO the powers to grant an exemption from the ban under section 17 of that Act on taking or selling crabs and lobsters, if they are taken for scientific purposes (section 212).

43. Thirdly, other Parts of the Act enable Ministers to delegate their marine functions under the Act to the MMO. Part 3 (marine planning) provides powers for “marine plan authorities” (listed in section 50) to delegate certain marine plan functions to public bodies by means of a direction (section 55). Part 4 (marine licensing) enables the Secretary of State to make an order which delegates certain of his marine licensing functions to any person specified in the order (section 98), which may include the MMO.

44. Fourthly, other functions will be conferred on the MMO through agreements with the Secretary of State. Chapter 3 of Part 1 makes provision for the Secretary of State to enter into agreements with the MMO for the MMO to perform any of the Secretary of State's marine functions.

45. In addition, where functions that the MMO is to undertake are currently set out in secondary legislation, the Government will seek to amend that legislation to confer those functions on the MMO. Examples of secondary legislation that would be amended are the Conservation (Natural Habitats &c) Regulations 1994, the Offshore Marine Conservation (Natural Habitats, &c) Regulations 2007 and the Grants for Fishing and Aquaculture Industries Regulations 2007.

### ***Section 2: General objective***

46. The MMO is to act as the UK Government's strategic delivery body in the marine area. As such it will exercise a number of marine functions. This section sets out the MMO's general objective in relation to those functions. It must ensure that activity in its marine area is managed, regulated and controlled with the objective of making a contribution to the achievement of sustainable development. To facilitate the performance of its overall objective of contributing to the achievement of sustainable development under *subsection (1)(a)* the MMO may further any of the three core elements of sustainable development. This may be necessary to ensure that an appropriate balance between environmental, social and economic considerations is reached (*subsection (2)*).

47. In carrying out its functions the MMO must take account of all relevant facts and matters (*subsection (1)(b)*). The test is an objective one: the MMO must take into account any fact or matter that is in fact relevant. *Subsection (3)* gives examples of the sorts of evidence that the MMO will need to take into account in fulfilment of this duty. A broad definition of evidence applies to the section (see *subsection (12)*) to ensure that reliance may be placed upon the fullest possible range of evidence that the MMO is likely to need to refer to in carrying out its functions, including scientific and economic data and predictive studies. *Subsection (3)(c)* enables the MMO additionally to take into account other things which it may consider appropriate (but this does not mean that it may leave out of account anything which is in fact relevant and which it is required to take into account under *subsection (1)(b)*).

48. The MMO must also consider the effect that decisions on one area will have on any other area so that overall it acts in a consistent and coordinated way (*subsection (1)(c)*). This means that any decision of the MMO should be viewed in the context of the entirety of its functions to ensure that it comes to a balanced view.

49. The Secretary of State will issue the MMO with guidance as to how it is to seek to secure that a contribution to the achievement of sustainable development is made. This guidance will be subject to Parliamentary scrutiny before it is given to the MMO. It will be published by the Secretary of State and a copy of it will be provided by the MMO to any person who requests it.



### ***Section 3: Performance***

50. The Secretary of State will set objectives and performance indicators for the MMO which it must endeavour to meet.

51. In addition, the MMO will be placed under a duty to have regard to the five principles of good regulation set out in section 21 of the Legislative and Regulatory Reform Act 2006 (LRRRA). The MMO's functions will be listed by Order under Part 2 of that Act. Section 24(6) of the LRRRA requires that the body whose functions are to be listed be consulted. Section 3(2) disapplies those consultation requirements. This is because the MMO must be made subject to the principles of good regulation on or before the date that it starts to deliver regulatory functions and there is a possibility that there will be insufficient time for such consultation between appointing the board members and the date on which the MMO is due to deliver those regulatory functions.

### **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.

**Chapter 3: Agreements involving the MMO for the exercise of function**

*Power to enter into agreements*

***Section 14: Agreements between the Secretary of State and the MMO***

79. This section allows the Secretary of State to enter into agreements with the MMO authorising the MMO to perform marine functions currently performed by the Secretary of State.

80. The type of functions that these agreements would cover includes work currently undertaken by the Marine and Fisheries Agency under the Common Fisheries Policy or under EU Regulations which are directly applicable in the UK.

81. Over time the MMO may need to take on new functions and this section also provides the necessary flexibility in relation to any future functions to enable Ministers to delegate these to the MMO.

82. The functions that the MMO may be authorised to perform in the context of the Act are limited to marine functions. The MMO may be authorised to carry out a particular function generally or only in specified cases or areas.

83. The existence of an agreement between the Secretary of State and the MMO does not prevent the Secretary of State continuing to exercise the function that has been delegated. The Secretary of State may cancel the agreement at any time.

***Section 15: Agreement between the MMO and eligible bodies***

84. This section enables the MMO, with the approval of the Secretary of State, to make agreements with bodies listed in section 16 authorising those bodies to perform the MMO's functions on its behalf. This is to enable the MMO to make arrangements for the most effective discharge of its functions as these bodies may be better placed (because of their resources, expertise or other such reason) to carry out the MMO's function in a particular area.

85. Under such an agreement a body may be authorised to carry out the function generally or only in specified cases or areas. Any such agreements may be altered only by agreement between the MMO and the relevant body, and with the approval of the Secretary of State.

86. The Secretary of State must review any agreements between the MMO and eligible bodies every 5 years and may, if appropriate, cancel an agreement. Section 21 also provides that any agreement under section 15 must be in writing and published in order to bring it to the attention of people likely to be affected by it.

### ***Section 16: Eligible bodies***

87. Bodies listed in this section are those with which the MMO may enter into an agreement. The MMO will need the ability to delegate certain activities to eligible bodies where, for example, such bodies would be better placed (because of their resources, expertise or other such reason) to carry out the MMO's function in a particular area. Examples of functions the MMO might want these bodies to carry out are as follows.

- The MMO is taking over the licensing function under the Conservation of Seals Act 1970, but there are a few applications each year relating to seals in freshwaters. Those applications will be dealt with by Natural England and the function will therefore need to be delegated to that body by the MMO by agreement under section 15.
- The Environment Agency will be responsible for freshwater fisheries and migratory species out to 6 nautical miles, as it is now. IFCAs will be responsible for marine species management out to 6 nautical miles – as Sea Fisheries Committees (SFCs) are now – with the addition of estuaries as far as the tide flows. The MMO will be responsible for enforcement of marine nature conservation and national and EU fisheries provisions out to 200 nautical miles and for British vessels on the high seas. The MMO will take action in the inshore area where national measures are required and in cases where nature conservation is at risk from non-fisheries threats, and it may be that the MMO will wish to delegate certain functions in this area to IFCAs or the Environment Agency.

88. The Secretary of State may add a body, or a description of a body, to the list by Order, and may also remove bodies or descriptions of bodies from the list. The list is likely to change over time to take account of bodies being created, merged or disbanded, or to reflect a change of name. An example of such a change is that local fisheries committees (commonly known as Sea Fisheries Committees (SFCs)) will need to be removed from the list of bodies once IFCAs have been established; however, SFCs still need to be included in the list to cover the period between Royal Assent and the establishment of IFCAs. As the MMO evolves in future and takes on additional functions, further bodies may need to be added to the list.

89. The Secretary of State must be satisfied that a body which is to be added to the list has at least one purpose or function relating to or connected with a marine function. The power to add bodies to the list is not limited to public bodies because private bodies may be better placed to provide some functions or provide better value for money.

***Section 17: Non-delegable functions***

90. This section sets out functions that the MMO or an eligible body may not be authorised to perform under an agreement.

***Section 18: Maximum duration of agreement***

91. The maximum amount of time that an agreement between the Secretary of State and the MMO or an agreement between the MMO and an eligible body may last is 20 years.

*Supplementary provisions*

***Section 19: Particular powers***

92. *Subsection (3)* of this section provides for various cases where the body being authorised to carry out a function under an agreement is already involved with the function in some way. It may, for example, be a consultee or it may be required to give its consent to the exercise of the function or it may already exercise the function jointly with the body delegating the function. This section provides that an agreement may still be entered into with that body.

93. *Subsection (6)* ensures that the lack of a specific power to carry out a function does not prevent a body performing the function if that body has been authorised to do so under an agreement. It also provides that a body may delegate performance to a specially-formed body corporate or to a committee, sub-committee, member, officer or employee (except if the agreement itself prohibits this). However, *subsection (8)* provides that delegation of the performance of the function to anyone else is generally not permitted.

***Section 20: Agreements with certain harbour authorities***

94. This section makes additional provision in relation to agreements with harbour authorities which are local authorities. This provision is consequent upon the changes made to local government decision-making under the Local Government Act 2000.

95. Under that Act and subordinate legislation each function of a principal local authority is administered either directly by the full council or through executive arrangements, depending on the function. Detailed arrangements for the performance of the functions are specified in regulations made under section 13 of the 2000 Act.

96. Where, by agreement, a function is to be discharged on behalf of the MMO by a local authority exercising the functions of a harbour authority, the allocation of responsibility for the performance of that type of function under the 2000 Act and subordinate legislation (whether full council or executive) will apply. The full council (or executive, as applicable) of that authority may use various usual powers of delegation (for example to committees and officers of that same authority) to perform the function.

97. This section also enables local authorities which are also harbour authorities to work together jointly to carry out functions delegated to them by the MMO.

***Section 21: Supplementary provisions with respect to agreements***

98. *Subsection (1)* of this section requires agreements, and approvals for them, to be in writing and *subsection (2)* states that any such agreements must be published.



99. *Subsection (3)* provides that no power of a Minister of the Crown (under the Act or any other legislation) to give directions to a statutory body may be used to require that body to enter into an agreement or to prohibit it from doing so.

100. *Subsection (4)* applies Schedule 15 to the Deregulation and Contracting Out Act 1994 (relating to the disclosure of information) to bodies exercising functions under an agreement. This imposes requirements on each contracting body concerning the handling of confidential information and the situations where sharing of information between the contracting bodies is permitted.

### ***Section 22: Interpretation of the Chapter***

101. This section sets out how certain terms used within Chapter 3 of Part 1 should be interpreted.

### **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 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.

## **PART 2: EXCLUSIVE ECONOMIC ZONE, UK MARINE AREA AND WELSH ZONE**

### ***Section 41: Exclusive economic zone***

132. This section allows for the declaration of an Exclusive Economic Zone, and for the United Kingdom to assert its rights and assume its obligations in accordance with Part V of the 1982 United Nations Convention on the Law of the Sea. Such a declaration will remove inconsistencies in the current maritime zones claimed by the United Kingdom. It will replace the existing zones – namely the areas within British fishery limits, the Renewable Energy Zone, the Pollution Zone, and the Gas Importation and Storage Zone – with one Exclusive Economic Zone. This will simplify the management of the United Kingdom’s offshore maritime areas and bring the United Kingdom into line with accepted international good practice.

### ***Section 42: UK marine area***

133. This defines the geographical area referred to elsewhere in this Act for the purposes of managing the United Kingdom’s maritime space. It includes those areas of the sea and seabed over which the United Kingdom enjoys sovereignty in addition to those offshore areas over which the United Kingdom is able to assert its sovereign rights.

134. *Subsection (3)* describes the landward limit of the marine area. *Subsection (4)* adds further detail to the meaning of *subsection (3)(a)* by providing that areas that would be open to the regular action of the tide, apart from the fact that they are generally isolated from it by an artificial barrier such as closed lock gates, but where seawater may flow or be caused to flow (as, for example, by pumping), are part of the UK marine area. Such areas include harbour basins that are never or rarely open to the tide, such as at Bristol Harbour, but which contain seawater.

### ***Section 43: Welsh zone***

135. This section amends section 158(1) of the Government of Wales Act 2006 to insert a definition of the Welsh zone. The first part of the definition establishes that the Welsh zone goes out as far as the British fishery limits – to the west of Wales, this is the median line between Wales and Ireland set by virtue of the Fishery Limits Act 1976. An order will have to be made to set the boundaries of the zone by specifying its co-ordinates, in particular so as to define its southern boundary. That provision could be included in an order made under section 158(3) (as substituted) or in an Order in Council under section 58 of the 2006 Act.

136. This section also introduces Schedule 4. Paragraph 6(3) of that Schedule provides that functions of the Minister of the Crown that are exercisable in relation to the area of the Welsh zone beyond the seaward boundary of the territorial sea may be transferred to the Welsh Ministers if they are connected with fishing, fisheries or fish health. Such functions may be transferred by means of an Order in Council (commonly referred to as a “Transfer of Functions Order”) under section 58 of the 2006 Act. Schedule 4 makes other amendments to other sections of the same Act relating to the establishment of the Welsh zone.

## **PART 3: MARINE PLANNING**

### **Chapter 1: Marine Policy Statement**

#### *Statement of policy for UK marine area*

#### **Section 44: Marine policy statement**

137. This section describes what is meant by a “marine policy statement” (MPS). *Subsection (1)* defines the MPS as a document that is prepared and adopted by the policy authorities, in accordance with the process laid down in Schedule 5, and which sets out their policies for contributing to the sustainable development of the UK marine area.

138. *Subsections (2) and (3)* state that the MPS may include additional supporting information and statements about the policies it includes. They set out what happens in the event of an apparent conflict between policy and any supporting information or statements, by ensuring that the policy always takes precedence. For example, the MPS may contain a policy to increase extraction of marine minerals by 10%, supported by figures showing that this would represent an increase of 10,000 tonnes per year. If this figure of 10,000 tonnes were wrong or became inaccurate over time, *subsection (3)* provides clarity that the policy of a “10% increase” is the figure which must be applied, not “10,000 tonnes”, which was only supporting information.

139. *Subsection (4)* identifies the “policy authorities” who may prepare and adopt an MPS, and *subsection (5)* defines what is meant by “adoption”.

#### **Section 45: Preparation and coming into effect of statement**

140. This section enables the policy authorities to prepare an MPS by acting jointly. In order to ensure that an MPS may be adopted under any circumstances, *subsection (1)* provides that an MPS may also be adopted by the Secretary of State acting jointly with only one or two of the other policy authorities, or alone if necessary.

141. *Subsection (2)* requires the Secretary of State to invite the other policy authorities to participate in preparing an MPS before he takes any decision to prepare one by himself.

142. *Subsection (3)* provides that a new MPS will always replace an older one, even if the new one is prepared and adopted by a different group of policy authorities. This ensures that there is only ever one MPS in effect at any time. (See section 47 for separate provisions on amending an existing MPS without replacing it.)

143. *Subsection (4)* provides that the MPS comes into effect when it has been adopted by the policy authorities in accordance with the process in Schedule 5. Once an MPS comes into effect, it affects the taking of certain decisions as set out in sections 58 to 60.



***Section 46: Review of statement***

144. This section requires policy authorities to review the MPS whenever they consider it appropriate to do so. The effect of the MPS does not change during a review under this section, although the review might lead to a policy authority deciding that the MPS should be amended or perhaps even withdrawn. (See sections 47 and 48 below.)

145. Review might be required because circumstances have changed since the MPS was adopted, or because the policy authority becomes aware that the MPS is not having the desired effects (either because decision-makers are taking decisions falling within section 58 which depart from the MPS, or as a result of the marine plan authorities monitoring and reporting activities under section 61).

***Section 47: Amendment of statement***

146. This section enables an MPS to be amended. Only the policy authorities which originally prepared and adopted an MPS may amend it.

147. An amendment to an MPS must be prepared and adopted in accordance with Schedule 5 in exactly the same way as the original MPS. Amendments to an MPS come into effect when they have been adopted and published.

***Section 48: Withdrawal of, or from, statement***

148. If any one of the policy authorities which originally adopted an MPS comes to the conclusion that the MPS no longer reflects their policy, and that authority does not want to, or cannot, correct the problem by making an amendment to the MPS, this section enables the authority to withdraw from the MPS. This is done by first notifying the other policy authorities of their intention, and then placing a notice in the London, Belfast and Edinburgh Gazettes.

149. The policy authority withdrawing from the MPS must also bring the withdrawal to the attention of “interested persons”. They are defined as being anyone the policy authority thinks is likely to be interested in, or affected by, the withdrawal (for example the regulators that have been using it in their decision-making in relation to devolved matters) and the general public.

150. The withdrawal takes effect once the notice is published in the Gazettes.

151. *Subsection (8)* ensures that the withdrawal of an MPS does not change the effect or validity of any existing marine plans which have been prepared in order to implement the MPS, or the way in which such plans should be construed.

152. Once a devolved policy authority has withdrawn from an MPS, the MPS ceases to have any further effect on decisions which relate to matters within the authority’s devolved competence. If the Secretary of State withdraws from the MPS, it ceases to have effect at all.

## **Chapter 2: Marine Plans**

### ***Section 49: Marine planning regions***

153. This section identifies each of the component “regions” within the UK marine area for the purposes of identifying who will be responsible for planning in that region.

### ***Section 50: Marine plan authorities***

154. This section sets out which marine plan authorities are to have responsibility for the different regions of the UK marine area, as defined in section 49.

155. There is no marine plan authority under the Act for the Scottish inshore region or the Northern Ireland inshore region. That is because Scotland and Northern Ireland will be making their own provision for marine planning in those regions under their devolved legislative powers.

### ***Section 51: Marine plans for marine plan areas***

156. This section provides for the creation of marine plans, and sets out certain basic requirements as to their content and the way in which they are to be prepared.

157. *Subsection (1)* allows a marine plan authority to prepare marine plans for “marine plan areas” within its region.

158. *Subsection (2)* places a duty on marine plan authorities to seek to ensure that marine plans are prepared for all parts of regions where the MPS “governs marine planning” (see paragraph 162 below).

159. *Subsection (3)* defines a marine plan. Like the definition of an MPS in section 44, marine plans are defined by reference to who creates them, the process they must follow, and the content. *Subsection (3)* requires that marine plans must:

- be prepared and adopted by the marine plan authority for the marine planning region in which the marine plan area lies;
- be prepared in accordance with the process set out in Schedule 6; and
- state the marine plan authority’s policies for contributing to the sustainable development of the marine plan area.

160. *Subsection (5)* requires that a marine plan must identify the area to which it applies – this may be through a map or chart, or by other means.

161. *Subsection (6)* specifies that a marine plan must be in conformity with any MPS which “governs marine planning” for that marine plan area, unless relevant considerations indicate otherwise. Marine plans are intended to set out how the policies and objectives stated in the MPS apply at the local level, based on information about specific activities and processes taking place in that area. This ensures that there is a close link between the general policy in the MPS and how it is applied to specific situations in plans.

162. *Subsection (7)* explains when an MPS “governs marine planning”. The MPS must have been adopted by the policy authority which is also the marine plan authority for the marine planning region which includes the area of the plan, must not have been replaced or withdrawn and that policy authority must not have withdrawn from the plan.

163. *Subsection (8)* requires a marine plan prepared by a devolved administration to state whether it includes provision relating to “retained functions” (that is, powers and duties which have not been devolved: see section 60 for the meaning of these terms).

164. *Subsection (9)* provides that a marine plan may also contain supporting statements and information, and *subsection (10)* provides for any conflict between the policies in the marine plan and any supporting information to be resolved in favour of the plan. See the notes on section 44 above for further explanation.

165. *Subsection (11)* states that a marine plan comes into effect when it has been adopted and published in accordance with Schedule 6. Once a marine plan comes into effect in this way, it has a legal effect on decisions which affect the UK marine area (see sections 58 to 60).

### ***Section 52: Amendment of marine plan***

166. This section enables a marine plan authority to amend a marine plan. An amendment to a marine plan must be prepared and adopted in accordance with Schedule 6 in exactly the same way as the original plan. Where a marine plan is amended, *subsection (2)* provides that any reference in the Act to a marine plan include a reference to a marine plan as amended.

### ***Section 53: Withdrawal of marine plan***

167. Like an MPS, if the marine plan authority comes to the conclusion that there is a problem with the plan which it does not want to, or cannot, rectify by making an amendment – for instance if it decides that the plan must cease effect immediately – a marine plan may be withdrawn.

168. When a marine plan authority decides to withdraw a marine plan, it must publish a notice in the appropriate Gazette(s). For plans in the English or Welsh inshore regions, this is the London Gazette. For all offshore plans, notices must be published in the London, Edinburgh and Belfast Gazettes.

169. This section also allows the Secretary of State to withdraw his agreement to a plan prepared by any of the other marine plan authorities (if his agreement was required to the plan’s adoption). If he decides to withdraw his agreement to the plan, he must give notice to the marine plan authority, which then has 7 days to withdraw the plan (by publishing a notice in the appropriate Gazette(s)).

170. The marine plan authority must also bring the withdrawal to the attention of anyone likely to be interested in or affected by it, as well as members of the general public.

***Section 54: Duty to keep relevant matters under review***

171. This section requires the marine plan authorities to keep under review matters which may affect their functions of identifying marine plan areas, and preparing plans for them. This is to ensure that marine plan authorities stay up-to-date with what is happening in their region of the marine area, which they need to know about in order to make effective planning decisions in their region.

172. *Subsection (2)* sets out a non-exhaustive list of the kinds of things which a marine plan authority ought to keep under review.

173. *Subsection (3)* requires an authority, on a review, to consider how the matters described in *subsection (2)* might be expected to change, and the effect that any such changes might have on the authority's region and its sustainable development.

174. *Subsection (4)* makes clear that the reference in *subsection (1)* to "cultural" includes "historical and archaeological" characteristics.

**Chapter 3: Delegation of Functions Relating to Marine Plans**

***Section 55: Delegation of functions relating to marine plans***

175. This section enables a marine plan authority to direct another public body to carry out some of its marine planning functions, by giving it a direction. The Government's intention is that this power will be used to delegate functions of the Secretary of State to the Marine Management Organisation.

176. *Subsection (3)* requires the marine plan authority to obtain the public body's consent before making the direction. Since public bodies may generally only do things that they have specific powers to do, *subsection (4)* compels the public body to comply with the direction and states that it is taken to have any necessary powers to carry out the functions delegated to it.

177. *Subsections (5) to (7)* set out which functions may be delegated in this way. A marine plan authority may delegate any of the functions in Chapter 2 (apart from the "excepted functions") and the duty to monitor and report on the effects and effectiveness of marine plans in section 61. The functions in Chapter 2 which *may* be delegated include:

- preparing a marine plan for a marine plan area in accordance with the procedure in Schedule 6 (section 51);
- amending a marine plan (section 52); and
- keeping relevant matters under review (section 54).

178. The “excepted functions” which must be carried out by the marine plan authority and *may not* be delegated are:

- adopting a marine plan (paragraph 15 of Schedule 6); and
- withdrawing a marine plan, or withdrawing agreement to a marine plan (section 53).

179. In addition, functions of the Secretary of State in his own capacity may not be delegated by a direction under this section (see *subsection (7)*). These functions include agreeing to the publication of statements of public participation and consultation drafts by the devolved administrations, and agreeing, or withdrawing agreement, to the adoption of their final marine plans.

***Section 56: Directions under section 55: supplementary provisions***

180. This section contains a number of additional rules about directions issued under section 55.

181. *Subsection (1)* requires the authority to publish the direction in a way that will bring it to the attention of anyone likely to be interested in or affected by it.

182. Unless the marine plan authority has specified otherwise in the direction, *subsection (2)* prevents the authority from exercising the functions it has delegated, for as long as the direction is in force. *Subsection (3)* sets out how the marine plan authority may make exceptions to this rule.

183. *Subsection (4)* enables a marine plan authority to impose terms, conditions, obligations or requirements on the way a public body exercises any marine planning functions delegated to it, and also enables the terms of the delegation to make financial provisions (for example to enable the public body to receive funding for carrying out the functions).

184. *Subsection (5)* enables a marine plan authority to delegate its functions differently for different areas or cases or to different bodies.

***Section 57: Directions to public bodies as regards performance of delegated functions***

185. This section applies where a marine plan authority has delegated some of its planning functions by directions under section 55. It enables the marine plan authority to give further directions to a public body to which it has delegated functions, setting out how those functions should be performed.

186. *Subsection (3)* requires the marine plan authority to consult the public body before giving any directions under this section. *Subsection (4)* requires the public body to comply with any directions given to it, which must also be published by the marine plan authority in accordance with *subsection (5)*.

## **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.

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.

**Chapter 5: Miscellaneous and General Provisions**

*Validity of documents under this part*

***Section 62: Validity of marine policy statement and marine plans***

214. This section sets out how people may challenge the content of marine policy documents (or amendments to them) in court. *Subsection (3)* provides that such challenges may only be brought in accordance with this section.

215. *Subsection (4)* provides that the only grounds for challenge to a “relevant document” are that the document is not within the appropriate powers, or that a procedural requirement has not been complied with (see *subsection (6)* for definitions of “appropriate powers” and “procedural requirement”). Only a person aggrieved by a relevant document may bring a challenge against it.

216. *Subsection (5)* requires that any such challenges are brought within 6 weeks of the adoption of the relevant document.

217. *Subsection (6)* identifies the appropriate court for bringing challenges in different parts of the UK, and defines “appropriate powers” and “procedural requirement”.

***Section 63: Powers of the court on an application under section 62***

218. This section sets out the powers of a court hearing a challenge to the validity of a marine policy document.

219. *Subsection (2)* enables a court to make an interim order, suspending the operation of all or part of a document until the legal proceedings are over.

220. *Subsection (3)* sets out the conditions which must be satisfied before the court may grant any of the remedies set out in *subsection (4)*. The court must be satisfied either that the marine plan authority (or its delegate) acted outside or beyond the relevant powers in relation to the document, or that the applicant has been substantially prejudiced by a failure to meet a procedural requirement.

221. If the court is satisfied that one of the conditions in *subsection (3)* has been met, *subsection (4)* enables the court either to quash the document or remit it (in effect, send it back) to a person or body involved in its preparation, adoption or publication.

222. *Subsections (5) and (6)* then enable the court to give directions relating to whether the document should be treated as adopted or published and to procedural or other steps which should be taken to ensure that whatever was wrong with the document is put right, without necessarily having to start the whole preparation process again from the beginning.

223. *Subsection (7)* states that the court is able to quash or remit only part of a relevant document, or the whole document.

224. *Subsection (8)* refers back to the definitions used in section 62.

*Interpretation and Crown application*

***Section 64: Interpretation and Crown application of this Part***

225. This section sets out how certain terms used within Part 3 of the Act should be interpreted and states that the Crown is bound by the planning provisions.

**PART 4: MARINE LICENSING**

**Chapter 1: Marine Licences**

***Sections 65 and 66: Requirement for licence; Licensable marine activities***

226. Anyone undertaking an activity mentioned in section 66 will need to obtain a licence from the appropriate licensing authority, subject to any exemption provided for in the Act.

227. The appropriate licensing authority for any area is specified in section 113.

228. The list of licensable activities is similar to that covered by the Act's predecessor, Part II of the Food and Environment Protection Act 1985 ("FEPA"). One of the main differences is dredging. Under FEPA only some forms of dredging were licensable, namely those that involved the removal and dumping of sediment elsewhere at sea. For example,

hydrodynamic and plough dredging that involve the use of water jets or ploughs, respectively, to move sediment along the sea bed were not licensable. Aggregate dredging which involves the removal of sediment but for use on land was also not licensed under FEPA. Item 9 of *subsection (1)*, as read with *subsection (2)(a)*, make all forms of dredging within the UK marine licensing area licensable under this Part. Section 75 provides an exemption from the need for a marine licence for dredging already authorised under a Harbour Order or other local Act.

229. The list of licensable activities is self-explanatory. In summary:

- All vessels, aircraft or structures, regardless of their country of origin, will need a licence to deposit, scuttle or incinerate any object or substance within the UK marine licensing area;
- All vessels, aircraft or structures, regardless of their country of origin, where it is their intention to engage in such an activity anywhere at sea, will need a licence to load or begin towing in the UK marine licensing area; and
- British vessels, aircraft or structures will need a licence to deposit, scuttle or incinerate any object or substance anywhere at sea. British vessels, aircraft or structures are defined in section 115.

230. By virtue of section 85, it is an offence to engage in a licensable activity without the requisite licence or in a way that breaches the conditions attached to that licence.

231. The list of activities that need a licence may be amended by order. Each licensing authority may produce such an order for activities within its competence. This order making power cannot be delegated to another body under the powers given in section 98.

***Sections 67 and 68: Applications; Notice of applications***

232. The licensing authority, by virtue of these sections, may specify in what form an application for a marine licence should be submitted and may charge an application fee. The licensing authority may vary these requirements for different cases. Fees will be set according to regulations made by the licensing authority.

233. The licensing authority may require any supplementary information or investigations it thinks are necessary to be able properly to assess an application. If, as part of the assessment of the application the authority undertakes additional investigations or tests, then it will be able to recover the costs from the applicant.

234. If an applicant fails to provide any such information, or fails to pay the associated fee, then the licensing authority may refuse to proceed with an application entirely or until the failure is remedied.

235. On receipt of an application, the licensing authority must, subject to section 68(7), secure that any application for a marine licence is advertised in a manner that will bring it to the attention of those likely to be interested in it. It may either advertise the application itself or ask the applicant to do so on its behalf.

236. It must also notify, or require the applicant to notify, any local authority in whose area the activity is proposed (wholly or in part) to be carried on (whether or not notice has been published under *subsection (1)*).

237. *Subsections (7) and (8)* give the licensing authority the discretion to lift the requirement to publicise or give notice if it thinks that a particular application should not be published or notified. This would be the case, for example, where it was clear to the licensing authority that the operation under consideration would have no impact on others and providing notice would serve no function other than to delay a decision on the application and increase the costs of the project unnecessarily. Section 68(7)(b) and (8)(b) makes provision for the specific case where the Secretary of State decides that giving notice would be prejudicial to the interests of national security.

238. The licensing authority may refuse to proceed with an application if publication or notice has not been given where it was required to have been; it may also refuse to proceed if any costs of publishing or giving notice which are due to the licensing authority are outstanding.

***Sections 69 and 70: Determination of applications; Inquiries***

239. When determining an application for a marine licence the licensing authority must have regard to the need to protect the environment; the need to protect human health; the need to prevent interference with legitimate uses of the sea; and such other matters as the authority thinks relevant.

240. The reference to the “environment” includes the local and global environment; the natural environment; and, by virtue of section 115(2), any site of historic or archaeological interest. The natural environment may include the physical, chemical and biological state of the sea, the sea-bed and the sea-shore, and the ecosystems within it, or those that are directly affected by an activity, whether within the marine licensing area or otherwise.

241. Legitimate uses of the sea include (but are not limited to): navigation (including taking any steps for the purpose of navigational safety); fishing; mineral extraction; and amenity use.

242. During its assessment of an application the licensing authority may actively seek views and comments from expert bodies on matters where they have expertise relevant to the application. It must also take into account any comments it receives from other interested parties. The licensing authority may hold an inquiry in connection with the determination of the application.

243. A licensing authority may set out further details in regulations as regards the procedure for applications and how it grants them.



***Section 71: Licences***

244. The licensing authority may, by virtue of this section, impose conditions on any licence it grants. Examples of the sorts of conditions that may be imposed are given in *subsection (3)*; these are very similar in effect to those that could be imposed by the Act's predecessor, FEPA. However, under FEPA, conditions could only be imposed that governed the original carrying out of an activity. *Subsection (2)(b)* allows the licensing authority to attach conditions that will govern the behaviour of the licensee after the carrying out of the authorised activities. For example, under FEPA a developer would obtain a licence to build a jetty and the conditions attached to the licence would only cover the activity of building that jetty. Under the Act, the same licence could also include conditions relating to precautions to be taken when using the jetty once it has been built and also how the jetty should be dismantled and removed from the sea once its active life is over.

245. In the particular case of licensing the construction, alteration or improvement of works, licence conditions may bind persons other than those to whom the licence is given. The persons who may be bound are those that own, occupy or enjoy the use of the works. There is a similar provision in section 34(4A)(b) of the Coast Protection Act 1949 ("CPA") though not in FEPA, as the consequences of using the works primarily relate to obstructing navigation (the subject matter of the CPA). Given that the Act subsumes the CPA's navigational remit under the interpretation of "interference with legitimate uses of the sea", the Act also includes this provision. Such persons may commit an offence in failing to comply with the condition in the circumstances described in section 85.

***Section 72: Variation, suspension, revocation and transfer***

246. The licensing authority may vary, suspend or revoke a licence in certain cases by notice. These may include, for example, where there has been a breach of conditions or where there has been a change in circumstances relating to the environment or human health. A licence may not be suspended for more than 18 months.

247. On receipt of an application from the licensee, the licensing authority may transfer a licence from one named person to another. Licensees themselves cannot transfer their licences.

248. Where a licensing authority has delegated its function to another organisation (see section 98), any licences issued before the delegation may be varied, revoked or transferred by the new body as if it had issued the original licence (section 99(6)).

***Section 73: Appeals against licensing decisions***

249. Each appropriate licensing authority is under an obligation to establish a mechanism through which an applicant for a marine licence may appeal against its decision to refuse to grant a licence or against any of the conditions attached to one.

## **Chapter 2: Exemptions and Special Cases**

### *Exemptions*

#### ***Sections 74 and 75: Exemptions specified by order; Exemptions for certain dredging etc activities***

250. The licensing authority may, by order, either exempt activities from the need for a licence completely, or specify conditions which, if met, will mean the activity may be exempted from the need for a licence. Examples of the sorts of activity which might be covered by such exemptions are the routine re-distribution of sand along a beach or minor repairs to seawalls. Conditions may include the requirement for approval prior to the activity proceeding, in order for the activity to be exempt. This order-making power cannot be delegated to another body under the powers given in section 98.

251. In deciding whether to make an order, the licensing authority must have regard to the need to protect the environment, the need to protect human health, the need to prevent interference with legitimate uses of the sea, and such other matters as the authority thinks relevant.

252. Where a particular dredging operation or a deposit of dredged materials is already authorised under any of the legislation in *subsection (3)* of section 75, that particular operation will not need an additional marine licence.

#### ***Section 76: Dredging in the Scottish zone***

253. Marine licensing as described in this Part does not apply to any dredging done, in the exercise of the specified functions in *subsection (2)*, in the Scottish zone for the purpose of extracting minerals.

#### ***Section 77: Oil and gas activities and carbon dioxide storage***

254. This section exempts from the need to obtain a marine licence certain activities licensable under the Petroleum Act 1998 or the Energy Act 2008. The exempted activities are listed in *subsection (1)*. *Subsections (3) and (4)* place geographical restrictions on the exemption.

### *Special provisions in certain cases*

#### ***Section 78: Special procedure for applications relating to harbour works***

255. This section takes effect where a marine licence is required and an application for a harbour order (for example in respect of certain harbour works) has been, or is likely to be, made.

256. In such cases the authority granting, or likely to grant, the harbour order, in conjunction with the marine licensing authority, if it is a different body, may issue a notice to the applicant stating that both the application for a harbour order and the application will be subject to the same administrative procedure. That procedure will secure that the two related applications for the two different permissions are dealt with in parallel at the same time rather than in sequence. In cases where only one of the applications has been received, that application must not be dealt with until the other application is received.

257. When both applications have been received the process that the applications will go through is that which is to be determined by the Secretary of State in any order made under *subsection (6)*. That order may modify the process as specified in the Harbours Act 1964 and disapply any provision of the marine licensing process.

***Section 79: Special procedure for applications relating to certain electricity works***

258. This section takes effect where both a marine licence and consent under section 36 of the Electricity Act 1989 (in relation to offshore generating stations) are required.

259. In such cases the authority to determine consent under section 36 of the Electricity Act, in conjunction with the marine licensing authority, if it is a different body, may issue a notice to the applicant stating that both the application for a section 36 consent and the application for a marine licence will be subject to the same administrative procedure. That procedure will secure that the two related applications for the two different permissions are dealt with in parallel at the same time rather than in sequence. In cases where only one of the applications has been received, that application must not be dealt with until the other application is received.

260. When both applications have been received the process that the applications will go through is that which is to be determined by the Secretary of State in any order made under *subsection (6)*. That order may modify the process as specified in the Electricity Act 1989 and disapply any provision of the marine licensing process.

***Section 80: Electronic communications apparatus***

261. This section removes the obligation for an operator to apply to the Secretary of State for a licence under the Electronic Communications Code (“the Code”), as set out in Schedule 2 to the Telecommunications Act 1984. The carrying on of activities in connection with submarine cable-laying or the removing of any submarine cable is licensable under the marine licensing regime established by Part 4 of the Act instead.

262. The licensing authority must not grant a licence for an activity that amounts to or involves the exercise of a right conferred by paragraph 11 of the Code unless it is satisfied that adequate compensation arrangements have been made for loss or damage suffered in consequence of that activity.

263. This in no other way affects the rights granted to operators by other parts of the Code.

***Section 81: Submarine cables on the continental shelf***

264. In the case of certain submarine cables, this section restricts the application of the marine licensing regime as respects their laying or maintenance. The effect of the section, as read with the other provisions of Part 4, is as follows-

- a cable constructed or used in connection with any of the activities specified in *subsection (5)* (mineral exploration and exploitation activities etc) is fully licensable anywhere in the UK marine licensing area;

- the following rules apply to a cable that is not constructed or used for any of those purposes (an “exempt cable”);
- if the whole of an exempt cable is beyond the seaward limits of the territorial sea, the cable is not subject to any requirement for a marine licence;
- if the whole of an exempt cable is within those limits, the cable is fully licensable;
- if part of an exempt cable is, but part is not, within those limits, a marine licence is needed, but only in relation to the laying (and not the maintaining) of the part of the cable that is within those limits, and the licensing authority must grant the licence though it may attach conditions to it as respects the laying of that part of the cable.

***Section 82: Structures in, over or under a main river***

265. In cases where an activity requires a licence under the Act, and would otherwise also require consent under section 109 of the Water Resources Act 1991, the Environment Agency may remove the need for separate consent under the Water Resources Act by issuing a notice to that effect to the applicant.

***Section 83: Requirements for Admiralty consent under local legislation***

266. In cases where an activity requires a licence under the Act, and would otherwise also require consent from the Admiralty under any local legislation, the Secretary of State may remove the need for that separate consent by issuing a notice to that effect.

***Section 84: Byelaws for flood defence and drainage purposes***

267. In cases where an activity requires a licence under the Act, and would otherwise also require consent from the Environment Agency under any of its byelaws under Schedule 25 to the Water Resources Act 1991, the Environment Agency may remove the need for that separate consent by issuing a notice to that effect.

**Chapter 3: Enforcement**

***Offences***

***Section 85: Breach of requirement for, or conditions of, a licence***

268. It is an offence for a person to carry out a licensable activity (as defined in section 66) without a licence or to do so in a manner that breaches any conditions of a licence.

269. With regard to the construction, alteration or improvement of any works, any person who owns, occupies or enjoys the use of the works and is, by virtue of section 71(5), bound by specified conditions in a licence is not to be taken to have committed an offence unless the enforcement authority has served a notice on the person identifying the particular condition and specifying a period within which the condition must be complied with, and the person fails to comply with the condition within that period.

270. *Subsection (4)* states the penalties for committing any such offence.

***Section 86: Action taken in an emergency***

271. If a person undertakes a licensable activity without a licence but does so for the purpose of securing the safety of a vessel, aircraft or structure, or for the purpose of saving life, the person has a defence against a charge under section 85(1). However, this is dependent on the person informing the licensing authority within a reasonable time of the matters specified in *subsection (2)*; on the steps taken being necessary and reasonable; and on it not being the person's fault that the emergency occurred.

***Section 87: Electronic communications: emergency works***

272. The scope of emergency works under the Electronic Communications Code (Schedule 2 to the Telecommunications Act 1984) ("the Code") is broader than the defence provided by section 86 of the Act. For example, emergency works under the Code include works to put right any interruption in service provided by an operator's system. This section therefore provides a defence against any charge brought under section 85(1) of the Act where the activity in question is carried out by an operator or relevant undertaker, within paragraph 23 of the Code, for the purpose of executing emergency works, within the meaning of the Code.

***Section 88: Activity licensed by another State***

273. There is a further defence to the undertaking of certain activities without a licence. The activities are those mentioned in *subsection (2)* – namely the depositing or incineration of any substance or object, or the scuttling of a vessel or floating container, from a British vessel, aircraft or structure, in non-UK waters. For the defence to be applicable, the vessel, aircraft or structure must have either been loaded (in the case of making a deposit or incineration), or started its journey (in the case of scuttling) in a State that is party to the international Conventions identified in *subsection (5)*. Under *subsection (4)* the activity must also have been undertaken in pursuance of, and in accordance with, a licence issued by the appropriate authority in that State.

274. The Secretary of State may amend *subsections (5) and (6)* to give effect to any international agreement which alters or replaces any Convention or Protocol mentioned in those subsections.

***Section 89: Information***

275. It is an offence for a person who is applying for a new licence, or for the variation or transfer of an existing licence or who, in complying, or purporting to comply, with obligations imposed either by this Part or a licence, knowingly or recklessly supplies false or misleading information, or intentionally fails to disclose any material particular. Penalties set out in *subsection (3)* apply if an offence has been committed.

***Enforcement notices***

***Section 90: Compliance notice***

276. A person carrying on a licensed activity in a manner that breaches the conditions of the licence may be issued with a notice requiring compliance. Such a notice is called a compliance notice.

277. An enforcement authority, as defined in section 114, may issue a compliance notice in all circumstances where licence conditions have been breached, except where serious harm to either the environment or human health has occurred or is likely to occur, or where the activity has seriously interfered, or is likely seriously to interfere with, legitimate uses of the sea. A compliance notice may be served, for example, in case of a technical breach. The enforcement authority will be able to use other enforcement tools available to it, such as a stop notice or an emergency safety notice, where the breach has led to serious harm or serious interference.

278. A compliance notice must state the enforcement authority's reasons for issuing the notice, the steps which the enforcement authority requires to be taken, and the period within which any steps required should be completed.

### ***Section 91: Remediation notice***

279. A person who has carried on or is in the process of carrying on a licensable activity, either without a licence or with a licence but in a manner that breaches the conditions of the licence and who has caused, is causing or is likely to cause any of the results described in *subsection (5)*, may be issued with a remediation notice. This is a notice requiring the person to take "remedial or compensatory steps" (described in more detail below) or to pay a sum representing the cost of taking such steps.

280. The enforcement authority may issue a remediation notice in cases where harm to the environment or human health has occurred, is occurring, or is likely to occur, or where the activity has interfered is interfering or is likely to interfere with legitimate uses of the sea.

281. The enforcement authority may only issue a remediation notice after they have consulted the person to whom they intend to issue the notice.

282. The "remedial or compensatory steps" which a remediation notice may require a person to take are steps to protect the environment or human health, or to prevent interference with legitimate uses of the sea, or to prevent, minimise, remedy or mitigate the effects of the harm or interference in question, or to restore the condition of any place affected by the activity, or for any other purpose which the enforcement authority considers appropriate, or to pay a sum representing the cost of taking such steps. A remediation notice may require steps to be taken at a site other than the one affected by the harm or interference (see *subsection (9)(f)*). It may not be reasonably possible to restore the whole or part of a site to the condition it would have been in had the harm or interference not been caused, so steps to be taken at another site may be considered more appropriate. This could occur for instance where steps to be taken would be disproportionately expensive compared to the gain achieved or the best course of action may be to allow the site to recover naturally over time.

283. A remediation notice could be served in addition to a stop notice (see section 102). This would be the case, for example, where an enforcement authority puts an immediate halt to a damaging activity and then requires the operator to put right the damage already caused.



284. A remediation notice must state the enforcement authority's reasons for issuing the notice; any remedial or compensatory steps to be taken, or any sum to be paid in respect of the cost of taking such steps; and the period within which any such steps are to be completed or any such sum is to be paid. The requirements contained in a remediation notice must be reasonable.

***Section 92: Further provision as to enforcement notices***

285. All compliance and remediation notices must be in writing (see the definition of notice in section 322(1)). They must be served on the person carrying on or in control of the activity in question, and may, if a licence has been granted for that activity to another person, also be served on the licensee. Notices may be varied or revoked by the issue of a further notice.

286. It is an offence to fail to comply with a notice.

***Civil sanctions***

287. The fixed and variable monetary penalties and processes described in the following sections are based on those in the Regulatory and Enforcement Sanctions Act 2008.

***Section 93: Fixed monetary penalties***

288. This section enables the licensing authority by order to grant to the appropriate enforcement authority the power to issue a fixed monetary penalty to a person in relation to an offence under this Part.

289. The appropriate enforcement authority is defined in section 115(1).

290. The appropriate enforcement authority may impose a fixed monetary penalty only if it is satisfied beyond reasonable doubt that the person has committed the offence in question.

291. The amount of a fixed monetary penalty will be specified by the order and may not exceed the maximum fine that could be imposed on conviction of the offence in question. Different provision may be made for different cases.

***Section 94: Fixed monetary penalties: procedure***

292. This section specifies certain minimum requirements that the licensing authority must ensure that any fixed monetary penalty regime includes. In particular, when imposing the penalty the enforcing authority must be required to issue a notice of intent to the person setting out the information specified in *subsection (3)*, and providing the person with an opportunity to discharge the liability by payment of a prescribed sum. Alternatively a person may make representations, in accordance with *subsection (2)(c)(i)*. The authority may decide to impose a fixed monetary penalty by a "final notice" which must contain the information specified in *subsection (5)*. A person on whom a final notice is served has a right of appeal. *Subsection (6)* states the minimum grounds for appeal that must be available.

***Section 95: Variable monetary penalties***

293. This section enables the licensing authority by order to grant to the appropriate enforcement authority the power to issue a variable monetary penalty to a person in relation to an offence under this Part.

294. The appropriate enforcement authority is defined in section 115(1).

295. The appropriate enforcement authority may impose a variable monetary penalty only when satisfied beyond reasonable doubt that the person has committed the offence.

296. The enforcement authority will determine the amount of the variable monetary penalty on a case-by-case basis.

***Section 96: Variable monetary penalties: procedure***

297. This section specifies certain minimum requirements that the licensing authority must ensure that any variable monetary penalty regime includes. In particular, when imposing the penalty the enforcing authority is required to issue a notice of intent to the person which must contain the information specified in *subsection (3)* and must provide the person with an opportunity to discharge the liability by making a payment or offering an undertaking (for example, remediation works or another kind of activity). Alternatively a person may make representations against the imposition of the notice. The authority may decide to impose a variable monetary penalty by a “final notice” which must contain the information specified in *subsection (6)* and the authority will take into account any representations it has received. A person on whom a final notice is served has a right of appeal. *Subsection (7)* sets out the minimum grounds for appeal that must be available.

***Section 97: Further provision about civil sanctions***

298. Schedule 7 makes further provision in relation to the civil sanctions that may be imposed under this Part.

**Chapter 4: Delegation**

***Sections 98 and 99: Delegation of functions relating to marine licensing; Orders under section 98: supplementary provisions***

299. The licensing authority may by order delegate any of its delegable marine licensing functions, as defined in this section, to such other body as the licensing authority considers appropriate. The power also extends to conferring on such a body powers that the licensing authority might confer on an enforcement authority in orders under sections 93 or 95 that relate to imposing civil sanctions. However, it does not include the “excepted functions” specified in *subsection (6)* of section 98, which must remain the preserve of each licensing authority. This section enables each licensing authority either to retain the delegable functions described above or to delegate some or all of them to another competent body. The Government intends that most of the Secretary of State’s licensing functions will be delegated to the Marine Management Organisation established under Part 1 of the Act.

300. The body to which any functions are to be delegated under the section must give its consent before the licensing authority may make the order. The licensing authority may not exercise any function it has delegated unless the order explicitly permits it to do so. There is no minimum or maximum period for which the delegation applies. Different functions may be delegated to different bodies, or the same function may be delegated to different bodies in different cases.

301. Section 99 enables further provision to be made in an order concerning the exercise of any delegated functions. *Subsection (4)* provides a list of the aspects of the licensing process that the licensing authority may want to regulate specifically in the order.

***Section 100: Directions to persons as regards performance of delegated functions***

302. This section applies where a licensing authority has delegated any of its licensing or enforcement functions under section 98. It enables the licensing authority to give further directions to a person to whom it has delegated functions, setting out how those functions should be performed. *Subsection (3)* requires the person to comply with any such directions, which must be published by the appropriate licensing authority in accordance with *subsection (4)*.

**Chapter 5: Supplementary**

*Register*

***Section 101: Register***

303. Each licensing authority must maintain a register of information relating to applications and licences for which it is responsible. It must make the register available to the public. Each licensing authority must also set out in regulations further provision regarding the maintenance of its register.

304. Information must be withheld from the register if disclosure would, in the opinion of the Secretary of State, be contrary to the interests of national security or adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate commercial interest. In the latter case, review of the excluded information must take place after four years. There is a presumption that after this period the excluded information will be made public unless on an application by the person to whom the information relates the licensing authority determines that it should remain excluded, in which case it will be reviewed in a further four years. The existence of commercially confidential information has to be recorded in the register.

*Stop notices and emergency safety notices*

***Section 102: Notice to stop activity causing serious harm etc***

305. An enforcement authority may issue a notice to a person prohibiting the person from carrying on a licensable marine activity if that activity is causing or is likely to cause serious harm to the environment or to human health or is causing or is likely to cause serious interference with legitimate uses of the sea. Such a notice is called a stop notice.

306. An enforcement authority may issue a stop notice whether or not the person to whom it is issued has a marine licence or is operating in accordance with the conditions of the licence.

307. A stop notice must state the enforcement authority's reasons for issuing the notice, the date and time that the activity must cease being carried out and any steps required by the enforcement authority to be carried out to ensure safe cessation.

308. A stop notice may only be in effect for up to seven days. A stop notice may be extended, but only up to a combined total period of 35 days. This limit does not apply where the activity is carried out without a marine licence. In such cases stop notices may remain in effect until a marine licence is granted for the activity in question.

***Section 103: Further provision as to stop notices***

309. Stop notices must be in writing (see section 322(1)). They must be served on the person carrying on or in control of the activity and, if a licence has been granted for that activity to another person, may also be served on the licensee. A notice may be revoked or varied by a further notice.

310. It is an offence to fail to comply with a stop notice.

***Sections 104 and 105: Emergency safety notices; Further provision as to emergency safety notices***

311. These sections provide a way to enforce the navigational safety provisions being repealed in section 36A of the Coast Protection Act 1949 and brought within the licensing provisions of the Act.

312. An enforcement authority may issue a notice to a person if it appears that serious interference with legitimate uses of the sea is occurring, or is likely to occur, as a result of licensable works. The notice may require the provision of lights, signals or other aids to navigation or the stationing of guard ships until the serious interference, or threat of interference, is removed.

***Other powers***

***Section 106: Power to take remedial action***

313. Where it appears that a licensable marine activity has been carried on without a licence or in breach of the conditions of a licence, the appropriate licensing authority may carry out any works that appear to be necessary or expedient for the purpose of protecting the environment or human health, preventing interference with legitimate uses of the sea, preventing or minimising, or remedying or mitigating the effects of, any harm to the environment or any interference with legitimate uses of the sea, or restoring the condition of any place affected by any such harm or interference.

***Section 107: Power to test, and to charge for testing, certain substances***

314. At any person's request, the licensing authority may perform tests on substances for their effect on the marine environment, and the authority may charge for that testing. Substances covered by the testing regime include those used to treat oil or chemicals, algae or other living or dead organisms that may foul a surface, whether on, in or under the sea or sea bed, or on a vessel, vehicle, aircraft or marine structure.

*Appeals against notices under this Part*

**Section 108: Appeals against notices**

315. Each appropriate licensing authority is under an obligation to establish a mechanism under which people may appeal its decision to issue a statutory notice. This includes compliance, remediation, stop, and emergency safety notices.

*Offences: supplementary provision*

**Section 109: General defence of due diligence**

316. In any proceedings for an offence under Part 4 of the Act, it is a defence under this section to prove that the person charged took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

317. *Subsections (2) to (6)* specify some particular circumstances in which the defence is available and prescribe procedures which apply to the proving of this defence.

**Section 110: Offences: jurisdiction**

318. Proceedings for an offence under this Part may be taken, and the offence may for all incidental purposes be treated as having been committed, in any part of the United Kingdom. This produces the result that, depending on whether the offence is to be tried summarily or on indictment, any court in the United Kingdom with jurisdiction to try an offence summarily or (as the case may be) on indictment will have jurisdiction to try the offence, even if it was in fact committed at sea.

*Application to the Crown*

**Section 111: Application to the Crown**

319. This Part of the Act applies to the Crown. While the Crown is not criminally liable for contravening any provision in this Part, certain higher courts may, on receipt of an application, declare any of its acts or omissions unlawful.

320. The Secretary of State has the power to certify, in the interests of national security, that any specified powers of entry should not be exercised on any Crown land specified in the certificate.

*Consequential and transitional provision*

**Section 112: Amendments and transitional provision**

321. This section gives effect to Schedules 8 and 9.

*Interpretation*

**Sections 113: The appropriate licensing authority**

322. This section contains the rules for determining who is the appropriate licensing authority for any area. This varies depending on both the area and the nature of the activity.

323. *Subsections (2) and (3)* relate to the Scottish offshore region (defined in section 322). In this region the Scottish Ministers are the licensing authority unless the activity to be licensed falls within *subsection (3)*. In respect of those activities the Secretary of State is the licensing authority. Activities licensable by the Secretary of State are those that relate to oil and gas, Part 6 of the Merchant Shipping Act 1995 or defence, where the activities that relate

to oil and gas or defence are more particularly described in the subsection. An example of the type of activities that would be licensable in this region by the Secretary of State is an activity relating to the abandonment of offshore oil platforms.

324. *Subsections (4) and (5)* relate to Wales and the Welsh inshore region (defined in section 322). In this area the Welsh Ministers are the licensing authority unless the activity to be licensed falls within *subsection (5)*. In respect of those activities the Secretary of State is the licensing authority. Activities licensable by the Secretary of State are those that relate to the exploration for, or production of, petroleum, and defence activities as defined by *subsection (9)*. As with the Scottish offshore region, an example of the type of activities that would be licensable in this area by the Secretary of State is an activity relating to the abandonment of offshore oil platforms.

325. *Subsections (6) and (7)* relate to Northern Ireland and the Northern Ireland inshore region (defined in section 322). In this area the Department of the Environment in Northern Ireland is the licensing authority unless the activity relates to defence of the realm, as described in *subsection (7)*, for which the Secretary of State is the licensing authority.

326. In all other areas the licensing authority is the Secretary of State (*subsection (8)*).

***Sections 114 and 115: Meaning of “enforcement authority”; Interpretation of this Part***

327. These sections provide definitions of terms used in this Part.

## **PART 5: NATURE CONSERVATION**

### **Chapter 1: Marine Conservation Zones**

#### *Designation of zones*

#### ***Section 116: Marine conservation zones***

328. This section provides a power for the Welsh Ministers, Scottish Ministers and the Secretary of State (hereafter referred to as “Ministers”) to designate, as the appropriate authority, areas as marine conservation zones (MCZs) by means of local orders.

329. *Subsections (2) and (3)* identify those areas within which an MCZ may be designated. These include English inshore waters and the offshore waters of England, Wales, and Northern Ireland (where the Secretary of State is the appropriate authority), the Welsh inshore region (where the Welsh Ministers are the appropriate authority), and the Scottish offshore region (where the Scottish Ministers are the appropriate authority). Marine nature conservation in the inshore waters of Scotland and Northern Ireland is a matter for Scottish Ministers and Northern Ireland Departments to determine through their own legislation.

330. *Subsection (6)* states that the Scottish Ministers may not designate an MCZ without agreement from the Secretary of State.

331. *Subsection (7)* provides that an MCZ designated by the Scottish Ministers under this section is to be known as a marine protected area and that references in this Act to an MCZ designated by the Scottish Ministers should be read as a reference to a marine protected area.



***Section 117: Grounds for designation of MCZs***

332. This section sets out the circumstances in which Ministers may designate an MCZ. This must be for the purpose of conserving species of marine flora and fauna, particularly if they are rare or threatened, or for conserving or protecting marine habitats or features of geological or geomorphological interest. An MCZ may also be designated for the purpose of conserving the diversity of marine flora or fauna or habitat, whether or not they are considered rare or threatened (*subsections (1) to (5)*).

333. In this Act, the terms “geomorphological” (used in Parts 5 and 9) and “physiographical” (used in Parts 6 and 7) have the same meaning. Each term is consistent with the previous legislation in the relevant field.

334. *Subsection (2)* provides that the order designating the MCZ must state both the protected features and the conservation objectives for the MCZ. The level of protection for an individual MCZ will depend on the site’s conservation objectives, which may take account of relevant conservation, social and economic considerations. The conservation objectives will need to be clear to ensure that all public authorities understand the implications of the duties placed on them by sections 125 and 126.

335. *Subsection (7)* allows Ministers to take account of the economic or social consequences of designation. This ensures MCZs may be designated in such a way as to conserve biodiversity and ecosystems whilst minimising any economic and social impacts. Where an area contains features that are rare, threatened or declining, or forms a biodiversity hotspot, greater weight is likely to be attached to ecological considerations. Where there is a choice of alternative areas which are equally suitable on ecological grounds, socio-economic factors could be more significant in deciding which areas may be designated as an MCZ.

336. *Subsection (8)* clarifies that the reference to “social” consequences of designating an MCZ includes any consequences of doing so for sites of historic or archaeological interest.

***Section 118: Further provision as to orders designating MCZs***

337. This section sets out further requirements for MCZ designations, including the requirement to specify the boundaries of the designated area.

338. *Subsection (3)* provides for the inclusion in an MCZ of any island regardless of whether the land lies above mean high water spring tide. This will be particularly relevant where there are numerous small islands, transient sand banks or rocky outcrops (which would be impracticable to exclude individually). Islands which should be excluded from an MCZ may be identified in the designation order.

339. *Subsections (4) and (5)* allow Ministers to extend the boundary of an MCZ to include an additional adjacent area of seashore above mean high water spring tide if certain conditions apply. These conditions include the requirement that the feature(s) which comprise the grounds for designating the MCZ are also present in the extended area. This may be appropriate where a threatened species is also present in the area of land above mean high water spring tide and protection depends on extending the boundary of the MCZ.

340. *Subsection (6)* requires that an MCZ includes land whether or not it is covered by water (which will include the sea bed and foreshore) and in the case of an area within the seaward limits of the territorial sea or the exclusive economic zone, may include the water covering it (which includes the water column at sea, estuarial/transitional waters, pools and lagoons).

***Section 119: Consultation before designation***

341. This section requires Ministers to carry out public consultation before designating an MCZ. *Subsections (2) and (3)* require notice of a proposed designation order to be published. This enables parties likely to be affected by a proposed order to have the opportunity to have their interests taken into account.

342. *Subsections (5) to (9)* provide for consultation between the Ministers so that each has the opportunity to comment if their respective waters might be affected by the making of a designation order.

343. *Subsection (10)* requires the appropriate authority to make a decision regarding designation of an individual MCZ within 12 months of publishing the notice. Failure to designate a site within that time will mean that the process will need to begin again before an area may be designated as an MCZ.

344. *Subsections (11) and (12)* provide an exemption from the general consultation requirement if there is an urgent need to designate an MCZ, though Ministers would still be required to consult each other. In such cases, an urgent order may only remain in force for up to two years before the end of which consultation in accordance with *subsections (2) to (9)* will be required for an order confirming the designation.

***Section 120: Publication of orders designating MCZs***

345. This section makes provision for Ministers to publish notice of the making of an order. The section requires that interested individuals are made aware of the publication and provided with a copy if they ask for one. The authority may charge a fee for providing a copy.

***Section 121: Hearings by appropriate authority***

346. This section allows Ministers to hold hearings before deciding whether to make an order under section 116 to designate an MCZ.

347. *Subsection (2)* gives Ministers discretion to give any person the opportunity of being heard by an inspector or other appointed person, either orally or in writing. *Subsection (4)* requires these representations to be reported back to the authority.

***Section 122: Amendment, revocation and review of orders designating MCZs***

348. This section allows an order designating an MCZ to be amended or revoked by a further order. *Subsection (2)* requires the appropriate authority to review any order if asked to by another appropriate authority or the Department of the Environment in Northern Ireland.

*Duties relating to network*

**Section 123: Creation of network of conservation sites**

349. This section places a duty on the appropriate authority to designate MCZs so as to contribute to the creation of a network of marine sites. *Subsections (1) and (2)* set out the duty to designate MCZs and the objective for such designation. *Subsection (3)* sets out what the network of MCZs should achieve, listing three conditions. These are based on key elements of the definition of an ecologically coherent network developed for the Convention for the Protection of the Marine Environment of the North East Atlantic (OSPAR). The conditions require that the network should contribute to the conservation of the marine environment, protect features that represent a range of features present in the UK marine area and reflect the fact that conservation of a feature may require more than one site to be designated.

350. *Subsection (4)* provides that the network of relevant conservation sites may include European Sites notified under the Wild Birds and Habitats Directives, Sites of Special Scientific Interest and wetland sites designated under the Ramsar Convention.

351. *Subsection (5)* requires the appropriate authority to have regard to relevant obligations under EU and international law.

352. *Subsection (6)* requires the appropriate authority to prepare a statement setting out the principles which it will apply in designating MCZs to help create the UK network. It is a requirement to lay the statement before the appropriate legislature and it must be reviewed, and if necessary updated, periodically.

**Section 124: Report**

353. This section requires the Secretary of State, the Welsh Ministers and the Scottish Ministers to report to Parliament, the Welsh Assembly and the Scottish Parliament, as appropriate, on progress in designating a network of MCZs. The purpose of the report is to specify the extent to which the MCZs that each authority has designated in its respective area contribute to the achievement of an ecologically coherent network of marine protected areas, and any further steps necessary to help meet that objective.

354. *Subsection (2)* sets out the information that must appear in the report. This includes the number of MCZs designated during the relevant period, information about amendments to designation orders and the extent to which the authority believes that the conservation objectives for each MCZ have been achieved. *Subsection (2)(c)* requires Ministers to report on the number of sites where licensable marine activities, fishing and the taking of animals and plants have been restricted or prohibited. *Subsection (3)* provides for the Secretary of State, the Welsh Ministers and the Scottish Ministers to direct the appropriate statutory nature conservation body to carry out monitoring of MCZs.

*Duties of public authorities*

***Section 125: General duties of public authorities in relation to MCZs***

355. This section places a general duty on public authorities (defined in section 322) to carry out their functions in the manner that they consider best furthers – or least hinders – the conservation objectives set for MCZs. This duty only applies so far as is consistent with the proper exercise of a public authority's functions and only where such functions may have a significant effect on the MCZ.

356. If a public authority thinks that the exercise of its functions will or might significantly hinder the conservation objectives of an MCZ, it has to notify the appropriate statutory nature conservation body (Natural England, the Joint Nature Conservation Committee, or the Countryside Council for Wales, depending on where the MCZ is).

357. *Subsections (4) to (8)* provide that a public authority must inform the appropriate statutory nature conservation body if it intends to carry out an activity which might significantly hinder the conservation objectives for an MCZ. This duty does not apply if standing advice from the relevant statutory nature conservation body applies. This means that statutory nature conservation bodies may issue standing guidance on routine activities (such as harbour works) and that public authorities do not have to notify them every time they plan to carry out such activities. Where a public authority has notified the appropriate statutory conservation body under *subsection (5)*, the statutory nature conservation body has 28 days to provide any advice, after which public authorities may decide to go ahead as planned. However, this 28-day rule does not apply if the body notifies the authority that it need not wait or if the situation is urgent.

358. *Subsections (9) to (11)* require a public authority to inform certain bodies when it considers that an offence (in relation to which it has functions) that will or may significantly hinder the achievement of an MCZ's conservation objectives has occurred. The bodies it must inform are the relevant authority (which is the enforcement authority for the area in which the MCZ is situated) and the statutory conservation body (which is the body competent to assess the effect of any act and advise the enforcement body).

359. *Subsection (12)* requires public authorities to have regard to any advice issued by the statutory conservation bodies under section 127.

***Section 126: Duties of public authorities in relation to certain decisions***

360. This section applies to all public authorities with responsibility for authorising applications for certain activities (such as proposed infrastructure development or a dredge) capable of affecting a protected feature of an MCZ or any geological or geomorphological processes on which the conservation of a feature is partially or wholly dependent. It does not apply where the effect is insignificant, in order to avoid capturing very minor matters. The section has effect in relation to all types of consent (however described), including licences granted by the MMO under Part 1 of the Act and planning permissions granted by local planning authorities.

361. *Subsection (2)* requires a public authority to inform the relevant statutory nature conservation body if it believes a proposed activity will hinder the achievement of the conservation objectives of an MCZ. *Subsection (3)* states that no authorisation may be granted until 28 days have passed since notice was given. This does not apply, however, where the appropriate statutory conservation body informs the authority that it does not need to wait 28 days or where the authority thinks that there is an urgent need to grant authorisation.

362. *Subsections (5), (6) and (7)* impose a duty on an authority not to grant authorisation unless it is satisfied that there is no significant risk that the activity will hinder the achievement of the conservation objectives or if certain conditions in *subsection (7)* are met. These conditions are: (i) the act cannot be carried out in any other way; (ii) the benefit of the act to the public clearly outweighs the risk of environmental damage; and (iii) the person seeking authorisation will take measures of equivalent environmental benefit to the damage that will be, or is likely to be, caused.

363. *Subsection (10)* requires public authorities to have regard to any advice or guidance given by the appropriate statutory conservation body.

***Section 127: Advice and guidance by conservation bodies***

364. This section confers powers and duties on the statutory nature conservation bodies (Natural England, the Joint Nature Conservation Committee and the Countryside Council for Wales) to give advice or guidance to public authorities in respect of MCZs. Public authorities are required to have regard to this advice or guidance when carrying out their duties under sections 125 and 126. This section does not limit or restrict the matters on which the conservation bodies may advise (in accordance with their existing functions) but identifies the types of MCZ-related advice and guidance to which other provisions in this part of the Act apply (namely the duties on public authorities).

365. *Subsections (1) and (2)* specify the issues on which advice or guidance may be given, and allows it to be issued in respect of one or more sites, and to one or more authorities. Advice and guidance may also be issued more generally on MCZs.

***Section 128: Failure to comply with duties etc***

366. This section enables the relevant statutory nature conservation body to obtain an explanation if it thinks a public authority has failed to exercise its functions to further, (or where permissible, least hinder), the conservation objectives of an MCZ, failed to notify the appropriate conservation body where it believes that an act requiring authorisation may have a significant risk of hindering the achievement of the conservation objectives of an MCZ or failed to act in accordance with the guidance provided by the statutory nature conservation body. This section has effect even when the public authority did not initially request the advice or guidance. This section is analogous to section 4(2) to (5) of the Natural Environment and Rural Communities Act 2006 (c. 16).



*Byelaws for protection of MCZs etc: England*

**Section 129: Byelaws for protection of MCZs in England**

367. This section gives the MMO the power to make byelaws to protect MCZs in the English inshore region and help further their conservation objectives. There is no power to make byelaws in the offshore region. Separate arrangements for Wales are detailed in section 134.

368. *Subsection (3)* sets out some of the activities which may be controlled through the making of byelaws. These are primarily activities which are not otherwise controlled (for example under the new licensing system). Research has shown that unregulated activities may threaten biodiversity, and that those of highest risk are motorised recreation (such as the use of speed boats and jet-skis), wildlife watching (which may also disturb sensitive species), and land-based recreation. The powers are drafted widely in order to allow the MMO to regulate these, and any other activities likely to threaten a site's conservation objectives.

369. *Subsection (4)* allows the MMO to control specific activities on the seashore adjacent to an MCZ, for the purposes of protection (for example to control noise disturbance from vehicles or music).

370. *Subsections (5) and (6)* enable the MMO to issue permits (with whatever conditions it feels appropriate) to authorise activities which would otherwise be unlawful under a byelaw.

**Section 130: Byelaws: procedure**

371. This section requires the MMO to carry out public consultation before making a byelaw. It must publicise its intention to make a byelaw and provide a copy of the draft byelaw if asked, for which it may charge a fee to cover the cost of doing so.

372. Byelaws must be confirmed by the Secretary of State before they come into force. Once made, byelaws must also be publicised.

**Section 131: Emergency byelaws**

373. This section enables the MMO to make byelaws (under section 129) urgently, without having to comply with the usual consultation and publication requirements and without confirmation by the Secretary of State. This is only permitted where the MMO considers there to be an urgent need to protect an MCZ.

374. A notice that the emergency byelaw has been made must be published (*subsection (3)*). Those likely to be affected may then make representations to the Secretary of State – who has the power to revoke an emergency byelaw.

375. The MMO must keep the emergency byelaw under review. Under *subsection (2)*, emergency byelaws remain in force for a maximum of 12 months (although they may be extended by up to a further six months by the MMO (*subsections (7) to (9)*)).



***Section 132: Interim byelaws***

376. This section enables the MMO to make interim byelaws to protect features in an area where the MMO considers there may be reasons for the Secretary of State to designate an MCZ, and where there is an urgent need for protection. Delay in providing protection through a byelaw could otherwise result in harm to the site. Byelaws under this section are essentially the same as emergency byelaws made by virtue of section 131 except that they apply to areas which are not yet designated as MCZs.

377. As there will be no MCZ designated in these cases, *subsection (3)* requires that the interim byelaw clearly states the boundaries of the area to which it will apply.

378. As with emergency byelaws, *subsection (4)* exempts interim byelaws from consultation (although the MMO must publish notice of them), and the MMO must keep the need for them under review.

379. *Subsection (5)* provides for an interim byelaw to remain in force for up to 12 months, unless revoked by the Secretary of State. In cases where the period specified in the byelaw is under 12 months, it may be subsequently extended by the MMO (under *subsection (10)*) – but the byelaw cannot remain in force for more than 12 months in total in any event.

380. If, while an interim byelaw is in place, the Secretary of State gives notice of a proposal to make an order (under section 116) to designate any part of the area as an MCZ, the Secretary of State may direct that the interim byelaw is to remain in place until the Secretary of State decides whether to make the order and until any such order comes into effect.

***Section 133: Further provision as to byelaws***

381. This section sets out the administrative and notification requirements in relation to byelaws (whether they are made urgently or not) and interim byelaws.

382. *Subsections (4) and (5)* provide that the MMO must make an order available for inspection and provide a copy if asked, and may charge a fee to cover its costs of doing so. It must send a copy of the byelaw to the Welsh Ministers if the byelaw may affect activity in Wales.

***Orders for protection of MCZs etc: Wales***

***Section 134: Orders for protection of MCZs in Wales***

383. This section gives the Welsh Ministers the power to make conservation orders, in order to protect MCZs in the Welsh inshore region and help further their conservation objectives.

384. *Subsection (3)* applies the byelaw-making provisions of *subsections (3), (4) and (7) to (9)* of section 130 to conservation orders made by the Welsh Ministers. Conservation orders in Wales will work in a similar way to byelaws in England.

385. *Subsection (4)* enables the Welsh Ministers to issue permits authorising anything which would otherwise be unlawful under a conservation order and *subsection (5)* enables the Welsh Ministers to attach conditions to any such permit.

386. *Subsection (6)* allows the Welsh Ministers to make an order which applies to two or more MCZs.

***Section 135: Consultation etc regarding orders under section 134***

387. *Subsection (1)* requires the Welsh Ministers to consult before making a conservation order, while *subsections (2) and (3)* require Welsh Ministers to publish notice of the making of the order and to ensure that interested individuals are aware of the publication.

388. *Subsection (4)* enables the Welsh Ministers to make conservation orders (under section 134) urgently, without having to comply with the usual consultation requirements. This is only permitted where the Welsh Ministers consider there to be an urgent need to protect an MCZ.

***Section 136: Interim orders***

389. This section enables the Welsh Ministers to make interim orders to protect features where there may be reasons to designate an MCZ and where there is an urgent need to protect the feature. Orders under this section are essentially conservation orders made urgently except that they apply to areas which are not yet designated as MCZs.

390. *Subsection (3)* requires an interim order to identify the boundaries of the area in which the order applies.

391. *Subsection (4)* applies *subsections (2) to (5)* of section 134 to interim orders, and consequently, an interim order will be able to make any provision which could be made in an ordinary conservation order.

392. *Subsection (5)* provides for an interim order to remain in force for a limited period not exceeding 12 months (unless revoked). The Welsh Ministers may further extend an order (by means of a further order) made under *subsection (9)*, thereby allowing for continued protection of the area until its status as an MCZ is settled.

393. Interim orders, being urgent by nature, require no prior consultation, but *subsection (6)* requires the Welsh Ministers to publish notice of the making of an interim order in Wales and *subsection (7)* sets out the matters to be addressed in the notification.

394. *Subsection (8)* requires the Welsh Ministers to keep under review the need for an interim order to remain in force.

***Section 137: Further provision as to orders made under section 134 or 136***

395. This section sets out administrative and notification requirements in relation to Welsh conservation orders (whether made urgently or not) and interim orders.

396. *Subsection (6)* allows conservation and interim orders to be amended or revoked by a further order.

#### *Hearings*

##### ***Section 138: Hearings by Secretary of State or Welsh Ministers***

397. This section makes provision for the Secretary of State to hold a hearing before deciding whether to confirm a byelaw or revoke an emergency or interim byelaw. The section also makes provision for the Welsh Ministers to hold hearings before deciding whether to make a conservation order or an interim order.

398. *Subsection (3)* gives Ministers discretion to give any person the opportunity of being heard by an inspector or other appointed person, either orally or in writing. *Subsection (5)* requires these representations to be reported back to Ministers.

399. *Subsection (4)* allows Ministers to make regulations setting out the procedures to be followed, including the awarding of costs (for example where one party incurs additional costs as a result of the unreasonable behaviour of another party).

#### *Offences*

##### ***Section 139: Offence of contravening byelaws or orders***

400. This section provides that breaching any byelaw or conservation order is an offence.

401. *Subsection (2)* sets out the level of fine for a person guilty of an offence. A level 5 fine is a fine up to £5,000.

##### ***Section 140: Offence of damaging etc protected features of MCZs***

402. This section creates a general offence to catch deliberate or reckless acts of damage to protected features of an MCZ.

403. *Subsections (1)* and *(2)* set out the circumstances in which a person is guilty of the offence. The offence is committed where a person intentionally or recklessly causes damage or harm to the protected features of an MCZ. This includes killing or injuring plants and animals and removing anything that is a protected feature from an MCZ. In order to be guilty of the offence, it is necessary that the person knows, or ought to have known, that the feature was in, or formed part of, an MCZ. In addition, an offence is committed only where the person's actions have significantly hindered, or may significantly hinder, the achievement of the conservation objectives of the MCZ.

404. *Subsection (5)* provides that a court determining the fine should have regard to any financial benefit the person obtained by committing the offence: the greater the gain, the higher the penalty is likely to be.

405. *Subsection (6)* states that an offence may be tried in any part of the UK.

***Section 141: Exceptions to offences under section 139 or 140***

406. This section sets out the circumstances in which a person will not be guilty of an offence under section 139 or 140.

407. *Subsection (1)* sets out a number of exceptions, including: things done in the interests of national security or for the prevention or detection of crime; acts for which a permit has been issued, for example in the case of scientific investigation; and actions taken to save a life.

408. *Subsection (3)* provides that a person is not also guilty of contravening byelaws or orders if he is found guilty of the general offence.

409. *Subsection (4)* provides a defence to the general offence under section 140 where the accused person may prove that he was sea-fishing and the damage could not reasonably have been avoided. If damage were caused for example by the use of illegal fishing gear where it would not have been so caused had legal fishing gear been used, then this defence would not be available. Such damage could reasonably have been avoided by using legal fishing gear, and therefore the person would not have met the condition in *subsection (4)(b)*.

410. *Subsection (5)* provides a power for the Secretary of State to restrict or remove the defence set out in *subsection (4)*. The power would have to be exercised within any relevant constraints of the Common Fisheries Policy. Once the defence had been removed or restricted, it could not be reinstated. The power is exercisable by order subject to the affirmative procedure, as set out in section 316.

411. Under the UN Convention on the Law of the Sea, the UK may restrict the activities of certain vessels in order to protect the environment. If the UK has not declared an exclusive economic zone (EEZ) under the Convention, restrictions may be applied only to UK and other EU vessels. Once an EEZ has been declared, restrictions may apply to all countries' vessels. *Subsection (6)* recognises this, by ensuring that the application to third country vessels will only take place once an EEZ has been declared under section 41 of the Act.

*Fixed monetary penalties*

***Section 142: Fixed monetary penalties***

412. This section enables the Secretary of State or the Welsh Ministers to make an order which confers a power on an enforcement authority to issue fixed monetary penalties for the breach of byelaws or conservation orders.

413. The appropriate enforcement authority may only impose a fixed monetary penalty when satisfied beyond reasonable doubt that the person has committed the relevant offence.

414. *Subsection (4)* provides for the maximum fixed financial penalty, which will be £200 (based on the current amount of a level 1 fine). A level 1 fine on the standard scale cannot exceed £200. A fixed monetary penalty may differ in amount according to whether the person liable is an individual or part of a corporate body. This level of fine reflects the nature of the likely offences, which will tend to be minor breaches of byelaws or conservation orders by an individual.

***Section 143: Fixed monetary penalties: procedure***

415. This section specifies certain minimum requirements that must be included in any fixed monetary penalty regime. In particular, when imposing the penalty, the enforcing authority must issue a notice of intent to the person setting out the information specified in *subsection (3)* of this section, and provide the person with an opportunity to discharge his liability by payment of a prescribed sum which will be lower or equal to the amount of the penalty. If the sum is not paid, a person may make representations to the authority setting out the reasons why he does not think he was guilty of the offence. Having considered those representations, the authority will come to a decision on whether to impose a fixed monetary penalty (“final notice”) setting out the information specified in *subsection (5)*. A person on whom a final notice is served has a right of appeal.

416. *Subsection (6)* provides that an order allowing an enforcement authority to impose fixed monetary penalties must provide for the grounds for appeal set out in that subsection.

***Section 144: Further provision about fixed monetary penalties***

417. This section gives effect to the further provisions about fixed monetary penalties set out in Schedule 10.

*Miscellaneous and supplemental*

***Section 145: Application to the Crown***

418. This section provides that the provisions set out in Chapter 1 of Part 5 apply to the Crown.

***Section 146: Consequential and transitional provision***

419. This section gives effect to the consequential and transitional amendments contained in Schedules 11 and 12.

***Section 147: Interpretation of this Chapter***

420. Definitions are provided for words or expressions used in this Part.

**Chapter 2: Other Conservation Sites**

***Section 148: Marine boundaries of SSSIs and national nature reserves***

421. This section gives effect to Schedule 13 which amends the Wildlife and Countryside Act 1981 (c. 69).

**PART 6: MANAGEMENT OF INSHORE FISHERIES**

**Chapter 1: Inshore Fisheries and Conservation Authorities**

422. This Part provides for the establishment of inshore fisheries and conservation districts (“IFC districts”) and inshore fisheries and conservation authorities (“IFC authorities”) in England. The main duty of IFC authorities is to manage the exploitation of sea fisheries resources occurring in their districts in a sustainable way. IFC authorities have powers to make and enforce byelaws in pursuance of their main duty. The Sea Fisheries Regulation Act 1966, which relates to the inshore sea fisheries of England and Wales and provides for the establishment of sea fisheries districts and sea fisheries committees, will be repealed.

*Inshore fisheries and conservation districts and authorities*

***Section 149: Establishment of inshore fisheries and conservation districts***

423. This section provides for the Secretary of State to establish IFC districts. Such districts are to be established by order and will consist of one or more local authority areas that have a seashore. The seaward extent of a district will be determined in the order establishing that district. The term “seashore” is defined in section 186.

424. *Subsection (3)* requires the Secretary of State to consult certain people and organisations before making an order establishing an IFC district.

***Section 150: Inshore fisheries and conservation authorities***

425. This section requires there to be an IFC authority for every IFC district and provides that the IFC authority is a committee, or a joint committee (in the case of more than one local authority), of the local authority or authorities falling within the district.

***Section 151: Membership and proceedings of IFC authorities***

426. *Subsection (1)* requires that an order establishing an IFC district must provide for the membership of the IFC authority for that district. The membership must comprise members of constituent local authorities, persons appointed by the MMO according to the criteria in *subsection (2)* and other persons.

427. *Subsection (3)* provides for the Secretary of State to amend by order the descriptions of persons appointed as members of an IFC authority. Provision is also made for any consequential amendments to be made to this section as appear to the Secretary of State to be necessary. The order may only add further descriptions of persons appointed as members of an IFC authority, or vary or remove descriptions so added. The descriptions currently set out in *subsection (2)* may not be varied or removed.

428. *Subsections (4) and (5)* require the order establishing an IFC district to specify the total number of members of the IFC authority for the district. The order must also specify the number of members to be appointed from each constituent local authority and the number of members appointed by the MMO. The order must also set out the number of members to be appointed in the category “other persons” and by whom they are to be appointed.

429. An order establishing an IFC district may include the provision set out in *subsection (6)* as to the membership and procedures of the IFC authority for that district, for example provision as to how the chair of the IFC authority is to be appointed.

430. *Subsection (7)* lists certain enactments that concern the proceedings of local authority committees or joint committees. These will apply to an IFC authority subject to any provision made by the order establishing the district.

431. *Subsection (8)* provides definitions for the terms “the fishing community” and “marine environmental matters”.



432. *Subsection (9)* provides for the reference to the MMO in *subsection (1)(b)* to be read as the Secretary of State until the MMO comes into being, at which point anybody appointed to the IFC authority by the Secretary of State would be treated as if appointed by the MMO.

***Section 152: Amendment or revocation of orders under section 149***

433. This section allows the Secretary of State to amend or revoke an order that established an IFC district. Certain persons and organisations must be consulted before an order is amended or revoked, including any likely to be affected by the amendment or revocation.

*Main duties*

***Section 153: Management of inshore fisheries***

434. This section places a duty on each IFC authority to manage the exploitation of sea fisheries resources in its district. *Subsection (2)* sets out the key elements of each IFC authority's duty. These are: seeking to ensure sustainable exploitation of fisheries; balancing socio-economic benefits with the protection of, or the promotion of the recovery of, the marine environment from past and present exploitation; taking steps to contribute to the achievement of sustainable development; and balancing the needs of all persons exploiting the district's fisheries. Where, at a particular site, the marine environment needs to recover from past fisheries exploitation as well as to be protected from present fisheries exploitation, both of those needs will have to be balanced against the socio-economic benefits of fishing.

435. IFC authorities will be able to apply precautionary measures and use an ecosystem-based approach in order to fulfil their main duty. Precautionary measures in this context means that the absence of adequate scientific information should not be used as a reason for postponing or failing to take management measures to conserve target species, associated or dependent species and non-target species and their environment. The ecosystem-based approach in this context means that the capacity of the aquatic ecosystems to produce food, revenues, employment and, more generally, other essential services and livelihood, is maintained indefinitely for the benefit of present and future generations.

436. *Subsections (3) to (9)* make provision in respect of guidance issued by the Secretary of State to IFC authorities. The Secretary of State must give guidance to IFC authorities as to how they are to contribute to the achievement of sustainable development and must publish such guidance. The Secretary of State also may give guidance as to the performance of IFC authorities' duty under *subsection (1)*. Each IFC authority, in performing its duty, must have regard to any guidance issued by the Secretary of State. Before issuing such guidance, the Secretary of State must consult IFC authorities and other relevant people and organisations and must take into account IFC authority functions, the functions of other bodies exercisable in the IFC district and the resources available to IFC authorities.

437. The term *sea fisheries resources* is defined at *subsections (10) and (11)*. Certain fish are specifically excluded from that term and therefore from IFC authority competence because the Environment Agency is responsible for regulating fisheries for those kinds of fish. However, IFC authorities are still able to regulate the exploitation of sea fisheries resources in order to provide protection for the fish listed in *subsection (11)*.

438. The activities to which the main duties and powers of an IFC authority apply are set out at *subsection (12)*. These activities include activities relating to cultivated fisheries such as aquaculture and mariculture as well as all recreational fishing activities. Mariculture is the cultivation of marine organisms in their natural habitats, usually for commercial purposes.

***Section 154: Protection of marine conservation zones***

439. Each IFC authority must exercise its powers to seek to ensure that the conservation objectives of any MCZ in its district are furthered. This requirement will not be affected by anything set out in section 153 about how IFC authorities perform their duty.

***Byelaws***

***Section 155: Power to make byelaws***

440. This section provides a power for an IFC authority to make byelaws which must be observed in its district. Byelaws, apart from emergency byelaws, do not take effect until confirmed by the Secretary of State. The Secretary of State may cause a local inquiry to be held before confirming a byelaw. A byelaw may be confirmed with modifications, which must be agreed with the IFC authority that made it.

***Section 156: Provision that may be made by byelaw***

441. This section sets out a non-exhaustive list of the types of activities for which IFC authorities may make byelaws (including emergency byelaws) to manage sea fisheries resources in their district.

442. *Subsection (3)* enables byelaws to be made prohibiting or restricting the exploitation of sea fisheries resources in specified areas or periods or limiting the amount of resources that may be exploited or the amount of time a person or vessel may spend exploiting fisheries resources in a specified period.

443. *Subsection (4)* allows IFC authorities to prohibit or restrict the exploitation of sea fisheries resources within their district without a permit. IFC authorities will be able to recover the costs of administering and enforcing a permit scheme, attach conditions to permits and limit the number of permits they issue under a particular scheme.

444. *Subsection (5)* allows IFC authorities to prohibit or restrict the use of vessels of specified descriptions and any method of exploiting sea fisheries resources. The possession, use and transportation of specified items or types of items used in the exploitation of sea fisheries resources may also be prohibited or restricted. This would enable an IFC authority to require the use of a particular method of sea fishing or an item used in sea fishing (for example to reduce by-catch) by means of a prohibition on the use of other methods and items.

445. *Subsection (6)* provides for the protection and regulation of shellfisheries including, but not limited to, requirements for shellfish to be re-deposited in specified places and for the protection of shellfish laid down for breeding purposes and culch, which is the substrate/material on which the spat or young of shellfish may attach and grow. This subsection also enables a district of oyster cultivation to be established, so that the IFC authority may prohibit the sale of oysters between certain dates, and allows IFC authorities to

disapply the defence concerning the taking and sale of certain crabs and lobsters as set out in section 17(2) of the Sea Fisheries (Shellfish) Act 1967.

446. *Subsection (7)* allows IFC authorities to make provision in byelaws for monitoring the exploitation of sea fisheries resources. This includes requirements as to the fitting of particular equipment, the carriage of onboard observers and the marking or tagging of items used in the exploitation of sea fisheries resources.

447. *Subsection (8)* allows IFC authorities to require people involved in the exploitation of sea fisheries resources in their district to provide them with specified information so that it is an offence if certain information is not provided.

### ***Section 157: Emergency byelaws***

448. This section allows an IFC authority to make an emergency byelaw which takes effect without first being confirmed by the Secretary of State. *Subsection (2)* prescribes the circumstances in which an emergency byelaw may be made.

449. *Subsection (3)* provides when an emergency byelaw will come into force and for how long, subject to a maximum of 12 months duration. *Subsections (4) and (5)* allow an IFC authority to extend an emergency byelaw once for a period of up to 6 months with the written approval of the Secretary of State. That approval may only be given in accordance with the terms set out at *subsection (6)*.

### ***Section 158: Byelaws: supplementary provision***

450. *Subsections (1) and (2)* clarify that byelaw-making powers include powers to make byelaws for different cases or circumstances and that a byelaw may cease to have effect after a specified period.

451. *Subsection (3)* provides for IFC authorities to introduce a byelaw that prohibits, restricts, or otherwise interferes with the exercise of any right of a several or private fishery as set out in *subsection (4)*. If the byelaw would prohibit, or significantly restrict or interfere with, the exercise of that right, IFC authorities will require consent from the person who enjoys the right of private fishery, unless part or the whole of that fishery falls within an MCZ, a European Marine Site, a Site of Special Scientific Interest (SSSI), a Ramsar site or a National Nature Reserve (NNR).

### ***Section 159: Power of Secretary of State to amend or revoke byelaws***

452. This section allows the Secretary of State to revoke or restrict the application of any byelaw made by an IFC authority where it appears to the Secretary of State that the byelaw is unnecessary, inadequate or disproportionate. Before doing so the Secretary of State must follow the requirements of *subsection (2)* about notifying the IFC authority and considering objections.

### ***Section 160: Byelaws: procedure***

453. This section allows the Secretary of State to make regulations about the procedure to be followed by an IFC authority when making byelaws (including emergency byelaws). This section also enables regulations to make provision about the procedure to be followed by an

eligible body in relation to byelaws, where an IFC authority has delegated functions relating to byelaws (see section 167).

***Section 161: Inquiries***

454. This section applies, with modifications, subsections (2) to (5) of section 250 of the Local Government Act 1972 to any inquiry under section 155(5) or 159(3).

***Section 162: Evidence of byelaws***

455. This section provides that the production of a signed copy of a byelaw is conclusive evidence of the byelaw. An emergency byelaw must be signed by an officer or member of the relevant IFC authority. Other byelaws must be signed by or on behalf of the Secretary of State.

***Offences***

***Section 163: Offences***

456. This section establishes offences and penalties. A person is guilty of an offence if he contravenes any byelaw made by an IFC authority. Where a vessel is used in contravention of a byelaw the master, owner and charterer (if any) will each be guilty of an offence. A person guilty of an offence under subsection (1) is liable upon summary conviction to a maximum fine of £50,000. *Subsection (4)* ensures that magistrates' courts have jurisdiction over byelaw offences that are committed at sea, by treating them as having been committed in any part of England and Wales.

***Section 164: Powers of court following conviction***

457. This section provides that where a person is convicted of an offence, the court may order forfeiture of any fishing gear used in the commission of the offence or any fish in respect of which an offence was committed. If the fish are in a container, the container may also be forfeited. As an alternative, the court may order that person to pay a sum of money representing the value of the fishing gear or fish. Where there has been a breach of the conditions of a permit granted by an IFC authority, the court may suspend the permit or disqualify the person from holding or obtaining any IFC authority permit relating to any activity to which that permit related. A permit may be suspended or disqualified for such period as the court sees fit.

***Enforcement***

***Section 165: Inshore fisheries and conservation officers***

458. This section provides that inshore fisheries and conservation officers ("IFC officers") may be appointed by IFC authorities. Such appointments may be subject to any limitations specified by the IFC authority making that appointment.

***Section 166: Powers of IFC officers***

459. Enforcement powers are listed in Part 8 of the Act. This section sets out the powers from that list which are available to an IFC officer and the legislation in respect of which they may be exercised. The geographical area in relation to which an IFC officer may exercise his enforcement powers is set out at *subsection (4)*.

460. *Subsections (5) to (8)* make provision for an IFC officer to engage in hot pursuit of a vessel or vehicle from the IFC district for which he has been appointed. Hot pursuit applies only in relation to any vessel or vehicle in Scotland or the Scottish Zone which has been pursued there in accordance with *subsection (5)*.

461. This section makes it clear that IFC officers may enforce byelaws made for the district under section 155, whether or not the byelaws are made by the IFC authority for the district. This covers the situation where an IFC authority has delegated byelaw-making powers to an eligible body.

462. *Subsection (2)* allows the Secretary of State to amend *subsection (1)* of this section (the list of legislation in respect of which enforcement powers may be exercised).

#### *Power to delegate functions*

##### ***Section 167: Power to enter into agreements with eligible bodies***

463. Section 167 gives an IFC authority the power, with the approval of the Secretary of State, to make an agreement with an “eligible body”, authorising the body to perform any of the IFC authority’s functions on its behalf. An agreement may cover either the whole of an IFC district or specified parts of it. The Secretary of State may approve an agreement unconditionally or subject to conditions specified in the approval.

464. The power could not be used to authorise an eligible body to perform functions which would be incompatible with the purposes for which the body was established, or functions relating to the accounts of an IFC authority. Any agreement made under this power would not prevent the IFC authority from performing a function to which the agreement relates. The maximum period for which an agreement could authorise an eligible body to perform a function would be 20 years.

##### ***Section 168: Eligible bodies***

465. Section 168 provides for a list of those bodies with which an IFC authority may enter into an agreement for the delegation of functions of the authority. “Eligible bodies” are neighbouring IFC authorities and the Environment Agency. The section also provides an order-making power to enable the Secretary of State to add public bodies that have an inshore marine function to the list of eligible bodies, or to remove bodies from that list.

##### ***Section 169: Variation, review and cancellation of agreements under section 167***

466. Section 169 provides for the review, variation and cancellation of agreements made between IFC authorities and eligible bodies. The Secretary of State will be required to review all agreements at least every five years, and may cancel agreements if appropriate in the light of such reviews. Agreements may only be varied with the consent of the IFC authority and the eligible body and with the approval of the Secretary of State. The original approval given by the Secretary of State to the agreement could disapply these provisions.



***Section 170: Agreements under section 167: particular powers***

467. Section 170 makes provision for cases where a body that is authorised to carry out a function under an agreement is already involved with the function in some way: for example, where the body is a consultee or is required to give its consent to the exercise of the function, or where the body may already exercise the function jointly with the IFC authority delegating the function. The section provides that an agreement could still be entered into with that body.

468. The section also provides that the lack of a specific power to carry out a function will not prevent a body performing the function if that body has been authorised to do so under an agreement. It also provides that the body may delegate performance to a committee, sub-committee, member, officer or employee (except if the agreement itself prohibits this). However, delegation of the performance of the function to any other body or person is not permitted. In addition, the section enables agreements to provide that the performance of a function is subject to the fulfilment of conditions, and for payments to be made in respect of the performance of the function.

***Section 171: Supplementary provisions with respect to agreements under section 167***

469. Section 171 requires agreements, and approvals for them, to be in writing and provides for agreements to be published in such a way as to bring them to the attention of persons likely to be affected. It also provides that no power of a Minister of the Crown (under the Act or any other legislation) to give directions to a statutory body may be used to require that body to enter into an agreement or to prohibit it from doing so.

470. In addition, this section provides that Schedule 15 to the Deregulation and Contracting Out Act 1994 (relating to the disclosure of information) applies where bodies are exercising functions by virtue of an agreement. This is to make clear to each contracting body how to handle confidential information and the situations where sharing of information between the contracting bodies is permitted.

***Other powers and duties of IFC authorities***

***Section 172: Development, etc of fisheries***

471. This section provides for an IFC authority to take such measures as it considers necessary in order to develop any fishery for sea fisheries resources in its district. This includes the power to stock or re-stock a public fishery for any sea fisheries resources.

***Section 173: Provision of services by IFC authorities***

472. This section provides for IFC authorities to enter into arrangements, with or without charge, with another person or body for the provision of services by the IFC authority to that person or body. This may include an IFC authority making arrangements with the holder of a right of private fishery in connection with the enforcement of that right.



***Section 174: Duty of co-operation***

473. This section requires an IFC authority to take such steps as it considers appropriate to co-operate with certain other public organisations that have functions relating to the regulation and enforcement of activities in any part of the sea within the IFC district (for example, the MMO) and to co-operate with other IFC authorities that share a boundary with the IFC authority.

***Section 175: Information***

474. This section requires IFC authorities to collect certain information and to provide certain information to the Secretary of State.

***Section 176: Accounts***

475. IFC authorities must keep proper accounts and proper records in relation to those accounts. The accounts of an IFC authority comprising more than one constituent council must be made up yearly to 31st March.

***Section 177: Annual plan***

476. This section requires every IFC authority to make and publish a plan setting out the authority's main objectives and priorities for the year. The plan must be published before the beginning of each financial year. An IFC authority must send a copy of its plan to the Secretary of State.

***Section 178: Annual report***

477. This section requires every IFC authority, as soon as is reasonably practicable after the end of each financial year, to publish a report on its activities in that year. *Subsections (2) and (3)* enable the Secretary of State to impose requirements on IFC authorities relating to the form, contents and distribution of the report.

***Section 179: Supplementary powers***

478. This section sets out the miscellaneous powers of an IFC authority. These include matters necessary for the exercise of any of its other functions and the acquisition or disposal of land or other property, but the section prevents an IFC authority from borrowing money. An IFC authority may enter into arrangements with other IFC authorities for the establishment of a body to co-ordinate their activities.

***Miscellaneous and supplemental***

***Section 180: Expenses of IFC authorities***

479. This section establishes the funding arrangements for IFC authorities. The constituent council or councils must pay the expenses of the IFC authority for their area. It allows a majority of the local authority members to veto the total annual budget for that IFC authority (*subsection (4)*).

480. *Subsection (2)* explains that where there is more than one council for a district, each council must fund the IFC authority in accordance with the order establishing that district. The order may provide for the portion of funding falling to each council to be calculated by reference to any circumstances whatsoever (for example, according to the length of coastline of each council).

481. *Subsection (3)* provides that section 103 of the Local Government Act 1972 concerning expenses of joint committees does not apply in relation to an IFC authority since the matter is dealt with at *subsection (2)*.

***Section 181: IFC authority as party to proceedings***

482. An IFC authority may bring proceedings under this Act in its own name as well as bringing or defending any other proceedings in its own name.

***Section 182: Exemption from liability***

483. This section provides that no member or employee of an IFC authority acting in good faith shall be liable for anything done in connection with the discharge of the authority's functions. An IFC officer benefits from the corresponding exemption in section 291.

***Section 183: Report by Secretary of State***

484. This section requires the Secretary of State to lay a report before Parliament on the conduct and operation of IFC authorities. This report must be laid every four years starting from the date the first IFC authority was established.

***Section 184: Minor and consequential amendments***

485. This section introduces Schedule 14. This Schedule makes amendments to primary legislation consequent upon the repeal of the Sea Fisheries Regulation Act 1966 and the establishment of IFC authorities to replace the existing sea fisheries committees in England. In addition, IFC authorities are added to Schedule 7 to the Natural Environment and Rural Communities Act 2006. The Secretary of State may enter into an agreement with designated bodies listed in Schedule 7 for that body to perform a Defra function in the whole or part of England.

***Section 185: Application to the Crown***

486. This section provides that the provisions of this Chapter bind the Crown and applies in relation to Crown land subject to *subsection (2)*. Crown land is defined in *subsection (4)*. *Subsection (3)* applies this Chapter to persons in the public service of the Crown.

***Section 186: Interpretation of this Chapter***

487. This section defines certain terms used in this Part of the Act. For the purposes of the Act, the terms "geomorphological" (used in Parts 5 and 9) and "physiographical" (used in Parts 6 and 7) have the same meaning.

**Chapter 2: Local Fisheries Committees**

***Section 187: Abolition of local fisheries committees***

488. This section repeals the Sea Fisheries Regulation Act 1966.

***Section 188: Power to make consequential or transitional provision, etc***

489. *Subsection (1)* provides for the appropriate national authority to make any provision necessary as a consequence of the repeal of the Sea Fisheries Regulation Act 1966. This includes any transitional, consequential, incidental or supplemental provision or savings.

### **Chapter 3: Inshore Fisheries in Wales**

#### ***Section 189: Power of Welsh Ministers in relation to fisheries in Wales***

490. Section 189(1) provides that, subject to *subsection (2)*, the Welsh Ministers may by order make any provision which IFC authorities may make by byelaw under section 155. *Subsection (2)* provides that, to the extent that the Welsh Ministers already have the power to make such provision, *subsection (1)* does not apply. In other words, section 189 confers power on the Welsh Ministers to make any provision by order which the IFC authorities may make by byelaw, but only to the extent that the Welsh Ministers do not already have the power to make such provision.

491. The Welsh Ministers' power to make orders under section 189 will be exercisable by statutory instrument (section 316(3)) and such orders will be subject to annulment in pursuance of a resolution of the National Assembly for Wales (section 316(8) and (10)), that is, negative resolution procedure.

#### ***Section 190: Offences***

492. Section 190 provides that it is an offence for a person or vessel to contravene any provision of an order made under section 189. The maximum penalties for contravening an order made under section 189 are, on summary conviction, a fine not exceeding £50,000.

#### ***Section 191: Powers of court following conviction***

493. Section 191 confers various powers on the court following conviction of a person for an offence under section 190.

494. More particularly, section 191 enables the court, following conviction, to:

- order the forfeiture of –
  - a) any fishing gear used in the commission of the offence,
  - b) any sea fisheries resources (including any container in which they are kept) in respect of which the offence was committed; or
- order the offender to pay a sum of money representing the value of such fishing gear or resources.

495. Where there has been a breach of the conditions of a permit granted by the Welsh Ministers, the court may suspend the permit or disqualify the person from holding or obtaining any such permit relating to any activity to which that permit related. A permit may be suspended or disqualified for such period as the court sees fit.

#### ***Section 192: Power to provide services for purposes of enforcement***

496. This section provides for the Welsh Ministers to enter into arrangements, with or without charge, with third parties (private fishery owners and grantees of several and regulating orders) for marine enforcement officers to undertake enforcement activities within those third party fisheries.

***Section 193: Miscellaneous amendments***

497. This section amends the Coast Protection Act 1949 to include the Welsh Ministers as representatives on Coast Protection Boards in relation to any powers or duties that they have in relation to fishing and fisheries. It also amends the Wildlife and Countryside Act 1981 to allow the Welsh Ministers to authorise the killing of wild birds for purposes relating to fishing or fisheries (as IFCA's will have similar powers).

**PART 7: FISHERIES**

**Chapter 1: The Sea Fish (Conservation) Act 1967**

***Section 194: Size limits for sea fish***

498. Section 1 of the Sea Fish (Conservation) Act 1967 enables the Ministers (now the Secretary of State and the devolved administrations) to make an order to set minimum size limits for sea fish. Orders under this section may: prohibit any person from landing sea fish below a specified size; prohibit the sale of sea fish below a specified size; and prohibit the carriage by a relevant British fishing boat of sea fish below the specified size. Orders under this section may set different limits for different areas or for fish of different sexes and may restrict the landing by any person of parts of fish below the size limit set for that species.

499. Section 1 does not currently allow for a maximum size limit or for a size range to be set by an order or for the carriage restrictions to apply to a vessel not covered by the definition of a relevant British fishing boat. Section 1 is amended to provide for all the current powers available under orders made under that section to apply to any requirements as to size, rather than minimum size limits only, and for the prohibition on carriage to apply to all relevant British vessels. The effect of these amendments is to allow Ministers to make an order setting a minimum or a maximum size limit for sea fish or a size range outside which no fish may be landed, sold or carried.

500. The amendments made by this section extend to England and Wales only and the powers to make orders on the basis of these amendments would be exercisable by the Secretary of State as regards England and the Welsh Ministers as regards Wales. Since this section does not extend to Northern Ireland, amendments have been made to remove Northern Ireland fishing boats from the coverage of certain of the measures.

***Section 195: Regulation of nets and other fishing gear***

501. Section 3 of the Sea Fish (Conservation) Act 1967 enables the Ministers (now the Secretary of State and the devolved administrations) to make an order in relation to relevant British fishing boats registered in the UK applying restrictions to nets and other fishing gear in respect of their construction, design, material and size. An order under this section may be made so as to apply only in relation to fishing for specified descriptions of sea fish, specified methods of fishing, and specified areas or periods.

502. Section 3(2) provides that an order may be made to extend to nets and fishing gear carried within British fishery limits (excluding the Scottish zone) by Scottish fishing boats, fishing boats registered outside the UK and unregistered boats. In addition to other matters, section 3(3) and (4) provide for exemptions from the restrictions imposed by orders under this section to be made in relation to fishing boats. Section 3(5) creates offences for fishing in contravention of any orders made under this section.

503. Section 3 does not allow restrictions to apply equally to persons fishing from the shore as to persons fishing from a boat. Section 3 is amended so that restrictions of this type may be made by order in respect of persons fishing from the shore of England and Wales. That section is also amended to create new offences for any person fishing from the shore in contravention of any such restrictions and to allow for orders to exempt persons from the restrictions imposed. The power to make orders using the new provisions would be exercisable by the Secretary of State as regards England and the Welsh Ministers as regards Wales.

***Section 196: Charging for commercial fishing licences***

504. This section adds a new *subsection (4A)* to section 4 of the Sea Fish (Conservation) Act 1967. Section 4 gives powers to charge for commercial sea fishing vessel licences. *Subsection (4A)* enables the Ministers to specify the amount of the charge in the order, to make provision in the order as to how the charge should be determined or to provide that in specified circumstances no charge will be payable. The new subsection clarifies the existing power for the Ministers to vary the amount of charge for different classes of licence. An amendment to section 22 of the Act provides that “class” may relate to any circumstances whatsoever, including, for example, vessel length, vessel tonnage or gear type. The amendments made by this section extend to England and Wales only.

***Section 197: Grant of licences subject to conditions imposed for environmental purposes***

505. Section 4 of the Sea Fish (Conservation) Act 1967 provides powers to prohibit fishing by fishing boats in any specified area without authorisation by a licence. Section 4(6) provides that licences may authorise fishing subject to certain conditions. That section is amended to add to these conditions to allow the imposition of conditions for marine environmental purposes, as described.

***Section 198: Power to restrict fishing for sea fish***

506. Section 5 of the Sea Fish (Conservation) Act 1967 enables the Ministers (now the Secretary of State and the devolved administrations) to make an order restricting fishing for sea fish of any description and by any method specified for any period and creates an offence where any fishing boat is used in contravention of such an order. The order may apply to any fishing boat within relevant British fishery limits. Outside those limits, the order may apply only to a relevant British fishing boat registered in the UK, or where an order relates to fishing for salmon or migratory trout, to any fishing boat which is British-owned but not registered under the Merchant Shipping Act 1995. Any fish caught in contravention of a restriction of an order made under this section must be returned immediately to the sea.

507. Orders made under section 5 apply only to fishing boats and not to persons fishing from the shore. That section is amended so that orders may be made in relation to such persons. Offences are also created in respect of persons fishing in contravention of an order.

508. The amendments also provide for restrictions to be made in an order to place limits on how much fish a person or a fishing boat may take in any given period. Any fish caught in excess of this limit must be returned to the sea. The order may provide that any sea fish caught during the relevant period but returned to the sea as soon as the limit is exceeded do not count towards the limit imposed by the order in question. In addition, the amendments provide that an order which prohibits fishing for sea fish, or fishing for sea fish by any specified method, may require the stowage of fishing gear.

509. The powers to make orders using the new provisions would be exercisable by the Secretary of State as regards England and the Welsh Ministers as regards Wales. Since this section does not extend to Northern Ireland, amendments have been made to remove Northern Ireland fishing boats from the coverage of certain of the measures.

#### ***Section 199: Penalties for offences***

510. Section 11 of the Sea Fish (Conservation) Act 1967 sets the levels of fine applicable for persons found guilty of offences under specified sections of that Act. Offences under section 3, 4(9A) or 5(6) attract a fine not exceeding £5,000 on summary conviction or an unlimited fine on conviction on indictment. Offences under section 1, 2 or 6(5) attract a fine not exceeding the statutory maximum on summary conviction or an unlimited fine on conviction on indictment. Section 11 is amended to increase these levels of fine on summary conviction to a maximum of £50,000 or on indictment to an unlimited fine.

511. Section 15 of the Sea Fish (Conservation) Act 1967 provides penalties for certain offences relating to the enforcement of orders under that Act by British sea-fishery officers. That section is amended to replace paragraph (b) of subsection (2C) with two new subsections which provide for maximum fines on summary conviction for the offences of obstructing or assaulting an enforcement officer in the exercise of his duties under section 15 of £20,000 and £50,000 respectively.

512. Section 16 of the Sea Fish (Conservation) Act 1967 provides for the enforcement of section 2 and orders made under section 1 of that Act. That section is amended to replace subsection (1A) with two new subsections which provide for maximum fines on summary conviction for the offences of obstructing or assaulting an enforcement officer in the exercise of his powers under subsection (1) of £20,000 and £50,000 respectively.

#### ***Section 200: Offences by directors, partners, etc***

513. This section replaces section 12 of the Sea Fish (Conservation) Act 1967 and provides that where offences under sections 1 to 6 of that Act have been committed by a body corporate, then any officer, as defined, of the body corporate may be found to be guilty of that offence and liable to proceedings and fines. Officers will be liable in this way only where the offence has been committed with their consent or connivance or through their neglect. Similar provision is made in respect of offences committed by Scottish firms.



***Section 201: Minor and consequential amendments***

514. This section introduces Schedule 15, which contains minor and consequential amendments to sections 1, 3, 5 and 11 of the Sea Fish (Conservation) Act 1967 and Schedule 4 to the Fisheries Act 1981.

**Chapter 2: The Sea Fisheries (Shellfish) Act 1967**

515. For the purpose of establishing or improving, and of maintaining and regulating, shellfisheries, the Secretary of State and the Welsh Ministers may make several and regulating orders under the Sea Fisheries (Shellfish) Act 1967 (“the Act”). The Act allows for orders to be made, in the name of a person or body of persons (whether corporate or unincorporated), to restrict the right of fishing in a defined area of the sea to that person or body. An order will relate to a named species of shellfish and will be granted for a set period of up to 60 years.

516. Several orders grant exclusive rights to deposit, propagate, dredge, fish for and take specified shellfish. Grantees may cultivate and manage the fishery by preparing the ground, often by bringing in new seed stocks to grow on the fishery.

517. Regulating orders grant powers to enable grantees to better manage and conserve specified shellfish stocks in a designated area. In particular, orders may enable grantees to introduce quotas for shellfish stocks and a system of licensing to restrict the number of persons authorised to exploit the fishery.

518. Orders may also be made which combine provisions of both several and regulating orders (these orders are known as “hybrid” orders). Where such an order is made, it sets up a regulated fishery that has within its boundaries one or more areas designated as several fisheries.

519. Parts of the Act extend to private shellfisheries which have been established under Acts of Parliament. Such shellfisheries are normally in respect of oyster fisheries and establish private rights in much the same way as with several orders.

***Section 202: Power to make orders as to fisheries for shellfish***

520. Section 1(1) is amended to allow for orders to be made in relation to all types of shellfish including those not already listed in subsection (1) of that section, without the present requirement for regulations to be made each time the Secretary of State (or, as the case may be, the Welsh Ministers) wishes to add a new type of shellfish to the list. The amendment extends to England and Wales only.

521. As a consequence of amending section 1(1), section 15(2) of the Sea Fisheries Act 1968 is repealed.

522. Section 1(4) is repealed. This removes the need for the Crown Estate or representatives of the Duchy of Cornwall or the Duchy of Lancaster to consent to the making of a several or regulating order. The amendment extends to England and Wales only.

523. Paragraph 6 of Schedule 1 is amended so that it requires the appropriate Minister to have regard to the powers and duties of the Crown Estate Commissioners under the Crown Estate Act 1961 when making a several or regulating order in relation to a part of the sea shore belonging to the Crown Estate. The Duchies, and other landowners affected by the creation of an order, remain statutory consultees. The amendment extends to England and Wales only.

***Section 203: Variation etc of orders as a result of development***

524. This section amends section 1 of the Sea Fisheries (Shellfish) Act 1967 to enable several and regulating orders to be varied or revoked in order for development of the sea shore affected by such orders to be carried out.

525. The power to vary or revoke a several or regulating order arises where permission has been granted for a development in, on or over any part of the sea shore affected by an order and that development will make it impossible or impracticable to exercise the rights conferred by the order. Provision for paying compensation to holders of fishery rights affected by the development may be made by the variation or revocation order.

526. Before varying or revoking an order, the appropriate Minister must consult anyone entitled to a right of fishery in the affected area, as well as the owners and occupiers of the sea shore affected by the order.

527. The amendment extends to England and Wales only.

***Section 204: Purposes for which tolls etc may be applied***

528. Section 3 is amended to set out the powers of grantees of regulating orders who have the right to regulate the fishery. The amendment establishes that grantees may spend monies collected by way of tolls and royalties for purposes connected with the regulation of the fishery, not just for the improvement of the fishery as currently set out in section 3 of the Act. The amendment also establishes that grantees may, where the order provides, retain a portion of the tolls and royalties to cover the costs generated in applying for their order. The amendments extend to England and Wales only.

***Section 205: Increase in penalties for certain offences relating to fisheries for shellfish***

529. Sections 3 and 7 are amended so that the maximum fine that may be imposed by a court is increased to £50,000 in line with that for other fisheries legislation. The maximum fine that may be imposed by a magistrates' court at present is £5,000. The amendment extends to England and Wales only.

***Section 206: Liability of master, etc where vessel used in commission of offence***

530. Section 3 of the Act is amended to provide that, where a fishing boat is used in the commission of an offence under section 3(3), the master, owner and charterer (if any) of the boat are each guilty of an offence. Section 22 is also amended by this section to introduce a definition for the term "master" in line with that in the Sea Fish (Conservation) Act 1967 and the Fisheries Act 1981.

531. The amendments establish that masters, etc. of vessels who are licence holders may be found guilty of offences which take place from their vessels, with the possibility that their licence may be cancelled. The amendments extend to England and Wales only.

***Section 207: Restrictions imposed by grantees, etc***

532. Section 3 is amended to ensure that where a regulating order enables a grantee to impose restrictions or make regulations about the dredging, fishing for and taking of shellfish, the grantee is able to carry into effect and enforce those restrictions and regulations in the same way as may be done for regulations imposed by and restrictions made in the order itself. This amendment brings England and Wales in line with Scotland for which similar provision was made by the Police, Public and Criminal Justice (Scotland) Act 2006.

***Section 208: Cancellation of licence after single relevant conviction***

533. Section 4 of the Act is amended to allow for the removal of licences from a holder after a single conviction for a breach of licence or of the provisions of the regulating order. This mirrors an amendment that was made in Scotland by section 32 of the Aquaculture and Fisheries (Scotland) Act 2007. The amendment extends to England and Wales only.

***Section 209: Register of licences***

534. New section 4ZA requires grantees of regulated fisheries to hold a register of current licence-holders' names and addresses and make it available for inspection free of charge. Copies may be issued and a charge may be made for doing so.

535. This new requirement for a register of licence holders is intended to assist the Gangmasters Licensing Authority in their duties under the Gangmasters Licensing Act 2004 and will also allow anyone to see who is currently benefiting from a licence. The amendment extends to England and Wales only.

***Section 210: Protection of private shellfish beds***

536. Section 7 is amended to extend the protection afforded to private oyster beds under section 7 to all privately owned shellfish beds for the particular type of shellfish to which their rights of ownership relate. The amendment extends to England and Wales only.

***Section 211: Use of implements of fishing***

537. Section 7(4) of the Act currently provides that it is an offence to use any implement of fishing, apart from a line and hook or a net for catching floating fish, in any area where there is a right of several fishery or in a private oyster bed.

538. The amendments enable the Secretary of State (or, as the case may be, the Welsh Ministers) to specify by or under an order other implements of fishing that may be used in areas where there is a right of several fishery. The use of such implements may be restricted to particular times or particular areas of the fishery.

***Section 212: Taking of crabs and lobsters for scientific purposes***

539. Section 17 provides that it is an offence to take, possess, sell, etc certain edible crabs and lobsters. The amendments to section 17 provide for an exemption where a person has authorisation to take edible crabs and lobsters for scientific purposes. Authorisation for the

taking of such shellfish from within British fishery limits, not including the Scottish zone, Northern Ireland zone or Welsh zone, will be granted by the MMO, and authorisation for the taking of such shellfish from the Welsh zone will be granted by the Welsh Ministers. As well as extending to England and Wales, the amendment also extends to Scotland. This ensures that an authorisation granted by the MMO or the Welsh Ministers to take crabs and lobsters from those parts of the sea is recognised in Scotland, even though no authorisation may be granted by the Scottish Ministers to take such shellfish from the Scottish zone.

540. The ban on taking crabs covers those carrying spawn attached to their tail or other exterior part and those which have recently cast their shell. Should an order covering lobsters be made, this will also allow the MMO or the Welsh Ministers (as the case may be) to grant authorisations in respect of taking lobsters for scientific purposes.

541. The new subsections mean that the taking of crabs and lobsters for scientific purposes will not be an offence under section 17 and brings the Act in line with both Community and domestic legislation.

***Section 213: Orders prohibiting the taking and sale of certain lobsters***

542. The amendments allow the Secretary of State (or, as the case may be, the Welsh Ministers) to make an order to introduce protection for lobsters under section 17(3) independently of any other devolved administration. Each administration will be able to act alone. At present Scottish Ministers may act alone to make an order for Scotland. However the Secretary of State and the Welsh Ministers must act jointly with the Secretary of State for Scotland to make orders for England and Wales. This difference in procedure between the administrations is a consequence of devolution and of subsequent amendments to section 17. The amendment extends to England, Wales and Scotland.

***Section 214: Power to appoint an inspector before making orders as to fisheries for shellfish***

543. These amendments remove the requirement to appoint an inspector and provide the Secretary of State (or, as the case may be, the Welsh Ministers) with a discretionary power in making decisions on the appointment of an inspector and calling public inquiries. This amendment does not apply to any application made for an order under section 1 of the Act before this section comes into force. The amendment extends to England and Wales.

**Chapter 3: Migratory and Freshwater Fish**

544. This Chapter widens the powers available to the Environment Agency in its role as a fisheries manager. It also gives powers to the appropriate national authority to make regulations in respect of the keeping of live fish and their introduction into and removal from inland waters.

545. The Salmon and Freshwater Fisheries Act 1975, the Water Resources Act 1991 and the Environment Act 1995 apply a regulatory framework (a licensing system, byelaw making powers, enforcement powers and certain other restrictions) to fisheries of salmon, trout, eels and freshwater fish. The sections in this Chapter amend these three Acts and related enactments to extend the regulatory framework to smelt, lampreys, and (in respect of byelaw-making powers) shad, and to empower the appropriate national authority to add any other

kinds of fish to the regulatory framework. There are also a number of other miscellaneous changes, including amendments to the Theft Act 1968 and the Salmon Act 1986.

546. The 1975, 1991 and 1995 Acts apply to England and Wales, including the adjacent territorial sea, and to those parts of the Border River Esk and its tributaries which are in Scotland. They do not apply to those parts of the River Tweed and its tributaries which are in England. The sections in this Chapter, with some exceptions, have the same application. The exceptions are section 231, which applies to the whole catchment area of the Border River Esk, and amendments to the Theft Act 1968 and the Salmon Act 1986 (sections 228 and 229) which apply in England and Wales only.

547. “Appropriate national authority” means the Secretary of State, except in relation to Wales and the territorial sea adjacent to it, where it means the Welsh Ministers (see section 221(2)).

#### *Taking fish etc*

#### **Section 215: Prohibited implements**

548. This section amends section 1 of the Salmon and Freshwater Fisheries Act 1975. Section 1 creates offences in relation to certain instruments used for taking fish; in particular section 1(1)(a) lists instruments the use of which is prohibited.

549. *Subsection (2)(a)* adds tailers to the list in section 1(1)(a). A tailer is a pole with a retractable loop of wire at the end, which is looped around the body of the fish to help remove it from the water.

550. *Subsections (2)(b), (3) and (4)* extend the list of fisheries to which section 1 applies to those for eels, lampreys, smelt, shad. *Subsection (5)* inserts a new subsection (1A) into section 1, which extends this list to fisheries for any fish specified in an order made under new section 40A of the Salmon and Freshwater Fisheries Act 1975 (inserted by section 221).

551. *Subsection (5)* also inserts a new subsection (1B) into section 1, which gives the appropriate national authority power by order to add or remove instruments from the list in section 1(1)(a).

552. *Subsection (6)* inserts new section 1(3A), by virtue of which references in section 1 to waters include waters adjoining the coast of England and Wales to a distance of six nautical miles from baselines. This corresponds to the area of sea in which the Environment Agency carries out its functions.

553. Section 1(4) of the Salmon and Freshwater Fisheries Act 1975 permits the use of a gaff or tailer when fishing with a rod and line. A gaff is a pole with a steel hook mounted on the end, used to snag the fish, and subsequently to remove it from the water. *Subsection (7)* omits both this subsection, and the references to it within the section, with the effect that the use of these instruments is no longer permitted.

***Section 216: Roe etc***

554. This section amends section 2 of the Salmon and Freshwater Fisheries Act 1975. Section 2(1) prohibits the use of roe (fish eggs) and the buying, sale or possession of salmon or trout roe, for the purpose of fishing for salmon, trout or freshwater fish.

555. Section 2(1)(a) is amended by extending the prohibition on the use of roe for the purpose of fishing to lampreys, smelt, shad, and to any other specified fish (by order under new section 40A). This section amends section 2(1)(b) to cover the buying, selling, exposing for sale or possession of any roe for that purpose.

556. Section 2(2) is amended to extend the prohibition on taking, killing or injuring and buying, selling or possession of any unclean or immature fish to lampreys, smelt and shad. An unclean fish is one which is about to spawn, or has recently spawned and has not yet recovered from spawning.

557. *Subsection (4)* allows the taking of immature freshwater fish where permitted by Environment Agency byelaws.

***Section 217: Licences to fish***

558. This section amends section 25 of the Salmon and Freshwater Fisheries Act 1975, which requires the Environment Agency to regulate fishing for salmon, trout, eels and freshwater fish by means of a system of licensing.

559. *Subsection (1)* inserts new section 25(1) which amends the scope of the licensing system by extending the list of kinds of fish to which the licensing system applies to include lampreys, smelt and any fish specified in an order made under new section 40A of the Salmon and Freshwater Fisheries Act 1975. New section 25(1) also restricts the licensing system to licensable means of fishing. Licensable means of fishing are the instruments set out in new section 25(1A). These are rod and line, historic installations (certain fixed nets and traps which were certified under old legislation, or were in use by virtue of a grant or charter or immemorial usage in 1861) and such other means of fishing as the appropriate national authority may specify by order.

560. A person who fishes otherwise than by a licensable means of fishing is required to have an authorisation under new section 27A of the Salmon and Freshwater Fisheries Act 1975, inserted by section 219.

561. *Subsection (2)* provides that the Environment Agency, which already has the power to introduce licences for different areas, may introduce licences in relation to different descriptions of waters. For example, this power might be used to introduce different licences for canals as opposed to rivers.

562. *Subsection (3)* amends section 25(4) by removing a person's entitlement to use a gaff or taylor when fishing with rod and line. This flows from the addition of tailers to the list of prohibited instruments in section 1.



563. *Subsection (4)* omits previous provisions which, first, deemed a licence for fishing for salmon also to allow fishing for trout, and, second, deemed a licence for fishing for salmon or trout to allow fishing also for freshwater fish and eels.

564. *Subsection (5)* inserts new section 25(10) and (11), which allows the Environment Agency to permit people to fish by licensable means of fishing without a licence. For example, the Agency may allow those who need to remove excess fish from a particular water for management reasons, to do so without a licence.

565. *Subsection (6)* amends paragraph 11, and omits paragraph 12, of Schedule 2 to the Salmon and Freshwater Fisheries Act 1975. This removes the requirement to pay 20p for each name removed from, inserted into or substituted in a fishing licence.

566. *Subsection (7)* empowers the Environment Agency to impose conditions (by way of notice) on a licence to use historic installations. Conditions might include a limit on the number of fish which may be taken, specifying the times at which they may be taken or the gear which may be used. A breach of such a licence condition is an offence under section 27 of the Salmon and Freshwater Fisheries Act 1975.

### ***Section 218: Limitation of licences***

567. This section amends section 26 of the Salmon and Freshwater Fisheries Act 1975. Section 26 enables the Environment Agency, by order confirmed by the Minister, to limit the number of licences which it may issue for fishing for salmon or trout other than rainbow trout with any specified instrument other than rod and line. References to “the Minister” are replaced by references to the appropriate national authority throughout this section.

568. The amendments made by *subsection (2)* allow orders under section 26 to be made in respect of any kind of licence issued under section 25. Exceptions to this are provided by *subsection (3)*. This inserts new section 26(1A) and (1B), which sets out the circumstances in which an order may be made and excludes fishing by rod and line or historic installation from the scope of an order. This will allow the Environment Agency to limit the number of licences for all those fisheries subject to the system of licensing under section 25(1). New section 26(1A)(b) will empower the Environment Agency to limit the number of licences in fisheries that have a significant impact on the marine or aquatic environment.

569. The Minister is currently required to hold a local inquiry before confirming an order made under section 26 if the number of licences proposed to be issued is less than the number of licences issued in any of the three preceding years, or if an objection is made by any person who has held a relevant licence during each of the two preceding years. *Subsection (4)* amends section 26(3) to remove the obligation to hold a local inquiry, and replaces it with a power to do so.

570. Section 26(4) and (5) prohibits Ministers from confirming an order if it fails to secure that any person who is dependent on fishing for his livelihood may obtain a licence under it. *Subsection (5)* replaces this requirement with a power for the Environment Agency to pay compensation.

***Section 219: Authorisation to fish***

571. This section inserts new sections 27A and 27B into the Salmon and Freshwater Fisheries Act 1975. New section 27A gives the Environment Agency power to authorise a person to use any means (other than a licensable means of fishing) to fish for salmon, trout, eels, lampreys, smelt and freshwater fish, and other specified fish (by order under new section 40A). The Environment Agency may refuse or revoke authorisations, subject them to conditions, charge for them and grant them for limited periods of time. The Agency will also be able to grant an authorisation to a business or organisation or to a named individual within that organisation.

572. New section 27B makes it an offence to fish for or take fish using any means of fishing, other than an instrument for which a licence is required, without an authorisation.

***Section 220: Enforcement***

573. This section amends Part 5 of the Salmon and Freshwater Fisheries Act 1975.

574. *Subsection (2)* amends section 31. Section 31 gives water bailiffs (enforcement officers of the Environment Agency) powers of search and seizure where instruments or baits have been used in contravention of the Act. *Subsection (2)(a)* and *(b)* removes references to the Act so as to allow water bailiffs to check, amongst other things, partially submerged fishing gear to ensure hooks or bait prohibited under byelaws are not being used.

575. *Subsection (2)(c)* provides that a water bailiff's power of seizure includes a sample of any fish.

576. *Subsection 2(d)* allows water bailiffs to disable or destroy dams, fishing weirs, fishing mill dams or fixed engines suspected of having been operated or used, or likely to be used in contravention of the Salmon and Freshwater Fisheries Act 1975. This replaces, with some changes, the powers that were previously in sections 6, 7, and 8 of the 1975 Act but are deleted by other provisions in this Act.

577. *Subsection (3)* amends section 32. Section 32 gives water bailiffs the power to enter, remain upon and traverse any lands adjoining or near to any waters, subject to exceptions. The amendment removes the exception for decoys or lands used exclusively for the preservation of wild fowl which will allow, for example, water bailiffs to take action on such land against poaching.

578. *Subsection (4)* amends section 33. Section 33 enables a justice of the peace to issue a warrant authorising a water bailiff to enter land for the purpose of seizing illegal nets and other such instruments as well as salmon, trout, freshwater fish or eels that might have been illegally taken. *Subsection (4)(a)* extends the power of seizure to legal instruments suspected to have been used illegally and *subsection (4)(b)* extends the power to any fish illegally taken or sold. *Subsection (4)(c)* extends the purpose for which a power of entry may be authorised to the destruction or disablement of any fixed engine, dam, fishing weir or fishing mill dam found on the premises and suspected of having been used illegally.

579. *Subsection (5)* increases the period during which a warrant remains in force from one week to three months.

580. *Subsection (6)* amends section 34. Section 34 enables water bailiffs to seize without warrant any person who has illegally taken or killed fish, or is found on or near any waters with the intent so to do, or with any prohibited instrument but only during the period between sunset and sunrise. *Subsection (6)* removes this restriction.

581. *Subsections (7) and (8)* amend section 35. Section 35 empowers water bailiffs and other enforcement officers to demand a person fishing, suspected of being about to fish, or having fished in the preceding half hour, to produce his fishing licence or other authority to fish.

582. *Subsections (7)(a) and (7)(b)* replace the reference to having fished within “the preceding half hour” with having fished “recently” and allow water bailiffs to demand the production of a fishing licence from those suspected of intending to fish or those who have recently fished.

583. *Subsection (7)(c)* limits water bailiffs’ and other enforcement officers’ powers to require the production of a licence or authorisation issued under the Salmon and Freshwater Fisheries Act 1975 or a licence issued under section 16 of the Wildlife and Countryside Act 1981, under which certain species of fish are protected.

584. *Subsection (8)* omits section 35(2). This allowed any person, on the production of their own fishing licence, to demand another person produce their fishing licence and to state their name and address.

585. *Subsection (9)* increases the fine for using any explosive substance, any poison or other noxious substance, or any electrical device with the intent to take or destroy fish in contravention of section 5 of the Salmon and Freshwater Fisheries Act 1975 from the prescribed sum (currently £5,000) to £50,000.

***Section 221: Power to specify fish***

586. This section inserts a new section 40A into the Salmon and Freshwater Fisheries Act 1975.

587. New section 40A empowers the appropriate national authority to specify additional species of fish to which the following provisions will apply:

- fishing with prohibited instruments (section 1 of the Salmon and Freshwater Fisheries Act 1975);
- use of roe (section 2 of that Act);
- licensing and authorisation of fishing activities (sections 25 and 27A of that Act);
- the offence of handling fish in suspicious circumstances (section 32 of the Salmon Act 1986);

- byelaw making powers (paragraph 6 of Schedule 25 to the Water Resources Act 1991); and
- the duties of the Environment Agency (section 6(6) of the Environment Act 1995).

***Section 222: Order-making powers: supplementary***

588. This section inserts section 40B into the Salmon and Freshwater Fisheries Act 1975, which sets out the procedure for making an order made under section 40A described above.

***Section 223: Definitions relating to fish***

589. This section amends section 41 of the Salmon and Freshwater Fisheries Act 1975. It gives amended definitions for eels and freshwater fish and new definitions for freshwater crayfish and smelt.

***Byelaws***

***Section 224: Power to make byelaws***

590. This section amends paragraph 6 of Schedule 25 to the Water Resources Act 1991, which sets out the Environment Agency's powers to make fisheries byelaws.

591. *Subsections (2) and (3)* extend the species of fish for which the Environment Agency may make byelaws to include (in addition to salmon, trout, eels and freshwater fish) lampreys, shad and smelt, and any fish specified (by order under new section 40A of the Salmon and Freshwater Fisheries Act 1975).

592. *Subsection (4)* allows the Environment Agency to set close seasons and close times. These powers were previously in Schedule 1 to the Salmon and Freshwater Fisheries Act 1975. All byelaw powers will now be in the 1991 Act and enforced by section 211 of the Water Resources Act 1991, which makes it an offence to breach a byelaw, including one made under paragraph 6(2)(a) of Schedule 25 to the 1991 Act.

593. *Subsection (5)* amends paragraph 6(2)(b)(i) to allow byelaws prohibiting the taking of fish greater than a specified size in addition to the taking of or fishing for fish smaller than a specified size.

594. *Subsection (6)* amends paragraph 6(2)(e) to allow byelaws to be made for purposes which were previously contained in section 20 of the Salmon and Freshwater Fisheries Act 1975.

595. *Subsection (7)* omits paragraph 6(3), which allowed byelaws imposing further restrictions on fishing activity during close times. It is replaced by the general close season and close time byelaw making power described in relation to *subsection (4)* (see above).

596. *Subsection (8)* omits paragraph 6(4) of Schedule 25, which allows byelaws regarding the deposit or discharge of liquid or solids detrimental to fish. Section 4 of the Salmon and Freshwater Fisheries Act 1975 provides specific control of these activities.

597. *Subsection (9)* inserts new paragraph 6(5A) and (5B) into Schedule 25. Sub-paragraph (5A) enables the Environment Agency to authorise a person to act in breach of a byelaw. Examples of where an authorisation might be given are where action is needed to ensure the good management of a fishery or for scientific research. Sub-paragraph (5B) clarifies that byelaws may apply to historic installations.

598. Under *subsection (10)* existing byelaws made under paragraph 6(3) may be taken as having been made under the new power.

***Section 225: Byelaws: emergency procedures***

599. This section inserts a new Schedule 27 into the Water Resources Act 1991. Schedule 27 sets out the circumstances in which the Environment Agency may make emergency byelaws and the procedure for making such byelaws. Unlike byelaws made under Schedule 25 to the 1991 Act, there is no requirement for statutory public consultation or for confirmation by the appropriate national authority. Instead, emergency byelaws are time-limited and the appropriate national authority has a duty to repeal an emergency byelaw where it appears the criteria for making it no longer apply, or to amend it where it considers it appropriate.

***Section 226: Byelaws: enforcement***

600. Section 211 of the Water Resources Act 1991 sets the levels of fines for contravening byelaws made by virtue of Schedule 25 to that Act. This section raises the fine from one not exceeding level 4 on the standard scale (currently £2,500) to £50,000.

***Section 227: Byelaws: compensation***

601. This section replaces the duty in section 212 of the Water Resources Act 1991 to pay compensation to a fishery owner or occupier whose fishery is injuriously affected by a byelaw with a power to do so.

***Supplementary***

***Section 228: Theft of fish from private fisheries etc***

602. This section raises the penalty for committing the offence of taking or destroying fish under paragraph 2 of Schedule 1 to the Theft Act 1968 to £5,000. Previously, it was £200 for an offence committed during the day and £1,000 for an offence committed at night to £5,000. It also omits the requirement for the offence to have taken place during the hours between sunset and sunrise, removes the custodial element of the penalty, and removes the link to a previous conviction.

***Section 229: Handling fish***

603. Section 32 of the Salmon Act 1986 makes it an offence to handle salmon or sea trout in suspicious circumstances. A person is guilty of the offence if, at a time when he believes or it would be reasonable for him to suspect that an offence involving taking, killing or landing a salmon or sea trout has been committed, he receives the salmon or sea trout, or undertakes or assists in its retention, removal or disposal by or for the benefit of another person, or if he arranges to do so.

604. This section extends the offence to eels, lampreys, smelt, freshwater fish, and other specified fish (by order under section 40A of the Salmon and Freshwater Fisheries Act 1975). Salmon, trout, eel, smelt, fish and freshwater fish are given the same meaning as in section 41(1) of that Act.

605. *Subsection (3)(c)* removes the requirement for the undertaking or assisting to have been “for the benefit of another person”. The effect is that a person commits an offence if he undertakes, for instance, the disposal of fish for his own benefit and knows or suspects that the fish was unlawfully taken.

606. *Subsection (5)* adds the sale of fish to the list of offences relevant to the commission of an offence under section 32. This means it becomes an offence to handle a fish sold in contravention of, for example, byelaws.

### ***Section 230: Duties of the Environment Agency***

607. Section 6(6) of the Environment Act 1995 requires the Environment Agency to maintain, improve and develop salmon fisheries, trout fisheries, freshwater fisheries and eel fisheries.

608. This section extends the duty to lampreys and smelt fisheries, and fisheries of other specified fish (by order under section 40A of the Salmon and Freshwater Fisheries Act 1975).

### ***Section 231: Tweed and Esk fisheries***

609. Historically, English legislation on salmon and freshwater fisheries has applied to the Scottish as well as the English River Esk and its tributaries. Conversely, Scottish legislation has applied to the English as well as the Scottish Tweed. Section 111 of the Scotland Act 1998 allows this position to be maintained post-devolution by means of an Order in Council. Currently such orders may only relate to salmon, trout, eels and freshwater fish.

610. *Subsection (2)* amends section 111 to extend the scope of the order-making power to eels, lampreys and smelt. Section 111(4) defines “conservation “in relation to salmon, trout, eels and freshwater fish to include the protection of the environment. *Subsection (3)* extends this definition to the protection of the environment of lampreys, smelt and shad. *Subsection (4)* allows the Order in Council to amend section 111(1) to add or remove any species of fish listed and to which the order-making power applies.

### ***Section 232: Keeping, introduction and removal of fish***

611. This section allows the appropriate national authority to make regulations to prohibit persons from keeping any fish, introducing any fish into inland waters or removing any fish from inland waters without prior authorisation.

612. Section 30 of the Salmon and Freshwater Fisheries Act 1975 prohibits the introduction of fish into inland waters unless the person introducing the fish has the prior consent in writing of the Agency. Regulations made under section 232 may make consequential amendments to legislation, which would allow section 30 to be replaced by any such regulations.



***Section 233: Consequential and supplementary amendments***

613. This section omits sections 4(2), 23 and 24 of the Salmon and Freshwater Fisheries Act 1975.

614. Section 4 of the 1975 Act makes it an offence to allow any liquids or solid matter into waters that cause those waters to be poisonous or injurious to fish, spawning grounds, spawn or food of fish. Section 4(2) disappplies this offence in relation to those exercising any lawful rights, or continuing a method in use in connection with the same premises before 18 July 1923.

615. As water pollution legislation (from Rivers Prevention of Pollution Act 1951 through to Water Resources Act 1991) has removed any right to pollute without the prior consent of the Environment Agency, the disapplication under section 4 no longer applies.

616. Section 23 of the 1975 Act prohibits the export of unclean salmon or trout or any salmon or trout caught during a period when the sale of salmon or trout is prohibited. It also sets conditions on the export of salmon or trout between 31 August and the following 1 May. These provisions serve no useful purpose.

617. Section 24 of the 1975 Act requires consignments or packages containing salmon and trout to be so marked. The requirement to carry a consignment note under Council Regulation (EC) 1/2005 on the Protection of Animals During Transport and Related Operations makes this section redundant.

**Chapter 4: Obsolete Fisheries Enactments**

***Section 234: Repeal of spent or obsolete enactments***

618. This section repeals six redundant Acts of Parliament relating to sea fisheries and part of one further such Act. All of this legislation is approximately 100 years or more old. These Acts are repealed as part of a wider Government commitment to reduce regulatory burdens on the private, public and voluntary sectors through the Davidson Review<sup>11</sup>. The Davidson Review identified a series of fisheries Acts to consider for repeal. At the present time the Government has been able to identify six Acts and part of a seventh as suitable for immediate repeal. This section also repeals sections 86, 87 and 163 of the Port of London Act 1968.

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<sup>11</sup> Further information on the *Davidson Review: Implementation of EU legislation* can be found on <http://www.berr.gov.uk/files/file44583.pdf> or ISBN-10: 0-11-840484-9 and ISBN-13: 978-0-11-840484-6.

## **PART 8: ENFORCEMENT**

### **Chapter 1: Enforcement Officers**

#### *Marine Enforcement Officers*

619. These sections enable the MMO and the Welsh Ministers to appoint enforcement officers for the purpose of enforcing marine licensing, nature conservation and sea fisheries legislation. Such officers are called marine enforcement officers, or MEOs. On appointment, an MEO is automatically a British sea-fishery officer (see section 239). Any commissioned officer of the Royal Navy, and any person in charge of an aircraft or hovercraft of the Armed Services, are also MEOs.

620. The sections also enable the Department of the Environment in Northern Ireland to appoint officers with the common enforcement powers to enforce licensing and the Scottish Ministers to appoint officers with the common enforcement powers to enforce licensing and nature conservation legislation. For areas where the new enforcement officer powers do not apply, existing enforcement powers will remain in place.

621. Enforcement of sea fisheries, licensing and nature conservation in the marine area is currently performed by: British sea-fishery officers, under legislation such as the Sea Fisheries (Conservation) Act 1967, the Sea Fisheries Act 1968, the Fishery Limits Act 1976 and the Fisheries Act 1981; officers appointed under the Sea Fisheries Regulation Act 1966; officers appointed under the Food and Environment Protection Act 1985; and officers appointed under the Wildlife and Countryside Act 1981 and the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007. Enforcement powers in these Acts and Regulations are consolidated here.

622. Where the MMO takes on responsibility for enforcement of regulations which are not otherwise covered by the Act, the regulations will be amended to enable enforcement officers to exercise Chapter 2 powers (common powers) and Chapter 3 powers (other powers). Examples of such regulations include the Environmental Impact Assessment and Natural Habitats (Extraction of Minerals by Marine Dredging) (England and Northern Ireland) Regulations 2007, the Fisheries and Aquaculture Structures (Grants) (England) Regulations 2001 and the Grants for Fishing and Aquaculture Industries Regulations 2007.

#### ***Section 235: Marine enforcement officers***

623. This section allows the MMO and the Welsh Ministers to appoint marine enforcement officers (“MEOs”). The appointment of such officers may be restricted, so that they do not have the ability to use all the powers officers would otherwise have on appointment: for example, limitations to the geographical area within which an officer may use the powers. Commissioned officers of the Royal Navy and anyone in the Royal Navy, Army or RAF in charge of an aircraft or hovercraft are automatically MEOs. *Subsection (3)* is a transitional provision allowing the Secretary of State to appoint MEOs in advance of the establishment of the MMO, which will then appoint MEOs in England.

***Section 236: Enforcement of marine licensing regime***

624. This section sets out the areas in which and the vessels and installations in relation to which an MEO may exercise his enforcement powers for the purposes of enforcing the marine licensing regime set out in Part 4 of the Act. The enforcement powers that may be exercised by an MEO for enforcing licensing legislation are the common enforcement powers in Chapter 2 and the specific powers relating to requirements for information about certain substances and objects in Chapter 3 (see section 263).

625. The area where enforcement powers may be used is set out in *subsection (9)* as the relevant enforcement area. However, by virtue of *subsection (3)(d)*, MEOs may also exercise their powers in Scotland and the Scottish inshore region where they are investigating an offence suspected of being committed within the relevant enforcement area. They may use their powers in the Scottish offshore region only if they are in “domestic hot pursuit”.

626. “Domestic hot pursuit” is similar to the international agreement under UNCLOS for pursuit of a vessel, and allows pursuit of a vessel, marine installation or aircraft across national jurisdictions within the UK. Domestic hot pursuit is triggered if the officer has given a signal to stop which is ignored and the vessel leaves the relevant enforcement area and travels into an area where the officer would not otherwise be able to exercise his powers, such as the Scottish offshore region. Pursuit must be continuous, although the pursuing officer, vessel, etc. may change. It allows the officer to use powers under the Act in another jurisdiction within the UK, if the officer does not otherwise have powers in that area. This power does not affect any powers the officer might have under international law.

627. The section provides that MEOs may not use their powers to enforce the marine licensing regime to the extent that it relates to any activity in Wales or the Welsh inshore region concerning or arising from the exploration for, or production of, petroleum or anything done in the course of taking installation abandonment measures in any other part of the relevant enforcement area.

628. Outside the UK marine area, the powers may be exercised in relation to any British vessel, aircraft or marine structure or any vessel which was loaded within the relevant enforcement area.

629. Only an officer of the Armed Services may exercise enforcement powers in relation to a warship.

***Section 237: Enforcement of nature conservation legislation***

630. This section sets out the areas in which and the vessels and installations in relation to which an MEO may exercise his enforcement powers for the purposes of enforcing legislation relating to nature conservation. It also sets out the legislation that an MEO may enforce. The enforcement powers that may be exercised are the common enforcement powers in Chapter 2.

631. Within the UK and its marine area there are some restrictions as to where MEOs may exercise their powers for enforcing nature conservation legislation. MEOs have jurisdiction in the relevant enforcement area as defined in section 237(13). If an MEO is investigating an offence suspected of being committed within the relevant enforcement area, they may

exercise their powers in Northern Ireland and Scotland and in the territorial waters around Northern Ireland or Scotland by virtue of *subsection (3)(c)*. In the Scottish offshore region they may exercise their powers only if in domestic hot pursuit (see explanatory note to section 236).

632. Outside the UK marine area, an MEO may exercise the powers in relation to any British vessel or marine installation.

***Section 238: Enforcement of fisheries legislation***

633. This section sets out the areas in which and the vessels and installations in relation to which an MEO may exercise his enforcement powers for the purposes of enforcing sea fisheries legislation. The enforcement powers that may be exercised are both the common enforcement powers in Chapter 2 and fisheries specific powers in Chapter 3 relating to: the inspection and seizure of objects at sea (section 264); seizing fish or fishing gear for the purpose of forfeiture (sections 268 and 269); detention of vessels in connection with court proceedings (section 279); and production of certain equipment (section 284).

634. MEOs are able to use the common powers in circumstances as described in *subsection (4)*. MEOs may use these powers in the relevant enforcement area as defined by section 238(10). MEOs cannot use their powers in Scotland or Northern Ireland or their waters unless in domestic hot pursuit (see explanatory note to section 236) or if they are using them in relation to a British fishing boat which is not a Scottish or Northern Ireland fishing boat. However, the effect of section 239 is that they will retain British sea-fishery officer powers where they do not have MEO powers.

635. Outside British fishery limits, MEOs may exercise their powers in relation to any British vessel or marine installation, other than a Scottish or Northern Ireland fishing boat.

636. Only an officer of the Armed Services may exercise enforcement powers in relation to a warship.

***Section 239: Marine enforcement officers as British sea-fishery officers***

637. Section 7 of the Sea Fisheries Act 1968 provides for the appointment of British sea-fishery officers (BSFOs). This section makes MEOs automatically BSFOs on appointment but provides that where MEOs are able to exercise common enforcement powers under the Act, they cannot use their BSFO powers. Thus MEOs may use BSFO powers where their MEO powers are not available to them (for example, in enforcing against a Scottish boat in Scottish waters which an MEO had not pursued under section 237(4)).

***Other enforcement officers***

***Section 240: Marine licensing: oil and gas and other reserved matters***

638. The Secretary of State will be able to appoint persons to enforce Part 4 of the Act, to the extent that it relates to the licensing of activities relating to various reserved matters. The range of activities in respect of which such persons will be able to exercise enforcement powers differs depending on that part of the UK marine licensing area in which the activities take place. In the Scottish offshore region these activities are limited to those that relate to oil and gas, defence and the prevention of pollution (see *subsection (1)(a)*). In the Welsh inshore

region these activities are limited to those that relate to the exploration for, or production of, petroleum (as described in *subsection (1)(b)*). In all other parts of the UK marine licensing area, except the Northern Ireland inshore region, the activities are limited to installation abandonment measures as described in *subsection (1)(c)* and defined in *subsection (6)*. No other enforcement officers appointed under this Part will be able to enforce marine licences in relation to these matters in the areas described. Enforcement officers appointed under this section will have no functions in relation to oil and gas activities in Northern Ireland inshore waters, unless they are investigating an offence suspected of having taken place in their area of jurisdiction.

639. Enforcement officers appointed under this section will have access to the common enforcement powers in Chapter 2 of this Part and the specific power for requiring certain information relating to licensing in Chapter 3. They will have similar powers to other officers appointed under this Part for pursuing offenders across national and international boundaries.

***Section 241: Marine licensing: Northern Ireland***

640. This section allows the Department of the Environment in Northern Ireland to appoint persons for the purpose of enforcing Part 4 of the Act (marine licensing). Such an enforcement officer may exercise enforcement powers in England, Wales and Northern Ireland and in relation to any vessel, aircraft or marine installation within the UK marine licensing area other than the Scottish offshore region. If such an officer is investigating an offence suspected of being committed within their area of jurisdiction, they may use enforcement powers in Scotland and in the Scottish inshore region. However, the officer may only use these powers in the Scottish offshore region if in “domestic hot pursuit” (see explanation to section 236).

641. Enforcement officers appointed under this section do not have any powers to enforce Part 4 of the Act so far as relating to any oil and gas activities in Wales. In addition, they do not have any powers to enforce Part 4 of the Act so far as relating to the taking of installation abandonment measures (defined in *subsection (10)*), unless such measures are taken in Northern Ireland or the Northern Ireland inshore region.

***Section 242: Marine licensing: enforcement in Scottish offshore region***

642. This section enables Scottish Ministers to appoint persons for the purposes of enforcing licensing under Part 4 of this Act in the Scottish offshore region. Such officers will have access to the common enforcement powers in Chapter 2 of this Part and the specific power for requiring certain information relating to licensing in Chapter 3. These officers may not exercise their powers to enforce Part 4 so far as it relates to a limited range of reserved matters, such as oil and gas related activities (see section 240).

643. If an officer appointed by Scottish Ministers to enforce licensing is investigating an offence suspected of being committed within the Scottish offshore region, the powers to investigate on land and in inshore waters elsewhere in the UK may be used. To enforce in the offshore area other than in the Scottish offshore region, these powers will need to be used under domestic hot pursuit rules (see explanatory note to section 236).



***Section 243: Enforcement of MCZs in Scottish offshore region***

644. This section enables Scottish Ministers to appoint officers with the common powers for the purpose of enforcing section 140, which creates the offence of damaging etc protected features of MCZs, in the Scottish offshore region. Officers appointed by Scottish Ministers to enforce MCZs, investigating an offence suspected of being committed within the Scottish offshore region, may exercise their powers to investigate on land and in inshore waters elsewhere in the UK. They will need to use domestic hot pursuit to pursue offenders from the Scottish offshore region to other offshore areas within the UK marine area.

645. *Subsections (4), (5) and (6)* set out the circumstances in which a vessel is subject to hot pursuit (see explanatory note to section 236). They require that the vessel is in the Scottish offshore region, that an audible or visible signal is given for the offending vessel to stop and that the pursuit of the vessel is not interrupted.

646. *Subsection (8)* provides that persons appointed under this section may not exercise their powers in relation to British warships.

*Interpretation*

***Section 244: Interpretation of this Chapter***

647. This section provides definitions for the key terms used in this Chapter of the Act.

**Chapter 2: Common Enforcement Powers**

*Introductory*

648. This Chapter sets out various enforcement powers that are considered to be the core set of powers necessary for officers to carry out their enforcement functions in the marine area effectively. The powers are based on those in a number of pieces of existing legislation for sea fisheries, marine licensing and marine nature conservation.

***Section 245: Common enforcement powers***

649. This section introduces the purpose of the chapter, which is to set out the powers available to MEOs and other enforcement officers, and defines key terms. *Subsection (3)* provides that the powers available to enforcement officers under this Chapter do not limit their ability to act under other legislation.

*Entry, search and seizure*

***Section 246: Power to board and inspect vessels and marine installations***

650. The powers in this section enable enforcement officers to board and inspect any vessels and marine installations (subject to the need for a warrant pursuant to section 249 if the vessel or installation is a dwelling) to carry out their functions. Enforcement officers may require the vessel or marine installation to stop or do anything else that would assist them in boarding or disembarking and in carrying out their enforcement duties. The power extends to things which may be under the control of someone on the vessel or installation, such as a vessel under tow. Marine installations that may move under their own power include jack-up rigs and work platforms. The powers also allow officers to require assistance from someone present who has some control over the situation.



***Section 247: Power to enter and inspect premises***

651. The powers in this section enable enforcement officers to enter and inspect any premises (subject to the need for a warrant pursuant to section 249 if the premises are a dwelling) to carry out any relevant functions. “Premises” includes land but does not include a vehicle, vessel or marine installation. Entry must be at a reasonable time unless the officer believes that, by waiting for that reasonable time, the purpose for requiring entry and inspection may be thwarted. The officer also has the power to request assistance from people who have some control in the situation. This may be needed for instance in unlocking a door or opening a container. Where the premises are a dwelling, a warrant is needed before the power of entry may be exercised. Provisions regarding warrants are set out in section 249.

***Section 248: Power to enter and inspect vehicles***

652. This section enables enforcement officers to enter and inspect any vehicle at any time (subject to the need for a warrant pursuant to section 249 if the vehicle is a dwelling). An officer may also require the vehicle to be taken to an appropriate place to be inspected. The power also enables them to require assistance as necessary from people in the vehicle or the registered keeper.

653. The powers conferred by this section may be exercised wherever and whenever it is necessary, although subject to a warrant if it was necessary to enter a dwelling. For this section only, the term “vehicle” does not include vehicles at sea, namely vessels and marine installations (which are covered under section 245).

***Section 249: Dwellings***

654. This section provides that an enforcement officer may not enter a dwelling unless a justice has issued a warrant authorising entry. It sets out the matters that must be satisfied before a warrant may be granted. It also introduces Schedule 17 which sets out further provisions relating to warrants (how to obtain one and matters regarding the execution of the warrant).

***Section 250: Powers of search, examination, etc***

655. The powers in this section allow an enforcement officer, when exercising a power of inspection pursuant to sections 245 to 249, to search those premises and examine anything in it. They further allow the officer to stop someone and detain them to perform a search of anything in their possession or control, although *subsection (8)* means the officer cannot search a person. *Subsections (3) to (9)* enable the officer to examine anything that is in or on the relevant premises, is attached to them or is part of them, including anything that is controlled from them. Where appropriate, the officer may also test or measure any object found, which includes live animals (for example, shellfish) or plants. If necessary, an enforcement officer may break open any container or things that have been locked. The officer could also require assistance from anyone within the premises or connected to the premises to help, or from someone who has been carrying on an activity in respect of which the officer has enforcement powers.

***Section 251: Power to require production of documents, etc***

656. This section gives enforcement officers the power to require a person on or in the relevant premises being inspected to produce documents or records that they have. A document includes information which is recorded on paper or in an electronic format, and pictorial and related images.

***Section 252: Powers of seizure, etc***

657. This section enables an enforcement officer to seize and detain or remove anything found on premises or, where a person has been undertaking an activity in respect of which the officer has enforcement powers, any item in the person's possession or control. The officer may also take copies of, or extracts from, any document or record found on the relevant premises. These powers are exercisable either for the purposes of determining whether an offence has been committed or where the officer believes the item is evidence that an offence has been committed. *Subsection (5)* limits the power so that it does not allow an officer to remove any document that is required by law to be kept on the premises, such as vessel registration papers. However, *subsection (6)* allows such items to be seized when a vessel is in port.

658. *Subsection (7)* prevents an officer seizing an item which is subject to legal privilege (as defined by the Police and Criminal Evidence Act 1984) or, in Scotland, for which a claim to confidentiality of communications could be made.

***Section 253: Further provision about seizure***

659. *Subsections (1)* and *(2)* give officers powers to seize and remove things which are kept in a container and to require evidence to be put into a container so that it may be removed, such as might be necessary for undersized fish.

660. *Subsection (3)* enables officers to require that documents or materials are kept on the premises for safekeeping pending removal and seizure.

661. *Subsections (4)* and *(5)* provide that the officer may require someone to assist them with regard to matters under that person's control, for instance by opening doors, assisting with moving items etc.

662. *Subsection (6)* amends the definition of premises in section 66 of the Criminal Justice and Police Act 2001 to include "marine installation" so that the powers of seizure conferred by Part 2 of that Act may be exercised in relation to marine installations. *Subsection (7)* adds the Marine and Coastal Access Act 2009 to the list of legislation to which section 50 of that Act applies. Section 50 of the 2001 Act enables officers to remove property that otherwise they would not have the power to seize so that they may sift through and determine whether it contains something which they would have the power to seize, when it is not reasonably practicable to determine this on the premises.

***Section 254: Retention of seized items***

663. This section allows items seized during an investigation to be kept for as long as is necessary for the investigation and any trial proceedings, unless a photograph or copy would provide sufficient evidence.

*Miscellaneous and ancillary powers*

***Section 255: Power to record evidence of offences***

664. This section provides enforcement officers with powers to use any device to take visual images of anything connected with the relevant premises for evidence in the investigation of a suspected offence. *Subsection (2)* describes where the power may be used and *subsection (3)* enables the officer to require a person who has some control in that situation to help them.

***Section 256: Power to require name and address***

665. If the officer believes someone has committed an offence, that person may be required to give the officer their name and address.

***Section 257: Power to require production of licence, etc***

666. If the officer believes someone has been undertaking an activity which needs a licence, permit, etc., the officer may require that person to show that licence. *Subsection (2)* allows the person to produce the licence later should they be unable to produce it if they do not have it on them at the time the officer demanded it.

***Section 258: Power to require attendance of certain persons***

667. Where an officer has boarded a vessel or marine structure or entered any premises he may require the attendance of those persons listed.

***Section 259: Power to direct vessel or marine installation to port***

668. This section gives enforcement officers the power to direct a vessel or marine installation to the port they consider to be the nearest convenient port and detain it there. The section only applies in situations where an officer believes that an offence has been committed and it would not be practical to carry out their duties without first taking the vessel or marine installation to port and detaining it there, or where the officer believes that the vessel itself is evidence of the commission of an offence and the only way to preserve the evidence is to take it into port.

669. A convenient port may not be the nearest in terms just of distance, but may be, for example, the nearest one able to take the size of vessel, provide a berth or suitable storage facilities. The officer may take the vessel or installation there themselves, or arrange for someone else to take it, or require the person in charge of it to take it into port. For instance, arrangements may be made for a local pilot to take the vessel into port.

670. *Subsection (3)* provides that once the vessel or marine installation is in port, the officer may detain it or require the person in charge to do so.

671. *Subsections (4) to (7)* provide that enforcement officers are obliged to issue a written notice of detention to the person in charge of the vessel or marine installation. The notice must state that the vessel or marine installation will be detained until such time as the notice is withdrawn. The notice served under this subsection may be withdrawn by another written notice signed by an enforcement officer of the same authority as that of the enforcement officer who originally detained the vessel.

672. The power granted in this section is different from the power granted in section 279. That section provides for the detention of fishing vessels in relation to court proceedings. Detention of a vessel under section 259 may be performed for investigation purposes only.

***Section 260: Assistance etc***

673. This section enables enforcement officers to take other people and anything necessary (including equipment and materials) to assist them in their duties. These powers apply wherever the enforcement officer may be. Their assistants could include specialists, for example a vet if the officer is exercising his powers in order to enforce wildlife legislation. Anybody brought by the enforcement officer to assist may exercise any powers under the Act which the officer may exercise, but only under the officer's supervision or direction.

***Section 261: Power to use reasonable force***

674. This section allows enforcement officers and their assistants to use reasonable force wherever necessary to carry out their functions under the Act. Reasonable force might be needed to prevent documents being thrown overboard, for example.

***Interpretation***

***Section 262: Interpretation of this Chapter***

675. Definitions are provided for words or expressions used in this Chapter.

**Chapter 3: Licensing Enforcement Powers**

***Section 263: Power to require information relating to certain substances and objects***

676. This section enables enforcement officers to require a person to give details of any substance or objects on board a vehicle, vessel, aircraft or marine structure. People may also be required to declare information about substances or objects lost or missing from a vehicle, vessel, aircraft or marine structure. This re-enacts a power conferred by the Food and Environment Protection Act 1985 and relates to information about substances which might be harmful to human health or the environment. *Subsections (2) and (3)* prevent this information being used as evidence in a criminal prosecution (save for the offence of making a false statement, if the information given is found to be false).

**Chapter 4: Fisheries Enforcement Powers**

***Inspection and seizure of objects at sea***

***Section 264: Power to inspect and seize objects at sea***

677. This section provides enforcement officers with powers to inspect any object found in the sea which it is believed has been or is being used for or in connection with fishing. This includes powers to lift the object out of the sea for inspection. If the officer believes that the object in question has been used in committing, or is evidence of, an offence then it may be seized. The power to seize an object includes power to seize anything attached to or contained within the object (for example, fish). If the officer does not seize the item the officer must replace it or, if it is not practicable to do so, may seize it for subsequent collection by its owner.

***Section 265: Reports of inspections under section 264***

678. This section contains reporting requirements that an enforcement officer must follow after inspecting objects under section 264. The report must state the date and time of the inspection, the identity of the officer in charge of the inspection and how the officer may be contacted.

679. Where anything has been seized the report must also state what has been seized, the reason for its seizure, and any further action to be taken in respect of the object.

680. Where the object has not been seized, then, wherever it is reasonably practicable to do so, a copy of the report must be attached to the object. If the report cannot be attached to the object, the section provides that the report should be served on every person who appears to the officer to be the owner, or one of the owners, of the object. If, after taking reasonable steps to identify any person as owning the object, the officer cannot do so, he must take reasonable steps to bring the report to the attention of persons likely to be interested in it.

681. Where an object was seized and the relevant authority has decided not to take proceedings in respect of any offence relating to the object, or such proceedings have concluded, the relevant authority must serve a copy of the report on every person who seems to be the owner, or one of the owners, of the property. If the object was seized under section 264(5) because it was impractical to replace it, the report and notice of collection must be served together. Where a relevant authority cannot identify any person as owning the object it must take reasonable steps to bring the contents to the attention of those likely to be interested in it.

***Section 266: Retention of objects seized under section 264(2)***

682. This section provides for the retention by the relevant authority of any objects seized under section 264(2). The objects may be retained until such time that a decision has been made not to prosecute or where proceedings are completed without an order for forfeiture being made. In either event, the objects must be made available for collection. The object does not however have to be made available if it is gear or fish liable for forfeiture under section 275 or 276.

***Section 267: Disposal of objects seized under section 264***

683. This section sets out arrangements for the disposal of objects seized under section 264 where the relevant authority no longer wishes to retain the object or the relevant authority is required to make the object available for collection.

684. The relevant authority must send a “notice of collection” to every person who appears to the authority to be the owner, or one of the owners of, the property. The authority may take any other steps it sees fit to notify such persons that the object is available for collection. Where an owner cannot be identified, it may take the action it sees fit to bring the notice to the attention of persons likely to be interested in it. The notice must state where the object is and that the object must be collected within 3 months or it will be disposed of.

*Seizure for purposes of forfeiture*

***Section 268: Power to seize fish for purposes of forfeiture***

685. This section provides a power for an enforcement officer to seize fish for the purpose of forfeiture. The enforcement officer may only do this where a court has the power, following conviction, to order forfeiture. The power enables the seizure of fish from a vessel, from the sea or from the shore, including fish seized under section 252.

686. The section gives enforcement officers practical powers, such as allowing them to take the container the fish are in or to require the fish to be put in a container. It includes a power to require anybody (for example, crew, skipper etc) to keep the fish secure and not to tamper with them whilst the investigation is ongoing and until the fish are seized and removed. It also includes the power to request assistance from anybody in or on the premises whilst the enforcement officer is carrying out his duties, and the power to require a person carrying on an activity in respect of which the officer has functions to afford facilities and assistance.

***Section 269: Power to seize fishing gear for purposes of forfeiture***

687. The same principles which apply in relation to section 268 (regarding the seizure of fish for the purpose of forfeiture) apply here to the seizure of fishing gear.

***Section 270: Procedure in relation to seizure under section 268 or 269***

688. This section creates an obligation on the enforcement officer who seizes any fish or fishing gear under section 268 or 269 to serve a written notice on every person who appears to the officer to be the owner or one of the owners at the time the fish or gear were seized, and sets out other persons on whom the notice must be served (depending on the location from which the property was seized).

689. The written notice must state what has been seized, the reason for its seizure, the nature of the alleged offence committed and any proposed action to be taken. The notice must also indicate that, unless the property is liable for forfeiture under section 275 or 276, it will be kept until such time as it may be released or the court has ordered its forfeiture.

690. *Subsections (3) to (5)* set out the procedure where the fish or fishing gear has been seized following inspection carried out in accordance with section 264. It states that the officer must serve the notice referred to in section 265 at the same time as the notice which is to be served under this section and makes provision for the situation where the owner cannot be ascertained.

***Section 271: Retention of property seized under section 268 or 269***

691. This section provides the relevant authority with the power to retain any fish or fishing gear seized under section 268 or 269. However the property must be made available for collection as soon as is reasonably practicable where either the relevant authority decides not to bring court proceedings or any proceedings brought are concluded without an order for forfeiture being made.



***Section 272: Bonds for release of seized fish or gear***

692. This section allows the owner of any property (or the owner or charterer of the vessel if the property was seized from there) seized under section 268 or 269 and being retained under section 271 to lodge a bond with the relevant authority in return for its release. The relevant authority may set conditions for the release and may enter into an agreement with the owner as to the amount of money to be given as the security. Where an agreement is not reached, the court may determine the amount to be paid as security.

693. If the relevant authority has decided not to take proceedings or proceedings have concluded with no order for forfeiture having been made, the relevant authority must return the bond as soon as possible. Where a court has the power to order the forfeiture of fish or fishing gear seized under section 268 or 269, that power applies equally to any bond given under this section.

***Section 273: Power of relevant authority to sell seized fish in its possession***

694. This section gives the relevant authority the power to sell any fish it has retained under section 271. The power of the court to order the forfeiture of the fish may be exercised in relation to the proceeds of the sale of the fish.

695. The relevant authority may retain the proceeds of sale until the court orders the money to be forfeit, the relevant authority has decided not to take proceedings or proceedings have concluded with no order for forfeiture having been made. If the relevant authority decides not to take proceedings or proceedings have concluded with no order for forfeiture having been made then the relevant authority must release the proceeds of the sale as soon as possible. *Subsections (5) and (6)* provide for the persons to whom the proceeds of sale are to be released and the procedure if that money remains unclaimed.

696. Provision is also made as to how the fish are to be sold, including a right for the relevant person to make representations as to how the fish are to be sold. This section also permits the relevant authority to deduct its reasonable expenses from the proceeds of sale.

***Section 274: Disposal of property seized under section 268 or 269***

697. Where the relevant authority no longer wishes to retain fish or fishing gear seized under section 268 or 269, or where it is required to make such property available for collection under section 271, section 274 requires a notice of collection to be served on every person who appears to be the owner, or owners, of the property. The notice must state the location from which the property may be collected and that if not collected within 3 months it will be disposed of. The specified location for collection will usually be a port office. It further makes provision where the relevant authority is unable to identify an owner.

***Forfeiture***

***Section 275: Forfeiture etc of prohibited items***

698. This section provides a power for certain fishing gear seized by an enforcement officer to be forfeited to the relevant authority for disposal. The forfeiture power applies to any fishing gear seized on board a vessel or from the sea which when seized by the enforcement officer could not be used for any form of fishing without committing an offence under the law of England and Wales. Examples of such gear include “French Dredges”, gill

and other types of nets with mesh sizes between 71-89mm. The forfeiture power does not apply to gear found on land.

***Section 276: Forfeiture etc of fish failing to meet size requirements***

699. This section provides a forfeiture power in respect of fish that fail to meet size requirements which corresponds to the forfeiture power in respect of fishing gear in section 275.

***Section 277: Further provision about forfeiture under section 275 or 276***

700. This section gives effect to Schedule 18 which makes detailed provision in respect of the forfeiture under section 275 or 276 of gear or fish which fail to meet size requirements.

***Section 278: Forfeiture by court following conviction***

701. This section applies where, after a successful prosecution under fisheries legislation, the court orders the forfeiture of the fish or gear in respect of which the offence was committed. The relevant authority will be ordered to take possession of the property and may dispose of it as it sees fit. The proceeds of any sale may be retained by the relevant authority and the court may order the defendant to pay the costs of the relevant authority in storing the property.

***Detention of vessels in connection with court proceedings***

***Section 279: Power to detain vessels in connection with court proceedings***

702. This section allows an enforcement officer to detain a vessel to ensure the attendance of the alleged offenders in court and the payment of any fine on conviction. The enforcement officer has the power to direct the vessel to port and a power to hold the vessel in port or require the person in charge of the vessel to do so.

703. The section provides that the power to detain may be used where an enforcement officer has reasonable grounds to suspect that an offence has been committed by the owner, master or charterer of a fishing vessel. Furthermore, in order to detain a vessel, the enforcement officer must either believe that court proceedings will be commenced in respect of the offence committed and there is a real risk that the alleged offenders will not attend court unless the vessel is detained, or the enforcement officer must suspect that following a conviction and imposition by the court of a fine, the court is likely to use its detention powers until all fines have been paid.

704. This section gives an enforcement officer powers to take the vessel and its crew to the nearest convenient port and detain the vessel there. A convenient port may not be the nearest in terms of distance, but it may be, for example, the nearest one able to take the size of the vessel, provide a berth or suitable storage.

705. An enforcement officer is required to issue a written notice to the person in charge of the vessel stating why the vessel has been detained and the circumstances in which it would be released.

***Section 280: Release of vessels detained under section 279***

706. This section makes provision for the release of a vessel which is being detained under section 279. The vessel ceases to be detained if: the notice for detention is withdrawn; the vessel is released by order of the court; proceedings associated with the vessel's detention have concluded; or the court exercises its power to detain the vessel.

707. An enforcement officer may withdraw a notice of detention at any time and such a notice must be withdrawn if any of the grounds for release are met: either that the relevant authority has decided to take no proceedings in respect of the vessel or if there is no longer reason to believe either that the person in question would fail to attend court or that a court would order detention of the vessel.

***Section 281: Power of court to order release of vessels***

708. This section applies in circumstances where a vessel has been detained under section 279. It provides a power for the court to order the release of the vessel. An order may be made by the court if it is satisfied that the continued detention of the vessel under section 279 is no longer necessary. This might be either because the continued detention of the vessel is not necessary to secure any person's attendance at court or because following conviction the court would not order the vessel to be detained.

***Section 282: Bonds for release of vessels***

709. This section gives the relevant authority power to enter into an agreement with the owner or charterer of the vessel (or any of the owners or charterers of the vessel) to release a vessel detained under section 279 when a monetary security has been paid. The amount of the security will be settled by the two parties to the agreement. The relevant authority may impose conditions on the person who provides security.

710. The security must be returned if any of the grounds for release set out in *subsection (5)* are met.

711. Where the court imposes a fine, it may order that any money paid as security should be used towards the payment of the fine. If the fine imposed is less than the security that was paid, any surplus money must be returned to the person who provided the security.

***Section 283: Power of court to order repayment of bonds***

712. Where a bond has been paid pursuant to section 282 (and the notice of detention withdrawn) the court may order repayment of the bond to the person who provided the security if it is satisfied that the continuation of the bond is not necessary to ensure the attendance in court of the master, owner or charterer, or that, had the bond not been given, the court would not have ordered the detention of the vessel.

***Production of equipment***

***Section 284: Power to require production of certain equipment***

713. An enforcement officer may request anybody on board a fishing boat to produce any automatic recording or transmitting equipment as set out in *subsection (2)*.

*Supplementary*

***Section 285: Service of notices, etc***

714. This section specifies the means by which notices required to be served under this Chapter must be served. Such notices are to be delivered in person, left at an appropriate address or sent by post. In relation to the owner of a vessel the appropriate address is further defined by reference to the address given in the appropriate register. The section stipulates the appropriate address for other persons, including firms and companies and unincorporated associations registered or doing business outside the UK.

***Section 286: Conclusion of proceedings***

715. This section establishes a means of determining when proceedings have been concluded. Where proceedings are terminated by an appealable decision, they are not to be considered as concluded until the time for making an appeal has passed, or, if an appeal is brought, until the conclusion of the appeal. This is significant for various purposes in this Chapter, for example in triggering the release of a vessel that has been detained.

***Section 287: Interpretation of this Chapter***

716. This section provides definitions for words or terms used in this Chapter.

**Chapter 5: Common Enforcement Provisions**

*Introductory*

***Section 288: Meaning of “enforcement officer”***

717. This section defines enforcement officer as someone who has powers under this Part of the Act, save those who have powers by virtue of being an assistant to an officer.

*Duties of enforcement officers*

***Section 289: Duty to provide evidence of authority***

718. This section obliges enforcement officers who are exercising the common enforcement powers to show evidence that they have the authority to carry out their enforcement functions, when asked to do so. The duty does not apply to Marine Enforcement Officers of the Armed Services. If the officer thinks that to comply with the request immediately would create problems, such as putting the officer in personal danger or allowing evidence of an offence to be destroyed, the officer may defer complying with the request until it is practicable to do so.

***Section 290: Duty to state name and purpose, etc***

719. In conjunction with section 289, enforcement officers are also obliged to state their name, the power they are intending to use and reason for its use whenever they are requested to do so, although the officer may defer complying with the request if the immediate situation requires it (for example, if an officer thinks that the request is a delaying tactic to avoid the officer discovering an offence being committed at that moment in time). Someone assisting the enforcement officer need not give their name, but would need to say what power that person was proposing to exercise and the grounds for so doing, if so requested.

*Liability of enforcement officers*

**Section 291: Liability of enforcement officers etc**

720. Enforcement officers and their assistants will be protected from liability in any civil or criminal proceedings for anything done or not done as a result of carrying out their functions under the Act. This exemption from liability does not apply when an enforcement officer acts in bad faith or if there were no reasonable grounds for the officer to act in such manner, nor would it prevent damages from being awarded if the officer's actions were unlawful under section 6(1) of the Human Rights Act 1998. This immunity similarly covers any person assisting an enforcement officer.

*Offences in relation to enforcement officers*

**Section 292: Offences in relation to enforcement officers**

721. This section provides for a number of offences that may be committed in relation to enforcement officers or people assisting them. Anyone who fails to comply with a requirement reasonably made by an enforcement officer, or prevents any other person from so doing, is guilty of an offence. However, *subsection (2)* provides that someone who was required to produce a licence under section 257 and did not do so at the time, but complied with a requirement to produce it later, is not guilty of an offence.

722. Where a person provides information to an enforcement officer in response to a requirement made by the officer, it is also an offence for the person knowingly or recklessly to provide false information, or intentionally to fail to disclose any relevant piece of information. Anyone who assaults or intentionally obstructs an enforcement officer, when the officer is exercising his duties under this Part, is guilty of an offence. Anyone who pretends to be an enforcement officer is also guilty of an offence.

**Chapter 6: Miscellaneous and Supplementary**

*Enforcement of Community rules*

**Section 293: Enforcement of Community rules**

723. This section amends section 30 of the Fisheries Act 1981.

724. Section 30(1) is amended so that it applies both to enforceable Community restrictions and enforceable Community obligations. These restrictions and obligations are directly applicable and enforceable against all fishing boats within British Fishery Limits, and also English and Welsh boats outside those limits and persons in England and Wales.

725. The general power in section 30(2) for the Secretary of State to make by order provision to enforce Community obligations and restrictions is extended to English and Welsh fishing boats anywhere in the world and to persons of a specified description (specified within the order) on board fishing boats anywhere in the world. Persons on board Scottish or Northern Ireland fishing boats are excluded.

726. Section 30 is further amended so that an Order in Council may be made extending the application of section 30(1) and (2) to any Isle of Man or Channel Islands fishing boat outside British Fishery Limits.

*Administrative penalty schemes*

**Section 294: Administrative penalty schemes**

727. This section introduces powers for the Secretary of State (in relation to England or vessels outside the Welsh zone) or the Welsh Ministers (in relation to Wales or vessels within the Welsh Zone) to apply Fixed Administrative Penalties (FAPs) to domestic fisheries offences, namely offences which do not originate in Community law. The vast majority of fisheries offences are breaches of Community law for which FAPs are available using existing powers made under section 30(2) of the Fisheries Act 1981.

728. The FAP scheme will complement the existing criminal system rather than replace it, as a person will be under no obligation to pay the penalty if he wishes to have the matter dealt with in court in the usual way. The scheme will be used to address fisheries offences such as offences under the Sea Fisheries Act 1868, the Sea Fish (Conservation) Act 1967, the Sea Fisheries Act 1968, the Fishery Limits Act 1976 and the British Fishing Boats Act 1983, including any offences in any of the orders made under these Acts. An order to make provision to apply FAPs may apply in relation to England and Wales, any vessels within British Fishery Limits other than the Scottish zone, Northern Ireland zone and the territorial sea adjacent to the Isle of Man, Jersey and Guernsey, and any English or Welsh fishing boats wherever they may be. *Subsection (6)* also provides that Her Majesty may by Order in Council provide for this scheme to apply to any Isle of Man or Channel Islands fishing boats which are outside British Fishery Limits.

729. The section sets out detail of the provision which may be made in the order, including the content of the penalty notice, who may issue a notice, the minimum and maximum amount of the penalty and matters as to payment.

*Crown application*

**Section 295: Application to the Crown**

730. The provisions in Chapters 1 to 5 of this Part apply to the Crown. Contravention of any provision of Chapter 5 will not make the Crown criminally liable.

## **PART 9: COASTAL ACCESS**

*The coastal access duty*

**Section 296: The coastal access duty**

731. This section imposes a duty (described by *subsection (4)(a)* as the “coastal access duty”) on the Secretary of State and Natural England. *Subsections (2)* and *(3)* describe the duty by reference to two objectives.

732. *Subsection (2)* contains the first objective, which is that there is a route around the whole of the English coast consisting of one or more long-distance routes and available to the public for recreational journeys on foot or by ferry (“the English coastal route”).

733. *Subsection (3)* contains the second objective, which is that there is a margin of land along the length of the coast which the public may enjoy. It requires a margin to exist “in association with” the route, and provides that, subject to the exception mentioned below, the



margin of land is to be “accessible to the public for the purposes of its enjoyment by them in conjunction with that route or otherwise”. This makes it clear that the route and the margin are linked objectives, but also that the margin does not have to be accessed directly from the route. It may be accessed from another part of the margin (for example by walking along the foreshore to reach an isolated beach) or using a right of access under other legislation, such as a public right of way, or by other means. The exception to the requirement for the margin to be accessible to the public is the case where the land falls within any category of “excepted land” listed in Schedule 1 to the Countryside and Rights of Way Act 2000 (“the CROW Act”), other than a category of land which is accessible to the public by virtue of any enactment or rule of law (as to which see the note to *subsection (5)(c)*). This formulation enables the margin to be proposed and established without the need to describe individually every area which is not accessible to the public. This is because Schedule 1 to the CROW Act (which may be amended by an order under section 3A of that Act to be inserted by this Act) sets out general categories of land to which there is no access.

734. *Subsection (4)(b)* allows Natural England and the Secretary of State to fulfil the duty in stages over a number of years. This means that the duty may be fulfilled on certain parts of the coast before other parts, and there is no set time limit for completion of the duty.

735. *Subsection (5)* establishes that land will only be considered accessible to the public (as specified in the objectives) if it is accessible in certain ways. *Subsection (5)(a)* provides that one way in which it will be considered accessible to the public is if it is accessible by virtue of section 3A of the CROW Act. This means that, for land to be accessible to the public under *subsection (5)(a)*, access must be available under the right of access conferred by section 2(1) of the CROW Act, and this must be by virtue of it being coastal margin as defined in the new section 3A of the CROW Act (see section 303). So land which is accessible under the CROW Act but which is not coastal margin will not fulfil the duty. The reason for this distinction is that certain aspects of the management regime for access land under the CROW Act may differ according to whether the land is coastal margin or other access land. *Subsection (5)(a)* goes on to say that this is subject to any exclusions or restrictions imposed by or under Part 1 of the CROW Act. Part 1 of the CROW Act deals with access to the countryside, and allows relevant authorities to make directions excluding the right of access or restricting it in certain ways (for instance the right might be exercisable only along certain routes). So *subsection (5)(a)* makes it clear that such exclusions or restrictions may be disregarded for the purpose of deciding whether the route passes over land which is accessible to the public and there is a margin of land which is accessible to the public.

736. *Subsection (5)(b)* is another category of land which is considered accessible to the public for the purposes of this section. This is land which falls under any of the enactments or instruments specified in section 15 of the CROW Act. These enactments and instruments all provide for public access on foot and in some cases provide higher rights of access, for example on horseback. An example of this is section 193 of the Law of Property Act 1925,

which regulates certain commons and has been held by the High Court in the case of *R v Secretary of State for the Environment ex parte Billson*<sup>12</sup> to provide rights on horseback.

737. *Subsection (5)(c)* provides that land will be considered accessible to the public where it is excepted land under the CROW Act (certain types of land set out in Schedule 1 to that Act), but only where it is accessible to the public by virtue of any other enactment or rule of law. The most common situation where this may apply is where the coastal route goes along a public highway. In order to avoid having two different access regimes applying to public highways, it is expected that the public highways will become a category of excepted land under the CROW Act as far as the coastal margin is concerned. *Subsection (5)(c)* therefore allows the English coastal route to follow a public highway, for example through built-up areas. However this does not apply to land which is accessible to the public by virtue of a military lands byelaw as defined in *subsection (8)* (one of the categories of excepted land) and such land may therefore never form part of the route.

738. *Subsection (6)* makes it clear that the duty of Natural England and the Secretary of State to exercise their relevant functions regarding the second objective (making available a margin of land along the length of the English coast) refers to making land accessible to the public by means of section 3A of the CROW Act, as described in *subsection (5)(a)*. Land within the margin may be accessible to the public under the mechanisms described in *subsections (5)(b)* and *(c)*. However, if land is not accessible to the public, the only mechanism which Natural England and the Secretary of State are required to use to make it so accessible is the mechanism described in *subsection (5)(a)*, (provision under section 3A of the CROW Act), although they may decide to use other mechanisms. This reflects the fact that the legislation envisages that so far as any new right of access needs to be created to provide the coastal margin, the principal means of creating it is by way of an order under section 3A of the CROW Act (as inserted by section 303 of the Act).

739. *Subsection (7)* sets out what constitutes a journey by ferry for the purposes of the first objective, and makes it clear that the ferry does not have to be operating at all times of the day or year.

***Section 297: General provision about the coastal access duty***

740. This section sets out the requirements imposed on Natural England and the Secretary of State as regards considerations that they have to take into account in discharging the coastal access duty. *Subsections (2)* and *(3)* set out these considerations.

741. *Subsection (2)* provides that they must have regard to:

- a) the safety and convenience of those using the English coastal route;
- b) the desirability of that route adhering to the periphery of the coast and providing views of the sea; and
- c) the desirability of ensuring that so far as reasonably practicable interruptions to that route are kept to a minimum.

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<sup>12</sup>[1998] 2 All ER 587.

742. *Subsection (3)* provides that they must aim to strike a fair balance between the interests of the public in having rights of access over land and the interests of any person with a relevant interest in the land.

743. *Subsection (4)* sets out which people are treated as having a “relevant interest in land” for the purposes of *subsection (3)* (with the intention of striking a fair balance between the interests of the public and those with a relevant interest in land). It says that a person has a relevant interest in land if the person-

- a) holds an estate in fee simple absolute;
- b) holds a term of years absolute in the land; or
- c) is in lawful occupation of the land.

### ***Section 298: The coastal access scheme***

744. This section requires Natural England to draw up a scheme setting out the approach it will take when discharging its coastal access duty, and makes provision regarding this scheme, including provision for its approval by the Secretary of State. *Subsection (5)* requires Natural England to set out in the scheme (and any revised scheme) the approach it will take when deciding whether it would be appropriate for an access authority to carry out any preliminary activity, which is defined in section 302. *Subsection (6)* requires the Secretary of State to lay before Parliament a copy of the scheme or a revised scheme. The section also makes provision for Natural England to revise the scheme, with the approval of the Secretary of State, and to publish the scheme or a revised scheme as soon as is reasonably practicable and in such manner as it considers appropriate. *Subsection (9)* provides that Natural England must act in accordance with an approved scheme in discharging its coastal access duty. *Subsection (10)* provides that Natural England cannot prepare or submit proposals for a long-distance route pursuant to the coastal access duty until there is an approved scheme. *Subsection (11)* enables Natural England to survey land in preparation for preparing or submitting a report before there is an approved scheme, which means that Natural England may do some preparatory work in advance of the scheme being finalised and approved.

### ***Section 299: Review of the coastal access scheme***

745. This section provides for Natural England to review the coastal access scheme (which has been approved by the Secretary of State under section 298) from time to time. *Subsection (2)* requires Natural England to complete the first review of the scheme within three years of the date of approval of the scheme by the Secretary of State. *Subsection (3)* requires Natural England to publish a report of each review as soon as reasonably practical after it has completed the review.

### ***Section 300: The English coast***

746. The coastal access duty (section 296) relates to the English coast. This section defines the English coast, for the purposes of this Part of the Act, by reference to its adjacency to the sea. It provides that the coast includes the coast of islands unless they are excluded.

747. *Subsection (2)* explains what an excluded island is. It says that islands are excluded unless they are “accessible islands” or they are specified by the Secretary of State by order. *Subsection (3)* sets out what constitutes an “accessible island”. This is an island to which it is possible to walk from the mainland of England or from another island (other than an excluded island) across the foreshore or by means of a bridge, tunnel or causeway. *Subsection (4)* provides that, for this purpose, it is possible to walk to an island even if it is possible at certain times, or during certain periods, only. *Subsection (5)* puts a condition on the Secretary of State’s power to specify an island by order. This is that the coast of the island must be sufficiently long to enable the public to make an extensive journey on foot (the language used in relation to long-distance routes by section 51 of the National Parks and Access to the Countryside Act 1949).

748. *Subsection (6)* provides that the means of access to an accessible island (for example a bridge, tunnel or a causeway or the foreshore) is to be considered to be part of the English coast for the purposes of the first objective (the duty to secure the English coastal route). This is so that the English coastal route includes the means of access.

749. *Subsection (7)* provides that this section is subject to section 307 which makes provision about the application of this Part to the Isles of Scilly.

### ***Section 301: River estuaries***

750. *Subsection (1)* provides that this section applies where the coast is interrupted by a river.

751. *Subsection (2)* provides that Natural England may treat the relevant upstream waters of any river as if they were the sea. Section 309 says that “the sea”, in this Part of the Act, does not include any part of a river which is upstream of the seaward limit of the river’s estuarial waters; however this section allows Natural England to treat relevant upstream waters as if they were the sea. This is necessary because section 300 defines the English coast as being the coast of England adjacent to the sea and section 296 relates the coastal access duty to the English coast.

752. *Subsection (3)* defines the relevant upstream waters (which Natural England may treat as if they were the sea) as estuarial waters of the river upstream of the seaward limit of estuarial waters either (*subsection (3)(a)*) to the first bridge or tunnel by means of which the public may cross the river on foot (“the first public foot crossing” which is defined in *subsection (8)*), or (*subsection (3)(b)*) to some point it specifies before (downstream of) the first public foot crossing. Any decision to treat estuarial waters as if they were the sea under either *subsection (3)(a)* or *subsection (3)(b)* is subject to the general provisions about the coastal access duty set out in section 297. This is clarified in *subsection (5)*.

753. *Subsection (4)* sets out certain matters to which Natural England must have regard, in addition to the matters to which it must have regard in applying *subsections (2) or (3)* of section 297 (general provisions about the coastal access duty). These are (a) the nature of the land, for instance whether it bears a greater resemblance to either typical coastal land or typical riverine land; (b) the topography of the shoreline for instance how indented it is and hence how awkward a journey might result from including it in the route; (c) the width of the

river, which again would contribute to whether it is closer to typically coastal or to typically riverine land; (d) the recreational benefit to the public of including land; (e) the extent of potential excepted land (the presence of a large expanse of excepted land could influence the decision as to whether to include that part of the estuary in the coastal margin or not); (f) the desirability of continuing the route to a particular feature (for instance to an intersection with a footpath or road, or car park) or viewpoint, and (g) the existence of a ferry by which the public may cross the river. This list is not exhaustive. As well as having regard to the matters in section 297(2), Natural England must also comply with section 297(3).

754. *Subsection (6)* gives the Secretary of State powers corresponding to those given to Natural England as set out in *subsections (1) to (5)*.

755. *Subsection (7)* makes it clear that the Secretary of State's decisions under *subsection (2)*, and compliance with the requirements set out in section 297 are independent of any decision taken by Natural England. This means that the Secretary of State may make a different decision about whether waters of a river are to be treated as part of the sea.

#### *Implementation of the coastal access duty*

##### ***Section 302: Long-distance routes***

756. *Subsection (1)* of this section inserts new sections into the National Parks and Access to the Countryside Act 1949 ("the 1949 Act"). These sections all refer to the coastal access duty imposed under section 296(1) of the Act and reports prepared pursuant to that duty.

757. *Section 55A Proposals relating to the English coastal route. Subsection (1)* provides that Natural England may prepare a report proposing a coastal long-distance route, whether or not the requirements of section 51(1) of the 1949 Act are satisfied. This means that proposals may be made even though they relate to a route which does not enable an "extensive" journey, or when the greater part of the length of the route passes along roads used by vehicles. Under *subsection (2)* it is immaterial that the public are already able to make journeys, as described in section 51(1) of the 1949 Act, by virtue of proposals for a long-distance route that have already been approved under that Act. This is because such existing routes may not be sufficient to discharge the coastal access duty. *Subsection (3)* defines the term "preliminary activity". *Subsection (4)* requires Natural England to consider whether it would be appropriate for the access authority to carry out any such activity and if so Natural England must take all reasonable steps to enter into an agreement with the access authority in relation to that land. *Subsection (5)* gives access authorities powers to enter into an agreement with Natural England in relation to their area to undertake preliminary activity.

758. *Section 55B* makes provision for eroding coastlines. *Subsection (2)* provides that in the situations set out in *subsection (3)* the report may set out proposals for the route to be determined in accordance with provision in the proposals rather than as shown on a map. *Subsection (3)* sets out the relevant situations, which are where the area is subject to significant erosion or encroachment by the sea, or to significant physical change due to other geomorphological processes. Under *subsection (4)* Natural England may describe the route by reference to a cliff edge or a field boundary, "as that cliff edge or field boundary exists from time to time"; this means that as the cliff edge or field boundary changes over time, so will the route. *Subsection (5)* says that where Natural England makes use of this flexibility,



the map of the proposed route contained in the report (as required by section 51 of the 1949 Act) must show the position of the route at the time the map is drawn up. *Subsection (6)* requires Natural England to consult the Environment Agency before exercising its powers in respect of an area which is subject to significant coastal erosion or encroachment by the sea or to significant physical change due to other geomorphological processes in relation to which the Agency has functions.

759. *Section 55C* deals with alternative routes. *Subsection (3)* provides that the report may include alternative routes which will operate as diversions during specified periods, or during those periods when the normal route needs to be closed by direction under Chapter 2 of Part 1 of the CROW Act (for example for land management purposes or for reasons of danger to the public). *Subsection (5)*, taken together with *subsection (3)*, allows this alternative route to operate flexibly, by enabling specified periods of closure to be determined in accordance with the proposal or by a person specified in it, or determined by a person who is in turn determined in accordance with the proposal. For instance it may be that an alternative route should come into operation when a particular breed of bird starts to nest; the time may vary each year and so the alternative route may come into operation on the date that a warden determines that the birds are starting to nest and following the warden putting up a sign to say that the alternative route is in operation. *Subsection (4)* says that the report may include an alternative route which will operate as an optional alternative to the ordinary route or part of it when the ordinary route might reasonably be regarded as unsuitable for use by reason of flooding, action of the tide, coastal erosion or encroachment by the sea, or the effect of any geomorphological process.

760. Under *subsection (6)* section 51(2) (which sets out what must be contained in a report proposing a long-distance route), and section 55B (provision for eroding coastlines), apply equally to any alternative route.

761. *Section 55D Coastal margin.* This section deals with those aspects of a report under section 51 pursuant to the coastal access duty which relate to coastal margin. Section 303 allows the coastal margin to be defined by reference to a long-distance route.

762. *Subsection (2)(a)* provides that the report under section 51 pursuant to the coastal access duty may provide for the landward boundary of the coastal margin to be drawn either wider or narrower than follows from the normal application of the new section 3A of the CROW Act (inserted by section 303 of the Act) in order to make it coincide with a physical feature (as described in section 3A(2)(d) of the CROW Act). This may be used, for instance, to make the boundary of access land clearer to the user by aligning the boundary with a more physical marking such as a fence or to bring additional land to the landward of the route into the coastal margin. *Subsection (2)(b)* allows the same flexibility with regard to the route strip for any alternative route. *Subsection (2)(c)* allows the same flexibility with regard to any land which is made an exception to land of a type to which the right of access does not apply (that is, land which is made an exception to excepted land as set out in Schedule 1 to the CROW Act). This would apply, for instance, in cases where a particular type of land is excepted land except for the route strip and would allow the route strip in these cases to coincide with a physical feature such as a field boundary.



763. *Subsection (3)* requires Natural England to include in its report a map showing the landward boundary of the relevant coastal access land or a description of the boundary which is sufficient to identify that land. Natural England must also provide under *subsection (4)* a copy of any map in its report to a person on request with a relevant interest in affected land. *Subsection (5)* requires Natural England to include details in the report of any restrictions to, or exclusion of, the right of access that it intends to put in place if the proposals are approved, which will have effect when any right of access under the CROW Act comes into force. This will help the reader of the report to understand the implications of the proposals. The subsection makes clear that Natural England does not have to include such details if it does not believe that any restrictions or exclusions are appropriate.

764. *Subsection (6)* sets out who Natural England is required to consult before the report is prepared. These requirements are in addition to requirements under section 51(4) of the 1949 Act. The subsection makes reference to “a relevant interest in affected land”. For this purpose, “relevant interest” and “affected land” are defined in section 55J.

765. *Subsection (7)* requires bodies of the type mentioned in section 51(4) of 1949 Act but not required to be consulted under that Act, London borough councils and local access forums to provide information to Natural England when consulted under *subsection (6)*. *Subsection (8)* requires the Secretary of State, when consulted by Natural England under *subsection (6)*, to provide Natural England with information relating to any exclusion or restriction for the purposes of defence and national security which the Secretary of State proposes to make, and to notify Natural England if any information provided in this respect should not be made public, on the grounds of defence and national security. *Subsection (9)* requires Natural England to include information which it considers relevant on defence and national security exclusions or restrictions in the report. This is so that the report contains all the information relevant to the proposals made in it. *Subsection (10)* prohibits Natural England from including information which the Secretary of State has specified should not be included on the grounds of defence and national security.

766. *Section 55E Consideration of reports made pursuant to the coastal access duty.* This section introduces a new Schedule 1A to the 1949 Act. The text of Schedule 1A to the 1949 Act is contained in Schedule 19 to this Act.

767. *Section 55F Directions under Part 1 of the CROW Act.* This section provides that if approved proposals relating to a long-distance route provide that certain restrictions and exclusions on the right of access are to be put in place by Natural England under Chapter 2 of Part 1 of the CROW Act, it must put them in place. *Subsection (3)* makes it clear that Natural England may subsequently revoke or vary these under its powers in the CROW Act.

768. *Section 55G Ferries for the purposes of the English coastal route.* This section should be read in conjunction with section 53 of the 1949 Act. Section 53 relates to ferries on long-distance routes and provides that they may be provided and operated (or provision may be made for them to be provided and operated) by the highway authority (or either or both of the authorities) for the highways that the ferry will connect – for example the highways on either side of a river crossing. As the English coastal route will not be confined to highways, a ferry for the purposes of the route might not connect two highways, but might instead connect two

areas of access land. Section 55G provides that in this case the power lies with the highway authority responsible for the area in which the approach route to the ferry along the English coastal route lies.

769. *Section 55H Variation pursuant to the coastal access duty.* This section makes provision to ensure that the “procedural requirements” specified in section 55H(4) apply equally to any reports dealing with variations of the coastal route. With respect to any variation made to the coastal route by direction under section 55(2) (which deals with situations where the Secretary of State considers that a variation should be made but Natural England has not made a proposal), *subsection (2)* provides that the Secretary of State may make regulations for the procedural requirements specified in *subsection (4)* to apply (with suitable modifications), and *subsection (3)* provides that the Secretary of State may only make a direction for such a variation if regulations mentioned under *subsection (2)* are in force.

770. *Section 55I Temporary diversions.* This section allows Natural England to establish a temporary route if the English coastal route or an official alternative route is closed by a direction under Chapter 2 of Part 1 of the CROW Act. *Subsection (2)* says that Natural England cannot do this if the direction is permanent; this is because in this case Natural England would be expected to establish a new route using a variation order under section 55. *Subsection (3)* enables Natural England to give a direction specifying a temporary route. *Subsection (4)* specifies that the temporary route may only be created over access land as defined by Part 1 of the CROW Act, land which is treated by section 15 of that Act as accessible to the public apart from that Act, along a highway or over any other land the owner of which has agreed to the route insofar as it passes over the land which he owns. *Subsection (5)* provides that where the temporary route is to pass over land of a type described in *subsection (4)(d)*, that is any other land where the owner has agreed to the route passing over it, then Natural England must consult the Environment Agency before giving a direction. *Subsection (6)* provides that such a direction must be in writing and enables it to be revoked or varied subsequently.

771. *Section 55J Interpretation.* A number of definitions for words and expressions used in sections 55A to 55I and Schedule 1A are provided in *section 55J*. That section also provides that any power to make regulations conferred by those sections or Schedule 1A includes power to make different provision for different cases, and to make incidental, consequential, supplemental or transitional provision or savings.

### ***Section 303: Access to the coastal margin***

772. This section amends Part 1 of the CROW Act. *Subsection (2)(a)* includes coastal margin in the definition of access land in section 1(1) of the CROW Act. This will have the effect, subject to an order being made by the Secretary of State under section 3A (inserted by *subsection (5)*), of extending the right of access under section 2(1) of the CROW Act to the coastal margin, other than in relation to excepted land and land which is treated by section 15 of the CROW Act as accessible apart from that Act. *Subsection (2)(b)* inserts a definition of coastal margin into section 1(2) of the CROW Act; it provides that coastal margin means land which is of a description specified by an order under section 3A.

773. *Subsection (2)(c)* amends the definition of open country under the CROW Act. As a result, the definition of open country becomes “land which:

- a) appears to the appropriate countryside body to consist wholly or predominantly of mountain, moor, heath or down; and
- b) is not registered common land or coastal margin.”

774. Open country is one of the categories of access land under section 1(1) of the CROW Act. So the effect of *subsection (2)(c)* is that where land appears to the appropriate countryside body to be mountain, moor, heath or down but has become coastal margin, the right of access under section 2(1) applies to it only by virtue of its being coastal margin. *Subsection (2)(d)* has a similar effect for land which is registered common land but has become coastal margin; for the purposes of Part 1 of the CROW Act it is not considered to be registered common land and the right of access under 2(1) applies to it by virtue of its being coastal margin. These provisions ensure that only one regime of access and access management under the CROW Act applies to land which is coastal margin.

775. *Subsection (3)* deals with how the right of access under the CROW Act relates to other enactments as regards prohibitions. The position for coastal land is different from the position for other land to which the right applies. As regards coastal land, prohibitions under any other enactments will apply, whether the enactment is local or general, public or private. So, for instance, rules prohibiting certain types of activities on beaches under a local byelaw will continue to apply. For other land to which the right of access under the CROW Act applies, prohibitions under other enactments only apply if that other enactment is not a local or private Act.

776. *Subsection (4)* makes section 3 of the CROW Act apply in relation to Wales only, rather than in relation to England and Wales as at present.

777. *Subsection (5)* inserts a new section into the CROW Act, section 3A (*Power to extend to coastal land etc: England*). *Section 3A(1)* allows the Secretary of State to make an order defining coastal margin in England. *Subsection (7)* requires orders under section 3A(1) to be approved by resolution of each House of Parliament. This is the same procedure as was previously in place for orders under section 3 of the CROW Act in relation to England and the same as for orders under section 3 to modify provisions which apply to coastal land in Wales.

778. *Section 3A(2)* sets out ways in which the order may describe land, but is not an exhaustive list. It sets out a number of ways in which land may be described by reference to the English coastal route. *Section 3A(2)(a)* provides that such an order may describe land by reference to its being land over which the line of the English coastal route passes, land adjacent to and within a specific distance of that line and land adjacent to such land. This is subject to the proviso that the land, taken as a whole, must be coastal land, as defined in section 3 of the CROW Act, in other words foreshore or land adjacent to the foreshore. *Section 3A(2)(b)* refers to cases where the route is subject to erosion etc and allows coastal margin to be described in relation to such a route as it has effect from time to time. *Section 3A(2)(c)* refers to alternative routes and allows land to be described by reference to its being

land over which the line of the English coastal route passes or land adjacent to and within a specified distance of this line. This does not have the effect of making land to the seaward of such land coastal margin. *Section 3A(2)(e)* makes similar provision for temporary diversions. *Section 3A(2)(d)* provides that land may be included as a result of the boundary of the coastal margin being drawn to coincide with a physical feature and this is the case whether the result is that land is included which is not itself coastal land, or whether land is excluded which is coastal land.

779. Under *section 3A(3)* an order under *section 3A(1)* may be made describing land by reference to the English coastal route before any such route is in existence. This will allow the order to be made before any English coastal route is proposed, so that Natural England in proposing a route, and the Secretary of State when approving the proposals, may take account of the implications of that route for the coastal margin.

780. *Section 3A(4)* provides that an order under *subsection (1)* may modify the provisions of Part 1 of the CROW Act insofar as they apply to coastal margin. This is similar to the existing power in *section 3* (which will now apply to coastal land in Wales only) and would, for instance, allow the Secretary of State to modify the categories of excepted land which apply to the coastal margin.

781. *Section 3A(5)* specifies particular things that provision made under *section 3A(4)* may do. It may for example confer functions on the Secretary of State or Natural England (see *section 3A(5)(a)*). Examples of this might be, in relation to the Secretary of State, a function of considering representations, and, in relation to Natural England, a function of making directions regarding exclusions or restrictions, if new grounds for exclusions or restrictions are introduced. *Section 3A(5)(b)* makes provision in relation to any description of land which is excluded from any category of excepted land. It enables an order to make similar provision in relation to land of that description as in relation to other access land. For example, where the route runs along a strip of land along the seaward edge of arable land (and if such a strip were excluded from the arable land category of excepted land under the CROW Act), the area of coastal margin along that route could be enlarged or narrowed to allow it to coincide with a physical feature.

782. *Section 3A(6)(a)* provides for a period of time, referred to as the access preparation period, between the approval of a coastal route and the right of access coming into force. This is to allow time for Natural England to make preparations such as doing work to sign the route and establishment works to make it suitable for public access (for example installing gates or steps) and to make directions with regard to restrictions and exclusions. *Subsection (6)(b)* allows Natural England to make directions for the exclusion or restriction of access which will come into force after the end of the preparation period. *Subsection (6)(c)* provides that land in the coastal margin that was already open country or registered common land will continue to be treated as open country or registered common land until the end of the preparation period. This ensures that any existing rights of access or restrictions and exclusions over such land under the CROW Act continue until the end of that period. *Subsection (6)(c)(ii)* further makes clear that the position as regards occupier's liability will remain unchanged until the right of access to the land as coastal margin comes into force:

once it does come into force the position as regards occupier's liability will be as set out in section 1(6AA) of the Occupiers' Liability Act 1984 (see section 306).

783. *Section 3A(7)* provides that any exclusions or restrictions of the right of access relating to such land will cease to have effect at the end of the access preparation period. This ensures that any existing exclusions or restrictions on the rights of access over such land under the CROW Act continue until the end of that period. Where appropriate, Natural England should have replaced any such exclusions or restrictions with directions forming part of the proposals for an English coastal route, and these replacement restrictions or exclusions may be made to come into effect immediately after the end of the access preparation period (*subsection (6)(b)*).

784. *Section 3A(8)* ensures that any direction made under *subsection (6)(b)* to take effect after the end of the access preparation period will not be negated by *subsection (7)*.

785. *Subsection 3A(9)* provides that *subsections (6) and (7)* do not apply where land is already dedicated as coastal margin. This is because, at the time that an order under section 3A(1) comes into force, the land is already treated as coastal margin by virtue of the dedication.

786. *Subsection (6)* of section 303 amends section 16 of the CROW Act relating to dedication of land. It allows land in England which is coastal margin or is adjacent to coastal margin to be dedicated as coastal margin. If the land is already coastal margin, the effect of dedicating it is that the restrictions in Schedule 2 to the CROW Act may be relaxed by the dedication if the dedicator so wishes. This subsection also provides that where land is dedicated as coastal margin, then if the land would otherwise be excepted land (within the meaning of Part 1 of the CROW Act) it is treated as if it were not excepted land, unless it is land which is accessible to the public under another enactment or rule of law (for instance, a public right of way). The subsection enables land adjacent to coastal margin to be dedicated as coastal margin, and in this case, in addition to the effects already described, the dedication ensures that the land is treated for the purposes of Part 1 of CROW as if it were coastal margin. Existing dedications may be amended so that land which is already dedicated as access land may also be dedicated as coastal margin.

787. *Subsection (7)* amends section 20 of the CROW Act to require Natural England to ensure that in relation to land which is coastal margin the public are informed that the right of access conferred by the Act does not affect any other rights of access that may exist in relation to that land. The amendment made by *subsection (7)(b)* provides that a separate code of conduct may be drawn up for coastal land.

788. *Subsection (8)* amends section 44 of the CROW Act to ensure that orders under section 3A(1) of that Act are subject to affirmative resolution procedure (like the existing orders under section 3 of that Act).

789. *Subsection (9)* amends section 45 of the CROW Act to include a definition of coastal margin. The definition is the one set out in section 1(2) of that Act (as amended by this section): "land which is of a description specified by an order under section 3A".



***Section 304: Establishment and maintenance of the English coastal route etc***

790. This section introduces Schedule 20 to the Act.

***Liabilities***

***Section 305: Restricting liabilities of Natural England and the Secretary of State***

791. There are many dangers on the coast and this section makes clear that Natural England does not have unlimited responsibility for the safety of people who choose to use the route or associated access land. *Subsection (1)(a)* removes any duty of care owed by Natural England under the law of negligence when preparing or proposing the coastal route. *Subsection (1)(b)* removes any duty of care owed by Natural England under the law of negligence in connection with any failure by it to erect notices and signs warning of obstacles or hazards. This is because Natural England cannot assume responsibility for erecting such notices and signs for every obstacle or hazard that exists. It is expected that Natural England will erect notices or signs only when it is aware that there is an obstacle or hazard which is unusual or cannot be easily identified by the public. *Subsection (1)(c)* removes any duty of care owed by Natural England under the law of negligence in connection with any failure by it to exclude or restrict access under Chapter 2 of Part 1 of the CROW Act, except a failure within *subsection (2)*. *Subsection (2)(a)* relates to where Natural England has decided not to act in accordance with an application made under section 24 of the CROW Act, which relates to a direction for the purposes of land management, or an application under section 25 of that Act, which relates to a direction for the purpose of fire protection or avoiding a danger to the public. *Subsection (2)(b)* relates to where Natural England does not act in accordance with representations under section 27(5) of that Act, which relates to consultation with the original applicant before revoking or varying a direction made under sections 24 or 25 of that Act. *Subsection (3)* restricts the liability of anyone acting on Natural England's behalf in the same way. This would for example, apply to Natural England's employees and agents.

792. *Subsection (4)* makes it clear that the Secretary of State does not owe any duty of care under the law of negligence when approving proposals for a coastal long-distance route or giving a direction for the variation of such proposals.

***Section 306: Occupiers' liability***

793. The CROW Act amended section 1 of the Occupiers' Liability Act 1984 in certain respects including by removing the liability of occupiers of access land to those exercising the right of access, and to trespassers, in respect of risks arising from natural features of the landscape "or any river, stream, ditch or pond whether or not a natural feature". This exclusion of liability is subject to certain safeguards and does not apply if the danger is due to anything done by the landowner with the intention of creating that risk, or being reckless as to whether that risk is created.

794. This section extends this exclusion of liability, for land which is coastal margin, in respect of a risk resulting from any physical feature (whether of the landscape or otherwise). Coastal land includes many man-made features, for example war-time defences. Occupiers should enjoy the same reduced liability for these as they enjoy for natural features.



### *General*

#### ***Section 307: Isles of Scilly***

795. This section relates to the application of the Act to the Isles of Scilly. *Subsection (1)* provides that sections 296 to 301, 304, 305, 308, 309 and Schedule 20 do not apply to the Isles of Scilly unless there is an order made by the Secretary of State under *subsection (2)*. *Subsection (3)* requires the Secretary of State to consult the Council of the Isles of Scilly before making such an order.

796. Part 4 of the 1949 Act applies to the Isles of Scilly, but an order under section 111 of that Act may provide for it to apply as if those Isles were a separate county (and not part of Cornwall). *Subsection (4)* makes it clear that such an order may be made in relation to Part 4 of that Act as amended by this Part of the Act. Part 1 of the CROW Act does not apply to the Isles of Scilly unless an order is made under section 100 of that Act applying it there. *Subsection (5)* makes it clear that an order under section 100 of the CROW Act may be made in relation to Part 1 of that Act as amended by this Part of the Act.

#### ***Section 308: The Crown***

797. This section makes Part 9 of the Act binding on the Crown and applies it to any Crown land. *Subsection (2)* sets out what constitutes “Crown land”.

798. *Subsection (3)* enables the appropriate authority (as defined by *subsection (5)*) in relation to land held by or on behalf of the Crown to enter into an agreement under section 35 of the CROW Act (agreements with respect to means of access) entered into by Natural England or an access authority, by virtue of paragraph 1 of Schedule 20) or an agreement under paragraph 2 of that Schedule in respect of that Crown land. *Subsection (4)* provides that an agreement with respect to any other interest in Crown land (for example, a person entering an agreement in respect of his leasehold interest in Crown land) is of no effect unless it has been approved by the appropriate authority in relation to that land. *Subsection (5)* sets out what constitutes the “appropriate authority” in relation to different categories of Crown land.

799. *Subsection (6)* provides for any question as to which Crown authority is the appropriate authority for the purpose of making or approving an agreement under *subsection (3)* to be referred to the Treasury, whose decision is final. *Subsection (7)* provides for any reference to Her Majesty’s private estates to be construed in accordance with section 1 of the Crown Private Estates Act 1862.

#### ***Section 309: Interpretation of this Part***

800. A number of definitions are provided for words or expressions used in this Part.

### *Wales*

#### ***Section 310: Powers of National Assembly for Wales***

801. This section amends the Government of Wales Act 2006 to confer legislative competence on the National Assembly for Wales. The section provides competence in relation to the establishment and maintenance of a route (or a number of routes) for the coast to enable the public to make recreational journeys. However, the section specifies that this does not include competence to create new highways by Assembly Measure or to enable journeys by mechanically propelled vehicles, except permitted journeys by qualifying invalid

carriages. It also provides competence in relation to the securing of public access to relevant land for the purpose of open-air recreation. Land is relevant land if it:

- a) is at the coast;
- b) may be used for the purposes of open-air recreation in association with land within paragraph (a); or
- c) may be used for the purposes of open-air recreation in association with the route or routes.

802. The section provides that for the purposes of the section, the coast means the coast of Wales adjacent to the sea, including the coast of any island. It also provides that the sea includes the relevant upstream waters of a river, and that these are the waters from the seaward limit of the estuarial waters of the river upstream to the first bridge or tunnel by means of which the public have rights to cross the river on foot (“the public foot crossing”).

## **PART 10: MISCELLANEOUS**

### *Natural England*

#### ***Section 311: Area in which functions of Natural England exercisable***

803. This section amends section 1 of the Natural Environment and Rural Communities Act 2006 in order to clarify the area over which Natural England may exercise its functions. *Subsection (2)* amends subsection (3) of the 2006 Act so that the reference to England includes, where the context requires, the territorial sea adjacent to England (up to 12 nautical miles from baseline). *Subsection (3)* inserts subsection (3A), which provides that orders defining the boundaries of the territorial sea adjacent to England, where it meets the sea adjacent to Wales and Scotland, apply for the purposes of section 1 of the 2006 Act.

804. Natural England and its predecessor bodies have regularly undertaken research and given advice on relevant marine issues within territorial waters. However, a new formulation of their territorial scope was expressed in the 2006 Act which it has been suggested might restrict their scope. So this section is not intended to alter the status quo, but merely to make it clear that Natural England may exercise functions in the territorial sea adjacent to England.

#### ***Section 312: Natural England not to be responder for Civil Contingencies Act 2004***

805. This section amends Schedule 1 to the Civil Contingencies Act 2004 (category 1 and 2 responders) so as to omit paragraph 11A (Natural England). Paragraph 11A was inserted by paragraph 174 of Schedule 11 to the Natural Environment and Rural Communities Act 2006, and had the effect of making Natural England a category 1 responder. Such responders have duties under section 2 of the 2004 Act (for example, to assess emergency risks and to maintain contingency plans). It has not been commenced. This section will remove Natural England from the lists of category 1 responders. Natural England has an important role in certain types of emergency, but it has been concluded that non-statutory arrangements are a more cost-effective way of engaging them.

*Countryside Council for Wales*

***Section 313: Area in which functions of Countryside Council for Wales exercisable***

806. This section amends Part 7 of the Environmental Protection Act 1990 in order to clarify the area over which the Countryside Council for Wales may exercise its functions. The effect of section 313(2) is to amend the 1990 Act in order to clarify that CCW's functions are, except where otherwise expressly provided, exercisable in relation to Wales only. "Wales" is defined by reference to the definition of "Wales" in the Government of Wales Act 2006. This means that CCW's functions are exercisable in the sea adjacent to Wales up to 12 nautical miles from the baseline.

807. The effect of section 313(3) and the proposed amendment to section 132 of the 1990 Act is that CCW will be able to:

- a) provide advice to the Welsh Ministers on the development and implementation of policies for or affecting nature conservation in Wales and the Welsh zone;
- b) provide advice and the dissemination of knowledge to any persons about nature conservation in Wales and the Welsh zone, or about matters arising from the discharge of their functions under section 132 or section 134 of the 1990 Act in relation to Wales and the Welsh zone; and
- c) commission or support (whether by financial means or otherwise) research which in their opinion is relevant to any of their functions under section 132 or section 134 in relation to Wales or the Welsh zone.

808. CCW will also be able to accept any gifts or contributions made to them for these purposes and, subject to the terms of the gift or contribution, to apply it to those purposes. Where it is appropriate for CCW to carry out research themselves instead of commissioning or supporting other people's research under section 132(1)(e), CCW will also be able to initiate and carry out research directly related to those functions. The amendment to section 134 of the 1990 Act means that CCW's functions in relation to the giving of financial assistance and the making of grants are also exercisable in relation to Wales and the Welsh zone.

*Works detrimental to navigation*

***Section 314: Works detrimental to navigation***

809. This section inserts a new navigational consenting regime into the Energy Act 2008 and provides a variety of powers for the enforcement of that regime.

810. Consent under these provisions is only needed if all the following are satisfied:

- the operation being undertaken falls within a description listed in subsection (4) of the inserted section 79A;
- the operation is being carried out subject to any of the legislative permissions mentioned in subsection (5) of the inserted section 79A;
- the operation causes, or is likely to result in, obstruction or danger to navigation, either while the operation is being carried out or after its completion (section 79A(3)(a)). This includes any intended use to which any works in question are likely to be put (section 79A(7)).

811. Consent will not be needed under these provisions if the operation in question requires a marine licence under Part 4 of this Act.

812. The Secretary of State may publish notice of any applications received (section 79B(2)) and may direct a local inquiry to be held (section 79B(4)) into that application before making any determination under section 79C.

813. The Secretary of State may give consent subject to any conditions as he or she thinks fit (section 79C). The conditions may remain in force for a set period of time or indefinitely (section 79D(2)) and may bind not only the person to whom consent is given, but also any other person who owns, occupies or enjoys the use of the works forming the subject of the consent (section 79D(3)). It is an offence to fail to comply with a consent or any condition of a consent and any offender will be subject to the penalties specified in section 79I(2).

814. In the event of a consent holder failing to comply with any provision of a consent, the Secretary of State may direct the consent holder to take appropriate steps to bring them into compliance (section 79E). Failure to comply with any such direction is an offence subject to the penalties specified in section 79K(2).

815. If, after consent has been given, a danger to navigation arises because substantial damage, or other substantial and unforeseen changes in the state of any works, has occurred, the Secretary of State may serve an “emergency safety notice” on the consent holder (section 79F). The requirements that an emergency safety notice may impose relate only to those matters given in section 79F(5). If a consent holder fails to comply with any requirement of an emergency safety notice the Secretary of State may make arrangements to ensure compliance with that notice and recover the costs of doing so from the consent holder or other person bound by a consent (section 79G(3)). Further, it is an offence to comply with an emergency safety notice, and a person committing such an offence is subject to the penalties given in section 79L(2).

816. The Secretary of State may impose an “immediate action notice” on a consent holder, or other person bound by a condition on a consent, if as a result of a failure to comply with a consent condition a danger to navigation has arisen (section 79H). The immediate action notice may impose a requirement on a person to comply with the condition or to take action to remedy their failure to comply with the condition. If a consent holder, or other person on whom a notice is served, fails to comply with any requirement of an immediate action notice the Secretary of State may make arrangements to ensure compliance with that notice and recover the costs of doing so from the consent holder or other person bound (section 79G(1) to (6) applies by virtue of section 79H(5)). Further, it is an offence to comply with an immediate action notice, and a person committing such an offence is subject to the penalties given in section 79L(2).

817. In addition to using any of the other enforcement powers, the Secretary of State may apply to a court for an injunction (or interdict in Scotland) to restrain any breach of a consent (section 79M).

818. The Secretary of State has the power to appoint inspectors to assist in the carrying out of his or her functions under these provisions (section 79N).

819. The Secretary of State may by order extend these provisions, subject to modification, to Scottish inshore waters but only in so far as they relate to activities that Scottish Ministers do not have the power to control or regulate for the purpose of preventing obstruction or danger to navigation (section 79P).

*Harbours Act 1964*

***Section 315: Amendments of the Harbours Act 1964***

820. Schedule 21 sets out a number of miscellaneous amendments of the Harbours Act 1964.

**PART 11: SUPPLEMENTARY PROVISIONS**

***Section 316: Regulations and Orders***

821. This section contains general provisions for making regulations and orders under the Act.

***Section 317: Directions***

822. This section contains details for making directions under the Act.

***Section 318: Offences by directors, partners, etc***

823. This section provides for individual liability in some cases where there is also corporate liability.

824. Where the offence has been committed by a Scottish firm, *subsection (4)* states that proceedings may be brought against an individual partner as well as the partnership.

***Section 319: Disapplication of requirement for consent to certain prosecutions***

825. Section 3 of the Territorial Waters Jurisdiction Act 1878 provides that a person who is not a British subject may not be prosecuted for an indictable offence committed in the territorial sea without the consent of the Secretary of State. This section has the effect of disapplying section 3 of the 1878 Act in relation to proceedings for offences committed under the Act.

***Section 320: Power to make transitional provisions and savings***

826. This section allows the Secretary of State to make, by order, transitional provisions and savings for any Part of the Act.

***Section 321: Repeals***

827. Repeals are found in Schedule 22.

***Section 322: Interpretation***

828. This section contains definitions of expressions used in the Act.

829. The term “public body” is not apt to include, and is not defined so as to include, Her Majesty, the Duchy of Lancaster or the Duchy of Cornwall. Similarly, in the definition of “public office holder”, “person holding... an office under the Crown” is not apt to include persons who are officers of Her Majesty in Her private capacity, officers of Her Household or officers of either the Duchy of Lancaster or the Duchy of Cornwall.

***Section 323: Extent***

830. This section sets out to which parts of the UK the provisions in the Act apply. This is different for different Parts of the Act.

831. The Act extends to England and Wales, whilst various provisions also extend to Scotland and Northern Ireland. The Act also in certain cases allows for orders to be made in respect of Channel Islands, the Isle of Man, or overseas territories.

832. Part 1 (the Marine Management Organisation) provisions extend to the whole UK. However the functions of the MMO are for the most part not exercisable in relation to the territorial waters adjacent to Scotland.

833. Part 2 allows for the designation of a UK EEZ and defines the UK marine area. It also provides for the designation of a Welsh zone. This Part extends to the whole of the UK.

834. Marine Planning (Part 3) extends to the whole of the UK, with responsibilities for each of the Secretary of State, the Welsh Ministers, the Scottish Ministers and the Department of the Environment (Northern Ireland). Functions relating to marine plans do not apply in relation to the Scottish inshore region or the Northern Ireland inshore region.

835. Licensing (Part 4) extends to the whole of the UK. It applies in all areas except territorial waters adjacent to Scotland, although provisions apply in different ways in different areas, in line with the existing devolution settlement.

836. The provisions of Chapter 1 of Part 5 (provisions relating to marine conservation zones) (other than Schedules 11 and 12 relating to consequential amendments and transitional provisions for MCZs) extend to the whole of the UK but are of no application in relation to the Scottish inshore region and the Northern Ireland inshore region, where the relevant administrations intend to bring forward provisions under their own legislation.

837. Part 6 (inshore fisheries) extends to England and Wales, although inshore fisheries and conservation districts may only be established in England. The sections on the powers of IFC officers etc (sections 165, 166 and 186) also extend to Scotland.

838. Part 7 (fisheries) extends to England and Wales, although sections 212 and 213 (crabs and lobsters) and 232 (keeping, introduction and removal of fish) also extend to Scotland. Measures to manage migratory and freshwater fisheries in that Part (Chapter 3) apply in England and Wales, the River Esk in Scotland but not the River Tweed in England. Section 232 applies to England and Wales and the catchment area of the Esk in Scotland.



839. In Part 8 (enforcement measures) Chapters 1 to 5 and section 295 (Application to the Crown) extend to the whole of the UK. Measures will apply in different areas in different ways in line with the existing devolution settlement and agreements between the different administrations.

840. Coastal access provisions (Part 9) extend to England and Wales but in general apply in relation to England only. However this Part also provides framework powers for the National Assembly for Wales to designate a coastal route in Wales.

841. Part 10 (Miscellaneous) extends to the whole of the UK. The sections relating to Natural England under Part 10 (sections 311 and 312) apply in England only. The section relating to the Countryside Council for Wales (section 313) applies in Wales only. The section relating to navigation (section 314) applies in all UK waters with the exception of the Scottish inshore region, though it does provide for the Secretary of State to extend these provisions by order to the Scottish inshore region. The section relating to harbours (section 315) applies in England and Wales.

842. Finally, the supplementary provisions of the Act (Part 11) extend to the whole of the UK with the exception of the provisions relating to repeals (section 321 and Schedule 22) which generally have the same extent as the provisions being repealed.

#### ***Section 324: Commencement***

843. This section prescribes when the different provisions in the Act will come into force. Part 3, certain parts of Parts 5 and 6, and Part 9 will come into force 2 months after the Act receives Royal Assent. Other Parts of the Act will come into effect on a date which will be set out in an order made by the Secretary of State or, in the case of certain provisions to the extent they relate to Wales, the Welsh Ministers. However, Ministers will be able to make orders and regulations under the Act from the date of Royal Assent, and certain provisions in Part 3 relating to the Marine Policy Statement also come into force on Royal Assent.

#### ***Section 325: Short title***

844. This section gives the short title of the Act as the “Marine and Coastal Access Act 2009”.

### **SCHEDULE 1: THE MARINE MANAGEMENT ORGANISATION**

845. This Schedule sets out detailed arrangements for the establishment of the MMO including the appointment, terms of appointment (including allowances) and resignation or suspension from office of the MMO chair and other board members. The chair and board members are appointed by the Secretary of State, the latter after consultation with the chair.

846. The Schedule also makes provision for the appointment of staff by the MMO including the chief executive and the chief scientific adviser. The Secretary of State must approve the person chosen as chief executive and may make the first appointment. The MMO is enabled to pay pensions, allowances and gratuities in respect of any staff but this must be approved by the Secretary of State.

847. The MMO must provide the Secretary of State with an annual report detailing how it discharged its functions during that year. It must also keep proper accounts and records. A statement of accounts must be prepared for each financial year and a copy of that statement provided to the Secretary of State and to the Comptroller and Auditor General (the National Audit Office) for auditing. The annual report, the statement of accounts certified by the Comptroller and Auditor General and the Comptroller and Auditor General's report on that statement must be submitted to the Secretary of State and laid before Parliament.

848. The MMO must also provide any information that is needed relating to these accounts and returns, in respect of its property and the discharge of its functions, to the Secretary of State. It must also allow inspection of its accounts or other documentation relating to the above, or any explanation of them which is required.

## **SCHEDULE 2: MINOR AND CONSEQUENTIAL AMENDMENTS RELATING TO THE MMO**

### *Paragraph 1: Public Records Act 1958*

849. This paragraph amends the Public Records Act 1958 to make the administrative records of the MMO "public records" for the purposes of that Act.

### *Paragraph 2: Parliamentary Commissioner Act 1967*

850. This paragraph adds the MMO to the list of bodies which are subject to investigation by the Parliamentary Commissioner for Administration in the event of maladministration.

### *Paragraph 3: House of Commons Disqualification Act 1975*

851. This paragraph adds the MMO to the list of bodies, membership of which will disqualify a person for membership of the House of Commons.

### *Paragraph 4: Race Relations Act 1976*

852. This paragraph adds the MMO to the list of bodies subject to the statutory duty to promote race equality.

### *Paragraph 5: Inheritance Tax Act 1984*

853. This paragraph adds the MMO to the list of bodies that are not liable to inheritance tax when property is transferred to them.

### *Paragraph 6: Freedom of Information Act 2000*

854. This paragraph adds the MMO to the list of public authorities which are subject to the requirements of the Freedom of Information Act 2000 and, consequentially, the requirements of the Environmental Information Regulations 2004 (S.I. 2004/3391).

### **SCHEDULE 3: TRANSFER SCHEMES**

855. This Schedule makes detailed provision in relation to transfer schemes made under section 39.

*Paragraph 1: Introductory*

856. This paragraph defines a “transferor” and “transferee”. The “transferor” is likely to be a Government Department and the “transferee” the MMO.

*Paragraph 2: The property, rights and liabilities that may be transferred*

857. By this paragraph, a transfer scheme may make provision for the transfer of property, rights or liabilities, even where that property, or those rights or liabilities, would not otherwise be capable of transfer.

*Paragraph 3: Creation and apportionment of property, rights or liabilities*

858. This paragraph enables the creation of interests in or rights over transferred property for the benefit of transferor or the transferee or others. It also allows the creation of rights and liabilities between the transferor and transferee.

*Paragraph 4: Vesting certificates*

859. This paragraph confirms that a certificate issued by the Secretary of State that states that something is vested in any person under a transfer scheme is to be taken as conclusive evidence of that fact. This certificate is evidence that a transfer has taken place.

*Paragraph 5: Employment contracts*

860. This paragraph makes provision in relation to rights and liabilities under a contract of employment transferred by means of a transfer scheme. It provides that a contract of employment does not end when there is a transfer of employment under a transfer scheme. The contract of employment will continue as if it had been made between the employee and the MMO (the transferee). This provision is equivalent to regulation 5 of the Transfer of Undertakings (Protection of Employment) Regulations 1981 (“TUPE”) and conforms with the Cabinet Office statement of practice of January 2000 “Staff Transfers in the Public Sector”. This states that public sector bodies should ensure that the principles of TUPE are followed and that transferring public sector staff are offered terms that are, overall, no less favourable than those set out in TUPE.

*Paragraph 6: Employee expressing objection to transfer of contract of employment*

861. This paragraph sets out what happens if an employee objects to the transfer of their employment contract under a scheme. The contract of employment will cease at the point the transfer would have taken place but the employee is not to be considered to have been dismissed.

*Paragraph 7: Right to terminate contract of employment for substantial detrimental change in conditions*

862. This paragraph preserves an individual's right to terminate their contract of employment where there is a substantial detrimental change in working conditions. A detrimental change is something other than a change in employer.

*Paragraph 8: Civil servants*

863. This paragraph makes provision for the employment of persons employed in the civil service at the point of transfer under a transfer scheme. The terms of their employment in the civil service will form the terms of a contract of employment with the transferee.

*Paragraph 9: Compensation*

864. This paragraph allows the Secretary of State to include in a transfer scheme provision for the payment of compensation to any person adversely affected by that scheme.

*Paragraph 10: Validity*

865. This paragraph ensures anything done by the transferor before the time of transfer is still valid after transfer. An example of this might be where the transferor has signed the lease on a building. This paragraph ensures the lease remains valid after transfer to the MMO.

*Paragraph 11: Continuity*

866. This paragraph ensures anything done by the transferor in relation to something being transferred is treated as though it had been done by the MMO (the transferee). The MMO may also continue anything started by the transferor before transfer. For example, if an enforcement action were being taken against someone by the transferor, this paragraph may enable this action to be continued by the MMO. Similarly, where an employee had brought an action against their employer (the transferor), their case would continue against the MMO after the transfer.

*Paragraph 12: Documents*

867. This paragraph ensures that any reference to the transferor in any document relating to anything transferred under a scheme is to be read as a reference to the MMO. This saves having to change the wording in documents such as leases.

*Paragraph 13: Remedies*

868. This paragraph means that the rights, powers and remedies which were available to the transferor are available to the MMO – in relation to any right or liability that it assumes on transfer – in exactly the same way as they could have been relied upon by the transferring organisation.

*Paragraph 14: Interim arrangements*

869. This paragraph allows a transfer scheme to include interim arrangements whereby the transferor makes available to the MMO premises, facilities and staff for the period between the making of the scheme and the date of transfer.

*Paragraph 15: Retrospective modification of schemes*

870. This paragraph allows the Secretary of State to modify a transfer scheme and for any changes to take effect from a nominated date. The power might be used to remedy any mistake made in a transfer scheme and the ability to nominate a date would avoid any adverse affects on matters such as continuity of service.

*Paragraph 16: Incidental, consequential, supplemental, or transitional provision or savings*

871. This paragraph allows for transfer schemes to include additional provisions designed to ensure a smooth and efficient transition to the new arrangements.

**SCHEDULE 4: EXCLUSIVE ECONOMIC ZONE AND WELSH ZONE:  
CONSEQUENTIAL AMENDMENTS**

872. This sets out the necessary amendments required to previous legislation that defined the United Kingdom's offshore maritime zones. It will redefine the boundaries of these zones such that they are consistent with the boundaries of any declared Exclusive Economic Zone. The amendments relating to the Exclusive Economic Zone are in Part 1 of the Schedule. Part 2 contains amendments to the Government of Wales Act 2006 consequential on the creation of the Welsh zone.

**SCHEDULE 5: PREPARATION OF AN MPS OR OF AMENDMENTS OF AN MPS**

873. This Schedule sets out the procedure which must be followed when preparing or amending a marine policy statement (an "MPS").

874. *Paragraph 2* defines certain terms used in this Schedule.

875. Under the Northern Ireland devolution settlement, functions are conferred upon departments, rather than the administration as a whole, or Ministers. Therefore *paragraph 3* requires that the Department of Environment in Northern Ireland consult with the other relevant Northern Ireland departments at certain points during the preparation or amendment of an MPS.

876. *Paragraphs 4 to 6* concern the preparation and publication of a 'Statement of Public Participation' ("SPP") by the policy authorities engaged in preparing or amending the MPS. This must set out how and when the policy authorities intend to involve "interested persons" in the process ("interested persons" is defined in *paragraph 4(4)*).

877. The SPP must contain a timetable for the various stages of preparing the MPS or amendments, including how and when representations about the consultation draft (defined in *paragraph 8*) should be made. Since the draft MPS must be laid before the legislatures of the policy authorities involved in its preparation, the SPP must also set out the length of time the legislatures will have to consider the MPS and make any resolutions or recommendations about it.

878. Policy authorities must allow a reasonable period of time for each of the stages of the timetable.

879. Policy authorities must keep the SPP under review, and must amend it when necessary to address any problems with it and keep it up to date. They must then re-publish it as amended. They are obliged to take all reasonable steps to comply with the SPP.

880. *Paragraph 7* requires that the policy authorities carry out a sustainability appraisal of the policies proposed for inclusion in the MPS. *Sub-paragraph (2)* makes clear that the results of the appraisals are to influence which proposals the policy authorities take forward – they may only proceed with proposals if the results of the appraisals indicate that it is “appropriate” to do so. *Sub-paragraph (3)* requires the policy authorities to produce a report of the results of these appraisals, and *sub-paragraph (4)* requires that the sustainability appraisal report is published at the same time as the consultation draft. Marine plans are also subject to sustainability appraisal (see the notes on Schedule 6, paragraph 10 below).

881. *Paragraph 8* requires the policy authorities to prepare a “consultation draft” of the MPS (or amendments) and publish it so that “interested persons” are aware of it and may make representations about it. “Interested persons” is defined in sub-paragraph (4).

882. *Paragraph 9* permits any person to make representations about the consultation draft, but requires that such representations must be made in accordance with the SPP (see *paragraph 5*). If any representations are made, the policy authorities are required to consider them in the course of finalising the text of the MPS.

883. *Paragraph 10* sets out the procedure for laying the draft MPS before the legislatures of the administrations involved in its preparation. If any of the legislatures make resolutions or recommendations about the MPS, the relevant policy authority must respond to those resolutions or recommendations (and lay the response before the legislature).

884. If the policy authorities make any changes to the MPS or amendments between publishing the consultation draft and adopting the final text, *paragraph 11* requires that they publish a summary of those changes and the reasons for them alongside the final text.

885. *Paragraph 12* establishes that the policy authorities adopt the final text by deciding that that text should be published as the MPS, and then notifying the other policy authorities of their decision. As soon as possible after all the policy authorities have adopted the final text, they must jointly publish it. *Sub-paragraph (4)* provides that policy authorities which have not yet adopted the final text must be given a “reasonable interval” in which to do so before the MPS is published.

886. *Paragraph 13* provides that an MPS is still valid even if it is not adopted by all the policy authorities which were engaged in preparing it.



## **SCHEDULE 6: MARINE PLANS: PREPARATION AND ADOPTION**

887. This schedule sets out the procedure which must be followed when preparing marine plans under section 51.

888. *Paragraphs 1 to 3* relate to co-operation, consultation and consistency in planning arrangements made by the different marine plan authorities.

889. *Paragraph 1* places duties on marine plan authorities when they decide to prepare a plan to notify “related” planning authorities of their intention to plan. (“Related planning authorities” include the Secretary of State (unless he is the marine plan authority), terrestrial local and regional planning bodies, and other marine plan authorities.)

890. This is so that the other related authorities may consider how they might want to be involved in the planning process and make arrangements for their involvement.

891. *Paragraph 2* sets out what must go in a notice to the Secretary of State under paragraph 1. The notice must state whether the marine plan authority (if it is a devolved administration) intends the plan to include provision relating to “retained functions” (defined in section 60 – that is, matters which are not within its devolved competence). If the devolved marine plan authority intends to prepare a plan which is not in conformity with any marine policy statement which governs planning for the marine plan area, it must also state this in its notice to the Secretary of State.

892. The duty to notify the Secretary of State continues whilst a marine plan is being prepared. *Sub-paragraph (4)* provides that, if the marine plan authority’s intentions change whilst it is preparing the plan, it must send a new notice to the Secretary of State.

893. *Paragraph 3* provides that the marine plan authority must also take all reasonable steps to secure compatibility between the new marine plan and other existing marine or terrestrial development plans for “related” areas (that is, areas which adjoin or are adjacent to the area of the proposed marine plan, or which affect, or might be affected by, the area of the proposed marine plan).

894. *Paragraph 4* places a duty on the Department of the Environment in Northern Ireland to consult other relevant Northern Ireland departments at key stages of the plan preparation process. (See also the note on *paragraph 3* of Schedule 5 above.)

895. *Paragraphs 5 to 7* then set out the process and requirements relating to the preparation and publication by the marine plan authority of a “Statement of Public Participation” (“SPP”) for the plan. As for the MPS, the SPP must set out how and when the policy authorities intend to involve “interested persons” in the planning process (“interested persons” is defined in *paragraph 5(8)*). In addition, an SPP for a plan must also make clear the area which is to be planned for, and must invite people to make representations on what the plan should include.

896. An SPP for a plan in the Welsh, Scottish or Northern Ireland offshore regions, or the Welsh inshore region, must state whether the plan is intended to include provision relating to “retained functions” (defined in section 60). If the plan is intended to include such provision, the Secretary of State must be notified and the marine plan authority may not publish the SPP without his consent.

897. If a marine plan authority which had previously proposed to plan without including provision in relation to “retained functions” decides after publication of the SPP that it does want to plan for those matters, it must notify the Secretary of State, revise the SPP (because more “interested persons” will then have an interest), and must then seek the Secretary of State’s agreement before publishing the revised SPP.

898. Again, as for the MPS, an SPP for a plan must contain a timetable for the various stages of preparing the plan, and must also set out how and when representations about the content of the plan or the consultation draft (defined in *paragraph 11*) should be made.

899. Marine plan authorities must allow a reasonable period of time for each of the stages in the timetable.

900. Marine plan authorities must keep the SPP under review, and must amend it when necessary to address any problems with it and keep it up to date. They must then re-publish it as amended (after securing the Secretary of State’s agreement if they intend to include in a plan provision relating to retained functions ).

901. Marine plan authorities are obliged to take all reasonable steps to comply with the SPP.

902. *Paragraph 8* concerns the provision of advice and assistance to the marine plan authority. *Sub-paragraph (1)* enables the marine plan authority to seek advice and assistance from any body or individual with relevant expertise, whilst *sub-paragraph (2)* makes clear that the marine plan authority may convene “advisory and consultative groups” to assist it in developing and consulting on a draft marine plan. The marine plan authority would be able to establish new groups, or make use of any existing groups which met its needs.

903. *Paragraph 9* sets out a non-exhaustive list of matters to which the marine plan authority must have regard in preparing a marine plan. These include:

- the requirement that the plan be in conformity with any MPS which governs marine planning for the area;
- the duties in relation to compatibility with other plans;
- the likely effect of the marine plan on any area (marine or terrestrial) which is related to the area covered by the plan;
- the results of the marine plan authority’s review of matters likely to affect the exercise of their functions (see section 54);

- the SPP;
- any representations made in response to the SPP about the content of the plan;
- Any advice received from experts or “advisory and consultative groups”;
- any other plan prepared by a public or local authority in connection with the management of marine or coastal resources (for example, River Basin Management Plans prepared under the Water Framework Directive<sup>13</sup>, Shoreline Management Plans).
- the powers and duties of the Crown Estate Commissioners.

904. Existing obligations under the Strategic Environmental Assessment Directive require that an assessment is made of the environmental impacts of a proposed plan. In addition to this environmental impact assessment, *paragraph 10* requires that the marine plan authority carry out a sustainability appraisal of the policies proposed for inclusion in the plan. *Sub-paragraph (2)* makes clear that the results of the appraisals are to influence which proposals the marine plan authority takes forward – it may proceed with proposals only if the results of the appraisals indicate that it is ‘appropriate’ to do so. *Sub-paragraph (3)* requires the marine plan authority to produce a report of the results of these appraisals, and *sub-paragraph (4)* requires that the sustainability appraisal report is published at the same time as the consultation draft.

905. *Paragraph 11* sets out the requirements for publication of the “consultation draft” of a marine plan. It must be published by the marine plan authority in a way that brings it to the attention of interested persons. If a plan prepared by one of the devolved marine plan authorities includes provision relating to “retained functions”, the consultation draft may only be published with the agreement of the Secretary of State.

906. *Paragraph 12* provides that anybody may make representations about the draft plan, in accordance with the SPP. If any representations are made, the marine plan authority must consider them in the course of finalising the text of the plan.

907. *Paragraph 13* requires a marine plan authority to consider holding an independent investigation into the draft plan, to look in more detail at the proposals or the responses received to the consultation on the proposals. *Sub-paragraph (2)* sets out the factors to which the authority should have regard in deciding whether to hold an independent investigation, and *sub-paragraph (3)* requires the investigator to make recommendations and give his reasons for them. *Sub-paragraph (4)* requires the marine plan authority to publish the recommendations and reasons given by the investigator.

908. *Paragraph 14* sets out some of the matters a marine plan authority must consider before deciding to adopt a marine plan, including the recommendations and reasoning given by any independent investigator that it appointed.

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<sup>13</sup> 2000/60/EC.

909. *Paragraph 15* sets out the process for adopting and publishing a marine plan in its final form. A marine plan authority “adopts” a marine plan by making the decision to publish it.

910. *Sub-paragraphs (2) and (3)* require that plans for the Welsh, Scottish and Northern Ireland offshore areas must be agreed by the Secretary of State before they may be adopted by the marine plan authority. (The requirement for the Secretary of State’s agreement to the adoption of a marine plan does not apply to a plan for the Welsh inshore region which does not include provision relating to retained matters.)

911. Under *sub-paragraph (4)* the conferral on the Welsh or Scottish Ministers, or the Department of the Environment in Northern Ireland, of marine planning functions which are subject to the agreement of the Secretary of State does not affect any functions, or the exercise of any functions they have, or may acquire, apart from those under Part 3 of the Act.

912. This sub-paragraph secures that the devolved administrations’ existing functions, and any to be conferred, imposed or transferred in the future, are neither diminished nor constrained by the fact that certain marine planning functions under Part 3 are subject to a requirement for the Secretary of State’s agreement. Thus, for example, the fact a marine plan under Part 3 of the Act cannot contain provision relating to retained functions unless the Secretary of State agrees does not prevent the devolved administrations from setting out policies of theirs relating to retained functions in the exercise of any relevant existing functions of theirs, or any relevant functions which are in future conferred or imposed on, or transferred to, them.

913. Section 58(1) requires certain authorisation or enforcement decisions to be taken in accordance with the appropriate marine policy documents (that is to say, the MPS, and any marine plans, to the extent provided for in section 59) unless relevant considerations indicate otherwise: so where a devolved administration has policies which relate to the marine area but which are made otherwise than under Part 3 of the Act, those policies could be relevant considerations for those purposes, depending on the circumstance.

914. *Sub-paragraph (6)* enables the marine plan authority to make changes to the draft marine plan before it adopts it, and *sub-paragraph (7)* requires that it should publish the plan as soon as possible after adoption, along with details of any changes and the reasons for them. If an independent investigation has been carried out, but the marine plan authority has not implemented some of the recommendations made by the investigator, it must also publish its reasons for not implementing the recommendations.

## **SCHEDULE 7: FURTHER PROVISION ABOUT CIVIL SANCTIONS UNDER PART 4**

915. Like the sections on civil sanctions, these provisions are based on those contained in the Regulatory and Enforcement Sanctions Act 2008.

### *Paragraph 1: Interpretation*

916. This paragraph defines “civil sanction” as meaning, for the purposes of the Schedule, a fixed or variable monetary penalty.

### *Paragraph 2: Fixed monetary penalties: other sanctions*

917. Imposition of a fixed monetary penalty removes the person's liability to criminal prosecution for the relevant offence in respect of the act of non-compliance in question. Liability to criminal prosecution is also removed if the person has discharged the liability to a fixed monetary penalty within a specified period under *subsection (3)(e)* of section 94.

918. The enforcement authority may not issue either a compliance or remediation notice as well as a fixed monetary penalty to a person for the same offence.

### *Paragraph 3: Variable monetary penalties: other sanctions*

919. Imposition of a variable monetary penalty removes the person's liability to criminal prosecution for the relevant offence in respect of the act of non-compliance in question.

920. The enforcement authority may not issue a compliance notice and a variable monetary penalty for the same offence.

### *Paragraph 4: Combination of sanctions*

921. The enforcement authority may only combine sanctions for the same offence in certain ways. In addition to the combinations prohibited in *paragraphs 2 and 3*, it may not take the following action in relation to the same offence:

- a) impose a fixed monetary penalty where a variable monetary penalty has been imposed;
- b) impose a variable monetary penalty where a fixed monetary penalty has been imposed;
- c) impose a variable monetary penalty or stop notice where the person has discharged liability for a fixed monetary penalty under *subsection (2)(b)* of section 94;
- d) impose a fixed monetary penalty where a stop notice has been issued;
- e) issue a stop notice where a fixed monetary penalty has been imposed.

922. All other permutations are permitted.

*Paragraph 5: Monetary penalties*

923. This paragraph allows an order made under section 93 or 95 to make provision for discounts for early payment of a monetary penalty and for the payment of interest or other financial penalties for late payment of the original penalty. The total amount of any late payment penalty must not exceed the total amount of the penalty imposed.

924. This paragraph also provides for the enforcement of unpaid penalties (and any interest or late payment charges) through the civil courts. It also allows an order to create a process of recovery by treating the penalty as if it were payable under a court order.

*Paragraph 6: Costs recovery*

925. An order made under section 95 may require a person on whom a variable monetary penalty has been imposed to pay the costs the enforcement authority has incurred up to the point of imposing that penalty. Such costs may include investigation costs, administration costs, and costs of obtaining expert advice. A person receiving a notice for payment may appeal against its imposition and the amount required to be paid. Guidance must be published about how the enforcement authority will exercise the power conferred by this provision.

*Paragraph 7: Appeals*

926. This paragraph specifies the provisions that orders made under section 93 or 95 may and may not make in respects of appeals against fixed or variable monetary penalties. For example, an order may contain provision as to the powers granted to any person conducting an appeal and may require suspension of any requirement or notice until an appeal hearing has concluded.

927. Appropriate tribunals are limited in all cases, except in the case of an order made by Scottish Ministers, to the First-tier Tribunal established under the Tribunals, Courts and Enforcement Act 2007 or any other tribunal established under an enactment (including an enactment contained in, or in an instrument made under, Northern Ireland legislation).

*Paragraph 8: Consultation*

928. This paragraph requires a licensing authority proposing to make an order under section 93 or 95 to consult the enforcement authority that will be the recipient of the powers to be granted by the order and such other persons the authority considers appropriate. The authority will also be required to consult with relevant organisations that it considers represent the interests of persons substantially affected by the proposals.

929. If, as a result of the consultation, there are substantial changes to any part of the proposals, the authority must undertake such further consultation on the revised proposals as it considers appropriate.

*Paragraph 9: Guidance as to use of civil sanctions*

930. The licensing authority may not make an order enabling the imposition of fixed or variable monetary penalties, unless it secures that the enforcement authority will publish guidance in relation to the use of these powers ("Penalty Guidance"). The enforcement authority may be required to consult specified persons before publishing or revising the Penalty Guidance. The Penalty Guidance must also be revised by the enforcement authority



when appropriate, for example, when there has been a change in the rules. The authority must publish the revised guidance. The order must also stipulate that the enforcement authority has regard to the Penalty Guidance when exercising its functions.

931. The Penalty Guidance must contain information about the circumstances in which a sanction is likely to be imposed or may not be imposed (for example, if undertakings or payment of a sum of money are accepted by the enforcement authority once a notice of intent for a monetary penalty has been issued) and information about the person's rights of appeal.

*Paragraph 10: Guidance as to enforcement of offences*

932. This paragraph requires that, where the licensing authority makes an order enabling the imposition of fixed or variable monetary penalties, the enforcement authority must prepare and publish guidance regarding the manner in which the offence to which the power relates is enforced.

933. An enforcement authority may revise and publish its guidance periodically. The enforcement authority must consult all persons it considers appropriate before publishing or revising its guidance.

*Paragraph 11: Publication of enforcement action*

934. Any order made under section 93 or 95 establishing a civil sanction regime must make provision for the publication of certain information relating to its enforcement actions. Those particulars are listed in *sub-paragraphs (2) to (4)*.

*Paragraph 12: Payment of penalties into Consolidated Fund etc*

935. Any monies received by the enforcement authority in pursuant of its enforcement functions under sections 93 and 95 must be paid into the relevant consolidated fund as determined by *sub-paragraph (2)*.

*Paragraph 13: Disclosure of information*

936. This paragraph permits the persons listed in *sub-paragraph (2)* to disclose information to an enforcement authority that has had conferred on it the new powers to impose civil sanctions. Information may only be disclosed where the person making the disclosure has an enforcement function in relation to a criminal offence and for the purposes of the enforcement authority exercising any of the new powers relating to the issue of fixed and variable monetary penalties.

## **SCHEDULE 8: LICENSING: MINOR AND CONSEQUENTIAL AMENDMENTS**

937. Part 1 of this Schedule makes a number of consequential amendments to the Coast Protection Act 1949 (CPA), the Food and Environment Protection Act 1985 (FEPA), the Government of Wales Act 2006 (GOWA) and the Planning Act 2008. Part 2 of this Schedule makes further amendments to FEPA, and to the Petroleum Act 1998.

*Paragraph 2: The Food and Environment Protection Act 1985*

938. This paragraph amends Part 2 of FEPA restricting its geographical scope to the Scottish inshore region.

*Paragraph 3: The Government of Wales Act 2006*

939. Paragraph 4(1)(a) of Schedule 3 to GOWA extends the power confirmed in section 58(1)(c) of that Act to provide that a Minister of the Crown may only exercise functions under Part 2 of FEPA in “Welsh controlled waters” after consultation with the Welsh Ministers. “Welsh controlled waters” are defined in paragraph 4(2) of Schedule 3 to GOWA as that part of the sea beyond the seaward boundary of the territorial sea which is adjacent to Wales.

940. *Paragraph 3* of this Schedule amends paragraph 4 of Schedule 3 to GOWA by replacing reference to the Minister of the Crown’s functions under Part 2 of FEPA with their direct equivalents in Part 4 of the Act.

*Paragraph 4: The Planning Act 2008*

941. Sections 148 and 149 of the Planning Act 2008 make provision such that an order granting development consent under that Act may include provision deeming consent under section 34 of the CPA and Part 2 of FEPA, respectively. This paragraph amends the Planning Act 2008 by replacing those provisions with provision for an order granting development consent to include provision deeming a marine licence to have been issued under Part 4 of the Act.

*Paragraphs 5 and 6: Electronic communications apparatus: operations in tidal waters etc; Electronic communications: emergency works*

942. These two paragraphs insert provision equivalent to sections 80 and 87 of this Act into FEPA as it will continue to apply to the Scottish inshore region.

*Paragraph 7: Application of Part 3 in relation to submarine pipelines*

943. This paragraph introduces two new order making powers into the Petroleum Act 1998. The first power in *sub-paragraph (2)* provides for the Secretary of State to be able to disapply Part 3 of the Petroleum Act 1998 to any pipelines specified by order. This may apply to individual pipelines or more generic descriptions of pipelines. On commencement of any such order, pipelines no longer regulated under Part 3 of the Petroleum Act 1998 will become fully licensable under the Act by virtue of section 65.

944. The second power, in *sub-paragraph (3)*, provides for the Secretary of State to apply Part 3 of the Petroleum Act 1998 to pipelines not currently subject to regulation under that Act. It may only be used to include pipelines used in the connection with exploration for, exploitation of, petroleum, or the importation of petroleum into the UK.

*Paragraph 8: Exception of certain pipelines from being “submarine pipelines” for the purposes of Part 4*

945. This paragraph amends the definition of “submarine pipelines” in Part 4 of the Petroleum Act 1998. It prevents any pipeline specified in an order made under *sub-*

paragraph (2) of paragraph 7 being captured by Part 4 of that Act “(abandonment of offshore installations)”.

## **SCHEDULE 9: LICENSING: TRANSITIONAL PROVISION RELATING TO PART 4**

### *Parts 2 and 3: Coast Protection Act 1949; Food and Environment Protection Act 1985*

946. These two Parts provide that all consents under the Coast Protection Act 1949 and FEPA licences issued before the commencement of the marine licensing provisions are to be considered as if they were marine licences granted under the Act. Additionally, applications for CPA consent and FEPA licences currently under consideration by the licensing authority at the time of commencement of the marine licensing provisions are to be considered by the licensing authority as applications for a marine licence. No additional fees will be required. Any information held by an authority in a register of information that it maintained under section 14 of FEPA must be transferred to the register of information that that authority will maintain under section 101 of the Act.

### *Paragraph 8: Channel Islands and British Overseas Territories*

947. This paragraph provides that an Order in Council under section 26 of FEPA that was in force before the commencement date will remain in force, and may be revoked, amended or re-enacted, as if that section had not been repealed. In addition, if it appears that provision with respect to the licensing of marine activities has been made in the law of any of the Channel Islands or any British overseas territory, and that that provision was made otherwise than by virtue of an Order in Council under section 323 of the Act extending provisions of the Act, any provisions of Part 2 or 4 of FEPA as they have effect as part of the law of that territory may be repealed by Order in Council.

### *Paragraph 9: Dredging*

948. Dredging that involves moving sediment around the sea (as opposed to lifting it out of the sea and taking it to a deposition site) was not licensable under FEPA or the Coast Protection Act 1949. Plough and hydrodynamic dredging are two examples of this. Under the Act these types of dredging need a marine licence. This paragraph delays the requirement for a marine licence for such dredging activities by one year from the date of commencement of the marine licensing functions of the Act. Any order made under section 320 that makes further transitional arrangements may specify additional types of dredging activity that are subject to the one-year grace period.

### *Paragraph 10: Water Resources Act 1991*

949. This paragraph provides that the amendment made by section 82 of the Act applies to any application for consent under section 109 of the Water Resources Act 1991 made, but not determined, by the time of commencement of the marine licensing provisions of the Act.

*Paragraphs 11 and 12: Electronic Communications Code: England and Wales; Electronic Communications Code: Scotland*

950. The Act repeals the requirement for operators to seek approval under the Electronic Communications Code for tidal works (see Part 2 of the Repeals Schedule). These paragraphs provide that approvals granted under paragraph 11 of the Electronic Communications Code before that repeal are to be considered as marine licences, in England and Wales, and FEPA licences, in Scotland. Additionally, applications for approval currently under consideration by the licensing authority at the time of the repeal are to be considered by the licensing authority as applications for a marine licence, in England and Wales, and FEPA licences, in Scotland.

*Paragraph 13: Direction under section 58(1)(c) of the Government of Wales Act 2006*

951. This paragraph provides that before the Secretary of State exercises functions under any of the sections specified in *sub-paragraph (2)* in “Welsh controlled waters”, as defined by paragraph 4 of Schedule 3 to the Government of Wales Act 2006, then the Secretary of State must consult the Welsh Ministers. This provision may be amended, modified or repealed by any further Order in Council made under section 58(1)(c) of the Government of Wales Act 2006.

**SCHEDULE 10: FURTHER PROVISION ABOUT FIXED MONETARY PENALTIES  
UNDER SECTION 142**

952. This Schedule sets out the further provisions about fixed monetary penalties. *Paragraph 1* provides that an order allowing the imposition of fixed monetary penalties must provide that, where a fixed monetary penalty is imposed on a person, that person must not also be liable to criminal prosecution in respect of the relevant offence.

953. *Paragraph 2* states that such an order may provide for discounts for early payment or interest for late payment of the original penalty. The total amount of any late payment penalty must not exceed the total amount of the penalty imposed.

954. This paragraph also provides for the enforcement of unpaid penalties (and any interest or late payment charges) through the civil courts.

955. *Paragraph 3* makes provision for appeals.

956. *Paragraph 4* requires the “appropriate authority” (the Secretary of State or the Welsh Ministers), when it proposes to make an order allowing the use of fixed monetary penalties, to consult the enforcement authority and such other persons as the authority considers appropriate. The relevant authority will also be required to consult relevant organisations which it considers represent the interests of persons substantially affected by the proposals.

957. If, as a result of this consultation, there are substantial changes to any part of the proposals, the authority will be required to undertake such further consultation on the revised proposals as it considers appropriate.

958. *Paragraph 5* provides that an order enabling the imposition of fixed monetary penalties must also require that the enforcement authority publishes guidance in relation to the use of these powers (“Penalty Guidance”). The enforcement authority must revise the Penalty Guidance where appropriate and must consult specific persons before publishing or revising the Penalty Guidance. The order must also state that the enforcement authority should have regard to the Penalty Guidance when exercising its functions.

959. The Penalty Guidance must contain information about the circumstances in which a sanction is likely to be imposed, the amount of the penalty and the person’s right of appeal.

960. *Paragraph 6* requires that where the Secretary of State or the Welsh Ministers make an order enabling the imposition of fixed monetary penalties in relation to an offence, the enforcement authority must prepare and publish guidance regarding the manner in which the offence is enforced (“Enforcement Policy”). The Enforcement Policy must set out the sanctions for committing an offence, the action the enforcement authority may take and the circumstances in which the enforcement authority is likely to take such action. The Enforcement Policy, in contrast to Penalty Guidance, is focused on how particular offences are enforced.

961. *Paragraph 7* provides that any order must require an enforcement authority to publish information concerning its use of those powers in cases where either a fixed monetary penalty has been imposed (but not overturned on appeal) or liability to a penalty has been discharged by payment of a prescribed sum.

962. *Paragraph 8* provides that all payments made in relation to civil sanctions are to be paid into either the Consolidated Fund or the Welsh Consolidated Fund as appropriate.

963. *Paragraph 9* permits those persons listed in *sub-paragraph (2)* to disclose information to an enforcement authority that has had the new enforcement powers conferred on it. Information may only be disclosed where the person listed has an enforcement function in relation to offences and for the purposes of the enforcement authority exercising one of the new powers. The police will not have access to the new enforcement powers but if, for example, they have begun a criminal investigation but think that it no longer merits a criminal prosecution, this provision would allow them to pass information to the enforcement authority so that it could determine whether to issue an alternative sanction.

## **SCHEDULE 11: CONSEQUENTIAL AMENDMENTS RELATING TO MCZS**

964. This Schedule makes a number of amendments to legislation in consequence of the provisions in the Act relating to MCZs.

965. *Paragraph 1* amends section 10 of the Conservation of Seals Act 1970 so that the power to grant licences is in relation to MCZs rather than marine nature reserves.

966. *Paragraph 2* amends the Wildlife and Countryside Act 1981 to abolish the power to establish marine nature reserves in England and Wales, which is no longer necessary as a result of the power to designate MCZs.

967. The amendment to the Water Resources Act 1991 made by *paragraph 3* ensures that byelaws made by the Marine Management Organisation and orders made by the Welsh Ministers to protect MCZs are not affected by byelaws made by the Environment Agency for flood defence and drainage purposes under that Act. This exception currently only applies to byelaws made by navigation authorities, harbour authorities and conservancy authorities.

968. *Paragraph 4* amends the Conservation (Natural Habitats, &c) Regulations 1994 so that MMO byelaws and equivalent orders by the Welsh Ministers protecting European marine sites may be made under Part 5 of the Act rather than under section 37 of the Wildlife and Countryside Act 1981 (which will be repealed by the Act). Provisions are slightly different for European marine sites as different designation criteria apply to them: they will not have the same conservation objectives as MCZs.

## **SCHEDULE 12: TRANSITIONAL PROVISION RELATING TO MCZS**

969. This Schedule makes transitional provision relating to the coming into force of the provisions about MCZs in Part 5.

970. *Paragraph 2* provides that, from the date when Marine Nature Reserves are abolished and replaced by MCZs, any existing Marine Nature Reserve is to be treated as an MCZ. Lundy and Skomer will therefore become MCZs following the commencement of the Act. For as long as conservation objectives for these MCZs remain the same as they were for the former MNRs, no further consultation will be required. If, however, changes are proposed to the conservation objectives for the former MNRs, consultation will be required to agree the conservation objectives for the site.

## **SCHEDULE 13: MARINE BOUNDARIES OF SSSIs AND NATIONAL NATURE RESERVES**

### ***Sites of special scientific interest***

971. *Paragraph 2* amends section 28 of the Wildlife and Countryside Act 1981 in order to define the circumstances in which Sites of Special Scientific Interest (SSSIs) may extend below mean low water mark.

972. Statutory nature conservation bodies (Natural England and the Countryside Council for Wales) will be able to notify any land as an SSSI where it lies above mean low water mark or where it is covered by estuarial waters. An SSSI may also include other adjoining land that lies below mean low water mark where any of the conditions in section 28(1C) is satisfied.



973. *Paragraphs 5 and 6* make corresponding amendments to sections 28B and 28C of the Wildlife and Countryside Act 1981 to enable land lying below mean low water mark to be included in an SSSI where certain conditions are satisfied. Section 28B enables additional land to be added to an SSSI and section 28C enables an SSSI to be enlarged.

974. *Paragraph 7* inserts a new section 28CA into the Wildlife and Countryside Act 1981 to enable Ministers to provide guidance to Natural England or the Countryside Council for Wales regarding subtidal SSSIs.

975. *Paragraph 8* inserts a new section 28CB into the Wildlife and Countryside Act 1981, to give Ministers the power to direct the conservation bodies on whether or not land lying below mean low water mark should be included within the NNR if declared. Ministers may also leave the decision to the discretion of the conservation body.

976. *Paragraph 9* amends section 28D of the Wildlife and Countryside Act 1981 which allows Natural England to denotify areas of land as a SSSI. The amendment made by *sub-paragraph (2)* will allow a statutory nature conservation body to denotify land where it is of the opinion that the land should no longer be notified because it has instead been designated as (or as part of) an MCZ.

#### ***National nature reserves***

977. *Paragraph 10* amends section 35 of the Wildlife and Countryside Act 1981 in order to specify the circumstances in which National Nature Reserves (NNRs) may extend beyond mean low water mark or estuarial waters. It clarifies the existing power of declaration with respect to land lying below mean low water mark.

978. *Paragraph 11* inserts new section 35A into the Wildlife and Countryside Act 1981 to give Ministers the power to direct the conservation bodies on whether or not land lying below mean low water mark should be included within the NNR if declared. Ministers may also leave the decision to the discretion of the conservation body.

#### **SCHEDULE 14: INSHORE FISHERIES AND CONSERVATION AUTHORITIES: AMENDMENTS**

979. Schedule 14 contains minor and consequential amendments to various Acts.

#### **SCHEDULE 15: SEA FISH (CONSERVATION) ACT 1967: MINOR AND CONSEQUENTIAL AMENDMENTS**

980. Schedule 15 contains minor and consequential amendments to sections 1, 3, 5 and 11 of the Sea Fish (Conservation) Act 1967 and Schedule 4 to the Fisheries Act 1981.

## **SCHEDULE 16: MIGRATORY AND FRESHWATER FISH: CONSEQUENTIAL AMENDMENTS**

981. *Paragraph 2* omits section 3 of the Salmon and Freshwater Fisheries Act 1975, which regulates the use of nets in certain waters. Such use will be regulated by conditions issued as part of a licence or authorisation.

982. Section 5 of the Salmon and Freshwater Fisheries Act 1975 makes it an offence to use any explosive substance, any poison or other noxious substance, or any electrical device with the intent to take or destroy fish. The Environment Agency may permit their use for scientific or fisheries management purposes. *Paragraph 3(3)* clarifies that the Agency may charge for such permission. *Paragraph 3(4)* excludes activities that have been authorised under section 27A from the offence.

983. *Paragraphs 4 to 6* omit sections 6 to 8 and 16 and 17 of the Salmon and Freshwater Fisheries Act 1975. These sections place restrictions on the operation of fixed nets and traps. The Environment Agency will include relevant operating conditions within the conditions of licences and authorisations.

984. *Paragraph 7* removes a cross-reference to section 17 of the Salmon and Freshwater Fisheries Act 1975, which has been repealed.

985. *Paragraph 8* omits sections 19 to 21 of the Salmon and Freshwater Fisheries Act 1975. Section 19 contains offences in relation to close seasons and close times. Section 20 sets out requirements in relation to operation of fixed engines and obstructions during close seasons and close times, and section 21 sets out similar requirements in relation to eel baskets. Close seasons and close times will be regulated through licence conditions, authorisations and byelaws. Penalties for breaching byelaws are in section 211 of the Water Resources Act 1991.

986. *Paragraph 9* amends references to “instruments” in section 25 of the Salmon and Freshwater Fisheries to “means of fishing” to bring it in line with other amendments to that section. Section 25 extends the licensing system to means of fishing which are not “instruments”.

987. *Paragraph 11* amends section 27 of the Salmon and Freshwater Fisheries Act 1975 (unlicensed fishing) in consequence of new provisions on fishing authorisations (see section 213).

988. *Paragraph 12* amends section 33 of the Salmon and Freshwater Fisheries Act 1975 which enables enforcement officers to enter lands situated on or near to any waters where they suspect an offence under that Act is being committed or likely to be committed. Officers first need to apply to a justice of the peace. This power has been extended so that officers have the power when the offence has been committed in relation to any kind of fish.

989. Section 34 of the Salmon and Freshwater Fisheries Act 1975 enables enforcement officers to seize without warrant any person who has illegally taken or killed salmon, trout, freshwater fish and eels, or is found on or near any waters with the intent so to do during night-time. *Paragraph 13* replaces references to particular species with any fish where the taking or killing constitutes an offence under that Act.

990. *Paragraph 15* omits Schedule 1 to the Salmon and Freshwater Fisheries Act 1975, which makes provision in relation to close times. These will be set in byelaws (see section 218).

991. *Paragraph 16* amends Schedule 2 to the Salmon and Freshwater Fisheries Act 1975. Under Schedule 2, the Environment Agency may, in special cases, exempt a person from paying a licence duty fixed under that Schedule. *Paragraph 16(2)* removes the requirement for special cases and allows the exemption in cases where the Agency considers it appropriate.

992. *Paragraph 16(3)* allows different licence duties to be charged for the different descriptions of licences the Environment Agency may introduce under section 217(2).

993. Amendments to section 25 of the Salmon and Freshwater Fisheries extend the licensing system to means of fishing which are not “instruments”. *Paragraph 16(4), (7), (8), (10), (11))* and *(12)* amends other references to “instruments” in Schedule 2 accordingly.

994. *Paragraph 16(9)* ensures that names may be removed from a licence as well as being entered.

995. *Paragraph 17* amends Schedule 4 to the Salmon and Freshwater Fisheries Act 1975. This Schedule sets out the penalties for offences under that Act. *Paragraph 17* makes consequential amendments (including, in particular, the repeal of references to sections 19 and 21).

996. Those who operate fish farms are exempt from offences listed in Part 1 of Schedule 4 to the Fisheries Act 1981: for example, offences of killing unclean or immature fish, or killing fish during close seasons. *Paragraph 18* updates this list to ensure it makes correct reference to the (amended) offences under the Water Resources Act 1991.

997. *Paragraph 19* omits section 32(6)(a) of the Salmon Act 1986, which is redundant following amendments to section 31(1)(b) of the Salmon and Freshwater Fisheries Act 1975 made by section 220.

998. Amendments to Schedule 25 to the Water Resources Act 1991 extend the Environment Agency’s byelaw making powers to salmon, trout, lampreys, smelt, shad, eels, freshwater fish and other specified fish (by order under new section 40A of the Salmon and Freshwater Fisheries Act 1975). *Paragraphs 23* and *24* amend other references to fish species in Schedule 25 and section 218 accordingly.

999. *Paragraph 25* omits paragraph 7 of Schedule 25 to the 1991 Act. Paragraph 7(1) requires that when making byelaws within the district of a Sea Fisheries Committee the Environment Agency must seek its consent. Sea Fisheries Committees are to be replaced with Inshore Fisheries and Conservation Authorities; the relationship between the two jurisdictions will be managed administratively rather than through statutory limitations.

1000. Paragraph 7(2) prohibits the Environment Agency from making byelaws which would prejudice any powers of a sewerage undertaker to discharge sewage which is permitted under any other Act.

1001. *Paragraph 26* amends the references to fish made in section 13 of the Environment Act 1995, which requires the Environment Agency to create regional and local fisheries advisory committees.

#### **SCHEDULE 17: WARRANTS ISSUED UNDER SECTION 249**

1002. This Schedule sets out the procedure for applying for a warrant for an enforcement officer to enter a dwelling, rules about executing the warrant and other safeguards. It is based on the provisions in the Police and Criminal Evidence Act 1984.

#### **SCHEDULE 18: FORFEITURE OF PROPERTY UNDER SECTION 275 OR 276**

1003. Schedule 18 makes detailed provision in respect of the forfeiture of gear or fish which fail to meet size requirements under sections 275 and 276. The Schedule provides that notice must be served on the person who appears to the relevant authority to be the owner (or any of the owners) at the time of the seizure (and if the property was seized from a vessel then also the master, owner or charterer at that time) and states that the notice must set out the reason for the intended forfeiture action, together with the details of how a notice of claim may be made. Provision is made covering delivery of the notice of intended forfeiture.

1004. A person disputing that the property is liable to forfeiture may submit a notice of claim. Provision is made as to the time limits for submitting such a notice and the details that it must include. If no notice of claim is made then the property is automatically forfeit. If a valid notice is submitted then the property must either be returned or the relevant authority must bring forfeiture proceedings in a court. In forfeiture proceedings the court may either order forfeiture of the property or, if it is not satisfied that the property is forfeitable, may order it to be returned. If the property is not collected by the appropriate owner after the three-month period for collection has lapsed, then the relevant authority may dispose of the property as it sees fit, provided that at the time of disposal it cannot be returned immediately to the person to whom it is required to be returned.

1005. The Schedule also gives the relevant authority the power to destroy any fish which are liable to be treated as forfeit or condemned even if they have not actually been forfeited or condemned. Where the court is not satisfied that the destroyed fish were forfeitable, it has the power to order the relevant authority to pay the claimant the market value of the fish at the

time they were seized, determined by a Court-appointed referee. Accepting this payment prevents a claimant maintaining an action in respect of the seizure, detention or destruction of the fish. Further provision is made concerning the detail of the forfeiture proceedings (including matters as to proof), the effect of forfeiture, how property is to be disposed of, who may be a referee and provisions on partnerships.

## **SCHEDULE 19 : SCHEDULE 1A TO THE NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT 1949**

1006. Schedule 1A sets out the procedure for making and considering objections and representations about coastal access reports. This procedure is as follows:

1007. *Paragraph 2* says that Natural England must advertise a coastal access report and must take reasonable steps to give notice of the report to those with a relevant interest in affected land and to certain bodies, and to persons set out in regulations. It also says that the Secretary of State may make regulations relating to the form, manner and timing of advertisements and notices.

1008. *Paragraph 3* says that those with a relevant interest in affected land may make an objection to Natural England's report. In order to be admissible an objection must meet certain requirements set out in *sub-paragraphs (3) and (4) of paragraph 3* and any requirements of regulations made in accordance with *sub-paragraph 7(b)*. The ground of the objection must be that the proposals fail to strike a fair balance as a result of certain issues set out in *sub-paragraph (3)*. These are the position of any part of the proposed route; proposals for routes subject to erosion; proposals for alternative routes; proposals for the boundary of the coastal margin to coincide with a physical feature; proposals for exclusions and restrictions of access, and any decision to treat the relevant upstream waters of a river as part of the coast. *Sub-paragraph (4)* says that the person making the objection must specify the reasons they are of the opinion a fair balance has not been struck. *Sub-paragraph (5)* says that the person making the objection may propose modifications of the proposal, but these must meet certain criteria set out in *sub-paragraph (6)* – they must be practicable, take account of the considerations mentioned in section 297(2) and (where appropriate) 301(4), and must be in accordance with the coastal access scheme. *Sub-paragraph (7)* says that the Secretary of State may make regulations about the steps to be taken by Natural England to make persons with a relevant interest in affected land aware of their entitlement to make objections, and the form and manner in which, and period within which, objections are to be made.

1009. *Paragraph 4* says that any objection received by Natural England must be forwarded to the Secretary of State, and that the Secretary of State must refer the objection to the appointed person. It also sets out details about the appointment of the appointed person.

1010. *Paragraph 5* says that the appointed person must decide if the objection is admissible (as set out in *paragraph 3*) and must give a notice of that determination to the person who made the objection, Natural England and the Secretary of State.

1011. *Paragraph 6* places an obligation on Natural England to provide comments on objections, which have been determined to be admissible, to the Secretary of State. The appointed person may require Natural England's comments to include information on any relevant alternatives or rejected options.

1012. *Paragraph 7* says that anyone may make a representation to the Secretary of State about the coastal access report. *Paragraph 8* says that representations from those to whom Natural England had to give a notice under *paragraph 2(2)(b) to (f)* will be sent to the Secretary of State together with Natural England's comments on them. Other representations will be summarised by Natural England and sent to the Secretary of State with Natural England's comments.

1013. *Paragraph 9* sets out the documents which the Secretary of State must send to the appointed person with regard to an admissible objection.

1014. *Paragraph 10* says that the appointed person must determine whether the proposals in the report fail, in the respects specified in the objection, to strike a fair balance, as a result of the matter or matters within *paragraph 3(3)* specified in the objection. The appointed person will consider the information and if he is minded to decide that a fair balance has not been struck he will publish the objection and invite representations – anyone may make representations to the appointed person. This is necessary only if the appointed person considers a fair balance may not have been struck – if he considers it has been struck in Natural England's proposals, then he must make a report recommending that the Secretary of State makes a determination to that effect. There has already been an opportunity to make representations on Natural England's proposals.

1015. *Paragraph 11* says that the appointed person must give a report to the Secretary of State in which he recommends whether the Secretary of State should determine that the proposals do not fail to strike a fair balance, or that they do fail to strike a fair balance. If he recommends that they do fail to strike a fair balance, then the appointed person must recommend either that no modification would strike the fair balance, a certain modification would strike the fair balance, or a certain modification may strike the fair balance. Where he recommends that no modification would strike a fair balance, he may additionally make a recommendation that a certain modification would, or may, mitigate the effects of the failure to strike a fair balance.

1016. *Paragraph 12* says that the appointed person may ask for other relevant information from Natural England or the Secretary of State.

1017. The appointed person may limit the proceedings to written representations, or, as set out in *paragraph 13*, a hearing or local inquiry may be held where it is considered necessary or expedient to do so.



1018. *Paragraph 14* gives the Secretary of State a power to make regulations regarding the consideration of objections by the appointed person. These may allow two or more objections to be considered together by the appointed person; may make provision for the appointed person to conduct an inspection of land and may make provision for the conduct of a hearing or local inquiry.

1019. *Paragraph 15* gives the Secretary of State powers to make provisions for procedures to be followed where he may wish to consider modifications to Natural England's proposals (these would be modifications other than those proposed with reference to an objection).

1020. The Secretary of State makes a determination on the report as a whole. In making the determination he must consider certain information as set out in *paragraph 16*, including any objections, Natural England's comments on them, the report of the appointed person, any representations and Natural England's comments on them. *Paragraph 16* also makes clear that, in making a determination, the Secretary of State may approve proposals relating to one or more parts of the route only, and may reject the remaining proposals. He may also make regulations about the procedure to be followed where he is minded to approve the proposals with modifications other than modifications contained in a report from the appointed person. The Secretary of State will also be bound by a finding of fact in the report of the appointed person, except where, for example, there was insufficient evidence to make the finding or the finding was made by reference to irrelevant facts.

1021. The Secretary of State must give notice of his determination to persons with a relevant interest in affected land, or publish such notice, and in addition must give notice to certain bodies, including local authorities and local access authorities, as set out in *paragraph 17*. The notice must include, so far as relevant to the objection, a statement of his reasons for the determination.

1022. *Paragraph 18* defines certain words for the purposes of this Schedule.

## **SCHEDULE 20: ESTABLISHMENT AND MAINTENANCE OF ENGLISH COASTAL ROUTE ETC**

### *Extension of Chapter 3 of Part 1 of the CROW Act*

1023. *Paragraph 1* provides for the powers of access authorities in relation to means of access to access land set out in Chapter 3 of Part 1 of the CROW Act to be exercisable by Natural England for the purposes of the coastal access duty. *Paragraph 1(1)* makes the Chapter 3 powers apply additionally to land over which the coastal route passes which falls under any of the enactments set out in section 15 of the CROW Act.

### *Agreements relating to establishment and maintenance of the route*

1024. *Paragraph 2* provides for Natural England to enter into an agreement with the owner or occupier of any land where it thinks it appropriate for works to be carried out in order to meet its coastal access duty, as set out in section 296. *Sub-paragraph (2)* enables the access authority to enter into a similar agreement. *Sub-paragraph (3)* defines the types of works that the agreement may include, including clearance or maintenance, the removal of an

obstruction to the route, clearance or maintenance to enable the public to enter or remain on land on a bicycle or on horseback (where a general restriction under Schedule 2 to the CROW Act has been removed or relaxed), drainage or levelling, or the construction of a barrier.

1025. *Sub-paragraph (4)* enables the works to be carried out by either the owner or occupier or by a contracting authority (which is defined in *sub-paragraph (8)* as being either Natural England or the access authority), and allows a contracting authority to make a contribution towards the costs of the works under the agreement if the works are carried out by the owner or occupier.

1026. *Sub-paragraphs (5) and (6)* enable a notice to be given by the contracting authority to the owner or occupier, if the owner or occupier required by the agreement to carry out the works fails to carry them out. *Sub-paragraph (6)* requires the contracting authority to give at least 21 days' notice before taking steps to carry out the works.

1027. *Sub-paragraph (7)* enables the contracting authority to recover the costs of any works where a notice under *sub-paragraph (6)* has been given.

*Establishment and maintenance of route in absence of agreement*

1028. *Sub-paragraphs (1) to (3) of paragraph 3* enable Natural England or the access authority, to give notice of its intention to carry out works as set out in *paragraph 2(2)* that it considers necessary to enable Natural England to meet its coastal access duty (as set out in section 296) on any land, where it is unable to conclude an agreement under *paragraph 2*.

1029. *Sub-paragraph (4)* requires a period of not less than 21 days' notice to be given to the owner or occupier before any works may be carried out.

1030. *Sub-paragraph (5)* requires that the notice given to the owner or occupier must provide details of how an appeal against the notice may be made.

1031. *Sub-paragraph (6)* requires the notice to be given to each owner or occupier of any land to which the notice refers.

1032. *Sub-paragraph (7)* enables Natural England or the access authority to take steps to carry out the works if any of the required works have not been carried out before the end of the period specified in the notice. *Sub-paragraph (8)* provides that it must have regard to the requirements of efficient management of the land in deciding how to carry out the works.

*Appeals relating to notices under paragraph 3*

1033. *Paragraph 4* provides for appeals to be made against a notice given under *paragraph 3*, which relates to works to be carried out in relation to the establishment and maintenance of the route in the absence of an agreement. *Sub-paragraph (1)* enables the person given that notice, or any other owner or occupier of the land to which the notice relates, to appeal to the Secretary of State.

1034. *Sub-paragraph (2)* sets out the grounds on which an appeal may be made. These are: that the notice requires the carrying out of works which are not necessary, that the works have already been carried out, or that the period specified in the notice after which Natural England or the access authority are to take steps to carry out the works is too short. *Sub-paragraph (3)(a)* allows the Secretary of State, where an appeal has been made, to confirm the notice (with or without modifications) and *sub-paragraph (3)(b)* allows him to cancel the notice.

1035. *Sub-paragraph (4)* provides for sections 7 and 8 of, and Schedule 3 to, the CROW Act to apply to an appeal made under this section. Those provisions, among other things, enable the Secretary of State to cause an appeal to take the form of a hearing and to delegate functions relating to appeals.

1036. *Sub-paragraph (5)* allows the Secretary of State to make regulations as to the period and manner in which appeals may be made, the advertising of such an appeal and the manner in which appeals are to be considered.

1037. *Sub-paragraph (6)* says that, where an appeal has been made, neither Natural England nor an access authority may exercise any of its functions relating to *paragraph 3* until the appeal is determined by the Secretary of State or withdrawn.

#### *Power for Natural England to fund works*

1038. *Paragraph 5* provides for Natural England to meet or contribute to the costs of any works of a kind which could be the subject of an agreement reached by either Natural England or an access authority under *paragraph 2*, or an agreement under section 35 of the CROW Act where it is exercised for the purposes of the coastal access duty.

#### *Erection and maintenance of notices and signs*

1039. *Paragraph 6* allows Natural England to put up and maintain certain notices or signs on land over which the route passes and land which is accessible to the public by virtue of an order under section 3A of the CROW Act. *Sub-paragraph (2)* provides that notices or signs may identify or provide information about the route, warn the public of obstacles or hazards along the route or be any other notices or signs relating to the coastal route. *Sub-paragraph (3)* provides that Natural England must consult the owner and lawful occupier of land before erecting a notice or sign. *Sub-paragraph (4)* allows Natural England to meet or contribute towards the costs to others of erecting such notices and signs. *Sub-paragraph (5)* allows Natural England to delegate its powers under this section to the access authority.

1040. *Sub-paragraph (6)* provides that this paragraph does not apply in relation to a highway over which there are rights for mechanically propelled vehicles, or a footway (for example, a pavement) which forms part of such a right of way. The effect of this is that the powers in the paragraph may be used on footpaths, bridleways and restricted byways but not on highways over which there are rights to drive mechanically propelled vehicles, or footways attached to such highways. *Sub-paragraph (7)* defines “mechanically propelled vehicles” and “footways” for the purposes of *sub-paragraph (6)*. The term “mechanically propelled vehicle” when used in this context does not include electrically assisted pedal cycles.

1041. *Paragraph 7* amends section 19 of the CROW Act to give Natural England the same powers as the access authority with regard to notices indicating the boundaries of access land where that land is coastal margin.

*Removal of notices and signs*

1042. *Paragraph 8* allows Natural England and an access authority, where authorised by Natural England, to remove a notice or sign relating to the coastal margin which was erected under paragraph 6 or erected under section 19 of the CROW Act. *Sub-paragraph (3)* requires a person removing a sign or notice to consult, as far as reasonably practicable, the owner and, if different, the lawful occupier of the land before removing a notice or sign.

1043. *Sub-paragraph (4)* enables Natural England to meet or contribute towards the costs to others of removing notices and signs of a kind that could have been erected under paragraph 6 or, in relation to land which is coastal margin, under section 19 of the CROW Act.

*Powers of entry*

1044. *Paragraph 9* provides for powers of entry. *Sub-paragraph (1)* sets out the purposes for which a person authorised by Natural England may enter any land. These are: for surveying that or any other land in preparing a report containing proposals for the coastal route; considering representations made in respect of a report; determining how to treat a river estuary under section 301, and advising the Secretary of State in relation to the power to specify islands under section 300. *Sub-paragraph (2)* sets out purposes for which a person authorised by either Natural England or the access authority may enter any land. These are: for determining whether any works are necessary under *paragraph 2(3)* of this Schedule; for the purpose of carrying out any works (relating to means of access for the purpose of the coastal access duty and to establishment and maintenance of the coastal route) under section 35(2)(a) of the CROW Act, under paragraph 2(6) or paragraph 3(7), or under 36(1) or (5) or 37(5) of the CROW Act; to determine whether the public is able to exercise rights of access with regard to the coastal route on land subject to section 15 of the CROW Act; for the purposes of an appeal made against a notice made under *paragraph 4*; and for the purposes of erecting, maintaining or removing a notice or sign under paragraphs 6 or 8 or, as regards land which is coastal margin, under section 19 of the CROW Act.

1045. *Sub-paragraph (3)* provides for the provisions in section 40(5) to (7), (9) and (10) of the CROW Act, which apply to the exercise of powers of entry and rights under section 40 of that Act, also to apply in relation to a person exercising the powers of entry and other rights conferred by this paragraph.

1046. *Sub-paragraph (4)* has the effect of applying the powers relating to compensation under section 41 of the CROW Act to a body by which an authorisation may be given under this section.

1047. *Sub-paragraph (5)(a)* provides that where a person authorised to enter land is to carry out any works under *sub-paragraphs (2)(b)* or *(c)*, either a notice has to have been given to the occupier under *paragraph 2(6)* or under sections 36 or 37 of the CROW Act or at least 7 days' notice must be given to the occupier before the person may enter the land. The effect of this is to ensure that where notice has been given to the owner (who is not also the

occupier) of land under *paragraph 2(6)* or under sections 36 or 37 of the CROW Act then the occupier of land is given at least 7 days' notice. *Sub-paragraph (5)(b)* provides that in any other case, where a power of entry is exercised under this paragraph at least 24 hours' notice must be given to the occupier unless it is not reasonably practicable to give such notice.

*Interpretation of Schedule*

1048. A number of definitions are provided in *paragraph 10* for words and expressions used in this Schedule.

## **SCHEDULE 21: AMENDMENTS OF THE HARBOURS ACT 1964**

*Paragraph 2: Provision that may be made by harbour empowerment order*

1049. Under the Harbours Act 1964, the relevant authority has powers to repeal or modify Acts of local application when making a Harbour Revision Order or a Harbour Reorganisation Scheme. *Paragraph 2* provides that this power will also apply when making a Harbour Empowerment Order.

*Paragraph 3: Delegation of certain functions*

1050. The Act will amend the Harbours Act 1964 so that the authority that is currently responsible for issuing harbours orders will have the power, by order, to delegate some or all of its functions for making certain orders to another person or body, provided that person or body gives consent for the delegation.

1051. In this way the licensing functions that govern harbours may be transferred to the same body that may be responsible for issuing marine licences as a result of an order issued under section 98.

1052. The functions the authority may delegate are:

- a) making harbour revision orders on receipt of an application
- b) making harbour revision orders without receipt of an application
- c) making orders that vary the constitution of harbour authorities
- d) making harbour empowerment orders
- e) confirming or making harbour reorganisation schemes
- f) making orders amending Acts of local application.

1053. Orders delegating functions made by the relevant authority will be subject to negative resolution procedure.

1054. Table 3 below illustrates who may issue which harbour order and in what circumstances after a delegation of powers has been made.

1055. Table 3: Roles of harbour order issuing bodies after delegation

	Harbour Act Relevant Authority	Delegated Public Body
Making harbour revision orders on receipt of an application	Cannot issue	May issue
Making harbour revision orders without receipt of an application	May issue  Gives consent to public body	May issue only with consent of relevant authority
Making orders that vary the constitution of harbour authorities	May issue	May issue
Making harbour empowerment orders	Cannot issue	May issue
Confirming or making harbour reorganisation schemes	May issue  Gives consent to public body	May issue only with consent of relevant authority
Making orders amending Acts of local application	Cannot issue	May issue

*Paragraph 4: Consent of Welsh Ministers or Secretary of State required for making of certain orders*

1056. *Paragraph 4* inserts a new section 42C into the Harbours Act. Its effect would be that the Secretary of State cannot, without the prior consent of the Welsh Ministers, make a harbour order or scheme that would repeal or modify: any provision of the Act so far as it applies to Wales; an instrument made under the Act by the Welsh Ministers; or a provision of local application made by the Welsh Ministers. If the Welsh Ministers refuse their consent, the harbour order or scheme may be made but without that provision that does the repealing or modifying. The new sections also provide that if the Welsh Ministers have not refused their consent within a period to be set, the Secretary of State may continue with the process of making the order.



1057. Similarly, *paragraph 4* inserts a further new section 42D into the Harbours Act which states that the Welsh Ministers cannot, without the prior consent of the Secretary of State, make a harbour order or scheme that would repeal or modify: any provision of the Act so far as it applies to England; an instrument made under the Act by the Secretary of State; or a provision of local application made by the Secretary of State. If the Secretary of State refuses consent, the harbour order or scheme may be made but without that provision that does the repealing or modifying. The new sections also provide that if the Secretary of State has not refused consent within a period to be set, the Welsh Ministers may continue with the process of making the order.

*Paragraph 5: Procedure for dealing with applications for harbour orders; Paragraph 6: Procedure where harbour revision orders are made otherwise than on application and Paragraph 7: Application of paragraphs 5 and 6*

1058. *Paragraphs 5 and 6* make amendments to bring the Harbours Act 1964, as it applies to England and Wales, into line with arrangements in Scotland. At present, if there are any objections to a proposed harbour order that are not frivolous in nature then a public inquiry must be held. This is so even if only a single objection was made and the objector did not request that an inquiry be held.

1059. These paragraphs allow, in most cases, the Secretary of State to decide whether an inquiry is necessary. The exception to this is where the Welsh Ministers have raised an objection to an application for a harbour revision or empowerment order and the objection does not relate to the compulsory acquisition of land. In these cases the Secretary of State must hold an inquiry. The Secretary of State is also obliged to either hold an inquiry or give a person making an objection the opportunity of a hearing, if the person making the objection requests one and is: a local authority for an area in which the harbour (or any part of it) is situated; the relevant conservation body; if the order will authorise the compulsory acquisition of land, any person who is entitled to be served with notice under paragraph 11 of Schedule 3 to the Harbours Act 1964; or the Welsh Ministers, if their objection relates to the compulsory acquisition of land.

## **COMMENCEMENT**

1060. The provisions of the Act will come into force as described in section 324. Part 3, certain parts of Parts 5 and 6, and Part 9 will come into force 2 months after Royal Assent. Other Parts of the Act will come into effect on a specific date, which will be set out in an order made by the Secretary of State or, in the case of certain provisions to the extent they relate to Wales, the Welsh Ministers. However, Ministers will be able to make orders and regulations under the Act from the date of Royal Assent, and certain provisions in Part 3 relating to the marine policy statement also come into force on Royal Assent.

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

## HANSARD REFERENCES

The following table sets out the dates and Hansard references for each stage of this Act's passage through Parliament.

Stage	Date	Hansard reference
<b>House of Lords</b>		
Introduction	4 December 2008	Vol. 706 Col 27
Second Reading	15 December 2008	Vol. 706 Cols. 647-730
Committee	12 January 2009	Vol. 706 Cols. 1035-1073; 1084-1106
	21 January 2009	Vol. 706 Cols. 1672-1728; 1744-1760
	28 January 2009	Vol. 707 Cols. 252-311; 320-336
	10 February 2009	Vol. 707 Cols. 1019-1077; 1092-1110
	23 February 2009	Vol. 708 Cols. 11-73; 80-96
	3 March 2009	Vol. 708 Cols. 620-688; 704-724
	9 March 2009	Vol. 708 Cols. 1013-1052
	11 March 2009	Vol. 708 Cols. 1201-1260
	16 March 2009	Vol. 709 Cols. 18-59; 81-108
	30 March 2009	Vol. 709 Cols. 855-917; 928-952
	21 April 2009	Vol. 709 Cols. 1370-1431; 1441-1492
Report	5 May 2009	Vol. 710 Cols. 443-509; 523-539
	12 May 2009	Vol. 710 Cols. 943-998; 1013-1034
	19 May 2009	Vol. 710 Cols. 1312-1362;
	1 June 2009	Vol. 711 Cols. 11-76;
Third Reading	8 June 2009	Vol. 711 Cols. 421-518

*These Notes refer to the Marine and Coastal Access Act 2009 (c.23)  
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House of Commons		
Introduction	9 June 2009	No debate
Second Reading	23 June 2009	Vol. 494 Cols. 696-768
Committee	30 June 2009 – 14 July 2009	Public Bill Committee
Report	26 October 2009 27 October 2009	Vol. 498 Cols. 32-129 Vol. 498 Cols. 167-199
Third reading	27 October 2009	Vol. 498 Cols. 199-213
House of Lords		
Ping Pong	11 November 2009	Vol. 714 Cols. 872-892
<b>Royal Assent – 12 November 2009</b>		<b>House of Lords Hansard Vol. 714 Col 918</b> <b>House of Commons Hansard Vol. 499 Col 418</b>

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