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UK MARINE BILL WHITE PAPER

Research and Library Service

This paper outlines the key components of the UK Marine Bill White Paper and provides a comparison between Northern Ireland, Scotland and Wales in relation to their proposals and current position with regards to the new marine legislation.

Research Papers are compiled for the benefit of Members of The Assembly and their personal staff. Authors are available to discuss the contents of these papers with Members and their staff but cannot advise members of the general public.

SUMMARY OF KEY POINTS

UK MARINE BILL WHITE PAPER

The purpose of the UK Marine Bill is to establish a strategic system of marine planning, and to balance conservation, energy and resource needs.

The Marine Bill White Paper states that the shared vision of the UK government and devolved administrations is that the marine environment be, “Clean, healthy, safe, productive and biologically diverse oceans and seas”.

The five main areas to be included in the Marine Bill are as follows;

- (1) A new Marine Management Organisation
- (2) Marine Planning
- (3) Licensing marine activities
- (4) Marine nature conservation
- (5) Managing marine fisheries

The Marine Bill is designed to offer an opportunity for the sustainable development of this environment in addressing the use and protection of marine resources with a sustainable economic and social benefit.

Some marine functions are reserved for the UK government whilst others are devolved to the regional administrations (Northern Ireland, Scotland and Wales). The devolved administrations will decide on the need to bring forward new legislation for the management of their territorial waters.

NORTHERN IRELAND

In Northern Ireland the Department of the Environment proposals for new marine legislation state that there is an increasing need for a framework to provide protection for Northern Ireland’s marine environment.

The new Northern Ireland legislative proposals are in 4 key areas;

- (1) marine planning
- (2) marine licensing
- (3) marine nature and conservation
- (4) an appropriate delivery mechanism

SCOTLAND

The Scottish Executive has established an Advisory Group on the Coastal and Marine Strategy (AGMACS) considering the need for new Scottish marine legislation. However, there has not been an inquiry or piece of legislation which has addressed the use or regulation of the marine environment as a whole.

WALES

There was strong support for the Marine Bill during Defra’s consultation in Wales, stating that such legislation for the marine environment is overdue.

Concern was raised in relation to responsibilities of devolved administrations over the management of Wales and what specifically applied to Wales in the Marine Bill White Paper.

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INTRODUCTION

The five key components of the UK Marine Bill are as follows;

- a new Marine Management Organisation
- marine planning
- licensing marine activities
- marine nature conservation
- managing marine fisheries

The above mentioned reforms that the UK government wish to implement have been discussed by each of the devolved administrations, that of Northern Ireland, Scotland and Wales. All of the devolved administrations have recognised the need to bring about new legislation in relation to the marine environment; however there is concern in regards to the establishing of a Marine Management Organisation and licensing of marine based activities.

KEY COMPONENTS OF THE UK MARINE BILL: A SEA CHANGE A MARINE WHITE PAPER

The Marine Bill's purpose is to establish a strategic system of marine planning, and to balance conservation, energy and resource needs. The UK government and the devolved administrations are aiming to work in partnership to manage the marine area surrounding the UK in an integrated way. Thus, each administration will decide upon the most appropriate way to implement changes in accordance with international and European law¹.

The five main areas to be included in the Marine Bill are as follows;

- (1) A new Marine Management Organisation
- (2) Marine Planning
- (3) Licensing marine activities
- (4) Marine nature conservation
- (5) Managing marine fisheries

The Marine Bill White Paper states that the shared vision of the UK government and devolved administrations is that the marine environment be, "Clean, healthy, safe, productive and biologically diverse oceans and seas". The strategic goals needed to achieve this are as follows²;

- (1) conserve and enhance the overall quality of the seas
- (2) use marine resources in a sustainable and environmentally sustainable manner
- (3) promote and encourage economically and environmentally sustainable use of natural resources
- (4) increase understanding of the marine environment
- (5) promote public awareness, understanding and appreciation of the value of the marine environment

The Marine Bill will introduce a number of proposals including;

¹ A Sea Change: A Marine Bill White Paper, <http://www.defra.gov.uk/corporate/consult/marinebill-whitepaper07/marinebill-whitepaper.pdf>

² A Sea Change: A Marine Bill White Paper, <http://www.defra.gov.uk/corporate/consult/marinebill-whitepaper07/marinebill-whitepaper.pdf>

- (1) a new UK-wide system of marine planning, with devolved matters delivered by each devolved administration
- (2) streamlined system for licensing marine developments
- (3) flexible mechanism to protect natural resources
- (4) improvements to the management of marine fisheries

Also included is the formation of a new body, Marine Management Organisation (MMO). However, the devolved administrations will implement their own delivery arrangements for devolved matters.

The Marine Bill states that sustainable development is a guiding principal of the above proposals, referring to the general definition of sustainable development, which “enables us to meet our basic needs and enjoy a better quality of life without compromising the quality of life for future generations”³. This is an adoption of the Brundtland Report definition⁴ of sustainable development (development that meets the needs of the present without comprising the ability of future generations to meet their own needs) and signals a shift in the Bill from an idea of sustainability as primarily ecological, to one that also emphasizes the economic and social context of development⁵.

KEY AREAS COVERED BY THE MARINE BILL

The White Paper sets out a series of proposals for a new approach to the management of activities in the UK marine area. The government’s vision for the marine environment is for;

*Clean healthy, safe, productive and biologically diverse oceans and seas*⁶.

The concept of the Marine Bill is to provide an integrated system for the conservation and productivity of the marine and coastal environment. The managing of the marine environment offers a number of conflicting demands in relation to energy, aggregates, shipping and fishing. However, although integration is to be the overarching theme of the Bill, there will be some marine functions that are reserved for the UK government whilst others are devolved to the regional administrations (Northern Ireland, Scotland and Wales). Indeed, the devolved administrations will decide on the need to bring forward new legislation for the management of their territorial waters.

The Marine Bill is designed to offer an opportunity for the sustainable development of this environment in addressing the use and protection of marine resources with a sustainable economic and social benefit.

³ A Sea Change: A Marine Bill White Paper, <http://www.defra.gov.uk/corporate/consult/marinebill-whitepaper07/marinebill-whitepaper.pdf>

⁴ Our Common future (The Brundtland Report), <http://www.worldinbalance.net/agreements/1987-brundtland.html>

⁵ SD Gateway, <http://www.sdgateway.net/introsd/definitions.htm>

⁶ Key areas covered by the Marine Bill, <http://www.defra.gov.uk/enviroemtn/water/marinen/uk/policy/marine-bill/key.htm>

AREAS COVERED BY THE MARINE BILL

Marine Planning: Marine planning should clearly set out priorities, guidance and environmental standards for the development and protection of marine resources. Giving developers a smoother process and to enable us to use marine space to best effect in order to achieve the objectives⁷. A new system of marine planning is to be a key element of the new approach to marine management. The Marine Bill intends to adopt a strategic, plan-led approach to marine activities that will offer benefits to marine regulators and users, helping to secure the maximum sustainable benefits for marine resources, whilst ensuring appropriate environmental protection. The intention is to adopt a two-stage approach to planning⁸:

- (1) creation of a UK marine policy statement, agreed by all UK Government departments and the devolved administrations, highlighting the joint vision and objectives for the marine environment.
- (2) creation of a series of marine plans, which will implement the policy statement in specific areas, using information about spatial use and needs in those areas.

Marine Consents: Consent to developers in a more streamline and transparent way. Currently, there are a number of overlapping regimes operated by various organisations and Departments within the UK government and the devolved administrations⁹.

In relation to licensing activities in the marine area there are a number of proposals. These include, the creation of a reformed marine licensing regime based on the consolidation of Part 2 of the Food and Environment Protection Act 1985 (FEPA) and Part 2 of the Coastal Protection Act 1949 (CPA)¹⁰. This would include all forms of dredging, including marine minerals dredging and currently unregulated forms of dredging, within the reformed regime. Ministers would introduce new rules to regulate Carbon Capture and Storage (CCS), streamline licensing of offshore renewable energy installations, reduce overlaps in legislation applying to harbours and ports, give powers to the new Marine Management Organisation (MMO), establish timescales for processes set up by the reformed licensing regime, enable ministers to exempt activities from the need for licensing and enable ministers to issue licences for extended programmes of linked activities to stop developers having to make multiple applications¹¹.

Marine Management Organisation: The Marine Bill proposes that a new Marine Management Organisation (MMO) should be established. The MMO will act as a champion for the integrated management of the marine environment, contributing to sustainable development in bringing together the delivery of many of the marine functions of the UK government and Northern Ireland administration within a single body, including functions relating to strategic planning, streamlined marine licensing,

⁷ Key areas covered by the Marine Bill,
<http://www.defra.gov.uk/environemtn/water/marien/uk/policy/marine-bill/key.htm>

⁸ A Sea Change: A Marine Bill White Paper,
<http://www.defra.gov.uk/corporate/consult/marinebill-whitepaper07/marinebill-whitepaper.pdf>

⁹ Key areas covered by the Marine Bill,
<http://www.defra.gov.uk/environemtn/water/marien/uk/policy/marine-bill/key.htm>

¹⁰ A Sea Change: A Marine Bill White Paper,
<http://www.defra.gov.uk/corporate/consult/marinebill-whitepaper07/marinebill-whitepaper.pdf>

¹¹ A Sea Change: A Marine Bill White Paper,
<http://www.defra.gov.uk/corporate/consult/marinebill-whitepaper07/marinebill-whitepaper.pdf>

fisheries management and enforcement and nature conservation enforcement¹². Within the Bill it is stated that the MMO in London will have approximately 300-350 staff – including posts currently within the Marine Fisheries Agency (MFA), which will be incorporated within the MMO. A regional office in Northern Ireland is likely to be located in Belfast, with approximately 35-40 staff including a number of posts currently within the Sea Fisheries Inspectorate (SFI)¹³.

Marine Nature Conservation: The Marine Bill White Paper refers to the need for a framework to enable flexible management areas rather than focusing on specific species and habitats. Expansion of the range of nature conservation legislation and introduction of management mechanisms to meet conservation aims. For example marine protected areas¹⁴. There is a necessity to minimise the impact of damaging activities and enabling biodiversity improvements to take place. Natural and man-made impacts can have serious implications for the benefits resulting from the marine environment, including tourism and recreation, climate regulation and waste assimilation¹⁵. In order to minimise these impacts the White Paper proposes to introduce a parallel mechanism to designate and manage Marine Conservation Zones (MCZs). These are intended to provide protection for species and habitats considered of national value that cannot be protected under European law. Enforcement arrangements would be modernised and improved, giving enforcers new, updated powers and a comprehensive set of tools to ensure compliance with conservation legislation¹⁶.

Coastal and Estuary Management: Currently arrangements for co-ordinating activities in busy estuaries and coastal areas are split between authorities. Due to the developing proposals for a system of marine planning, consideration is needed in relation to the need for management arrangements for co-ordinating activities¹⁷.

Fisheries Management and Marine Enforcement: In the Marine Bill, the UK government states that the Marine Bill will provide an opportunity to take an integrated approach to changes in fisheries management and related environmental and marine resource issues. The White Paper sets out a number of forms that these changes could take. They include the following¹⁸;

(1) Modernising of inshore fisheries and environmental management arrangements by establishing a clear purpose and duties for Sea Fisheries Committees (SFCs) in England. Improving their evidence-based decision-making, update their by-law making and enforcement powers and enhance their funding arrangements;

¹² A Sea Change: A Marine Bill White Paper,

<http://www.defra.gov.uk/corporate/consult/marinebill-whitepaper07/marinebill-whitepaper.pdf>

¹³ A Sea Change: A Marine Bill White Paper,

<http://www.defra.gov.uk/corporate/consult/marinebill-whitepaper07/marinebill-whitepaper.pdf>

¹⁴ Key areas covered by the Marine Bill,

<http://www.defra.gov.uk/environemtn/water/marinen/uk/policy/marine-bill/key.htm>

¹⁵ A Sea Change: A Marine Bill White Paper,

<http://www.defra.gov.uk/corporate/consult/marinebill-whitepaper07/marinebill-whitepaper.pdf>

¹⁶ A Sea Change: A Marine Bill White Paper,

<http://www.defra.gov.uk/corporate/consult/marinebill-whitepaper07/marinebill-whitepaper.pdf>

¹⁷ Key areas covered by the Marine Bill,

<http://www.defra.gov.uk/environemtn/water/marinen/uk/policy/marine-bill/key.htm>

¹⁸ A Sea Change: A Marine Bill White Paper,

<http://www.defra.gov.uk/corporate/consult/marinebill-whitepaper07/marinebill-whitepaper.pdf>

(2) Strengthening the operation of Regulating Orders used to establish and maintain local shellfisheries. Remove the disincentives to applying for Orders and making practical improvements to the way they operate;

(3) Introduce a chargeable rod licence and measures to set catch limits and to regulate fishing undertaken from the shore and;

(4) Update and strengthen enforcement powers including improved powers to tackle illegal, unreported and unregulated fishing; implement a system of administrative penalties for minor offences in the commercial sector. Ensure the use of existing vessel licence charging powers to recover the costs of licence administration.

PROPOSALS FOR NEW MARINE LEGISLATION: NORTHERN IRELAND

Background

The Department of the Environment proposals for new marine legislation state that there is an increasing need for a framework to provide protection for Northern Ireland's marine environment¹⁹.

In terms of legislation at the European level, there is 'The Marine Strategy Directive', expected to be adopted in early 2008. This directive is designed to achieve Good Environmental Status (GES) for the marine environment by 2020. It will require member states to develop Marine Strategies to achieve and maintain GES, including assessment and monitoring. It will also require member states to identify and implement 'programmes of measure' to achieve and maintain GES. Marine protected areas will be included in the programme of measures and the Marine Strategies will require the development of Marine Spatial Plans²⁰.

New Legislation

The Minister proposes to introduce legislation to create a new fit for purpose framework based on the principles of sustainable development, good regulation and modern government which will deliver benefits for both the environment and industry. The new legislative proposals are in 4 key areas;

- (5) marine planning
- (6) marine licensing
- (7) marine nature and conservation
- (8) an appropriate delivery mechanism

Marine Planning

In relation to this aspect of the new legislation, it is proposed that there be a two-stage approach;

- (1) creation of a UK wide marine policy statement
- (2) a series of marine plans at regional (devolved) level which will implement the policy statement

¹⁹ Department of the Environment, *Paper to the Environment Committee: Proposals for new marine legislation*

²⁰ Department of the Environment, *Paper to the Environment Committee: Proposals for new marine legislation*

The regional plans will set out specific spatially based policies for an area of sea and all subsequent planning activity will be required to be consistent with the policy statement.

Marine Licensing

Reforms to marine licensing are designed to achieve a system that is easier to understand and can deliver decisions rapidly. In respect to marine licensing, the key areas of consideration will include the consolidation and clarification of the licensing regime under the Food and Environment Protection and the Coast Protection Acts, making it simpler for administrators to operate and applicants to understand²¹. Also, different types of dredging will be brought together within one regulatory regime. Thus, streamlining the licensing regime for offshore renewable energy installations and finally the deregulation of activities with low environmental impact.

Marine Nature Conservation

The aim is to introduce new tools for the conservation of marine wildlife that can complement existing arrangements. Environmental considerations are to be at the core of decision-making processes, and provide mechanisms that can deliver current and future European and international conservation obligations.

Policies will be developed to help, where needed, to protect any important part of Northern Ireland's marine area and the species and habitats within it, from damaging activity through the establishment of marine protected areas to be known as Marine Conservation Zones (MCZ). Existing legislation needs to be amended, so that it does not overlap with new legislation.

Delivery Mechanism

The minister has ruled out Northern Ireland's participation in a UK MMO. However, the possibility of establishing a separate MMO for Northern Ireland has not been ruled out. Rather the views of stakeholder are to be consulted on the best delivery mechanism for Northern Ireland. Thus, the minister proposes to remain in the UK Bill for the UK wide marine policy statement and those aspects of marine licensing relating to the Food and Environment Protection Act 1985 (the 1985 Act) and marine aggregate extraction²². The minister proposes to develop the remainder of the proposals in Northern Ireland by means of an Assembly Bill.

Legislative competence for the 1985 Act and marine aggregate extraction are both reserved and therefore must be legislated for in the UK Bill. However, it should be noted that the exercise of the new functions will remain within the DOE. In addition, the 1985 Act will be repealed so it will be important for the new powers to be available to DOE in the same timescale as the rest of the UK.

Regional Marine Plan

The Marine Policy Statement will be supplemented by a power to develop plans at a regional level. The intention of the regional plan will be to influence directly site-

²¹ Department of the Environment, *Paper to the Environment Committee: Proposals for new marine legislation*

²² Department of the Environment, *Paper to the Environment Committee: Proposals for new marine legislation*

specific decision making in Northern Ireland's territorial waters where the majority of activities are devolved.

Marine Nature Conservation

Under the terms of the Northern Ireland Act 1998, marine nature conservation in Northern Ireland's territorial waters is a reserved matter. However, with the consent of the Secretary of State legislation in this area has been made locally.

Marine Licensing

All the licensing functions likely to be covered in the new legislation are transferred with the exception of the 1985 Act and marine aggregate extraction.

Delivery Mechanism

Decisions on an appropriate delivery mechanism should only be taken after full consultation with interested stakeholders and delivered by means of an Assembly Bill²³.

SCOTLAND: MARINE LEGALISATION

The Marine Environment SPICe briefing states that regulation of the marine environment in Scotland is carried out in different jurisdictions, ranging from the low tide mark, the limit of Local Authorities planning controls; to the Exclusive Economic Zone within which the UK claims rights to marine resources. This extends 200 nautical miles west of Rockall, itself 200 nautical miles west of North Uist. Marine wildlife tourism generates revenues of £57 million and supported 2,670 full time jobs in 1996²⁴.

In relation to the devolution position, Scotland is defined in the Scotland Act 1998, as the land and the territorial waters to 12 nautical miles, but the Scottish ministers regulate fisheries and renewable energy beyond these limits. At the UK level, DEFRA has consulted on its proposals for new marine legislation, DEFRA's proposals are not intended to affect devolved matters and it will be the Scottish Executive to decide whether new Scottish marine legislation is needed.

The Scottish Executive has established an 'Advisory Group on the Coastal and Marine Strategy' (AGMACS) considering the need for new Scottish marine legislation. However, there had not been an inquiry or piece of legislation which has addressed the use or regulation of the marine environment as a whole.

A complex domestic statutory framework exists in relation to the number of different ways the marine environment is used. Over 50 UK and Scottish statutes and several important pieces of secondary legislation regulate the use of the sea around Scotland²⁵.

²³ Department of the Environment, *Paper to the Environment Committee: Proposals for new marine legislation*

²⁴ SPICe briefing, *The Marine Environment*,
<http://www.scottish.parliament.uk/business/research/briefing-06/sb06-109.pdf>

²⁵ SPICe briefing, *The Marine Environment*,
<http://www.scottish.parliament.uk/business/research/briefing-06/sb06-109.pdf>

ADVISORY GROUP ON MARINE AND COASTAL STRATEGY

The Advisory Group on Marine and Coastal Strategy in Scotland has produced a paper entitled 'Recommendations of the Advisory Group on Marine and Coastal Strategy' states that some 16,000 jobs in fishing and aquaculture generate a landing value of £300m from Scottish boats and a 'farm gate' value of £340m from aquaculture. Scotland produces about 90% of UK farmed fish and shellfish. Further to this marine wildlife contributes significantly to Scotland's tourism; placing Scotland as Europe's number one wildlife destination. For example, in Scotland, between 1997 and 2001, the number of wildlife-watching boat trips alone increased by 80%²⁶.

The SPICe briefing stated that the wider dimension to managing our seas is recognised by the Scottish Executive playing a full part in relevant international and EU agreements, e.g. Natura and OSPAR. The Scottish Executive, UK government and the EU are agreed that marine activity and policy needs to be managed in a framework that promotes long term sustainability.

'Seas the Opportunity – A Strategy for the long term sustainability of Scotland's Coasts and Seas' was published in 2005. This sets out a vision for clean, healthy, safe, productive and biologically diverse marine and coastal environments, managed to meet the long term needs of nature and people. This vision supports that of the UK government and devolved administration in the report entitled 'Safeguarding our Seas' which was published in 2002²⁷.

Recommendations

The Advisory Group on Marine and Coastal Strategy in Scotland have published a number of recommendations in relation to marine legislation, they are detailed below²⁸.

Integrated Coastal Zone Management

There should be the establishment of a Scottish Marine Management Organisation with a remit of national co-ordination of ICZM and Marine Spatial Planning (MSP) delivery. The Marine Management Organisation should have a local dimension. The ICZM and MSP policy at local level should be based on planning or policy statements.

Marine Spatial Planning

A system of Marine Spatial Planning, the planning system should have a statutory basis but be flexible to incorporate local stakeholder engagement. The system should be based on three tiers; the top level would be the UK level, then Scotland as middle level and then local as the bottom tier.

²⁶ Recommendations of the Advisory Group on Marine and Coastal Strategy, <http://www.scotland.gov.uk/resource/doc/169275/0047157.pdf>

²⁷ Recommendations of the Advisory Group on Marine and Coastal Strategy, <http://www.scotland.gov.uk/resource/doc/169275/0047157.pdf>

²⁸ Recommendations of the Advisory Group on Marine and Coastal Strategy, <http://www.scotland.gov.uk/resource/doc/169275/0047157.pdf>

Marine Management Organisation

A Scottish Marine Management Organisation should be established to carry out Marine Spatial Planning in Scotland. The Scottish MMO should have responsibility for Marine Nature Conservation and Fisheries to 200 nautical miles and also the role of ensuring a properly integrated approach with the UK system.

Marine Nature Conservation

Scotland's system of marine nature conservation should follow a three pillar approach, based on objective scientific guidance, with specific measures for species conservation, policy, and site protection. A set of Scottish Marine Ecosystem Objectives should be drawn together.

WALES: MARINE LEGALISATION

A report entitled 'Welsh Responses to Defra's Consultation on the Marine Bill White Paper' was published containing a variety of responses to the issues contained within the White Paper itself. Overall, there was strong support for the Marine Bill with a number of responses stating that such legislation for the marine environment is overdue²⁹.

Concern was raised in relation to responsibilities of devolved administrations over the management of Wales and what specifically applied to Wales in the Marine Bill White Paper. Clarification on the implementation of the Marine Bill within Wales was called for as the Bill seemed focused on areas under UK government control. The report highlights concern in relation to the prospect of inconsistencies in the management of the UK seas would arise as Wales could have a different approach to the management of the sea. Concern was also evident in regards to differences in management which could lead to distortions and unfair competition within the port industry between Wales and the rest of the UK³⁰.

Marine Planning

Creation of strategic marine planning was felt to be a very positive step for managing the marine environment. More details were felt to be needed in relation to establishing how the coastal area will be planned for within Wales and the rest of the UK.

Licensing in the Marine Area

Streamlined licensing was welcomed, but emphasise was placed on not allowing activities to be licensed before an environmentally sensitive area can obtain protection. In this respect it was felt that streamlined and faster licensing could be detrimental to the conservation effort.

²⁹ Welsh Responses to DEFRA's Consultation on the Marine Bill White Paper, http://www.wales.gov.uk/topics/environmentcountryside/env_cons_management/marine_fisheries/?lang=en

³⁰ Welsh Responses to DEFRA's Consultation on the Marine Bill White Paper, http://www.wales.gov.uk/topics/environmentcountryside/env_cons_management/marine_fisheries/?lang=en

Marine Nature Conservation

Strong support for the establishment of Marine Conservation Zones, but more detail was required in relation to the specifics of MCZs on how they will be selected, established and maintained. The Report highlighted the need for more clarification in the Bill on the Welsh Assembly governments' role.

Marine fisheries Management

Strong opposition was registered in relation to a license for sea fishing; many believing that it would lead to a decline in sport of the recreational sea angling and would lead to a loss of money and jobs in the area. Recreational anglers have called for a ban on commercial fishing, especially trawling, close to the shore and distances suggested for the ban range from 1 to 6 nautical miles.

Marine Management Organisation

In relation to a Marine Management Organisation (MMO), the Report stated that the Welsh government has declined the notion of an MMO. However, concern has been raised that an MMO would offer a great level of expertise, which Wales would be detached from.