

MARINE (SCOTLAND) BILL

[AS AMENDED AT STAGE 2]

REVISED EXPLANATORY NOTES

CONTENTS

1. As required under Rule 9.7.8A of the Parliament's Standing Orders, these revised Explanatory Notes are published to accompany the Marine (Scotland) Bill (introduced in the Scottish Parliament on 29 April 2009) as amended at Stage 2. Text has been added or deleted as necessary to reflect the amendments made to the Bill at Stage 2 and these changes are indicated by sidelining in the right margin.

INTRODUCTION

2. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

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

THE BILL

4. The Bill creates a new legislative and management framework for the marine environment. The Bill creates a new system of marine planning to manage the competing demands of the use of the sea whilst protecting the marine environment, creates a system of licensing with the aim of reducing the regulatory burden for key sectors, and includes powers to establish marine protected areas to protect natural and cultural marine features. The Bill also introduces a new regime for the conservation of seals and gives powers for Scottish marine enforcement officers to ensure compliance with the new licensing and conservation measures.

5. The Bill is divided into nine Parts.

Part 1 defines the Scottish marine area, which is essentially Scotland's territorial seas from 0 to 12 nautical miles. Part 1 also defines the sea which includes any area submerged at mean high water spring tide and the waters of every estuary, river or channel, so far as the tide flows at mean high water spring tide.

Part 1A places a general duty on the Scottish Ministers and public authorities to act in the way best calculated to further the achievement of sustainable development in the exercise of their functions.

Part 2 creates the statutory framework for marine planning which will allow the Scottish Ministers to ensure that the resource needs for marine space of different sectors are properly taken into account and

managed. International responsibilities and national objectives will be met by the national marine plan while local interests will be met by regional planning within Scottish Marine Regions.

Part 3 makes changes to the current licensing system to deliver a simplified licensing system. The requirements of Part II of the Food and Environment Protection Act 1985 and Part II of the Coast Protection Act 1949 will be consolidated to create a single licence. The Scottish Ministers will have general responsibility for the new marine licensing regime. The Bill also provides for the enforcement of the new licensing regime.

Part 4 creates powers to establish marine protected areas and management tools that deliver practical nature conservation to safeguard and protect Scotland's marine natural assets as well as marine historic assets of national importance. This is to be achieved through a single power to designate a marine protected area, either for the purposes of nature conservation, research and demonstration or historic site protection, with closely tailored arrangements for each. For the historic environment, this would have the effect of creating a unified approach by Scottish Ministers to protection of historic assets underwater (Scottish Ministers would no longer use section 1 of the Protection of Wrecks Act 1973 and the Ancient Monuments and Archaeological Areas Act 1979).

Part 5 prohibits the killing or taking of seals except under specific licence. The licence process allows for protection of fisheries and aquaculture sectors within the context of general seal conservation.

Part 6 creates common enforcement powers that will allow Scottish Ministers to monitor activity in the marine environment and take appropriate measures to ensure compliance.

Part 6A provides for modifications to the Sea Fish (Conservation) Act 1967

Part 7 includes general provisions concerning matters such as Crown application, offences by bodies corporate, ancillary provision, and orders and regulations.

PART 1 – THE SCOTTISH MARINE AREA

Section 1 - The “Scottish marine area”

6. Section 1 defines the “Scottish marine area”. Essentially this is Scotland's territorial seas from 0 to 12 nautical miles.

Section 2 - “Sea”

7. Section 2 states that the “sea” includes any area submerged at mean high water spring tide and the waters of every estuary, river or channel, as far as the tide flows at mean high water spring tide.

PART 1A – GENERAL DUTIES

Section 2A – Sustainable development

8. Section 2A requires the Scottish Ministers and public authorities to take the best course of action in order to further the sustainable development of the Scottish marine area when undertaking any

function that affects the Scottish marine area under this Act or any other enactment (so far as is consistent with the purpose of the function concerned).

PART 2 – MARINE PLANNING

Marine Plans

Section 3 - National marine plan and regional marine plans

9. Section 3 requires the Scottish Ministers to prepare and adopt a national marine plan for Scotland's marine area and allows them to prepare and adopt regional marine plans for Scottish Marine Regions. The marine plans will state the Scottish Ministers' policies for sustainable development of the area to which the plan applies and must be prepared and adopted in terms of schedule 1.

10. A national or regional marine plan may include statements or information relating to policies contained within the plan. The national marine plan must in particular include economic, social and marine ecosystem objectives, as well as objectives associated to the mitigation of, and adaption to, climate change.

11. Section 3(4) enables the Scottish Ministers to create Scottish Marine Regions through secondary legislation and to identify the boundaries of the regions.

Section 3A - Conformity of marine plans with other documents

12. The national and regional marine plans must conform to any marine policy statement currently in effect for the Scottish marine area, unless relevant considerations indicate otherwise. The regional marine plans must also conform with the national marine plan, unless relevant considerations indicate otherwise. The section also makes provision as to what is meant by a marine policy statement being in effect.

Section 4 - Coming into effect of marine plans

13. Section 4 indicates that the national marine plan or a regional marine plan only comes into effect once it is published in accordance with schedule 1. Once it comes into effect, a marine plan affects decisions of public authorities as set out in section 11.

Section 5 - Amendment of marine plans

14. Section 5 allows a marine plan to be amended when necessary by the Scottish Ministers. Any amendment to a marine plan must be prepared and adopted in exactly the same way as the original marine plan. The amended marine plan comes into effect once it has been adopted and published.

Section 6 - Withdrawal of marine plans

15. Section 6 allows the Scottish Ministers to withdraw a marine plan where they consider it appropriate to do so. It may be that there is a problem with the plan that they do not want to, or cannot, rectify by making an amendment such as if they decide that the plan must cease effect immediately. In those circumstances they could just withdraw the plan. They must publish a notice in

the Edinburgh Gazette and the marine plan will cease to have effect from the date of publication. The Scottish Ministers must bring the withdrawal to the attention of interested persons. Once a national marine plan has been withdrawn, the Scottish Ministers must, as soon as possible, prepare and adopt a new national marine plan for the Scottish marine area.

Section 6A – Effect of withdrawal from or of marine policy statement or of national marine plan

16. If the Scottish Ministers withdraw from a marine policy statement, or a marine policy statement is withdrawn, then the validity or effect of a national marine plan or regional marine plan is unaffected. The construction of any national or regional marine plans is unaffected in the period between a marine policy statement being withdrawn and a new statement coming into effect. The withdrawal of a national marine plan by Scottish Ministers does not affect the validity of a regional marine plan, nor the construction of any regional marine plan until a new national marine plan is in effect.

Section 7 - Duty to keep relevant matters under review

17. Section 7 requires the Scottish Ministers to keep up to date with issues so as to ensure that there is effective marine planning. The non-exhaustive list of matters which need to be reviewed is in section 7(2). This includes the physical, environmental, social, cultural and economic characteristics of the marine area and of the living resources which the area supports. “Cultural” characteristics include those which are of a historic or archaeological nature.

Delegation of functions relating to regional marine plans

Section 8 - Delegation of functions relating to regional marine plans

18. Section 8 permits the Scottish Ministers to direct a public body or a group of persons nominated by public authorities or Ministers (unincorporated group) to carry out some of their marine planning functions. The Scottish Ministers may give a direction only with the consent of the public body or any public authority responsible for nominating to the unincorporated group. The delegate must comply with the direction and is taken to have all the necessary powers to carry out the functions. The functions which can be delegated in relation to a regional marine plan are those under sections 3, 5, 7 and 12.

19. Excepted functions are detailed in section 8(6). These are functions which cannot be delegated and these include whether to publish a consultation draft plan or the final regional marine plan.

Section 9 - Directions under section 8: supplementary provision

20. Section 9 provides further as to directions given under section 8. The Scottish Ministers must publish a direction in such a way as to bring it to the attention of interested parties. For as long as the direction remains in effect the functions are to be carried out by the public body or unincorporated group acting on behalf of the Scottish Ministers. Section 9(3) sets out how the Scottish Ministers may make exceptions to this rule.

21. Section 9(4) allows the Scottish Ministers to impose terms, conditions, obligations or requirements on the way the public body or unincorporated group carry out the functions delegated to them. It also allows the Scottish Ministers to make financial provisions in connection with the carrying out of functions by the public body or unincorporated group.

22. Section 9(5) allows the Scottish Ministers to delegate their functions differently for different areas or different delegates recognising that different marine regions will have different demands. Section 9(6) allows Scottish Ministers to make grants to a delegate for the exercise of designated functions.

Section 10 - Directions to delegates as regards performance of designated functions

23. Section 10 allows the Scottish Ministers to give further directions to a public authority or unincorporated group setting out how those functions should be performed. The Scottish Ministers must consult the public authority or unincorporated group before giving a direction. The delegate must comply with any directions given. The directions must be published to bring them to the attention of interested parties.

Decisions of public authorities affected by a marine plan

Section 11 - Decisions of public authorities affected by marine plans

24. Section 11 indicates that a public authority must make any authorisation or enforcement decision in accordance with the appropriate marine plan unless relevant considerations indicate otherwise. If the public authority does not make authorisation or enforcement decision in accordance with the appropriate marine plan it must state its reasons. Authorisation or enforcement decisions relate to the authorisation or licensing of activities within Scotland's marine area. For all other decisions which are not authorisation or enforcement decisions, public authorities must have regard to the appropriate marine plan.

Monitoring and reporting

Section 12 - Monitoring of and periodical reporting on implementation of marine plans

25. Section 12 requires the Scottish Ministers to monitor and report on the effects of the national marine plan and the progress it has made towards sustainable economic development. Similarly public authorities or unincorporated groups will be required to monitor and report on regional marine plans and the progress they have made towards the objectives within the national marine plan. The reports should be published every 5 years and the Scottish Ministers must decide whether or not to amend or replace the national marine plan or a regional marine plan. Replacing a marine plan means preparing and adopting a new plan and withdrawing the existing one.

Validity of marine plans

Section 13 - Validity of national marine plans and regional marine plans

26. Section 13 sets out how a person aggrieved by the national marine plan or a regional marine plan may challenge the contents if thought not to be within the appropriate powers or if it is considered that a procedural requirement has not been met. An application to the Court of Session must be made no later than 6 weeks after the publication of the relevant documents.

Section 14 - Powers of the Court of Session on an application under section 13

27. Section 14 sets out the powers of the Court when hearing a challenge to the validity of a plan. Section 14(2) allows the courts to make an interim order suspending the operation of the relevant document until the proceedings are over. If the complaint is upheld the courts can quash the relevant

document or remit it back to the Scottish Ministers and give directions as to the actions that are to be taken.

Interpretation of Part 2

Section 15 - Interpretation of Part 2

28. Section 15 sets out how certain terms in Part 2 of the Bill are to be interpreted.

PART 3 – MARINE LICENSING

Requirement for licence

Section 16 - Requirement for licence

29. Section 16 indicates that anyone carrying out an activity mentioned in section 17 must obtain a licence from the Scottish Ministers. Exemptions or special cases are provided for in sections 24 to 28.

Licensable marine activities

Section 17 - Licensable marine activities

30. Section 17 lists the licensable marine activities. The list is similar to that applying under existing requirements, except that all forms of dredging will become licensable under this section. In summary all vessels, aircraft or structures, regardless of their country of origin, will need a licence to deposit or incinerate any object or substance within Scotland's marine area. All vessels, aircraft or structures, regardless of their country of origin, will need a licence before they are loaded in Scotland or in Scotland's marine area with any substance or object for incineration at sea.

31. Section 17(3) permits the Scottish Ministers to add or remove any activity from the list of licensable marine activities by order. Section 17(4) states that the Scottish Ministers must have regard to the need to protect the environment, to protect human health and to prevent interference with legitimate uses of the sea, and to any other matters that Ministers deem relevant when making an order to add or remove an activity from the list of licensable marine activities.

Pre-application consultation

Section 17A – Pre-application consultation: preliminary

32. Section 17A states that Scottish Ministers may by regulations prescribe classes of licensable activity, which will require a pre-application notice and report to be prepared prior to a licence application. If the prospective applicant is unsure as to whether the activity fits in the class that requires a pre-application notice or report to be submitted, they may request clarification from the Scottish Ministers.

Section 17B – Pre-application consultation: compliance

33. Section 17B states that those applicants whose activity falls within a class requiring a pre-application consultation report must give notice of an application for a marine licence at least 12 weeks in advance of the application itself. Section 17B(3) states what details are to be included in the notice. Section 17B(4) states that the regulations will specify who is to be notified and who is to be consulted,

and in what form, with respect to the proposed application. Section 17B(6) and (7) state that Scottish Ministers have 21 days after having received the notification, in which to notify the applicant if they require the notice to be given to additional people or if additional consultation is required (or both). When considering this, Scottish Ministers must have regard to the nature, extent and location of the proposed activity and to the likely effects of the activity.

Section 17C – Pre-application consultation report

34. Section 17C states that, prior to submitting an application for a marine licence, applicants must comply with section 17B and a report must be produced to show what has been done to comply with the conditions in that section.

Licences

Section 18 - Application for licence

35. Section 18 allows the Scottish Ministers to specify in what form an application for a marine licence should be submitted. They may also make regulations setting out the fee to be paid for an application.

36. The Scottish Ministers may request any supplementary information or require any investigations they think necessary to enable them to determine an application. The Scottish Ministers may charge a fee towards such an investigation. If the applicant fails to provide information or fails to pay a fee, then the Scottish Ministers can refuse to proceed with the application.

Section 19 - Notice of applications

37. Section 19 provides that the Scottish Ministers or the applicant must publish notice of an application to bring it to the attention of interested parties. If the Scottish Ministers publish the application then they may require the applicant to pay a fee towards the costs of the publication. Section 19(6) allows the Scottish Ministers to decide whether publication is necessary or not. The Scottish Ministers may consider that the impact of the application is so minor that it would serve no purpose to publish the details.

Section 20 - Determination of applications

38. Section 20 indicates that the Scottish Ministers must have regard to the need to protect the environment or human health or prevent interference with legitimate uses of the sea and to any other matters which they consider relevant when determining an application. Section 20(2) indicates that the Scottish Ministers must have regard to any alternative method of dealing with the substance or object as detailed in Section 17(1) item 1 and 2. The Scottish Ministers must consult any persons or bodies as specified by order and may consult any other person or body who they believe has particular relevant expertise. They must also take into account comments received from interested parties. Section 20(5) indicates that the Scottish Ministers must allow the applicant the opportunity to make representations regarding any of the comments received from interested parties.

39. Section 20(7) allows the Scottish Ministers to set out further details in regulations concerning the procedure for applications and the grant of licences. This may include the time period within which any function is to be exercised and provision about notifying the applicant of any licensing determination.

Section 21 - Inquiries

40. Section 21 allows the Scottish Ministers to cause an inquiry to be held in connection with their determination of an application for a marine licence. Section 21 also allows Scottish Ministers to cause two inquiries to be held together.

Section 22 - Grant or refusal of licence

41. Section 22 allows the Scottish Ministers to grant the licence unconditionally, refuse the application or impose conditions on any licence they grant. Examples of the sorts of conditions that may be imposed are given in Section 22(2) and include precautions to be taken, works to be carried out or monitoring of activities. The licence could include conditions governing the use of a marine structure and how it should be dismantled and removed from the sea once its active life is over.

Section 23 - Variation, suspension, revocation and transfer

42. Section 23 allows the Scottish Ministers to vary, suspend or revoke a licence in certain circumstances. These could include 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. On receipt of an application from a licensee, the Scottish Ministers can transfer a licence from one named person to another.

Exemptions from licensing requirements

Section 24 - Exemptions specified by order

43. Section 24 allows the Scottish Ministers to specify by order activities which will not need a marine licence. The Scottish Ministers must consult persons they consider appropriate as to any order they propose to make. When deciding under section 24(1) to specify an activity which does not need a marine licence, Scottish Ministers 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 any other matters considered relevant by those Ministers.

Section 25 - Activities below specified threshold of environmental impact

44. Section 25 will allow the Scottish Ministers by regulations to permit licensable marine activities which fall below a specified threshold of environmental impact to be registered rather than licensed. The regulations may define the meaning of “fall below”, “registered” and “specified threshold of environmental impact”. The regulations may also include provisions for who will be responsible for the register and for offences for those who do not register.

Section 26 - Oil and gas, defence or pollution

45. Section 26 lists activities within the reserved sphere to which this Part does not apply.

Special provision for certain cases

Section 27 - Special procedure for applications relating to certain electricity work

46. Section 27 applies when both a marine licence and a consent under section 36 of the Electricity Act 1989 are required for the same activity. Section 27 allows the two applications to be considered together with the procedural provisions of the Electricity Act applying to the marine licence application. The Scottish Ministers may modify by order the procedural provisions of the Electricity Act to allow this single process to operate satisfactorily.

Section 28 - Electronic communications apparatus

47. Section 28 provides that the Scottish Ministers must not issue a licence to carry out any activity which involves the exercise of a right conferred by paragraph 11 of the electronic communications code in Schedule 2 to the Telecommunications Act 1984 unless they are satisfied that adequate compensation arrangements have been made.

Section 28A – Submarine cables

48. Section 28A applies where a stretch of exempt submarine cable is proposed to be laid, is being laid or has been laid, outside the seaward limits of the territorial sea. The Scottish Ministers are required to grant any application for a marine licence for the carrying out of any licensable marine activity done in the course of laying any stretch of the cable in the Scottish marine area. The Scottish Ministers are able to attach conditions to these licences as they are to any other marine licence. Part 3 does not apply to anything done in the course of maintaining a stretch of cable within the Scottish marine area. Definitions are provided for terms used in this section.

Appeals against licensing decisions

Section 29 - Appeals against licensing decisions

49. Section 29 requires the Scottish Ministers to make regulations allowing any person who applies for a marine licence to appeal against a decision under section 22. The regulations may include provision about the procedure to be followed in any appeal.

Offences

Section 30 - Breach of requirement for, or conditions of, licence

50. Section 30 indicates that it is an offence for a person to carry out a licensable activity (as defined in section 17) without a licence or to breach any condition of a licence.

51. A person who is bound by specified conditions in a licence (by virtue of section 22(5)) cannot be considered to have committed an offence unless the Scottish Ministers have issued notice to that person stating that there is a breach of licence conditions and the person has subsequently failed to comply with that notice within the period specified in it.

52. Section 30(4) states the maximum penalties for committing an offence under the section.

Section 31 - Defences: action taken in an emergency

53. Section 31 provides that 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, they have a defence against any charge brought against them. However, this is dependent on the person informing the Scottish Ministers within a reasonable timeframe of the matters listed in section 31(2), on the steps taken being reasonable, and on it not being the fault of the person that the emergency occurred.

Section 32 - Defences: electronic communications: emergency works

54. Section 32 gives a defence against any charge brought under section 30(1) for operations conducted by an operator or undertaker and which are classified as emergency works within the meaning of the electronic communications code in Schedule 2 to the Telecommunications Act 1984.

Section 33 - Offence relating to information

55. Section 33 indicates that it is an offence for a person to knowingly supply false or misleading information in trying to obtain a marine licence or get it varied or transferred. Section 33(3) sets out applicable penalties.

Enforcement notices

Section 34 - Compliance notice

56. Section 34 provides that a person carrying out a licensed activity in a manner that breaches licence conditions can be issued with a notice requiring compliance. Such a notice is called a “compliance notice”.

57. The Scottish Ministers can issue a compliance notice where licence conditions have been breached and where the activity has not caused (nor is likely to cause) serious harm to either the environment or human health or serious interference with legitimate uses of the sea. A compliance notice may be served, for example in the case of a technical breach. The Scottish Ministers will use other enforcement tools available to them, such as a stop or remediation notice, where the breach has led to serious harm to the environment or human health.

58. A compliance notice must state the Scottish Ministers’ reasons for issuing the notice, any steps the Scottish Ministers require to be taken, and the time period within which any steps should be completed.

Section 35 - Remediation notice

59. Section 35 indicates that a person who has carried on or is carrying on a licensable activity, either without a licence or in a manner that breaches the conditions of their licence, can be issued with a notice requiring them to put right any damage caused by their activity, pay for another body to put right that damage, or to undertake steps elsewhere in compensation for the damage caused. Such a notice is called a “remediation notice”.

60. The Scottish Ministers can issue a remediation notice in cases where harm to the environment or human health has occurred, or is likely to occur, or where the activity has interfered with other legitimate uses of the sea, or is likely to do so.

61. The Scottish Ministers may only issue a remediation notice after they have consulted the person to whom they intend to issue the notice.

62. The remediation notice may require the person to take steps to protect the environment, prevent, minimise or mitigate the effects of harm or interference caused, or restore a site to an appropriate condition had the harm or interference not been caused. In addition, the remediation notice may require steps to be taken at a site other than the one affected by the harm or interference. It may not be reasonably possible to restore a site so steps to be taken at another site may be deemed more appropriate. A remediation notice could be served in addition to a stop notice (see below). This would be the case, for example, where the Scottish Ministers sought to put an immediate halt to a damaging activity and then to require the operator to put right the damage already caused.

63. A remediation notice must state the Scottish Ministers' reasons for issuing the notice; any remedial steps or payment to be made as a consequence of the offence or to protect the environment, human health or prevent interference; and the time period within which any steps required should be completed or sum paid. The requirements contained in a remediation notice must be reasonable.

Section 36 - Further provision as to compliance and remediation notices

64. Section 36 indicates that all compliance and remediation notices must be served on the person undertaking or in control of the activity in question, and may, if a licence has been granted for that activity and the person is different, also be served on the licensee. Notices can be varied or revoked by issue of a further notice.

65. It is an offence to fail to comply with a compliance or remediation notice.

Civil sanctions

Section 37 - Fixed monetary penalties

66. Section 37 allows the Scottish Ministers to make provision by order about the imposition of fixed monetary penalties.

67. The Scottish Ministers may only impose a fixed monetary penalty when they are satisfied beyond reasonable doubt that the person has committed an offence under Part 3.

68. The amount of any fixed monetary penalty will be specified by order. Different provision may be made for different cases.

Section 38 - Fixed monetary penalties: procedure

69. Section 38 details the minimum requirements that the Scottish Ministers must ensure are included within any fixed monetary penalty regime. In particular, when imposing a penalty Scottish Ministers must be required to issue a notice of intent to the person setting out the information specified in section

38(3) and providing the person with an opportunity to discharge their liability by payment of a prescribed sum. Alternatively a person is to be entitled to make representations, in accordance with section 38(2)(c)(i). Where the Scottish Ministers decide to impose a fixed monetary penalty, they must issue a final notice setting out the information specified in section 38(5). A person on whom a final notice is served has a right of appeal. Section 38(6) sets out the minimum grounds for appeal that must be available.

Section 39 - Variable monetary penalties

70. Section 39 allows the Scottish Ministers to make provision by order concerning the imposition of variable monetary penalties.

71. The Scottish Ministers may only impose a variable monetary penalty when satisfied beyond reasonable doubt that the person has committed an offence under Part 3.

72. The Scottish Ministers will determine the amount of any variable monetary penalty on a case-by-case basis.

Section 40 - Variable monetary penalties: procedure

73. Section 40 details the minimum requirements that the Scottish Ministers must ensure are included within any variable monetary penalty regime. In particular, when imposing the penalty the Scottish Ministers are required to issue a notice of intent to the person setting out the information specified in section 40(3) and providing the person with an opportunity to discharge their liability by payment or an undertaking to take action (for example, remediation works or another kind of activity). Alternatively a person can make representations against the imposition of the notice. Where the Scottish Ministers decide to impose a variable monetary penalty, they must issue a final notice setting out the information specified in section 40(6). A person on whom a final notice is served has a right of appeal. Section 40(7) sets out the minimum grounds for appeal that must be available.

Section 41 - Further provision about civil sanctions

74. Section 41 introduces schedule 2 which sets out further provision in relation to the civil sanctions that may be imposed under Part 3.

Delegation

Section 42 - Delegation of functions relating to marine licensing

75. Section 42 indicates that the Scottish Ministers may by order delegate any of their licensing functions listed in this section a public authority or an unincorporated group of persons. Those functions specified in section 42(6) are excepted functions and cannot be delegated. The licensable activities that could be delegated are listed in section 17(1).

76. The Scottish Ministers may not continue to exercise any function which has been delegated unless the order explicitly permits them to do so. There is no minimum or maximum period for which the delegation can apply. Different functions can be delegated to different persons.

Section 43 - Orders under section 42: supplementary provisions

77. Section 43 enables further provision to be made in an order concerning the delegation of functions. Section 43(4) provides a list of the aspects of the licensing process that the Scottish Ministers may want to specifically regulate in the order. These include the manner in which the delegate is to exercise the function, the application process to the delegate, matters to which the delegate must have regard to when determining the applications and the form and content of any licence granted.

Section 44 - Directions to delegates as regards the performance of the marine licensing designated functions

78. Section 44 applies where any functions are exercised by a delegate by virtue of an order made by the Scottish Ministers under section 42. It enables the Scottish Ministers to give directions to a person to whom they have delegated functions, setting out how those functions should be performed. Section 44(4) requires the person to comply with any such directions, which must be published by Ministers in accordance with section 44(5).

Register of licensing information

Section 45 - Register of licensing information

79. Section 45 requires the Scottish Ministers to maintain a register of information relating to applications and licences. They must make it available to the public. The Scottish Ministers must also set out in regulations further provision regarding the maintenance of the register.

80. Information is not to appear on the register if the Scottish Ministers determine that its disclosure would adversely affect the confidentiality of commercial or industrial information, where such confidentiality is provided by law to protect a legitimate commercial interest. 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 both the person to whom the information relates and the Scottish Ministers agree that it should remain confidential, in which case it will be reviewed in a further four years. The existence of commercially sensitive information must be recorded in the register.

Stop notices and emergency safety notices

Section 46 - Notice to stop activity causing serious harm etc.

81. Section 46 allows the Scottish Ministers to issue a notice to a person prohibiting them from carrying on a licensable marine activity if that activity is causing or will cause serious harm to the environment or human health or is causing or will cause serious interference with legitimate uses of the sea. Such a notice is called a “stop notice”.

82. The Scottish Ministers can issue a stop notice regardless of whether the person has a marine licence or not and (if they have a licence) regardless of whether they are operating in accordance with the licence conditions.

83. A stop notice must state the Scottish Ministers' reasons for issuing the notice, the date and time that the activity must cease being carried out and any steps required by the Scottish Ministers to ensure safe cessation.

84. An initial stop notice can be in effect for up to seven days. The stop notice may be extended but only up to a combined total period of 35 days.

85. This limit does not apply where an activity is being carried out without a marine licence. In such cases, stop notices can remain in effect until a marine licence is granted for the activity in question.

Section 47 - Further provision as to stop notices

86. Section 47 indicates that stop notices must be served on the person undertaking or in control of the activity in question, and may, if a licence has been granted for that activity and the person is different, also be served on the licensee. A notice can be revoked or varied.

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

Section 48 - Emergency safety notices

88. Section 48 makes provision relative to navigational safety. The Scottish Ministers can 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 marine works. The notice can 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. An emergency safety notice must state the Scottish Ministers' grounds for believing that serious interference with legitimate uses of the sea is occurring or is likely to occur, state the date and time from which the requirements are to take effect and require the person to take such steps as the Scottish Ministers consider appropriate to ensure compliance with the requirements.

Section 49 - Further provision as to emergency safety notices

89. Section 49 indicates that an emergency safety notice must be served on the licensee. Where a stop notice relating to the works is in effect, the emergency notice must also be served on any person on whom the stop notice was served. Section 49(2) allows the Scottish Ministers to revoke or vary an emergency safety notice.

90. It is an offence to fail to comply with an emergency safety notice.

Other powers

Section 50 - Power to take remedial action

91. In circumstances where a licensable activity has been undertaken either without a licence or in a manner that breaches conditions of a licence, section 50 allows the Scottish Ministers to carry out any works that will; protect the environment; protect human health; prevent interference with legitimate uses of the sea; limit the effects of the licensable activity, and restore the condition of any place affected. This power is not limited in use to those circumstances where the authority has issued a remediation notice.

Section 51 - Power to test and charge for testing certain substances

92. Section 51 allows the Scottish Ministers to carry out, on the request of any person, tests on substances for their effect on the marine environment and to recover the expenses of that testing. Tests can be carried out if a substance is to be used for treating fouling matter and in this context “fouling matter” means oil or chemicals, or algae or other living or dead organisms.

Appeals against notices under this Part

Section 52 - Appeals against notices

93. Section 52 requires that the Scottish Ministers by regulations make provision allowing any person issued with certain types of notices to appeal against the notice. The notices include compliance, remediation, stop and emergency safety notices. Section 52(4) indicates that the regulations may include provisions with regards to the procedure to be followed with respect to an appeal, suspending the notice pending determination of the appeal and the powers of any court, tribunal or person to which or whom the appeal is made.

Offences: supplementary provision

Section 53 - General defence of due diligence

94. Section 53 provides a defence for a person charged with an offence under this Part if the person can demonstrate they took all reasonable precautions and exercised due diligence to avoid committing that offence. Section 53(2) to (5) outline some circumstances in which the defence is available and sets out procedures which apply to the proving of this defence. Examples of defence in section 53(2) include that a defence is established if the accused acted under an employer’s instructions or acted in reliance on information supplied by another person.

Power by order to provide marine fish farming is not “development”

Section 54 - Power by order to provide marine fish farming is not “development”

95. Section 54 amends the Town and Country Planning (Scotland) Act 1997 by the creation of a power for Ministers to specify by order that the construction of marine fish farming works in specified waters is no longer to constitute “development” for the purposes of the 1997 Act. An order can only be made with the agreement of the planning authority for the relevant waters.

Interpretation of Part 3

Section 55 - Interpretation of Part 3

96. Section 55 sets out how certain terms in Part 3 of the Bill are to be interpreted.

PART 4 – MARINE PROTECTION AND ENHANCEMENT: THE SCOTTISH MARINE PROTECTION AREA

The Scottish marine protection area

Section 56 - The Scottish marine protection area

97. Section 56 defines the area which is to constitute the “Scottish marine protection area”.

Section 57 – “Sea” for the purposes of this Part

98. Section 57 defines the “sea” as having the meaning given in section 2 except that it does not include any waters upstream of the fresh-water limit of estuarial waters.

Designation of marine protected areas

Section 58 - Marine protected areas

99. Section 58 enables Scottish Ministers to designate a nature conservation, demonstration and research or historic marine protected area (an “MPA”) within the Scottish marine protection area. Section 58(2) clarifies any island within the area of an MPA may form part of it.

Nature Conservation MPAs

Section 59 - Nature Conservation MPAs: additional requirements relating to designation

100. Section 59 enables Scottish Ministers to designate by order a Nature Conservation MPA for the purposes of conserving marine flora or fauna, marine habitats and features of geological or geomorphological interest.

101. Section 59 also requires Scottish Ministers to prepare and publish guidance setting out scientific criteria to inform consideration of whether a Nature Conservation MPA should be designated, and that they have regard to such guidance when exercising functions under section 58 (which provides for Scottish Ministers to designate MPAs). The designation order is to state the protected feature(s) and conservation objectives for the site. Conserving marine flora or fauna includes in particular conserving any species that is rare or threatened because of the limited number of the species or the limited number of locations in which that species is present.

102. When designating a Nature Conservation MPA, Scottish Ministers must consider its contribution towards the development of a network of conservation sites as specified in section 68A.

103. Also, while considering designation of a Nature Conservation MPA, Scottish Ministers may have regard to the social and economic consequences of designation.

104. Additionally, in considering whether to designate a Nature Conservation MPA for the purposes of conserving or enhancing a marine habitat or feature of geological or geomorphological interest, Scottish Ministers may have regard to the degree to which the feature is representative of its type. Conserving a thing can include assisting in its conservation and enabling or facilitating its recovery or increase. Subsection (6) allows the Scottish Ministers, when considering whether to designate an area, to have particular regard to any views expressed by any person to whom marine planning functions for the relevant region have been delegated.

Section 60 - Nature Conservation MPAs: further provision

105. Section 60 makes further provisions concerning the establishment of Nature Conservation MPAs. A designation order must identify the area’s boundaries and may provide for the boundary to be determined by, or by reference to, mean high water spring tide. A Nature Conservation MPA may include, in addition to an area of sea referred to in section 58(1), an area of seashore lying above mean high water spring tide if the area of seashore adjoins the area of sea and at least any one the following conditions are satisfied: (a) the protected feature(s) is or are present in the area of seashore; (b) the

area of sea is designated for the purpose of conserving marine flora or fauna which are wholly or part dependent on anything which takes place in, or is present in, the area of seashore; (c) without inclusion of the area of seashore, the identification of the boundary of the MPA (either in order to designate or manage it) would be impossible or impracticable.

Demonstration and Research MPAs

Section 61 - Demonstration and Research MPAs: additional requirements relating to designation

106. Section 61 enables Scottish Ministers to designate by order a Demonstration and Research MPA. Scottish Ministers may do this for the purpose of demonstrating sustainable methods of marine management or exploitation or carrying our research into such matters. A relevant designating order must state whether it is for the purpose of demonstration or research or both, and the method or methods of marine management or exploitation to be demonstrated or researched. Subsection (3)(a) allows the Scottish Ministers, when considering whether to designate an area, to have particular regard to any views expressed by any person to whom marine planning functions for the relevant region have been delegated.

Section 62 - Demonstration and Research MPAs: further provision

107. Section 62 makes further provision for the establishment of Demonstration and Research MPAs. A designation order must identify the area's boundaries and may provide for the boundary to be determined by, or by reference to, mean high water spring tide. A Demonstration and Research MPA may include, in addition to an area of sea referred to in section 58(1), an area of seashore lying above mean high water spring tide if the area of seashore adjoins the area of sea and the inclusion of the area of seashore is necessary to further or support the purpose for which the area is designated.

Historic MPAs

Section 63 - Historic MPAs: additional requirements etc.

108. Section 63 makes further provision relating to the designation of Historic MPAs. Subsection (1) enables Scottish Ministers to designate a Historic MPA for the purposes of preserving a marine historic asset of national importance located, or which the Scottish Ministers are satisfied may be located, in the area. The designation order is to define the asset(s) to be protected, the preservation objectives and the boundaries of the area, including such area of seabed comprising or adjacent to the marine historic asset(s) necessary for the preservation of the marine historic asset(s). Section 63(5) sets out what a "marine historic asset" is for the purposes of Part 4.

Amendment or revocation of designation orders

Section 64 - Amendment or revocation of designation orders

109. Section 64 provides that a designation order may be amended or revoked by a further such order.

Consultation, urgent designation, representations etc.

Section 65 - Publicity and consultation etc. before designation

110. Section 65 requires Scottish Ministers, before making a designation order, to publish notice of their proposal to do so. This must be published in such a manner as the Scottish Ministers consider most likely to bring the proposal to the attention of any persons likely to be affected by the making of

the order. The Scottish Ministers are also required to consult any persons they consider are likely to be interested in or affected by the making of the order - these include in particular any local authority whose area is adjacent to the proposed boundaries of the MPA and persons specified by order under section 20(4)(a).

Section 66 - Publicity in relation to designation orders

111. Section 66 requires that if Scottish Ministers seek to designate, amend or revoke an MPA they must publish notice of the order. They must do this in a way most likely to bring the order to the attention of persons most likely to be interested in or affected by the order. They must provide an address at which the order may be inspected, ensure that it is available for inspection at this address at all reasonable hours, and provide a copy on request to any person. A fee may be charged for providing a copy on request.

Section 67 - Urgent designation

112. Section 67 provides that, where there is an urgent need to protect a marine area, Scottish Ministers may make a designation order without being required to publish notice of their proposals or to consult. Such an order can remain in place for up to 2 years. However, even in the case of urgently designated MPAs, Scottish Ministers will still be bound under section 66 to adequately publicise the designation order once made.

Section 68 - Representations and hearing in relation to proposed designation order

113. Section 68 provides that Scottish Ministers may, before deciding whether to make a designation order, give any person the opportunity to make oral or written representations. This section also gives Scottish Ministers the power to make regulations providing for the procedure to be followed at any hearing held under this section. It should be noted that section 67 confers discretionary powers on Scottish Ministers. Formal consultation duties on Ministers for non-urgent MPAs are set down in section 65.

Duties relating to network

Section 68A – Creation of network of conservation sites

114. Section 68A states that Scottish Ministers have an obligation to designate Nature Conservation MPAs under section 58 in order to contribute to the objective specified in section 68A(2). The objective is that any areas designated as MPAs, taken together with other marine conservation zones and relevant conservation sites in the UK marine area, form a network which satisfies certain conditions which are specified in subsection (3) of this section.

115. Those conditions are that the network contributes to the conservation or improvement of the marine environment in the UK marine area, that the features which are protected by the sites comprised in the network represent the range of features present in the UK marine area, and that the designation of sites comprised in the network reflects the fact that the conservation of features may require the designation of more than one site.

116. “Relevant conservation sites” are any European marine site, any European offshore marine site, the whole or part of any site of special scientific interest and the whole or part of any Ramsar site.

117. When complying with this duty to designate sites to contribute to a network, Scottish Ministers must have regard to any obligations under EU and international law that relate to the conservation or improvement of the marine environment.

118. Section 68A also requires the Scottish Ministers to prepare a statement outlining the principles relating to the achievement of a network, which the Scottish Ministers intend to follow. The document must be laid before Parliament within the period ending 2 months after the section comes into force. The statement may also set out other relevant matters that the Scottish Ministers plan on taking into account when designating Nature Conservation MPAs, which are not part of the conditions of improving and conserving the marine environment. This statement must be kept under review and if necessary amended and laid before the Parliament.

Advice etc. as regards protection of certain marine areas

Section 69 - Advice etc. by Scottish Natural Heritage as regards Nature Conservation MPAs and Demonstration and Research MPAs

119. Section 69 provides that Scottish Natural Heritage (SNH) may issue advice and guidance to public authorities on certain matters relating to MPAs. For example, advice may be provided on matters which are capable of damaging protected features. Such guidance may relate to a single MPA, categories of MPAs or all MPAs, and may be given to a particular authority or authorities in general. This section also requires that SNH must give advice to a public authority if the authority requests it.

Section 70 - Advice and guidance by the Scottish Ministers as regards MPAs

120. Section 70 provides that Scottish Ministers may also give advice and guidance on those areas for which SNH may provide guidance under section 69. In addition, Scottish Ministers may provide guidance relating to the matters which are capable of damaging or otherwise affecting any marine historic asset in a Historic MPA and how any stated objectives for a Historic MPA may be best furthered, or how the achievement of any such objectives may be hindered. Scottish Ministers may provide advice in relation to a particular Nature Conservation, Demonstration and Research or Historic MPA, as well as in relation to categories of MPA or indeed all MPAs.

General duties of public authorities

Section 71 - Duties of public authorities in relation to marine protected areas etc.

121. Section 71 requires public authorities to exercise their functions (so far as is consistent with the proper exercise of these functions) in a manner which best furthers or least hinders the stated objectives or purposes of individual MPAs. The public authority must also exercise those functions in the manner best calculated to further the contribution of a Nature Conservation MPA to a network of conservation sites as specified in section 68A.

122. Where a public authority believes that any of its functions is such that the exercise of the function would or might significantly hinder the achievement of the relevant objectives or purpose of the MPA, it must inform Scottish Ministers and (if appropriate) SNH of that fact.

123. If a public authority intends to do an act and it believes there is or may be a significant risk of the act hindering the achievement of the objectives or purpose in subsection (2)(a) (furthering the stated objectives or purpose of an MPA), it must notify Scottish Ministers and if appropriate SNH. The

authority must wait 28 days from notifying Scottish Ministers or SNH before deciding whether to act or not, unless the Scottish Ministers have stated they need not wait or if the authority deems that there is an urgent need to act. Authorities need not notify Scottish Ministers or SNH in such instances if guidance has already been provided by the Scottish Ministers or SNH, and that the guidance has not ceased to apply. This section also requires that if an authority considers there has been an act or omission in relation to the exercise of its duties which is an offence and which it believes will or may significantly hinder the achievement of the objective or purpose of an MPA, it must inform Scottish Ministers and (if appropriate) SNH. In carrying out its duties under this section a public authority must have regard to any advice given by SNH or Scottish Ministers under sections 69 and 70.

Section 72 - Duties of public authorities in relation to certain decisions

124. Section 72 applies to public authorities where they have the function of determining applications for any act, where that act is capable of affecting an MPA (other than insignificantly) or natural processes upon which it is dependent. Where the public authority believes that there is a significant risk of the act hindering the objectives or purpose of an MPA, it must notify Scottish Ministers and SNH. The public authority must then wait for 28 days before deciding whether to grant authorisation unless Scottish Ministers notify the authority that it need not wait until the end of the period or the authority thinks there is an urgent need to grant authorisation for the act. The authority must not grant authorisation for the act unless the applicant satisfies the authority that there is no significant risk of the act hindering the achievement of the objective or stated purpose of the MPA. Alternatively, the applicant can satisfy the authority that there is no other means of proceeding which would substantially lower risk of hindering the MPA objectives or purposes and that the benefit to the public clearly outweighs the risk of damage to the environment that will be created by the act. Where the applicant is not able to satisfy the authority that there is not a significant risk of the act hindering the achievement of the stated objectives for a MPA, if the authorising authority has the power to grant authorisation subject to conditions it must exercise its power so as to require the applicant to satisfy the authority and Scottish Ministers that it will undertake measures of equivalent environmental benefit to the damage which the act will or is likely to have in or on the MPA concerned. The authority must notify the Scottish Ministers that it proposes to grant the authorisation and of the conditions subject to which it proposes to grant it, and must wait 28 days before granting the authorisation, unless Scottish Ministers notify the authority that it need not wait until the expiry of the 28 day period. In the case where the person applying for the authorisation is not able to satisfy the authority that there is no significant risk of the act hindering the achievement of the stated preservation objectives of a Historic MPA, if the authorising authority has the power to grant authorisation subject to conditions it must exercise its power so as to make it a condition of the authorisation that before the act in question is commenced, a detailed archaeological investigation of the area is carried out. In carrying out its duties under this section a public authority must have regard to any advice given by SNH or Scottish Ministers under sections 69 and 70.

Section 73 - Failure to comply with duties

125. Section 73 provides powers for SNH, where it believes that a public authority has failed to follow the advice of SNH or to comply with its duties in relation to MPAs, to require the authority to supply an explanation in writing for the failure. SNH must send a copy of the request to Scottish Ministers. On receiving a request under this section the public authority must provide SNH with an explanation and send a copy to the Scottish Ministers. Where Scottish Ministers believe that a public authority has failed to act in accordance with advice or guidance issued by them under section 70, they may also request an explanation in writing from the authority and the authority must provide it. Where in relation to a Historic MPA Scottish Ministers believe a public authority has failed to comply with any

of its duties relating to MPAs in the exercise of its functions, they may seek an explanation from the authority in writing and the authority must provide it.

Marine conservation orders

Section 74 - Marine conservation orders

126. Section 74 enables Scottish Ministers to make marine conservation orders (MCOs) for the purpose of regulating activities so as to further the objectives or stated purposes of MPAs. Where the MPA overlaps with or adjoins a European Marine Site, the order can have effect on that site as well. Section 74(4)(a) provides that an MCO may disapply the defences found in section 85(1) which relate to the carrying out of public functions or authorisations from public authorities. Section 74(4)(c) provides for flexibility to apply orders in different ways to different parts of an MPA, and to different methods of carrying out an activity. This will enable orders to be focused on controlling particularly damaging methods, while avoiding capturing activities which pose less of a risk.

Section 75 - Example provisions for marine conservation orders

127. Section 75 gives example provisions which MCOs can make in order to further the objectives or stated purposes of MPAs. Subsection (1) sets out examples of activities which can be prohibited, restricted or regulated within the area through the making of a conservation order. Section 75(2) provides an example whereby an MCO can be used to regulate the speed of vessels outside the area of the MPA where that movement may adversely affect the objectives or purposes of the MPA. The activities set out are primarily activities which are not controlled by other means (e.g. the new licensing regime). The activities set out in the example provisions may, if unregulated, threaten biodiversity and in certain circumstances marine historic assets. However, the extent of threat can vary on a site by site basis depending on a variety of factors. The powers in these subsections are therefore drafted relatively widely to allow the Scottish Ministers to control any of the activities they may need to, based on an analysis of the threat posed in each instance.

Section 76 - Procedure for marine conservation orders

128. Section 76 sets out the procedure that the Scottish Ministers must follow when making a marine conservation order. This includes sending out a draft copy of the order to any persons Scottish Ministers believe are likely to be affected by or interested in the making of the order, placing the order in a place where they consider it to be most convenient for inspection by most persons affected by the order and providing a copy to any person who requests one (a fee not exceeding incurred expenses may be charged in this case by Ministers). Where the order would apply to an area any part of which is land, Ministers must also provide a copy to the relevant planning authority. Scottish Ministers are also required to publish notice of their proposal to make an order. The notice must be published in such a manner as the Scottish Ministers consider most likely to bring the proposal to the attention of any persons who are likely to be affected by the making of it, it must state where the copy or copies of the draft order have been placed by the Scottish Ministers and state the time within which representations about the draft order must be made to the Scottish Ministers. In placing copies of the notice, they must be placed in a place or places where Scottish Ministers consider them most likely or most convenient for the purpose of inspection by persons most likely to be affected by the making of the order.

Section 77 - Urgent orders

129. Where the Scottish Ministers consider there is an urgent need to protect an area (i.e. where delay in making an order could result in harm to the features, the marine historic asset, or the stated purpose of the area), Section 77 allows the Scottish Ministers to follow an expedited process, without the need to publicise in advance that the order is to be made. The order will still be made as a statutory instrument and it will be a requirement on Scottish Ministers to publish notice of an MCO once it has been made. Section 77(6) provides for urgent marine conservation orders to remain in force for a limited period which may not exceed 12 months except if extended as set out in Section 77(6) for an additional 12 months maximum duration, providing that certain conditions have been met as specified in Section 77(7). These conditions are that Scottish Ministers intend to make a permanent marine conservation order on the site to which the urgent MCO applies, and that they have published their proposals to make such an order.

Section 78 - Publicity in relation to marine conservation orders and urgent continuation orders

130. Section 78 lays out the duties on Scottish Ministers to adequately publicise marine conservation orders, orders amending or revoking MCOs and urgent continuation orders. Ministers should send a copy to any persons they consider likely to be interested in or affected by the order, and make a copy of the order available for inspection at one of their offices at all reasonable hours. Ministers must provide a copy of the order to anyone who requests one but in doing so may charge a fee (not exceeding expenses).

Section 79 - Representations and hearings in relation to proposed marine conservation orders etc.

131. Section 79 makes provision for Scottish Ministers to give any person the opportunity to make written or oral representations before an MCO is put in place and to make regulations providing for the procedure to be followed.

Authorisation of things prohibited, regulated etc. by marine conservation orders

Section 80 - Authorisation of things prohibited, regulated etc. by a marine conservation order

132. Section 80 sets out mechanisms for authorisation of things prohibited, regulated etc. by a marine conservation order. Under section 80(1), Scottish Ministers may issue a permit and under section 80(2) they may attach any condition to the permit that they consider appropriate. In the case of Historic MPAs, section 80(3) allows for an MCO applying to a Historic MPA to provide that the Scottish Ministers can authorise by direction the carrying out of certain activities or operations that would otherwise be unlawful and to attach any conditions they consider appropriate.

Section 81 - Delegation of issuing permits or authorisations

133. Section 81 allows for an MCO to provide that Scottish Ministers can delegate the issuing of permits or authorisations to third parties. By way of illustration, this would allow charter boat operators or community associations authorised by Scottish Ministers to themselves authorise visitor access to Historic MPAs providing that certain conditions had been met, thereby avoiding the need for each visitor to obtain individual authorisation from the Scottish Ministers.

Offences

Section 82 - Offences: contravening a marine conservation order

134. Section 82 provides for the offence of contravening an MCO. A person who contravenes an MCO is liable to a fine not exceeding £50,000 on summary conviction or on conviction on indictment to a fine. In determining the amount of fine to be imposed on a person convicted of an offence, the court must in particular have regard to any financial benefit which has accrued or appears likely to accrue to the person in consequence of the offence. In this section, the term “contravene” includes failing to comply.

Section 83 - Offences relating to protected features of a Nature Conservation MPA

135. Section 83 provides for an offence of doing a prohibited act relating to protected features of a Nature Conservation MPA. “Prohibited” acts include intentionally or recklessly killing or injuring any animal in the MPA which is a protected feature of the MPA; picking, collecting, cutting, uprooting or destroying any plant in the MPA which is a protected feature of the site; taking anything from the MPA which is or forms part of the protected feature(s) of the MPA; and damaging or destroying any habitat or feature which is a protected feature of the MPA. However, doing one of these acts is only an offence where the act significantly hinders, or may significantly hinder, the achievement of the stated conservation objectives of the MPA.

Section 84 - Offences relating to marine historic assets

136. Section 84 deals with an offence relating to prohibited acts in connection with a Historic MPA. It is an offence intentionally or recklessly to do a prohibited act which significantly hinders (or which may significantly hinder) the stated preservation objectives for the protected area. A prohibited act includes works or activities which (or which are likely to) damage or interfere with a marine historic asset or have a significant impact on the protected area. It is also a prohibited act to remove, alter or disturb a marine historic asset within a Historic MPA.

Section 85 - Exception to offences under section 82, 83 or 84

137. Section 85 sets out exceptions to certain offences. Section 85(1) provides that a person is not guilty of the offence if the act was an exercise of the functions of a public authority in accordance with section 71(2), authorised by a public authority (but see note on section 74 which deals with disapplication of this defence), or in accordance with a permit or authorisation issued by the Scottish Ministers under section 80(1) or (3). Section 85(1)(d) provides additional exceptions relating to the national interest. Section 85(2) provides a defence if the person can show that the act was done for the purpose of sea-fishing (or was an act done in connection with such an act) and the damage could not have reasonably been avoided. However, Scottish Ministers may by order (which requires Parliamentary approval by affirmative legislation) vary or remove the defence in section 85(2).

Section 86 - Prohibited act taken in an emergency

138. Section 86 sets out defences to certain offences. There are defences for where the act was necessary to save a life or to secure the safety of a vessel, aircraft or marine structure, and the person took steps within a reasonable time to inform the Scottish Ministers of the matters set out in subsection (2).

Marine management schemes

Section 87 - Marine management schemes

139. Section 87 makes explicit provision for relevant authorities (either individually or acting together with another authority or authorities) to establish one or more management schemes for Nature Conservation and Demonstration and Research MPAs and any European marine site situated in the Scottish marine area which is included in whole or in part in, or includes in whole or in part, or adjoins, a Nature Conservation or Demonstration and Research MPA. The purpose of management schemes is to further the conservation objectives or stated purpose of an MPA or the protection of a European marine site to which a management scheme applies. Under the scheme, the relevant authority's functions are exercised to that effect. Management schemes may be time limited and amended from time to time. "Relevant authority" here means any public body exercising functions in the Scottish marine protection area or the Scottish Ministers.

Section 88 - Review of schemes

140. Section 88 requires any established management schemes to be reviewed five years after it is established and at intervals of five years after that.

Section 89 - Marine management schemes: consultation etc.

141. Section 89 requires that Scottish Natural Heritage are consulted over the making or amending of schemes. Scottish Ministers and Scottish Natural Heritage must be informed of any amendments to a scheme.

Section 90 - Directions as to making, amending or revocation of schemes

142. Section 90 enables Scottish Ministers to give directions to relevant authorities as to the making of management schemes. A direction may in particular require one or more schemes to be made, require conservation or other measures specified in the direction to be included in a scheme, where a scheme is to be made by more than one relevant authority acting together, appoint one such authority to co-ordinate the making of it, set time limits within which any steps in relation to the making of the scheme are to be taken, require the approval of the Scottish Ministers before a scheme is made and require any relevant authority to give Scottish Ministers such information relating to the making of a scheme as may be specified in the direction. Scottish Ministers may also give direction (whether general or specific) to an authority or authorities as to the amendment of a marine management scheme, and they may revoke a marine management scheme by a direction given to the relevant authority or authorities. Any direction given under section 90 must be in writing.

Reports to Parliament

Section 91 - Reports to Parliament

143. Section 91 imposes duties on Scottish Ministers to report on all MPAs designated in Scotland. This includes reporting on overall numbers and the extent to which Nature Conservation MPAs, taken together with UK Marine Conservation Zones and any European inshore or offshore marine sites, form a network of sites that contributes to the conservation or improvement of the marine environment and the other objectives in 68A(3).

Licences granted under Wildlife and Countryside Act 1981

Section 92 - Grant of certain licences under Wildlife and Countryside Act 1981

144. Section 92 amends the Wildlife and Countryside Act 1981 so that Scottish Ministers will have responsibility for those marine wildlife licensing functions currently exercised by SNH. However, where appropriate Scottish Ministers will be able to delegate those functions to SNH.

Penalties in regulations implementing Habitats Directive

Section 93 - Penalties in regulations implementing the Habitats Directive for the Scottish marine area

145. Section 93 provides for the possibility of increased penalties for offences in the Scottish marine area relating to the Habitats Directive. Regulations implementing that Directive will be able to include penalties of a fine up to £50,000 on summary conviction and an unlimited fine on conviction on indictment.

Interpretation of Part 4

Section 94 - Interpretation of Part 4

146. Section 94 sets out how certain terms used in Part 4 are to be interpreted.

PART 5 – CONSERVATION OF SEALS

Offence: killing, injuring or taking seals

Section 95 - Offence: killing, injuring or taking seals

147. Section 95 provides for an offence of killing, injuring or taking a seal.

Section 96 - Exceptions: alleviating suffering

148. Section 96 sets out exceptions to the section 95 offence where the act was to alleviate suffering of a seriously disabled animal through humane killing or tending and releasing. The section places a duty on a person who kills, injures or takes a seal in accordance with these exceptions to report the matter to Scottish Ministers and provides for an offence of failing to comply with this duty.

Section 97 - Exceptions: licensed activity

149. Section 97 sets out a further exception to the section 95 offence where the act was carried out in accordance with a seal licence.

Seal licences

Section 98 - Seal licenses

150. Section 98 sets out in detail the purposes for which Scottish Ministers may issue licences to kill or take seals.

Section 99 - Methods of killing or taking seals under seal licence

151. Section 99 sets out that a seal licence must specify the method to be used to kill or take seals. It also provides that a seal licence must not authorise anything that would contravene regulation 41 of the Conservation (Natural Habitats, &c.) Regulations 1994 but that this does not restrict the things for which a licence may be issued under regulation 44 of those Regulations.

Section 100 - Seal licence conditions

152. Section 100 provides that seal licences must specify a maximum number of seals which may be killed or taken and require the licensee to report to Scottish Ministers every three months on certain matters, including providing “nil” returns. Licences may impose other conditions and some examples are provided. The section provides for an offence of failing to comply with licence conditions. Subsection (5) sets out a defence to that offence.

Section 101 - Variation or revocation of seal licence

153. Section 101 enables Scottish Ministers to vary or revoke a seal licence at any time.

Section 102 - Seal licence fees

154. Section 102 enables Scottish Ministers to make regulations to introduce fees for seal licences.

Section 103 - Consultation and consent

155. Section 103 places a duty on Scottish Ministers to consult the Natural Environment Research Council before granting or varying any seal licence and to obtain the consent of Scottish Natural Heritage in relation to seal licences granted for specified purposes in relation to the conservation of habitats and species, introduction of species to particular areas and protecting zoological or botanical collections. The consent of SNH is only required where the licence authorises killing or taking in a “protected area” (as defined in the section).

Seal conservation areas

Section 104 - Seal conservation areas

156. Section 104 enables Scottish Ministers to designate seal conservation areas where they consider it necessary to ensure the proper conservation of seals, places a duty on them to consult the Natural Environment Research Council before doing so, and sets out requirements in relation to publishing such designations.

Section 105 - Effect of seal conservation area status: licensing decisions

157. Section 105 sets out the effect of a seal conservation area designation on licensing decisions - specifically that Scottish Ministers should not grant a licence to kill or take seals in such an area unless they are satisfied that there is no satisfactory alternative and that this will not be detrimental to the maintenance of the seal population at favourable conservation status.

Authorisations to enter land

Section 106 - Power to enter land to obtain information about seals

158. Section 106 enables Scottish Ministers to authorise any person to enter land to obtain information about seals, provided that notice is given to the occupier of the land. There must be consultation with the Natural Environment Research Council before an authorisation is given.

Section 107 - Power to enter land to protect fisheries or fish farms from seals

159. Section 107 enables Scottish Ministers to authorise any person to enter land to kill or take seals in accordance with a licence granted for the purpose of preventing them from seriously damaging fisheries or fish farms, provided that notice is given to the occupier of the land. There must be consultation with the Natural Environment Research Council before an authorisation is given.

Section 108 - Duty to notify occupier

160. Section 108 sets out details for the giving of notice to the occupier of the land of an authorisation to enter land made under sections 106 and 107.

Section 109 - Duty to produce authority

161. Section 109 places a duty on anyone entering land to produce evidence of their authority if asked to do so.

Section 110 - Obstructing an authorised person

162. Section 110 provides for an offence of obstructing a person from entering land to carry out authorised activities.

Supplementary

Section 111 - Advice on seal population

163. Section 111 provides that Scottish Ministers must have regard to any advice about the management of seal populations given to them by the Natural Environment Research Council.

Section 112 - Police powers: search and seizure

164. Section 112 sets out police powers of search and seizure in relation to offences under this Part.

Section 113 - Forfeiture

165. Section 113 sets out court powers of forfeiture in relation to offences under this Part.

Section 114 - Penalties

166. Section 114 sets out penalties in relation to offences under this Part.

Section 115 - Repeal

167. Section 115 provides for repeal of the Conservation of Seals Act 1970.

PART 6 – COMMON ENFORCEMENT POWERS ETC.: LICENSING AND MARINE PROTECTION ETC.

Powers of marine enforcement officers

Section 116 - Enforcement of marine licensing regime

168. Section 116 sets out the powers that marine enforcement officers have for the purpose of enforcing the marine licensing regime. These are the common enforcement powers conferred by the Bill and the power conferred by section 135 (which pertains to requiring information relating to certain substances and objects). Such powers may be exercised in the Scottish marine area and in any other part of Scotland. The powers may not be exercised in relation to any British warship.

Section 117 - Enforcement of marine protection and nature conservation legislation

169. Section 117 outlines the powers that marine enforcement officers have for the purpose of enforcing nature conservation legislation. For the purpose of this section, “nature conservation legislation” means the specific pieces of legislation listed in subsection (2). That subsection lists marine conservation orders, sections 83, 84, 95 and 100(4) of the Bill, certain sections of the Wildlife and Countryside Act 1981, certain regulations in the Conservation (Natural Habitats, &c) Regulations 1994 and byelaws made under regulation 36 of those Regulations. Powers may be exercised in the Scottish marine area and in any other part of Scotland. The powers may not be exercised in relation to any British warship. Additionally, the powers may not be exercised in relation to a third country vessel, a non-UK warship or any other vessel that is being used by a country other than the UK for any non-commercial purpose. The exception to this is where in the case of a third country vessel (other than a warship or a vessel being used by a third country for any non-commercial purpose) the United Kingdom is entitled under international law to exercise those powers without the consent of the flag state. The term “vessel” in this context does not include aircraft.

The common enforcement powers

Section 118 - The “common enforcement powers”

170. Section 118 defines the “common enforcement powers” as the powers under sections 119 to 134.

Common enforcement powers of entry, search and seizure

Section 119 - Power to board and inspect vessels and marine installations

171. Section 119 sets out the powers of marine enforcement officers to board and inspect vessels and marine installations. Enforcement officers may require a 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 can 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 120 - Power to enter and inspect premises

172. Section 120 sets out the powers of marine enforcement officers to enter and inspect premises. Premises include land. Entry must be at a reasonable time unless the officer believes that, by waiting for that reasonable time, the purpose of entering the premises 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 122.

Section 121 - Power to enter and inspect vehicles

173. Section 121 sets out the powers of marine enforcement officers to enter and inspect vehicles at any time. An officer can also require the vehicle to be taken to an appropriate place to be inspected and can require assistance as necessary from people in the vehicle or the registered keeper. The powers may be exercised wherever and whenever it is necessary, although a warrant is necessary to enter a dwelling. For the purposes of this section, the term “vehicle” does not include vehicles at sea (i.e. vessels and marine installations). These are covered under section 119.

Section 122 - Dwellings

174. Section 122 provides that a marine enforcement officer may not enter a dwelling without a warrant and sets out the basis on which a justice may issue such a warrant. This section gives enforcement officers the power to seek a warrant from a justice to enter dwellings in order to exercise other enforcement powers in this Part.

Section 123 - Powers of search, examination, etc.

175. Section 123 sets out the powers that a marine enforcement officer has with regard to search and examination etc. The powers allow an enforcement officer to search a vessel, marine installation, premises or vehicle (“relevant premises”) as part of an inspection and allow an officer to stop someone and detain them to perform a search (e.g. of their equipment). Section 123(3) to (9) enable an officer to examine anything that is in or on the relevant premises, or is attached to, or part of them, including anything that is controlled from them. Subsection (8) provides that the section does not authorise the search of a person. Where appropriate, the officer can 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 other thing that has been locked. An officer could also require assistance from anyone within the premises or connected to the premises, or from someone who has been carrying an activity in relation to which the officer has enforcement powers.

Section 124 - Power to require production of documents, etc.

176. Section 124 gives enforcement officers the power to require a person on or in the relevant premises being inspected to produce documents or records. A document includes information which is recorded on paper, in an electronic format, and pictorial and related images.

Section 125 - Powers of seizure, etc.

177. Section 125 sets out powers of seizure that can be exercised by marine enforcement officers. Where an officer suspects that an offence may have been committed, the officer may seize and remove

(and detain) anything found on the premises. The officer can also take copies of or extracts from any document/material or record found on the relevant premises. Subsection (5) limits the power so that it does not allow an officer to remove any document/material 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. Subsection (7) prevents an officer seizing an item which is subject to legal privilege.

Section 126 - Further provision about seizure

178. Section 126 provides further regarding seizure. Subsections (1) and (2) give officers powers to seize and remove things which are kept in a container. This includes the ability to require evidence to be put into a container so that it can be removed. Subsection (3) enables officers to require that documents or materials are kept on the premises for safekeeping pending removal and seizure. Subsection (4) allows a marine enforcement officer exercising a power of inspection conferred by section 119, 120 or 121 to require any person in or on the relevant premises to afford such facilities and assistance, with respect to matters under that person's control, as the officer considers would facilitate the exercise of any power conferred by section 125 or 126. Subsection (4A) provides that, where a marine enforcement officer reasonably believes that a person is or has been carrying on a relevant activity, the officer may require that person to afford such facilities and assistance, with respect to matters under that person's control, as the officer considers would facilitate the exercise of any power conferred by section 125 or 126.

Section 127 - Retention of seized items

179. Section 127 makes provision for the retention of items seized under section 125 and sets out the conditions relating to such retention of seized items. 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 common enforcement powers

Section 128 - Power to record evidence of offences

180. Section 128 sets out the power to record evidence of offences. It provides enforcement officers with power to use any device to take visual images of anything connected with the relevant premises which the officer believes is evidence in the investigation of a suspected offence. Section 128(2) describes what the power can be used in relation to and section 128(3) enables the officer to require a person who has some control in that situation to give assistance.

Section 129 - Power to require name and address

181. Section 129 provides a power for marine enforcement officers to require names and addresses where they have reason to believe that a person has committed a relevant offence.

Section 130 - Power to require production of licence, etc.

182. Section 130 provides a power to require the production of a licence. If the officer believes that someone has been undertaking an activity which needs a licence, permit, etc., the officer can require that person to produce that licence. Subsection (2) allows the person to produce the licence later if unable to do so at the time the officer demanded it.

Section 131 - Power to require attendance of certain persons

183. Section 131 provides a power to require attendance of certain persons for the purpose of a marine enforcement officer carrying out functions where vessels or marine installations are boarded or premises are entered. This section applies when an officer has boarded a vessel or marine installation or entered any premises and needs to assemble those on the premises (for instance so that the officer can check identities of people present).

Section 132 - Power to direct vessel or marine installation to port

184. Section 132 provides a power to direct a vessel or marine installation to port. It 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 it would not be practical to exercise a power without first taking the vessel or marine installation to port and detaining it there. Section 132(2) sets out powers which enable an officer to get the vessel or movable marine installation (such as a jack-up rig) to the nearest convenient port. 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 or to provide a berth or suitable storage facilities. The officer may take the vessel or installation there, arrange for someone else to take it, or require the person in charge of it to take it into port. For instance, the officer might arrange for a local pilot to take the vessel into port. Section 132(3) says that, once the vessel or marine installation is in port, the officer may detain it or require the person in charge to do so. Subsections (4) to (6) explain 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. A notice may be withdrawn by another written notice signed by any marine enforcement officer.

Section 133 - Assistance, etc.

185. Section 133 sets out the circumstances in which a marine enforcement officer may bring along other persons when carrying out any relevant functions. 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. Assistants could include specialists (for example, a vet if the officer was inspecting wildlife legislation). Anybody brought by the enforcement officer to assist will be supervised or directed by the officer.

Section 134 - Power to use reasonable force

186. Section 134 enables marine enforcement officers (and their assistants) to use reasonable force if necessary in the exercise of their powers. Reasonable force might be needed to prevent documents being thrown overboard, for example.

Licensing: further enforcement powers

Section 135 - Power to require information relating to certain substances and objects

187. Section 135 provides a power to require information relating to certain substances and objects. It enables enforcement officers to require a person to give details of any substance or objects on board their vehicle, vessel, aircraft or marine structure. People on board can also be required to give information about substances or objects lost from their vehicle, vessel, aircraft or marine structure. The

section generally re-enacts powers in the Food and Environment Protection Act 1985. Subsections (2) and (3) prevent information obtained under this section from being used as evidence in a criminal prosecution (save for a prosecution for the offence of making a false statement, if the information given is found to be false).

Duties of marine enforcement officers

Section 136 - Duty to provide evidence of authority

188. Section 136 sets out the circumstances in which a marine enforcement officer must produce evidence of authority to exercise powers under this Part. This section obliges enforcement officers who are exercising enforcement powers to show evidence that they have the authority to exercise the power.

Section 137 - Duty to state name and purpose, etc.

189. Section 137 deals with the duty on a marine enforcement officer to state name and purpose. Enforcement officers are obliged on request to state their name, the power they are intending to use and reason for its use. A person assisting an enforcement officer need not give their name, but would need (on request) to say what power was being used and why.

Liability of marine enforcement officers

Section 138 - Liability of marine enforcement officers

190. Section 138 provides as to the liability of marine enforcement officers. Enforcement officers and their assistants are protected from being liable in any civil or criminal proceedings for anything done or not done as a result of carrying out their functions. This exemption from liability does not apply when an enforcement officer acts in bad faith, if the act was carried out without reasonable skill or care, if there were no reasonable grounds for him or her to act in such manner, or if an act was unlawful under the Human Rights Act 1998.

Offences in relation to marine enforcement officers

Section 139 - Offences in relation to marine enforcement officers

191. Section 139 sets out the circumstances in which persons may be guilty of offences in relation to preventing a marine enforcement officer from properly carrying out duties. This section provides sanctions and penalties for anyone who fails to comply with a requirement made by an enforcement officer, or who assaults or intentionally obstructs an enforcement officer, when the officer is carrying out their duties. It is an offence for anyone knowingly to provide false or misleading information in any particular form or material to an enforcement officer. This includes intentionally failing to disclose any information or materials requested for by the enforcement officer. Anyone who pretends to be an enforcement officer is also guilty of an offence. Offences against enforcement officers also apply similarly to acts in relation to their assistants. Subsection (2) provides that someone who was required to produce a licence under section 130 and did not do so at the time but complied with a requirement to produce it later, is not guilty of an offence.

General

Section 140 - General

192. Section 140 provides that the powers conferred on a marine enforcement officer in Part 6 are without prejudice to any powers exercisable by the officer apart from Part 6.

Interpretation of Part 6

Section 141 - Interpretation of Part 6

193. Section 141 provides as to the interpretation of terms used in Part 6.

PART 6A SEA FISHERIES

Chapter 1: The Sea Fish (Conservation) Act 1967

Section 141A - Extension of modifications relating to Sea Fish (Conservation) Act 1967

194. Section 141A applies to Scotland, the modifications to the Sea Fish (Conservation) Act 1967 made by Chapter 1 of Part 7 of, and Schedules 15 and 22 to, the Marine and Coastal Access Act 2009, with the exception of the modifications made by sections 194(4) and (5), 196 and 198 (3) of, and paragraph 1(4) of schedule 15.

195. Section 1 of the Sea Fish (Conservation) Act 1967 enables the Scottish Ministers as regards Scotland to make an order to set minimum size limits for sea fish. An order under section 1 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. An order under section 1 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.

196. Section 1 of the Sea Fish (Conservation) Act 1967 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 vessel or Scottish fishing boat.

197. By applying section 194 of the Marine and Coastal Access Act 2009 to Scotland, section 141A amends section 1 of the of the Sea Fish (Conservation) Act 1967 as regards Scotland 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 Scottish 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.

Regulation of nets and other fishing gear

198. Section 3(1) of the Sea Fish (Conservation) Act 1967 enables the Scottish Ministers as regards Scotland to make an order in relation to relevant Scottish fishing boats applying restrictions to nets and other fishing gear in respect of their construction, design, material and size. An order under section 3 may apply only in relation to fishing for specified descriptions of sea fish, specified methods of fishing, and specified areas or periods.

199. 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. (This provision is modified as regards Scotland and section 3(2) enables the Scottish Ministers to make an order in relation to the Scottish zone in respect of relevant British fishing boats or fishing boats registered in any country outside the UK or not registered in any country).

200. In addition to other matters, section 3(3) and (4) provides for exemptions from the restrictions imposed by orders under section 3 of the Act to be made in relation to fishing boats. Section 3(5) of the Conservation Act creates offences for fishing in contravention of any orders made under section 3.

201. Currently, section 3 does not allow restrictions to apply equally to persons fishing from the shore as they apply to persons fishing from a boat.

202. By applying section 195 of the Marine and Coastal Access Act 2009 to Scotland section 141A amends section 3 so that restrictions of this type may be made by order in respect of persons fishing from the shore. Section 3 is also amended to create new offences for any person fishing from the shore in contravention of any restrictions and to allow for orders to exempt persons from the restrictions imposed.

Grant of licences subject to conditions imposed for environmental purposes

203. Section 4 of the Sea Fish (Conservation) Act 1967 Act enables Ministers (the Scottish Ministers as regards Scotland) to prohibit fishing by fishing boats in any specified area within the Scottish Zone, except as authorised by a licence. Section 4(6) of the Act provides that licences may authorise fishing subject to conditions.

204. By applying section 197 of the Marine and Coastal Access Act 2009 to Scotland, section 141A amends section 4(6) to also allow the imposition of conditions for marine environmental purposes, as described.

Power to restrict fishing for sea fish

205. Section 5 of the Sea Fish (Conservation) Act 1967 enables the Ministers (the Scottish Ministers as regards Scotland) 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. Any fish caught in contravention of a restriction of an order made under this section must be returned immediately to the sea. An order made under this section as regards Scotland to an area outside the Scottish Zone may apply only to Scottish Fishing boats, and to any boat within that zone.

206. 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.

207. By applying section 198(1) and (2) of the Marine and Coastal Access Act 2009 to Scotland section 141(A) amends section 5(1) so that orders may also be made in relation to persons fishing from the shore. 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.

Penalties for offences

208. 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. By applying Section 199 of the Marine and Coastal Access Act 2009 to Scotland, section 141A amends section 11 to increase these levels of fine on summary conviction to a maximum of £50,000 or on indictment to an unlimited fine.

209. 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. By applying section 199 of the Marine and Coastal Access Act to Scotland section 141A amends section 15 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.

210. 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. By applying section 199 of the Marine and Coastal Access Act 2009 to Scotland, section 141A amends section 16 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.

Offences by directors, partners, etc

211. By applying section 200 of the Marine and Coastal Access Act 2009 to Scotland, section 141A replaces section 12 of the Sea Fish (Conservation) Act 1967 is replaced by a new section 12 which provides that, where offences under sections 1 to 6 of that Act have been committed by a body corporate, 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 (partnerships).

Minor and consequential amendments

212. By applying section 201 of the Marine and Coastal Access Act 2009 to Scotland, section 141A makes the relevant, minor and consequential amendments contained in Schedule 15 to the Sea Fish (Conservation) Act 1967.

Section 142B - Modification of Section 22A of the Sea Fish (Conservation) Act 1967

213. Section 22A of the Sea Fish (Conservation) Act 1967 provides that the 1967 Act has effect in Scotland subject to certain modifications. Section 142B adapts for Scotland relevant provisions of the Marine and Coastal Access Act 2009 (as applied by section 142A) by amending section 22A of the Sea Fish (Conservation) Act 1967.

PART 7 – GENERAL PROVISIONS

Section 142 - Crown application

214. Section 142 makes provision as to Crown application. The Crown is bound by the Bill but is not be criminally liable for any contravention. However, the Court of Session may declare unlawful any act or omission of the Crown which constitutes a contravention. Any provision of the Bill applies to persons in the public service of the Crown as it applies to other persons.

Section 143 - Offences by bodies corporate

215. Section 143 makes provision in relation to offences by corporate bodies.

Section 144 - Ancillary provision

216. Section 144 allows the Scottish Ministers to make by order such provision as will give full effect to the Bill or any provision of it. An order may modify any enactment, instrument or document.

Section 145 - Orders and regulations

217. Section 145 contains general provisions regarding orders and regulations. All orders or regulations under the Bill are to be made by statutory instrument, with the exception of orders made under section 58(1).

Section 146 - Interpretation: general

218. Section 146 sets out how certain terms used in the Bill are to be interpreted.

Section 147 - Consequential modifications

219. Section 147 introduces schedule 4 (which makes modifications consequential on the Bill).

Section 148 - Commencement and short title

220. Section 148 indicates that the provisions of the Bill (with the exception of sections 1, 2, 15, 55, 56, 57, 94, 118, 141, 145, 146 and 148) are to come into force in accordance with orders made by the Scottish Ministers.

SCHEDULE 1 – PREPARATION, ADOPTION ETC. OF MARINE PLANS OR ANY AMENDMENT

221. This schedule sets out the procedure which must be followed when preparing marine plans under section 3.

Scottish Ministers to notify planning authorities of decision to prepare any marine plan

222. Paragraph 1 places a duty on the Scottish Ministers to notify related planning authorities of their intention to prepare a national marine plan or a regional marine plan. Related planning authorities are those whose district adjoins the marine planning area in question. Where the national marine plan or regional marine plans adjoins the area of sea adjacent to England or to Northern Ireland, Scottish Ministers must notify the Secretary of State and/or the Department of the Environment in Northern Ireland of their intention to prepare a marine plan.

Interpretation

223. Paragraph 2 defines terms used in the schedule.

Regional marine plans to be compatible with certain other plans

224. Paragraph 3 indicates that, when preparing or amending a regional marine plan, the Scottish Ministers must ensure the plan is compatible with adjacent regional marine plans and any development plans in the adjacent terrestrial environment.

Statement of public participation

225. Paragraph 4 concerns the preparation and publication of a “Statement of Public Participation” (SPP). This will set out how the Scottish Ministers intend to involve interested parties in the preparation of a national marine plan or regional marine plan.

Further provision about content of an SPP

226. Paragraph 5 states that the SPP must contain a timetable for the various stages of preparing the marine plans or amendments, including how and when representations about the consultation draft should be made.

Review and revision of an SPP

227. Paragraph 6 states that the Scottish Ministers must keep the SPP under review and amend it when necessary to ensure that it meets requirements. If the SPP is revised, it must be published as revised.

Advice and assistance

228. Paragraph 7 allows the Scottish Ministers to seek advice or assistance from anyone with relevant expertise when preparing marine plans. It also allows them to convene advisory and consultative groups to assist in developing and consulting on a draft marine plan.

Matters to which Scottish Ministers are to have regard in preparing marine plans

229. Paragraph 8 sets out a non-exhaustive list of matters to which the Scottish Ministers must have regard in preparing a marine plan. These include conformity of marine plans with any marine policy statement currently in effect for the Scottish marine area unless relevant considerations indicate otherwise, compatibility with adjacent plans, the results of the review required under section 7, the SPP, any representations with regard to the content of the plan, and the powers and duties of the Crown Estate Commissioners.

Preparation and publication of a consultation draft

230. Paragraph 9 requires the Scottish Ministers to prepare a consultation draft of the relevant marine plan and publish it so that interested parties are aware of it and may make representations about it.

Representations about a consultation draft

231. Paragraph 10 allows any person to make representations on the consultation draft in accordance with the SPP. The Scottish Ministers must consider the representations when forming the final text of a marine plan.

Independent investigation

232. Paragraph 11 requires the Scottish Ministers to consider holding an independent investigation into a draft marine plan to look in more detail at the representations made during the consultation period. Paragraph 11(2) details the factors the Scottish Ministers should have regard to when considering whether to carry out an independent investigation. The independent person appointed will consider the representations and make recommendations (which are to be published by the Scottish Ministers).

Matters to which Scottish Ministers are to have regard in settling text with a view to adoption etc.

233. Paragraph 12 details the matters that the Scottish Ministers must have regard to when deciding to adopt and publish a marine plan. These include any recommendations made, and the reasons for them given, by any independent investigator appointed under paragraph 11.

Laying settled text of draft national marine plan before the Parliament

234. Paragraph 13 requires the Scottish Ministers to lay a copy of the draft national marine plan before the Scottish Parliament to give it the opportunity to pass resolutions about the draft. The period for Parliamentary consideration is 40 days beginning on the day on which a copy of the draft plan is laid before the Parliament. The Scottish Ministers must lay a statement in response to any resolution of the Parliament.

Adoption and publication of marine plan

235. Paragraph 14 sets out the process for the adoption and publication of a marine plan in its final form. The Scottish Ministers adopt a marine plan by making the decision to publish it. Paragraph 14(3) allows the Scottish Ministers to make changes to a draft marine plan prior to adoption.

However, the Scottish Ministers must detail any changes made and the reasons for them. If any recommendations by an independent investigator have not been implemented, Ministers must state the reasons for this. The Scottish Ministers must lay a copy of the adopted national marine plan before the Parliament as soon as possible.

SCHEDULE 2 – FURTHER PROVISION ABOUT CIVIL SANCTIONS UNDER PART 3 (MARINE LICENSING)

Interpretation

236. Paragraph 1 states that “civil sanction” means a fixed or variable monetary penalties.

Fixed monetary penalties: other sanctions

237. Paragraph 2 indicates that the 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 their liability to a fixed monetary penalty within a time period set under section 38(2)(b).

238. The Scottish Ministers cannot issue a compliance or remediation notice as well as a fixed monetary penalty to a person for the same offence.

Variable monetary penalties: other sanctions

239. Paragraph 3 indicates that the 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.

240. The Scottish Ministers cannot issue a compliance notice and a variable monetary penalty to a person for the same offence.

Combination of sanctions

241. Paragraph 4 indicates that the Scottish Ministers can only combine sanctions for the same offence in certain ways. In addition to the combinations prohibited by paragraphs 2 and 3, they cannot 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 section 38(2)(b);
- (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.

All other permutations are possible.

Monetary penalties

242. Paragraph 5 allows an order made under section 37 or 39 to make provision for discounts for early payment of a monetary penalty and for the payment of interest or a financial penalty 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.

243. This paragraph also provides as to the enforcement of unpaid penalties (and any interest or late payment charges) through the civil courts. It allows an order to create a process of recovery by treating the penalty as if it were payable under a court order.

Recovery of expenses

244. Paragraph 6 allows an order under section 39 to include requirements that a person on whom a variable monetary penalty has been imposed must pay the costs the Scottish Ministers have 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.

Appeals

245. Paragraph 7 enables any order under section 37 or 39 to make detailed provision regarding an appeals mechanism. Paragraph 7(1) and (2) outlines the powers which may be conferred on the person hearing appeals.

Consultation

246. Paragraph 8 indicates that, if the Scottish Ministers intend to make an order under section 37 or 39, they must consult with appropriate persons and such organisations as they consider represent the interests of persons substantially affected by the proposals.

247. If, as a result of the consultation exercise, there are substantial changes to any part of the proposals, the Scottish Ministers are required to undertake further consultation on the revised proposals.

Guidance as to use of civil sanctions

248. Paragraph 9 indicates that the Scottish Ministers may not make an order enabling the imposition of fixed or variable monetary penalties, unless they have published guidance in relation to the use of these powers. The Scottish Ministers may be required to consult specified persons before publishing or revising the guidance on penalties. The Scottish Ministers must have regard to the guidance on penalties when carrying out their functions. The guidance on penalties must contain information about the circumstances in which a sanction is likely to be imposed (or may not be imposed) and the person's rights of appeal.

Guidance as to enforcement of offences

249. Paragraph 10 requires that, where the Scottish Ministers make an order enabling the imposition of fixed or variable monetary penalties, they must prepare and publish guidance regarding the manner in which the offence to which the power relates is to be enforced.

250. The Scottish Ministers may revise their guidance periodically. The Scottish Ministers must consult with such persons as they consider appropriate before publishing or revising the guidance.

Publication of enforcement action

251. Paragraph 11 indicates that any order made under section 37 or 39 establishing a civil sanction regime must make provision for the publication of certain information relating to enforcement actions. The information is listed in paragraph 11(2).

Disclosure of information

252. Paragraph 12 permits those listed in sub-paragraph (2) to disclose information to the Scottish Ministers. Information may only be disclosed for the purposes of the Scottish Ministers exercising one of the powers relating to the issue of fixed and variable monetary penalties.

SCHEDULE 3 – WARRANTS ISSUED UNDER SECTION 122

253. This schedule sets out the procedures for applying for a warrant for a marine enforcement officer to enter a dwelling, rules about executing the warrant and other safeguards.

SCHEDULE 4 – CONSEQUENTIAL AMENDMENTS

Part 1 - Marine Licensing

254. Paragraph 1 repeals Part II and section 49(2A) of the Coast Protection Act 1949. This is required to be repealed as it becomes part of the single marine licence.

255. Paragraph 2 repeals section 36 of the Merchant Shipping Act 1988.

256. Paragraph 3 repeals section 99(4) and (5) of the Energy Act 2004.

Part 2 - Marine Protection and Enhancement: the Scottish Marine Protection Area

257. Paragraph 4 repeals section 1 of the Protection of Wrecks Act 1973 – this allows for the designation of wrecks of historical, archaeological or artistic importance and for it to be an offence to carry out certain activities within a protected area without a licence. Repeal of section 1 is proposed in Scotland because the new powers in the Bill to establish Marine Protected Areas in Scotland's territorial waters are to supersede the existing powers available to Scottish Ministers under the Protection of Wrecks Act 1973.

258. Paragraph 5 repeal the provisions in the Wildlife and Countryside Act 1981 allowing the establishment of marine nature reserves (MNRs) and the making of byelaws for their protection. This

is because the new powers in the Bill to establish marine protection areas make the powers to establish MNRs outdated. No MNRs have been established in Scotland since the power to create them was made in the 1981 Act.

259. Paragraph 6 repeals section 3(2)(b) of, and paragraph 6 of Schedule 1 to, the Territorial Sea Act 1987.

260. Paragraph 7 repeals paragraph 65(4) and (10) of Schedule 16 to the Local Government (Wales) Act 1994.

261. Paragraph 8 repeals paragraph 125(3) of Schedule 13 to the Local Government etc. (Scotland) Act 1994.

262. Paragraph 9 repeals paragraph 11(3) of schedule 7 to the Water Industry (Scotland) Act 2002.

Part 3 – Sea Fisheries

263. Paragraph 10 makes amendments to the Sea Fisheries Act 1968.

264. Paragraph 11 makes modifications to the Fisheries Act 1981 in consequence of the changes to the Sea Fish (Conservation) Act 1967 in Part 6A of the Bill.

265. Paragraph 12 repeals paragraph (b) of section 5 of the Sea Fish (Conservation) Act 1992 in consequence of modifications made in Part 6A of the Bill.

266. Paragraph 13 repeals provision in the Criminal Justice and Public Order Act 1994.

SCHEDULE 5 – INDEX

267. This schedule is an index of terms used across the Bill and defined in various provisions. It also contains a list of the provisions where the meanings of the terms listed there can be found.

MARINE (SCOTLAND) BILL

EXPLANATORY NOTES (AND OTHER ACCOMPANYING DOCUMENTS)

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