

# Marine (Scotland) Bill

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## Marshalled List of Amendments selected for Stage 3

The Bill will be considered in the following order—

Sections 1 to 148  
Long Title

Schedules 1 to 5

Amendments marked \* are new (including manuscript amendments) or have been altered.

### Section 2A

**Peter Peacock**

**101** Leave out section 2A and insert—

**<Sustainable development and protection and enhancement of the health of the Scottish marine area**

In exercising any function that affects the Scottish marine area under this Act—

- (a) the Scottish Ministers, and
- (b) public authorities

must act in the way best calculated to further the achievement of sustainable development, including the protection and, where appropriate, enhancement of the health of that area, so far as is consistent with the proper exercise of that function.>

### After section 2A

**Peter Peacock**

**2\*** After section 2A, insert—

**<Mitigation of and adaptation to climate change**

In exercising any function that affects the Scottish marine area under this Act, the Climate Change (Scotland) Act 2009 (asp 12), or any other enactment—

- (a) the Scottish Ministers, and
- (b) public authorities,

must act in the way best calculated to mitigate, and adapt to, climate change so far as is consistent with the purpose of the function concerned.>

### Section 3

**Elaine Murray**

**102\*** In section 3, page 2, line 15, at end insert—

<( ) states the Scottish Ministers' policies on the contribution of—

- (i) Nature Conservation MPAs (namely areas designated as such by order under section 58(1)(a)), and
  - (ii) sites falling within section 68A(4),
- to the protection and enhancement of the area to which the plan applies,>

**Liam McArthur**

**6** In section 3, page 2, line 18, leave out subsection (3) and insert—

- <(3) For the purposes of preparing a national marine plan or (as the case may be) a regional marine plan, the Scottish Ministers must—
- (a) set—
    - (i) economic, social and marine ecosystem objectives,
    - (ii) objectives relating to the mitigation of, and adaptation to, climate change,
  - (b) prepare an assessment of the condition of the Scottish marine area or, as the case may be, Scottish marine region at the time of the plan’s preparation,
  - (c) prepare a summary of significant pressures and the impact of human activity on the area or region,
  - (d) prepare policies and a programme of measures to be applied to achieve the objectives set under paragraph (a),
  - (e) prepare a list of those public authorities or persons responsible for implementing those policies.>

**Liam McArthur**

**103** In section 3, page 2, line 18, leave out subsection (3) and insert—

- <(3) For the purposes of preparing a national marine plan or (as the case may be) a regional marine plan, the Scottish Ministers must—
- (a) set—
    - (i) economic, social and marine ecosystem objectives,
    - (ii) objectives relating to the mitigation of, and adaptation to, climate change,
  - (b) prepare an assessment of the condition of the Scottish marine area or, as the case may be, Scottish marine region at the time of the plan’s preparation,
  - (c) prepare a summary of significant pressures and the impact of human activity on the area or region.>

**Section 7**

**Richard Lochhead**

**23** In section 7, page 4, line 26, at end insert <and of the living resources which the region supports>

## Section 8

### Elaine Murray

**24** In section 8, page 5, line 16, leave out from <may> to end of line 22 and insert <must comprise of—

- (a) a person nominated by the Scottish Ministers, and
- (b) one or more of the following—
  - (i) a public authority,
  - (ii) a person nominated by a public authority with an interest in the Scottish marine region to which the regional marine plan applies as the Scottish Ministers consider appropriate.>

### Robin Harper

**104\*** In section 8, page 5, line 22, at end insert—

- <( ) Where the Scottish Ministers designate delegable functions under subsection (1) to a group of persons, they must ensure that the group comprises—
- (a) so far as reasonably practicable, representatives of persons with an interest in—
    - (i) the protection and enhancement of the Scottish marine region to which the regional marine plan applies,
    - (ii) the use of that region for recreational purposes,
    - (iii) the use of that region for commercial purposes, and
  - (b) any other persons that the Scottish Ministers consider appropriate.>

### Elaine Murray

**25** In section 8, page 5, leave out lines 24 to 28 and insert <only with the consent of any public authority referred to in subsection (2)>

### Robin Harper

**105\*** In section 8, page 5, line 28, at end insert—

- <( ) Where the Scottish Ministers designate delegable functions under subsection (1) to a public authority, the direction must include—
- (a) a statement of reasons setting out the grounds for designating the authority in preference to a group of persons,
  - (b) a requirement for that authority to consult on the exercise of its functions in relation to the Scottish marine region to which the regional marine plan applies with—
    - (i) representatives of persons with an interest in—
      - (A) the protection and enhancement of that region,
      - (B) the use of that region for recreational purposes,
      - (C) the use of that region for commercial purposes, and
    - (ii) any other persons that the Scottish Ministers consider appropriate,

- (c) a requirement for that authority to have regard to any representations made under paragraph (b).>

### **After section 8**

#### **Robin Harper**

**106\*** After section 8, insert—

#### **<Directions under section 8: laying a draft before the Parliament**

- (1) The Scottish Ministers must not give a direction under section 8 unless they have complied with the requirements of this section.
- (2) The Scottish Ministers must—
  - (a) lay before the Parliament a copy of the draft direction, and
  - (b) specify the period (“the representation period”) during which representations on the draft direction may be made to them.
- (3) The representation period must be at least 40 days, leaving out of account any period during which the Parliament is dissolved or is in recess for more than 4 days.
- (4) The Scottish Ministers must, before giving the direction under section 8, have regard to—
  - (a) any representations on the proposed direction made to them,
  - (b) any resolution relating to the direction passed by the Parliament, and
  - (c) any report relating to the direction published by any committee of the Parliament for the time being appointed by virtue of standing orders,before the expiry of the representation period.>

### **Section 16**

#### **Richard Lochhead**

**26** In section 16, page 10, line 16, leave out <28> and insert <28A>

### **Section 17**

#### **Karen Gillon**

**107** In section 17, page 11, line 20, at end insert—

<( ) nothing therein is to be taken to apply to fishing by any method.>

#### **Richard Lochhead**

**27** In section 17, page 11, line 22, at end insert—

<( ) make such amendment consequential on such amendment of subsection (1) as they consider appropriate to any other provision of this Act>

**Kenneth Gibson**

108 In section 17, page 11, leave out line 27

**Section 17A**

**Karen Gillon**

109 In section 17A, page 11, line 34, at end insert—

<( ) The Scottish Ministers, if satisfied that a prospective applicant is applying for a marine licence in respect of a licensable marine activity—

(a) which—

(i) is an activity which has previously been carried on at the site to which the application relates (or at a similar site), or

(ii) is similar to such an activity, and

(b) for which a licence has previously been granted,

may determine that section 17B does not apply to the application.>

**Richard Lochhead**

28 In section 17A, page 12, line 8, leave out from <, including> to end of line 11

**Section 17B**

**Richard Lochhead**

29 In section 17B, page 12, line 31, leave out <for different cases or classes of case or>

**Richard Lochhead**

30 In section 17B, page 12, line 32, at end insert <(see also section 145(1))>

**Richard Lochhead**

31 In section 17B, page 12, line 39, leave out <development> and insert <activity>

**Section 18**

**Liam McArthur**

8 In section 18, page 13, leave out line 21

**Liam McArthur**

9 In section 18, page 13, line 22, leave out <or expedient>

**Liam McArthur**

10 In section 18, page 13, line 23, at end insert—

<(3A) Where the Scottish Ministers consider that, despite any information supplied or articles produced by the applicant under subsection (3), they are unable to determine the application, the Scottish Ministers may require the applicant to permit such investigations, examinations and tests as they may reasonably require to enable them to determine the application.>

**Liam McArthur**

- 11 In section 18, page 13, line 25, leave out <(3)(c)> and insert <(3A)>

**Liam McArthur**

- 12 In section 18, page 13, line 25, leave out <or expedient>

### **Section 19**

**Liam McArthur**

- 32 In section 19, page 14, line 3, at end insert <(and the manner may be publication on one or more websites, without further means of publication, if the Scottish Ministers consider that appropriate to achieve the result specified in this subsection)>

### **Section 20**

**Karen Gillon**

- 110 In section 20, page 14, line 34, at end insert—  
<( ) must determine each licence application in consultation with their statutory consultees,>

**Richard Lochhead**

- 33 In section 20, page 14, line 36, leave out from <has> to end of line 37 and insert <appropriate>

### **Section 23**

**Liam McArthur**

- 13 In section 23, page 16, line 32, leave out <any person> and insert <the applicant>

**Liam McArthur**

- 14 In section 23, page 16, line 34, after <information> insert <that the applicant might reasonably have been expected to supply>

**Liam McArthur**

- 15 In section 23, page 17, leave out line 4

**Karen Gillon**

- 111 In section 23, page 17, line 9, at end insert—

<( ) On an application made by a licensee, the Scottish Ministers may vary a licence if satisfied that the variation being applied for is not material.>

### After section 23

**Liam McArthur**

**34\*** After section 23, insert—

**<Pre-variation, suspension or revocation procedure**

- (1) This section applies where the Scottish Ministers propose to vary, suspend or revoke a licence under section 23.
- (2) The Scottish Ministers must notify—
  - (a) the licensee,
  - (b) any other person whom they consider would be adversely affected by the variation, suspension or revocation.
- (3) Such notification must—
  - (a) state that the Scottish Ministers propose to vary, suspend or, as the case may be, revoke the licence,
  - (b) state the ground on which they propose to do so,
  - (c) specify a period of not less than 28 days within which the person notified may request the opportunity to make representations about the proposal before a person appointed by the Scottish Ministers.
- (4) The Scottish Ministers must appoint a person (the “appointed person”) for the purpose of—
  - (a) hearing any such representations, and
  - (b) reporting to them on the merits of such representations.
- (5) Where a request referred to in subsection (3)(c) is made timeously, the Scottish Ministers must—
  - (a) provide a reasonable opportunity for the person notified to make representations to the appointed person,
  - (b) (where that opportunity has been taken) have regard to the appointed person’s report on the representations.
- (6) Where the Scottish Ministers consider that there is an urgent need to vary or suspend a licence, they may do so—
  - (a) for a period not exceeding 3 months,
  - (b) until there is no longer such a need,whichever is the shortest, without doing the things mentioned in subsections (2) and (5).
- (7) The Scottish Ministers may, by regulations, make provision as to—
  - (a) the categories of person who may be an appointed person or the qualifications of such persons,
  - (b) the procedure to be followed at a hearing under subsection (4)(a),

- (c) the manner in which reports under subsection (4)(b) are to be communicated to them,
- (d) the publication of such reports.>

**Liam McArthur**

35 After section 23, insert—

**<Compensation where licence varied, suspended or revoked**

- (1) This section applies where the Scottish Ministers vary, suspend or revoke a licence under section 23(3).
- (2) If, on a claim made to the Scottish Ministers within the prescribed time and in the prescribed manner, it is shown that the licensee—
  - (a) has incurred expenditure in carrying out work rendered abortive by the variation, suspension or revocation, or
  - (b) has otherwise sustained loss or damage directly attributable to the variation, suspension or revocation,the Scottish Ministers must pay the licensee compensation in respect of that expenditure, loss or damage.
- (3) For the purposes of this section, any expenditure incurred in the preparation of plans for the purpose of any work, or in undertaking other similar matters preparatory to it, is to be taken to be included in expenditure for that work.
- (4) Subject to subsection (3), no compensation is to be paid under this section in respect of—
  - (a) any expenditure incurred in relation to work carried out before the grant of the licence which was varied, suspended or revoked, or
  - (b) any other loss or damage arising out of anything done or omitted to be done before the grant of that licence.
- (5) In this section, “prescribed” means prescribed by regulations made by the Scottish Ministers.>

**Section 24**

**Kenneth Gibson**

112 In section 24, page 17, leave out line 29

**Section 25**

**Elaine Murray**

16 In section 25, page 18, line 1, at beginning insert <Any>

**Elaine Murray**

17 In section 25, page 18, line 1, leave out <may> and insert <must>



**Elaine Murray**

- 18 In section 25, page 18, line 8, leave out <also>

**Elaine Murray**

- 19 In section 25, page 18, line 15, leave out from <consult> to end of line 16 and insert <, before making any regulations under subsection (1), consult—
- (a) representatives of those persons with an interest in the protection and enhancement of the Scottish marine area,
  - (b) representatives of those persons with an interest in the use of the area for commercial purposes,
  - (c) Scottish Natural Heritage, and
  - (d) such other persons as they consider appropriate.
- ( ) The Scottish Ministers must have regard to any responses to the consultation conducted under subsection (4).>

**Section 27**

**Elaine Murray**

- 113 In section 27, page 19, line 19, at end insert—
- <(1D) Where the Scottish Ministers make provision as is mentioned in subsection (1C)(b), they must (without prejudice to subsection (1C)(c)), by order, make provision of the kind mentioned in subsection (1E).
- (1E) That provision is provision determining that the relevant planning authority, for the purposes of paragraph 2 of schedule 8 to the Electricity Act is to be—
- (a) each local authority whose area is adjacent to any part of the Scottish marine area where the generating station (or any part of it) is, or is proposed to be, situated, and
  - (b) each National Park authority which is, by virtue of a designation order under section 6 of the National Parks (Scotland) Act 2000 (asp 10), the planning authority for any such area.>

**Section 29**

**Richard Lochhead**

- 36 In section 29, page 20, line 32, after <appeal> insert <to the sheriff>

**Richard Lochhead**

- 37 In section 29, page 20, line 39, leave out from <any> to <or> in line 40 and insert <the sheriff to>

**Richard Lochhead**

- 38 In section 29, page 21, leave out lines 1 and 2

## Section 38

### Richard Lochhead

- 39 In section 38, page 25, line 35, after <appeal> insert <to the sheriff>

## Section 40

### Richard Lochhead

- 40 In section 40, page 27, line 14, after <appeal> insert <to the sheriff>

## Section 42

### Elaine Murray

- 41 In section 42, page 28, line 18, at end insert—

<( ) The Scottish Ministers' power, under subsection (1), to delegate the function of determining whether to grant or refuse a licence for a licensable marine activity includes the power to delegate the function of determining whether to grant or refuse a licence for a particular type of licensable marine activity (for example fish farming).>

### Elaine Murray

- 42 In section 42, page 28, line 19, leave out from <may> to end of line 24 and insert <must comprise of—

- (a) a person nominated by the Scottish Ministers, and
- (b) one or more of the following—
  - (i) a public authority,
  - (ii) a person nominated by a public authority with an interest in the Scottish marine region to which the regional marine plan applies as the Scottish Ministers consider appropriate.>

### Elaine Murray

- 43 In section 42, page 28, leave out lines 26 to 30 and insert <only with the consent of any public authority referred to in subsection (2)>

### Richard Lochhead

- 44 In section 42, page 29, line 8, leave out <27(1)> and insert <27(1C)>

## Section 45

### Liam McArthur

- 45 In section 45, page 31, line 3, after <maintained> insert <on a website>

**Liam McArthur**

- 46 In section 45, page 31, line 5, leave out subsection (4)

**Section 52**

**Richard Lochhead**

- 47 In section 52, page 34, line 29, after <appeal> insert <to the sheriff>

**Richard Lochhead**

- 48 In section 52, page 35, line 3, leave out from <any> to second <or> and insert <the sheriff to>

**Richard Lochhead**

- 49 In section 52, page 35, leave out lines 5 and 6

**Section 54**

**Elaine Murray**

- 22 In section 54, page 36, line 4, leave out subsections (2) to (4) and insert—

<( ) In section 26—

- (a) in subsection (1), the words “, or the operation of a marine fish farm in the circumstances specified in section 26AA” are repealed,
- (b) in subsection (6)—
  - (i) after “any”, where it occurs for the third time, there is inserted “inland”,
  - (ii) the words from “which”, where it first occurs, to “miles”, where it first occurs, are repealed,
  - (iii) for the definition of “inland waters”, there is substituted ““inland waters” means waters which do not form part of the sea, as defined in section 2 of the Marine (Scotland) Act 2009 (asp 00)”,
  - (iv) the definition of “nautical miles” is repealed,
- (c) subsections (6C) to (6J) are repealed.

( ) Section 26AA is repealed.

( ) Section 31A is repealed.

( ) In section 275—

- (a) in subsection (4), for the words “(6A) and (6C), 31A” there is substituted “and (6A)”,
- (b) in subsection (5A), the words “or (6C)” are repealed.>

## Section 58

### Liam McArthur

- 20 In section 58, page 37, line 23, leave out from <island> to <island> in line 24 and insert <reef, skerry, stack or sandbar in that area of sea, whether or not any part of it>

## Section 59

### Richard Lochhead

- 50 In section 59, page 38, line 2, after <The> insert <designation>

### Richard Lochhead

- 51 In section 59, page 38, line 5, at end insert—

<( ) Before designating an area as a Nature Conservation MPA, the Scottish Ministers must have regard to the extent to which the designation of the area would contribute towards the development of a network of conservation sites (namely a network referred to in section 68A(2)).>

### Liam McArthur

- 52 In section 59, page 38, line 5, at end insert—

<( ) Before designating an area as a Nature Conservation MPA, the Scottish Ministers must—

- (a) in a case where the area is not a candidate site registered under section 69(A1) (or does not comprise of two or more such sites)—
  - (i) obtain sufficient advice from Scottish Natural Heritage as to the appropriateness of the proposed boundaries of the area, and
  - (ii) have regard to that advice,
- (b) in any case, have regard to any information available by virtue of section 69(D1)(b).>

### Richard Lochhead

- 53 In section 59, page 38, line 10, leave out from second <the> to end of line 12 and insert <conserving marine flora or fauna, or (as the case may be) marine habitat or types of such habitat includes conserving the diversity of such flora or fauna or (as the case may be) such habitats or types of such habitats, whether or not any or all of them are rare or threatened>

### Peter Peacock

- 3 In section 59, page 38, line 12, at end insert—

<( ) In considering whether to designate an area, the Scottish Ministers may have regard to the extent to which doing so will contribute to the mitigation of climate change.>

**Robin Harper**

- 54 In section 59, page 38, line 13, leave out subsection (5) and insert—
- <( ) Where the Scottish Ministers consider the desirability of designating 2 or more areas may be equal, in reaching their decision as to which area (or areas) it is desirable to designate they may have regard to any social or economic consequences of designation.>

**After section 60**

**Elaine Murray**

- 55 After section 60, insert—
- <Nature Conservation MPAs: assessment of achievement of stated objectives**
- The Scottish Ministers must assess from time to time the extent to which in their opinion the stated conservation objectives of any Nature Conservation MPA have been achieved (see also section 91, in particular subsections (1) and (3)(d)).>

**Section 63**

**Richard Lochhead**

- 56 In section 63, page 40, line 11, leave out <believed to> and insert <which the Scottish Ministers are satisfied may>

**Karen Gillon**

- 114 In section 63, page 40, line 14, at end insert—
- <( ) In considering whether to designate an area as a Historic MPA, the Scottish Ministers may have regard to any social or economic consequences of designation.>

**Section 65**

**Richard Lochhead**

- 57 In section 65, page 41, line 4, leave out <proposed MPA> and insert <area proposed to be designated>

**Peter Peacock**

- 4 In section 65, page 41, line 10, at end insert—
- <( ) indicate where a plan or chart identifying the area's boundaries can be obtained or inspected.>

**Section 67**

**Elaine Murray**

- 21 In section 67, page 41, line 32, leave out <2 years> and insert <12 months>

**Robin Harper**

- 115** In section 67, page 41, line 33, at end insert <(but any order that specifies a period in excess of 6 months must be reviewed by the Scottish Ministers after 6 months has elapsed to assess whether it is still required).>

**Robin Harper**

- 59** In section 67, page 41, line 33, at end insert—
- <( ) Upon expiration of the order, the Scottish Ministers may not re-designate the area (or any part of it) without—
- (a) publishing notice of their proposals under section 65(1)(a)
  - (b) consulting under section 65(1)(b).>

**Section 69**

**Liam McArthur**

- 60** In section 69, page 43, line 14, at end insert—
- <(A1) Scottish Natural Heritage must maintain a register of candidate sites suitable for designation as Nature Conservation MPAs.
- (B1) In maintaining the register, Scottish Natural Heritage must have regard to the purposes mentioned in section 59(1).
- (C1) Scottish Natural Heritage must make arrangements for the register to be available online and for public inspection.
- (D1) In respect of each entry on the register, Scottish Natural Heritage must state—
- (a) the reasons why Scottish Natural Heritage considers it appropriate to include the site on the register, having regard to any guidance produced under section 59(1A),
  - (b) the boundaries of the site, or such information as to the locality of the site, as Scottish Natural Heritage considers would inform consideration of whether an area should be designated a Nature Conservation MPA under section 58(1)(a), (for instance an indication on a map as to the boundaries of the site),
  - (c) such other information as Scottish Natural Heritage considers appropriate.>

**Section 71**

**Richard Lochhead**

- 61** In section 71, page 44, leave out lines 35 to 37

**Richard Lochhead**

- 62** In section 71, page 45, line 26, leave out <National> and insert <Natural>

**Richard Lochhead**

- 63** In section 71, page 45, line 31, at end insert—

<( ) Where a public authority has any function, the exercise of which is capable of affecting (other than insignificantly) any protected feature of a Nature Conservation MPA, it must (so far as is consistent with the proper exercise of its functions) exercise its functions in the way best calculated by it to further the contribution of the Nature Conservation MPA in question to a network of conservation sites (namely a network referred to in section 68A(2)).>

**Richard Lochhead**

64 In section 71, page 46, line 5, leave out <National> and insert <Natural>

**Section 72**

**Richard Lochhead**

65 In section 72, page 47, line 39, leave out <National> and insert <Natural>

**Section 76**

**Richard Lochhead**

66 In section 76, page 51, line 2, leave out <relevant planning authority> and insert <planning authority in whose district the land is situated>

**Richard Lochhead**

67 In section 76, page 51, line 11, at end insert—

<( ) In subsection (4A), “planning authority” and “the district” of a planning authority have the same meaning as in section 1(1) of the Town and Country Planning (Scotland) Act 1997 (c.8).>

**Section 79**

**Karen Gillon**

116 In section 79, page 52, line 16, at end insert—

<(A1) The Scottish Ministers must, before deciding to—

- (a) make a marine conservation order,
- (b) amend a marine conservation order,

give any person mentioned in subsection (B1) the opportunity of making further representations to the Scottish Ministers or, at a hearing, to any person appointed by them for that purpose.

(B1) That person is a person—

- (a) who made representations under section 76, and
- (b) whose representations demonstrate that their economic position could be materially disadvantaged as a result of any decision mentioned in subsection (A1)

(C1) Subsection (A1) does not apply where the order mentioned in (A1)(a) is an urgent marine conservation order made in accordance with section 77.>

**Karen Gillon**

117 In section 79, page 52, line 25, after <subsection> insert <(A1) or>

**After section 79**

**Liam McArthur**

68 After section 79, insert—

**<Duty to assess impact of prohibition or restriction of activities**

- (1) Where an activity is restricted or prohibited under a marine conservation order made for a purpose mentioned in section 74(1)(a),(b) or (d), the Scottish Ministers must assess—
  - (a) the impact or potential impact of the restriction or prohibition within the area protected by the order (“the protected area”), and
  - (b) where the restriction or prohibition will cause displacement of the activity to another part of the Scottish marine area, the impact or potential impact of that displacement.
- (2) The assessment must include an assessment of the extent to which the restriction or prohibition of the activity has had and may have an impact on—
  - (a) economic interests,
  - (b) social interests,
  - (c) the environment within the protected area,
  - (d) the environment elsewhere in the Scottish marine area as a result of the activity being displaced.
- (3) Where, following an assessment, the Scottish Ministers identify an adverse impact under subsection (2), they must take such steps as they consider are reasonable to minimise the impact as far as is practicable.
- (4) This section does not apply where the order mentioned in subsection (1) is an urgent marine conservation order made in accordance with section 77.>

**Section 85**

**Kenneth Gibson**

118 In section 85, page 55, line 25, leave out subsections (2) and (2A)

**Section 90**

**Richard Lochhead**

69 In section 90, page 57, line 34, leave out <or (> and insert <(or>

**Section 91**

**Liam McArthur**

70 In section 91, page 59, line 2, after <made> insert <, or any amendment of any such order,>



**Liam McArthur**

- 71 In section 91, page 59, line 3, after <made> insert <, or any amendment of any such scheme,>

**Section 98**

**Elaine Murray**

- 72 In section 98, page 62, line 25, at end insert—

- <(2) Before granting a seal licence under subsection (1)(f), the Scottish Ministers must have regard to any information they have about—
- (a) damage which seals have already done to the fishery or fish farm concerned or to any other fishery or fish farm which is in the vicinity of, or which is of a similar type to, the fishery or fish farm concerned, and
  - (b) the effectiveness of non-lethal alternative methods of preventing seal damage to the fishery or fish farm concerned or to any other fishery or fish farm which is in the vicinity of, or which is of a similar type to, the fishery or fish farm concerned.
- (3) The Scottish Ministers may require an applicant for a seal licence under subsection (1)(f) to provide them with such information about the matters mentioned in paragraphs (a) or (b) of subsection (2) as they reasonably require for the purposes of assisting them to decide whether to grant the seal licence.>

**Robin Harper**

- 120\* In section 98, page 62, line 25, at end insert—

- <(4) No person may kill or take any seal under a seal licence during the period when females of the species are likely to be in an advanced stage of pregnancy or to have dependent pups.
- (5) For the purposes of subsection (4), the period is—
- (a) for grey seals (that is to say seals of the species *Halichoerus grypus*) from 1 September to 31 December inclusive,
  - (b) for common seals (that is to say seals of the species *Phoca vitulina*) from 1 June to 31 August inclusive.
- (6) Despite subsection (4), the Scottish Ministers may, on an application of the licensee, authorise the killing or taking of seals in the period mentioned in subsection (5)(a) or, as the case may be, (b) only if satisfied that there is no satisfactory alternative way of achieving the purpose for which the licence is granted.>

**Robin Harper**

- 121 In section 98, page 62, line 25, at end insert—

- <(7) The Scottish Ministers may not grant a licence authorising the killing or taking of seals to the owner or operator of any fish farm or other fishery installation unless they are satisfied that no part of the farm or installation is adjacent to a site important to seals.
- (8) In coming to a view as to whether—

- (a) a site is important to seals,
  - (b) a farm or fishery is adjacent to such a site,
- the Scottish Ministers must (without prejudice to section 103(1)) consult the Natural Environment Research Council.
- (9) Subsection (7)—
- (a) may only come into force—
    - (i) following the making of an order under section (*Offence: harassment at haul-out sites*),
    - (ii) after 31 December 2011,
 (whichever is the latest), and
  - (b) does not apply in relation to any farm or installation in place prior to the commencement of that subsection.>

### **Section 99**

#### **Richard Lochhead**

**73** In section 99, page 62, line 27, at end insert—

- <( ) The Scottish Ministers must not grant a seal licence authorising a person to kill seals by shooting unless they are satisfied that the person has adequate skills and experience in using firearms.>

### **Section 100**

#### **Richard Lochhead**

**74** In section 100, page 62, line 34, at end insert—

- <( ) specifying steps which must be taken in relation to any seal injured when attempting to kill or take it in accordance with the seal licence in order to reduce the risk of it suffering unnecessarily.>

#### **Richard Lochhead**

**75** In section 100, page 62, line 35, leave out from beginning to end of line 9 on page 63

#### **Richard Lochhead**

**76** In section 100, page 63, line 9, at end insert—

- <( ) A seal licence which authorises the killing of seals by shooting must impose conditions—
- (a) specifying the type of firearm which must be used,
  - (b) specifying the weather conditions in which a person may attempt to shoot a seal,
  - (c) specifying how close a person must be to a seal before attempting to shoot it,
  - (d) prohibiting a person from attempting to shoot a seal from an unstable platform, and

- (e) about the recovery of carcasses.>

**Elaine Murray**

77 In section 100, page 63, line 14, at end insert—

<( ) any period during which seals may not be killed or taken, for example, when females of the species of seal for which the licence has been issued are likely to be in an advanced stage of pregnancy or have dependent pups.>

**After section 100**

**Richard Lochhead**

78 After section 100 insert—

**<Seal licence reports**

- (1) A person to whom a seal licence is granted must send a seal licence report to the Scottish Ministers within 10 days of the end of each reporting period.
- (2) A seal licence report is a report which—
  - (a) states how many seals have, during the reporting period concerned, been—
    - (i) killed in accordance with the seal licence,
    - (ii) taken in accordance with the seal licence,
    - (iii) killed when attempting to take them in accordance with the seal licence,
    - (iv) injured when attempting to kill or take them in accordance with the seal licence, or
  - (b) where no seals have been so killed, taken or injured during the reporting period concerned, states that fact.
- (3) A reporting period is—
  - (a) in the case of a seal licence which has effect for 3 months or longer—
    - (i) each period of 3 months following the granting of the seal licence, and
    - (ii) any shorter period beginning at the end of such a 3 month period and ending when the seal licence is revoked or otherwise ceases to have effect,
  - (b) in the case of a seal licence which has effect for fewer than 3 months, the period for which the seal licence has effect.
- (4) Failure, without reasonable excuse, to send a seal licence report in accordance with subsection (1) is an offence.>

**Elaine Murray**

122 After section 100, insert—

**<Exemption from licence condition: period during which seals may be killed or taken**

Where a seal licence includes a condition specifying a period during which seals may not be killed or taken, the Scottish Ministers may, on an application of the licensee, authorise the killing or taking of seals in that period but only if they are satisfied that there is no satisfactory alternative way of achieving the purpose for which the licence is granted.>

**After section 103**

**Elaine Murray**

**79** After section 103, insert—

*<Protection at haul-out sites*

**Offence: harassment at haul-out sites**

Harassing a seal (intentionally or recklessly) at a haul-out site is an offence.

“haul-out site” means any place which the Scottish Ministers, after consulting the Natural Environment Research Council, by order designate as such for the purposes of this section.>

**Section 114**

**Elaine Murray**

**80** In section 114, page 66, line 31, after <95> insert <or (*Offence: harassment at haul-out sites*)>

**Richard Lochhead**

**81** In section 114, page 67, line 1, after <100(4)> insert <or (*Seal licence reports*)(3)>

**After section 114**

**Richard Lochhead**

**82** After section 114, insert—

**<Duty to review seal licensing regime**

- (1) The Scottish Ministers must review and publish a report on the operation of the seal licensing regime—
  - (a) within 5 years of section 98 coming into force, and
  - (b) within each subsequent period of 5 years beginning with the publication of a report.
- (2) When carrying out a review, the Scottish Ministers must—
  - (a) have regard to such scientific evidence on seal biology, welfare and behaviour, and on such other matters, as they consider relevant, and
  - (b) consult the Natural Environment Research Council and such other persons as they consider appropriate.

- (3) The Scottish Ministers must have regard to their most recent report when performing functions under the seal licensing regime.
- (4) In this section, “seal licensing regime” means the provisions of this Part relating to seal licences.>

### Section 117

#### Elaine Murray

- 83 In section 117, page 67, line 28, leave out <and 100(4)> and insert <, 100(4) and (*Offence: harassment at haul-out sites*)>

### Section 125

#### Richard Lochhead

- 84 In section 125, page 72, line 5, leave out <124(3)> and insert <124(2)>

### Section 132

#### Liam McArthur

- 7 In section 132, page 75, line 6, at end insert—
- <( ) Before doing any of the things in subsection (2), the officer must take all reasonable steps to—
- (a) notify the port authority for the port to which the officer proposes that the vessel be taken, and
  - (b) seek the views of the port authority as to the appropriateness of so doing.>

### Section 136

#### Richard Lochhead

- 85 Leave out section 136 and insert—
- <Duty to provide evidence of authority where a person is present**
- (1) Where one or more persons are present at the time a marine enforcement officer intends to exercise a power conferred by this Part, the officer may exercise the power only after complying with subsection (2) or, as the case may be, (3).
  - (2) Where one person is present at that time, the officer must produce to the person evidence that the officer is authorised to exercise the power.
  - (3) Where more than one person is present at that time, the officer must produce such evidence to the person who appears to the officer to have the greatest interest of those present in the exercise of the power, and is not required to produce it to any other person present.>

## After section 137

**Richard Lochhead**

86 After section 137, insert—

### <Disapplication of sections 136 and 137 in relation to dwellings

Sections 136 and 137 do not apply as regards the exercise by a marine enforcement officer of any power conferred by this Part in relation to entry to a dwelling. (Schedule 3 makes specific provision in relation to the exercise of warrants under section 122 authorising a marine enforcement officer to enter a dwelling, in particular in paragraphs 6 to 9).>

## Section 141B

**Richard Lochhead**

87 In section 141B, page 79, line 37, leave out <subsections (8) and (9)> and insert <subsection (8)>

## After section 141B

**Richard Lochhead**

88 After section 141B, insert—

### <Modifications relating to Sea Fisheries (Shellfish) Act 1967: orders as to fisheries for shellfish

- (1) In section 1 of the Sea Fisheries (Shellfish) Act 1967 (c.83) (“the 1967 Act”) (power to make orders as to fisheries for shellfish), omit subsection (4).
- (2) The modifications made to that section by section 203 of the 2009 Act (variation etc. of orders as a result of development) extend to Scotland.
- (3) In paragraph 6 of schedule 1 to the 1967 Act—
  - (a) the existing provision is renumbered as sub-paragraph (1), and
  - (b) after that sub-paragraph insert—
    - “(2) Where the proposed order relates to any portion of the sea shore belonging to Her Majesty in right of the Crown, the appropriate Minister must also have regard to the powers and duties of the Crown Estate Commissioners under the Crown Estate Act 1961 (c.55).”.>

**Richard Lochhead**

89 After section 141B, insert—

### <Further modifications relating to Sea Fisheries (Shellfish) Act 1967

- (1) The modifications to the Sea Fisheries (Shellfish) Act 1967 (c.83) (“the 1967 Act”) made by the following provisions of the 2009 Act extend to Scotland—
  - 5 (a) section 204 (purposes for which tolls from regulated fisheries may be applied),
  - (b) section 206 (liability of master, etc where vessel used in commission of offence),
  - (c) section 207 (restrictions imposed by grantees in relation to regulated fisheries),

- (d) section 209 (register of licences in relation to regulated fisheries),
- (e) section 210 (protection of private shellfish beds),
- 10 (f) section 211(1) and (3) (use of implements of fishing),
- (g) section 214 (power to appoint inspector before making orders as to fisheries for shellfish),
- (h) Part 5(A) of Schedule 22 (repeals).
- (2) In section 1 of the 1967 Act (power to make orders as to fisheries for shellfish), after
- 15 subsection (14) insert—
- “(14A) Subsection (14) above has effect in relation to Scotland as if the reference to the Town and Country Planning Act 1990 were a reference to section 26 of the Town and Country Planning (Scotland) Act 1997 (c.8).”.
- (3) In section 7 of the 1967 Act (protection of fisheries), in subsection (4), for “level 3 on
- 20 the standard scale” substitute “£50,000”.>

**Karen Gillon**

**89A** As an amendment to amendment 89, leave out line 7

**Karen Gillon**

**89B** As an amendment to amendment 89, leave out lines 11 and 12

**Liam McArthur**

**89C** As an amendment to amendment 89, line 18, at end insert—

<(5A) In section 3 of the 1967 Act (effect of grant of right of regulating a fishery), after subsection (5) insert—

- “(6) It is a defence for a person charged with an offence under subsection (5) to show that the person—
- (a) did not know, and
- (b) had no reason to suspect,
- that the boat would be used in the commission of an offence under subsection (3).”.>

**Liam McArthur**

**89D** As an amendment to amendment 89, line 20, at end insert—

- <( ) The modifications to the 1967 Act made by section 214 (power to appoint inspector before making orders as to fisheries for shellfish) of the 2009 Act, other than those made by subsection (2)(b), extend to Scotland.
- ( ) In paragraph 4(2) of Schedule 1 to the 1967 Act (provisions with respect to making orders as to fisheries for shellfish), for “The appropriate Minister shall” substitute “The Scottish Ministers may, and in the case of receiving an objection raising a material concern under paragraph 3 above, must”>

## Section 145

### Liam McArthur

- 90 In section 145, page 81, line 18, leave out subsection (3)

## Schedule 1

### Richard Lochhead

- 91 In schedule 1, page 83, line 23, leave out <317> and insert <322>

### Richard Lochhead

- 92 In schedule 1, page 86, line 24, after <region> insert <to>

## Schedule 2

### Richard Lochhead

- 93 In schedule 2, page 91, line 5, leave out from <any> to second <or> and insert <the sheriff to>

### Richard Lochhead

- 94 In schedule 2, page 91, leave out lines 7 and 8

### Richard Lochhead

- 95 In schedule 2, page 91, line 10, leave out from <court> to <person> and insert <sheriff>

### Richard Lochhead

- 96 In schedule 2, page 91, leave out line 17

### Richard Lochhead

- 97 In schedule 2, page 92, line 22, after <39> insert <in relation to an offence>

### Richard Lochhead

- 98 In schedule 2, page 93, line 7, leave out <40(5)> and insert <40(4A)>

## Long Title

### Peter Peacock

- 5 In the long title, page 1, line 1, leave out <functions and activities in> and insert <the sustainable development of>

### Richard Lochhead

- 99 In the long title, page 1, line 2, leave out <and>



**Richard Lochhead**

**100** In the long title, page 1, line 3, after <seals> insert <and regulation of sea fisheries>



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