

# MARINE AND COASTAL ACCESS ACT 2009

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## EXPLANATORY NOTES

### SUMMARY AND BACKGROUND

#### **Part 5: Nature Conservation**

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

#### **Designation of zones**

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

328. This section provides a power for the Welsh Ministers, Scottish Ministers and the Secretary of State (hereafter referred to as “Ministers”) to designate, as the appropriate authority, areas as marine conservation zones (MCZs) by means of local orders.
329. *Subsections (2) and (3)* identify those areas within which an MCZ may be designated. These include English inshore waters and the offshore waters of England, Wales, and Northern Ireland (where the Secretary of State is the appropriate authority), the Welsh inshore region (where the Welsh Ministers are the appropriate authority), and the Scottish offshore region (where the Scottish Ministers are the appropriate authority). Marine nature conservation in the inshore waters of Scotland and Northern Ireland is a matter for Scottish Ministers and Northern Ireland Departments to determine through their own legislation.
330. *Subsection (6)* states that the Scottish Ministers may not designate an MCZ without agreement from the Secretary of State.
331. *Subsection (7)* provides that an MCZ designated by the Scottish Ministers under this section is to be known as a marine protected area and that references in this Act to an MCZ designated by the Scottish Ministers should be read as a reference to a marine protected area.

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

332. This section sets out the circumstances in which Ministers may designate an MCZ. This must be for the purpose of conserving species of marine flora and fauna, particularly if they are rare or threatened, or for conserving or protecting marine habitats or features of geological or geomorphological interest. An MCZ may also be designated for the purpose of conserving the diversity of marine flora or fauna or habitat, whether or not they are considered rare or threatened (*subsections (1) to (5)*).
333. In this Act, the terms “geomorphological” (used in Parts 5 and 9) and “physiographical” (used in Parts 6 and 7) have the same meaning. Each term is consistent with the previous legislation in the relevant field.
334. *Subsection (2)* provides that the order designating the MCZ must state both the protected features and the conservation objectives for the MCZ. The level of protection for an individual MCZ will depend on the site’s conservation objectives, which may take

account of relevant conservation, social and economic considerations. The conservation objectives will need to be clear to ensure that all public authorities understand the implications of the duties placed on them by sections 125 and 126.

335. *Subsection (7)* allows Ministers to take account of the economic or social consequences of designation. This ensures MCZs may be designated in such a way as to conserve biodiversity and ecosystems whilst minimising any economic and social impacts. Where an area contains features that are rare, threatened or declining, or forms a biodiversity hotspot, greater weight is likely to be attached to ecological considerations. Where there is a choice of alternative areas which are equally suitable on ecological grounds, socio-economic factors could be more significant in deciding which areas may be designated as an MCZ.
336. *Subsection (8)* clarifies that the reference to “social” consequences of designating an MCZ includes any consequences of doing so for sites of historic or archaeological interest.

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

337. This section sets out further requirements for MCZ designations, including the requirement to specify the boundaries of the designated area.
338. *Subsection (3)* provides for the inclusion in an MCZ of any island regardless of whether the land lies above mean high water spring tide. This will be particularly relevant where there are numerous small islands, transient sand banks or rocky outcrops (which would be impracticable to exclude individually). Islands which should be excluded from an MCZ may be identified in the designation order.
339. *Subsections (4) and (5)* allow Ministers to extend the boundary of an MCZ to include an additional adjacent area of seashore above mean high water spring tide if certain conditions apply. These conditions include the requirement that the feature(s) which comprise the grounds for designating the MCZ are also present in the extended area. This may be appropriate where a threatened species is also present in the area of land above mean high water spring tide and protection depends on extending the boundary of the MCZ.
340. *Subsection (6)* requires that an MCZ includes land whether or not it is covered by water (which will include the sea bed and foreshore) and in the case of an area within the seaward limits of the territorial sea or the exclusive economic zone, may include the water covering it (which includes the water column at sea, estuarial/transitional waters, pools and lagoons).

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

341. This section requires Ministers to carry out public consultation before designating an MCZ. *Subsections (2) and (3)* require notice of a proposed designation order to be published. This enables parties likely to be affected by a proposed order to have the opportunity to have their interests taken into account.
342. *Subsections (5) to (9)* provide for consultation between the Ministers so that each has the opportunity to comment if their respective waters might be affected by the making of a designation order.
343. *Subsection (10)* requires the appropriate authority to make a decision regarding designation of an individual MCZ within 12 months of publishing the notice. Failure to designate a site within that time will mean that the process will need to begin again before an area may be designated as an MCZ.
344. *Subsections (11) and (12)* provide an exemption from the general consultation requirement if there is an urgent need to designate an MCZ, though Ministers would still be required to consult each other. In such cases, an urgent order may only remain

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in force for up to two years before the end of which consultation in accordance with *subsections (2) to (9)* will be required for an order confirming the designation.

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

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

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

346. This section allows Ministers to hold hearings before deciding whether to make an order under section 116 to designate an MCZ.
347. *Subsection (2)* gives Ministers discretion to give any person the opportunity of being heard by an inspector or other appointed person, either orally or in writing. *Subsection (4)* requires these representations to be reported back to the authority.

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

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

## **Duties relating to network**

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

349. This section places a duty on the appropriate authority to designate MCZs so as to contribute to the creation of a network of marine sites. *Subsections (1) and (2)* set out the duty to designate MCZs and the objective for such designation. *Subsection (3)* sets out what the network of MCZs should achieve, listing three conditions. These are based on key elements of the definition of an ecologically coherent network developed for the Convention for the Protection of the Marine Environment of the North East Atlantic (OSPAR). The conditions require that the network should contribute to the conservation of the marine environment, protect features that represent a range of features present in the UK marine area and reflect the fact that conservation of a feature may require more than one site to be designated.
350. *Subsection (4)* provides that the network of relevant conservation sites may include European Sites notified under the Wild Birds and Habitats Directives, Sites of Special Scientific Interest and wetland sites designated under the Ramsar Convention.
351. *Subsection (5)* requires the appropriate authority to have regard to relevant obligations under EU and international law.
352. *Subsection (6)* requires the appropriate authority to prepare a statement setting out the principles which it will apply in designating MCZs to help create the UK network. It is a requirement to lay the statement before the appropriate legislature and it must be reviewed, and if necessary updated, periodically.

### ***Section 124: Report***

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

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

## **Duties of public authorities**

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

355. This section places a general duty on public authorities (defined in section 322) to carry out their functions in the manner that they consider best furthers – or least hinders – the conservation objectives set for MCZs. This duty only applies so far as is consistent with the proper exercise of a public authority’s functions and only where such functions may have a significant effect on the MCZ.
356. If a public authority thinks that the exercise of its functions will or might significantly hinder the conservation objectives of an MCZ, it has to notify the appropriate statutory nature conservation body (Natural England, the Joint Nature Conservation Committee, or the Countryside Council for Wales, depending on where the MCZ is).
357. *Subsections (4) to (8)* provide that a public authority must inform the appropriate statutory nature conservation body if it intends to carry out an activity which might significantly hinder the conservation objectives for an MCZ. This duty does not apply if standing advice from the relevant statutory nature conservation body applies. This means that statutory nature conservation bodies may issue standing guidance on routine activities (such as harbour works) and that public authorities do not have to notify them every time they plan to carry out such activities. Where a public authority has notified the appropriate statutory conservation body under *subsection (5)*, the statutory nature conservation body has 28 days to provide any advice, after which public authorities may decide to go ahead as planned. However, this 28-day rule does not apply if the body notifies the authority that it need not wait or if the situation is urgent.
358. *Subsections (9) to (11)* require a public authority to inform certain bodies when it considers that an offence (in relation to which it has functions) that will or may significantly hinder the achievement of an MCZ’s conservation objectives has occurred. The bodies it must inform are the relevant authority (which is the enforcement authority for the area in which the MCZ is situated) and the statutory conservation body (which is the body competent to assess the effect of any act and advise the enforcement body).
359. *Subsection (12)* requires public authorities to have regard to any advice issued by the statutory conservation bodies under section 127.

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

360. This section applies to all public authorities with responsibility for authorising applications for certain activities (such as proposed infrastructure development or a dredge) capable of affecting a protected feature of an MCZ or any geological or geomorphological processes on which the conservation of a feature is partially or wholly dependent. It does not apply where the effect is insignificant, in order to avoid capturing very minor matters. The section has effect in relation to all types of consent (however described), including licences granted by the MMO under Part 1 of the Act and planning permissions granted by local planning authorities.
361. *Subsection (2)* requires a public authority to inform the relevant statutory nature conservation body if it believes a proposed activity will hinder the achievement of the

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conservation objectives of an MCZ. *Subsection (3)* states that no authorisation may be granted until 28 days have passed since notice was given. This does not apply, however, where the appropriate statutory conservation body informs the authority that it does not need to wait 28 days or where the authority thinks that there is an urgent need to grant authorisation.

362. *Subsections (5), (6) and (7)* impose a duty on an authority not to grant authorisation unless it is satisfied that there is no significant risk that the activity will hinder the achievement of the conservation objectives or if certain conditions in *subsection (7)* are met. These conditions are: (i) the act cannot be carried out in any other way; (ii) the benefit of the act to the public clearly outweighs the risk of environmental damage; and (iii) the person seeking authorisation will take measures of equivalent environmental benefit to the damage that will be, or is likely to be, caused.
363. *Subsection (10)* requires public authorities to have regard to any advice or guidance given by the appropriate statutory conservation body.

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

364. This section confers powers and duties on the statutory nature conservation bodies (Natural England, the Joint Nature Conservation Committee and the Countryside Council for Wales) to give advice or guidance to public authorities in respect of MCZs. Public authorities are required to have regard to this advice or guidance when carrying out their duties under sections 125 and 126. This section does not limit or restrict the matters on which the conservation bodies may advise (in accordance with their existing functions) but identifies the types of MCZ-related advice and guidance to which other provisions in this part of the Act apply (namely the duties on public authorities).
365. *Subsections (1) and (2)* specify the issues on which advice or guidance may be given, and allows it to be issued in respect of one or more sites, and to one or more authorities. Advice and guidance may also be issued more generally on MCZs.

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

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

## **Byelaws for protection of MCZs etc: England**

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

367. This section gives the MMO the power to make byelaws to protect MCZs in the English inshore region and help further their conservation objectives. There is no power to make byelaws in the offshore region. Separate arrangements for Wales are detailed in section 134.
368. *Subsection (3)* sets out some of the activities which may be controlled through the making of byelaws. These are primarily activities which are not otherwise controlled (for example under the new licensing system). Research has shown that unregulated activities may threaten biodiversity, and that those of highest risk are motorised recreation (such as the use of speed boats and jet-skis), wildlife watching (which may also disturb sensitive species), and land-based recreation. The powers are drafted widely

in order to allow the MMO to regulate these, and any other activities likely to threaten a site's conservation objectives.

369. *Subsection (4)* allows the MMO to control specific activities on the seashore adjacent to an MCZ, for the purposes of protection (for example to control noise disturbance from vehicles or music).
370. *Subsections (5) and (6)* enable the MMO to issue permits (with whatever conditions it feels appropriate) to authorise activities which would otherwise be unlawful under a byelaw.

### ***Section 130: Byelaws: procedure***

371. This section requires the MMO to carry out public consultation before making a byelaw. It must publicise its intention to make a byelaw and provide a copy of the draft byelaw if asked, for which it may charge a fee to cover the cost of doing so.
372. Byelaws must be confirmed by the Secretary of State before they come into force. Once made, byelaws must also be publicised.

### ***Section 131: Emergency byelaws***

373. This section enables the MMO to make byelaws (under section 129) urgently, without having to comply with the usual consultation and publication requirements and without confirmation by the Secretary of State. This is only permitted where the MMO considers there to be an urgent need to protect an MCZ.
374. A notice that the emergency byelaw has been made must be published (*subsection (3)*). Those likely to be affected may then make representations to the Secretary of State – who has the power to revoke an emergency byelaw.
375. The MMO must keep the emergency byelaw under review. Under *subsection (2)*, emergency byelaws remain in force for a maximum of 12 months (although they may be extended by up to a further six months by the MMO (*subsections (7) to (9)*)).

### ***Section 132: Interim byelaws***

376. This section enables the MMO to make interim byelaws to protect features in an area where the MMO considers there may be reasons for the Secretary of State to designate an MCZ, and where there is an urgent need for protection. Delay in providing protection through a byelaw could otherwise result in harm to the site. Byelaws under this section are essentially the same as emergency byelaws made by virtue of section 131 except that they apply to areas which are not yet designated as MCZs.
377. As there will be no MCZ designated in these cases, *subsection (3)* requires that the interim byelaw clearly states the boundaries of the area to which it will apply.
378. As with emergency byelaws, *subsection (4)* exempts interim byelaws from consultation (although the MMO must publish notice of them), and the MMO must keep the need for them under review.
379. *Subsection (5)* provides for an interim byelaw to remain in force for up to 12 months, unless revoked by the Secretary of State. In cases where the period specified in the byelaw is under 12 months, it may be subsequently extended by the MMO (under *subsection (10)*) – but the byelaw cannot remain in force for more than 12 months in total in any event.
380. If, while an interim byelaw is in place, the Secretary of State gives notice of a proposal to make an order (under section 116) to designate any part of the area as an MCZ, the Secretary of State may direct that the interim byelaw is to remain in place until the Secretary of State decides whether to make the order and until any such order comes into effect.

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

381. This section sets out the administrative and notification requirements in relation to byelaws (whether they are made urgently or not) and interim byelaws.
382. *Subsections (4) and (5)* provide that the MMO must make an order available for inspection and provide a copy if asked, and may charge a fee to cover its costs of doing so. It must send a copy of the byelaw to the Welsh Ministers if the byelaw may affect activity in Wales.

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

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

383. This section gives the Welsh Ministers the power to make conservation orders, in order to protect MCZs in the Welsh inshore region and help further their conservation objectives.
384. *Subsection (3)* applies the byelaw-making provisions of *subsections (3), (4) and (7) to (9)* of section 130 to conservation orders made by the Welsh Ministers. Conservation orders in Wales will work in a similar way to byelaws in England.
385. *Subsection (4)* enables the Welsh Ministers to issue permits authorising anything which would otherwise be unlawful under a conservation order and *subsection (5)* enables the Welsh Ministers to attach conditions to any such permit.
386. *Subsection (6)* allows the Welsh Ministers to make an order which applies to two or more MCZs.

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

387. *Subsection (1)* requires the Welsh Ministers to consult before making a conservation order, while *subsections (2) and (3)* require Welsh Ministers to publish notice of the making of the order and to ensure that interested individuals are aware of the publication.
388. *Subsection (4)* enables the Welsh Ministers to make conservation orders (under section 134) urgently, without having to comply with the usual consultation requirements. This is only permitted where the Welsh Ministers consider there to be an urgent need to protect an MCZ.

***Section 136: Interim orders***

389. This section enables the Welsh Ministers to make interim orders to protect features where there may be reasons to designate an MCZ and where there is an urgent need to protect the feature. Orders under this section are essentially conservation orders made urgently except that they apply to areas which are not yet designated as MCZs.
390. *Subsection (3)* requires an interim order to identify the boundaries of the area in which the order applies.
391. *Subsection (4)* applies *subsections (2) to (5)* of section 134 to interim orders, and consequently, an interim order will be able to make any provision which could be made in an ordinary conservation order.
392. *Subsection (5)* provides for an interim order to remain in force for a limited period not exceeding 12 months (unless revoked). The Welsh Ministers may further extend an order (by means of a further order) made under *subsection (9)*, thereby allowing for continued protection of the area until its status as an MCZ is settled.

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393. Interim orders, being urgent by nature, require no prior consultation, but *subsection (6)* requires the Welsh Ministers to publish notice of the making of an interim order in Wales and *subsection (7)* sets out the matters to be addressed in the notification.
394. *Subsection (8)* requires the Welsh Ministers to keep under review the need for an interim order to remain in force.

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

395. This section sets out administrative and notification requirements in relation to Welsh conservation orders (whether made urgently or not) and interim orders.
396. *Subsection (6)* allows conservation and interim orders to be amended or revoked by a further order.

## **Hearings**

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

397. This section makes provision for the Secretary of State to hold a hearing before deciding whether to confirm a byelaw or revoke an emergency or interim byelaw. The section also makes provision for the Welsh Ministers to hold hearings before deciding whether to make a conservation order or an interim order.
398. *Subsection (3)* gives Ministers discretion to give any person the opportunity of being heard by an inspector or other appointed person, either orally or in writing. *Subsection (5)* requires these representations to be reported back to Ministers.
399. *Subsection (4)* allows Ministers to make regulations setting out the procedures to be followed, including the awarding of costs (for example where one party incurs additional costs as a result of the unreasonable behaviour of another party).

## **Offences**

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

400. This section provides that breaching any byelaw or conservation order is an offence.
401. *Subsection (2)* sets out the level of fine for a person guilty of an offence. A level 5 fine is a fine up to £5,000.

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

402. This section creates a general offence to catch deliberate or reckless acts of damage to protected features of an MCZ.
403. *Subsections (1)* and *(2)* set out the circumstances in which a person is guilty of the offence. The offence is committed where a person intentionally or recklessly causes damage or harm to the protected features of an MCZ. This includes killing or injuring plants and animals and removing anything that is a protected feature from an MCZ. In order to be guilty of the offence, it is necessary that the person knows, or ought to have known, that the feature was in, or formed part of, an MCZ. In addition, an offence is committed only where the person's actions have significantly hindered, or may significantly hinder, the achievement of the conservation objectives of the MCZ.
404. *Subsection (5)* provides that a court determining the fine should have regard to any financial benefit the person obtained by committing the offence: the greater the gain, the higher the penalty is likely to be.
405. *Subsection (6)* states that an offence may be tried in any part of the UK.



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

406. This section sets out the circumstances in which a person will not be guilty of an offence under section 139 or 140.
407. *Subsection (1)* sets out a number of exceptions, including: things done in the interests of national security or for the prevention or detection of crime; acts for which a permit has been issued, for example in the case of scientific investigation; and actions taken to save a life.
408. *Subsection (3)* provides that a person is not also guilty of contravening byelaws or orders if he is found guilty of the general offence.
409. *Subsection (4)* provides a defence to the general offence under section 140 where the accused person may prove that he was sea-fishing and the damage could not reasonably have been avoided. If damage were caused for example by the use of illegal fishing gear where it would not have been so caused had legal fishing gear been used, then this defence would not be available. Such damage could reasonably have been avoided by using legal fishing gear, and therefore the person would not have met the condition in *subsection (4)(b)*.
410. *Subsection (5)* provides a power for the Secretary of State to restrict or remove the defence set out in *subsection (4)*. The power would have to be exercised within any relevant constraints of the Common Fisheries Policy. Once the defence had been removed or restricted, it could not be reinstated. The power is exercisable by order subject to the affirmative procedure, as set out in section 316.
411. Under the UN Convention on the Law of the Sea, the UK may restrict the activities of certain vessels in order to protect the environment. If the UK has not declared an exclusive economic zone (EEZ) under the Convention, restrictions may be applied only to UK and other EU vessels. Once an EEZ has been declared, restrictions may apply to all countries' vessels. *Subsection (6)* recognises this, by ensuring that the application to third country vessels will only take place once an EEZ has been declared under section 41 of the Act.

**Fixed monetary penalties**

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

412. This section enables the Secretary of State or the Welsh Ministers to make an order which confers a power on an enforcement authority to issue fixed monetary penalties for the breach of byelaws or conservation orders.
413. The appropriate enforcement authority may only impose a fixed monetary penalty when satisfied beyond reasonable doubt that the person has committed the relevant offence.
414. *Subsection (4)* provides for the maximum fixed financial penalty, which will be £200 (based on the current amount of a level 1 fine). A level 1 fine on the standard scale cannot exceed £200. A fixed monetary penalty may differ in amount according to whether the person liable is an individual or part of a corporate body. This level of fine reflects the nature of the likely offences, which will tend to be minor breaches of byelaws or conservation orders by an individual.

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

415. This section specifies certain minimum requirements that must be included in any fixed monetary penalty regime. In particular, when imposing the penalty, the enforcing authority must issue a notice of intent to the person setting out the information specified in *subsection (3)* of this section, and provide the person with an opportunity to discharge his liability by payment of a prescribed sum which will be lower or equal to the amount of the penalty. If the sum is not paid, a person may make representations to the authority

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setting out the reasons why he does not think he was guilty of the offence. Having considered those representations, the authority will come to a decision on whether to impose a fixed monetary penalty (“final notice”) setting out the information specified in *subsection (5)*. A person on whom a final notice is served has a right of appeal.

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

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

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

**Miscellaneous and supplemental**

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

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

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

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

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

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

***Chapter 2: Other Conservation Sites***

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

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