



# Marine and Coastal Access Act 2009

## 2009 CHAPTER 23

### PART 11

#### SUPPLEMENTARY PROVISIONS

#### 316 Regulations and orders

- (1) Any power conferred by this Act on the Secretary of State, the Scottish Ministers, the Welsh Ministers or a Northern Ireland department to make regulations or an order includes—
  - (a) power to make different provision for different cases, and
  - (b) power to make incidental, consequential, supplemental or transitional provision or savings.
- (2) The power conferred by subsection (1)(b) includes power, for the purpose of making any such provision or savings, to amend any primary or secondary legislation passed or made before, or in the same Session as, this Act.
- (3) Any power conferred by this Act on the Secretary of State, the Scottish Ministers or the Welsh Ministers to make regulations or an order is exercisable by statutory instrument.
- (4) Subsections (2) and (3) do not apply to—
  - (a) an order made under any of sections 116 to 137 (orders made for the purpose of designating, or furthering the objectives of, MCZs);
  - (b) an order made under section 159 (orders amending or revoking byelaws made by IFC authorities).
- (5) Any regulations or order made under this Act by a Northern Ireland department are to be a statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1513 (N.I. 12)).
- (6) A statutory instrument or statutory rule which contains (whether alone or with other provisions)—
  - (a) any regulation or order which by virtue of subsection (2) or section 188(2)(d) makes provision amending primary legislation, or

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- (b) any regulation or order under any of the provisions specified in subsection (7), is subject to draft affirmative procedure.
- (7) The provisions are—
- (a) section 43(5)(a);
  - (b) section 66(3);
  - (c) section 73;
  - (d) section 93 or 95;
  - (e) section 98(1) by virtue of section 98(2);
  - (f) section 108;
  - (g) section 141(5);
  - (h) section 142;
  - (i) section 232;
  - (j) paragraph 6 of Schedule 1.
- (8) A statutory instrument or statutory rule made under this Act which is not subject to—
- (a) draft affirmative procedure, or
  - (b) Commons draft affirmative procedure,
- is subject to negative resolution procedure.
- (9) Subsection (8) does not apply to a statutory instrument containing only orders under section 324 (commencement orders).
- (10) In this Act—
- “draft affirmative procedure” means—
- (a) in relation to any Order in Council, or any statutory instrument made by the Secretary of State, a requirement that a draft of the instrument be laid before, and approved by a resolution of, each House of Parliament;
  - (b) in relation to any statutory instrument made by the Scottish Ministers, a requirement that a draft of the instrument be laid before, and approved by a resolution of, the Scottish Parliament;
  - (c) in relation to any statutory instrument made by the Welsh Ministers, a requirement that a draft of the instrument be laid before, and approved by a resolution of, the National Assembly for Wales;
  - (d) in relation to any statutory rule made by a Northern Ireland department, a requirement that a draft of the rule be laid before, and approved by a resolution of, the Northern Ireland Assembly;
- “negative resolution procedure” means—
- (a) in relation to any Order in Council, or any statutory instrument made by the Secretary of State, annulment in pursuance of a resolution of either House of Parliament;
  - (b) in relation to any statutory instrument made by the Scottish Ministers, annulment in pursuance of a resolution of the Scottish Parliament;
  - (c) in relation to any statutory instrument made by the Welsh Ministers, annulment in pursuance of a resolution of the National Assembly for Wales;
  - (d) in relation to any statutory rule made by a Northern Ireland department, negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954 (c. 33 N.I.).

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(11) In this section—

“Commons draft affirmative procedure” means, in relation to any statutory instrument, a requirement that a draft of the instrument be laid before, and approved by a resolution of, the House of Commons;

“primary legislation” means—

- (a) an Act of Parliament;
- (b) an Act of the Scottish Parliament;
- (c) a Measure of the National Assembly for Wales;
- (d) Northern Ireland legislation;

“secondary legislation” means subordinate legislation or any other instrument made under primary legislation.

### **317 Directions**

- (1) Any directions given under this Act must be in writing.
- (2) Any power conferred by this Act to give a direction includes power, exercisable in the same manner and subject to the same conditions or limitations, to vary or revoke the direction.

### **318 Offences by directors, partners, etc**

- (1) Where an offence under this Act has been committed by a body corporate and it is proved that the offence—
  - (a) has been committed with the consent or connivance of a person falling within subsection (2), or
  - (b) is attributable to any neglect on the part of such a person,that person (as well as the body corporate) is guilty of that offence and liable to be proceeded against and punished accordingly.
- (2) The persons are—
  - (a) a director, manager, secretary or similar officer of the body corporate;
  - (b) any person who was purporting to act in such a capacity.
- (3) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member, in connection with that management, as if the member were a director of the body corporate.
- (4) Where an offence under this Act has been committed by a Scottish firm and it is proved that the offence—
  - (a) has been committed with the consent or connivance of a partner of the firm or a person purporting to act as such a partner, or
  - (b) is attributable to any neglect on the part of such a person,that person (as well as the firm) is guilty of that offence and liable to be proceeded against and punished accordingly.

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### 319 Disapplication of requirement for consent to certain prosecutions

Section 3 of the Territorial Waters Jurisdiction Act 1878 (c. 73) (consents to prosecutions of offences committed on the open sea by persons who are not British citizens) does not apply to any proceedings for an offence under this Act.

### 320 Power to make transitional provisions and savings

- (1) The Secretary of State may by order make such transitional provision or savings as the Secretary of State considers necessary or expedient in consequence of any provisions of this Act.
- (2) The power conferred by subsection (1) includes power to make provision in addition to, or different from, that made by this Act.

### 321 Repeals

Schedule 22 contains repeals.

#### Commencement Information

- I1** S. 321 in force at 12.1.2010 for specified purposes by S.I. 2009/3345, art. 2, Sch. para. 27
- I2** S. 321 in force at 1.4.2010 for specified purposes by S.I. 2010/298, art. 2, Sch. para. 12
- I3** S. 321 in force at 1.4.2010 for specified purposes for W. by S.I. 2010/630, art. 3(b) (with arts. 8, 12)
- I4** S. 321 in force at 1.1.2011 for specified purposes by S.I. 2010/298, art. 2, Sch. para. 14
- I5** S. 321 in force at 1.4.2011 for specified purposes by S.I. 2011/556, art. 2(2)(o) (with art. 2(3))
- I6** S. 321 in force at 6.4.2011 for specified purposes by S.I. 2011/556, art. 3(2)(b)

### 322 Interpretation

- (1) In this Act—

“baseline” means the baseline from which the breadth of the territorial sea is measured;

“British fishery limits” has the meaning given by section 1 of the Fishery Limits Act 1976 (c. 86);

“draft affirmative procedure” has the meaning given in section 316;

“English inshore region” means the area of sea within the seaward limits of the territorial sea adjacent to England;

“English offshore region” means so much of the UK marine area as is beyond the seaward limits of the territorial sea but is not within any of the following—

- (a) the Scottish offshore region;
- (b) the Welsh offshore region;
- (c) the Northern Ireland offshore region;

“exclusive economic zone” means any area for the time being designated by an Order in Council under section 41(3);

“financial year” means any period of twelve months ending with 31st March (except where the context otherwise requires);

“general objective”, in relation to the MMO, is to be read in accordance with section 2(1);

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“marine policy statement” is to be construed in accordance with sections 44 and 47;

“Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975 (c. 26);

“the MMO” means the Marine Management Organisation;

“MPS” means a marine policy statement;

“nautical mile” means an international nautical mile of 1,852 metres;

“negative resolution procedure” has the meaning given in section 316;

“Northern Ireland inshore region” means the area of sea within the seaward limits of the territorial sea adjacent to Northern Ireland;

“Northern Ireland offshore region” means so much of the Northern Ireland zone as lies beyond the seaward limits of the territorial sea;

“Northern Ireland zone” has the same meaning as in the Northern Ireland Act 1998 (c. 47) (see section 98(1) and (8) of that Act);

“notice” means notice in writing;

“public authority” means any of the following—

- (a) a Minister of the Crown;
- (b) a public body;
- (c) a public office holder;

“public body” includes—

- (a) a government department;
- (b) a Northern Ireland department;
- (c) a local authority (see subsection (2));
- (d) a local planning authority;
- (e) a statutory undertaker (see subsection (2));

“public office holder” means a person holding any of the following offices—

- (a) an office under the Crown;
- (b) an office created or continued in existence by a public general Act or by devolved legislation (see subsection (3));
- (c) an office the remuneration in respect of which is paid out of money provided by Parliament or a devolved legislature (see subsection (3));

“renewable energy zone” means any area for the time being designated by an Order in Council under section 84(4) of the Energy Act 2004 (c. 20);

“Scottish inshore region” means the area of sea within the seaward limits of the territorial sea adjacent to Scotland;

“Scottish offshore region” means so much of the UK marine area as lies outside the Scottish inshore region and consists of—

- (a) areas of sea which lie within the Scottish zone, and
- (b) areas of sea which lie outside the Scottish zone but which are nearer to any point on the baselines from which the breadth of the territorial sea adjacent to Scotland is measured than to any point on the baselines in any other part of the United Kingdom;

“Scottish zone” has the same meaning as in the Scotland Act 1998 (c. 46) (see section 126(1) and (2) of that Act);

“sea”, except in Part 9 (coastal access), is to be read in accordance with section 42(3) and (4);

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“subordinate legislation” has the same meaning as in the Interpretation Act 1978 (c. 30) (see section 21 of that Act);

“territorial sea” means the territorial sea of the United Kingdom;

“UK marine area” has the meaning given by section 42;

“UK sector of the continental shelf” means the areas for the time being designated by an Order in Council under section 1(7) of the Continental Shelf Act 1964 (c. 29);

“Welsh inshore region” means the area of sea within the seaward limits of the territorial sea adjacent to Wales;

“Welsh offshore region” means so much of the Welsh zone as lies beyond the seaward limits of the territorial sea;

“Welsh zone” has the same meaning as in the Government of Wales Act 2006 (c. 32) (see section 158(1) and (3) of that Act).

(2) In the definition of “public body” in subsection (1)—

“local authority” means—

(a) in relation to England, a county council, a district council, a parish council, a London borough council, the Common Council of the City of London or the Council of the Isles of Scilly;

(b) in relation to Scotland, a council for any local government area constituted under section 2(1) of the Local Government etc. (Scotland) Act 1994 (c. 39);

(c) in relation to Wales, a county council, a county borough council or a community council;

(d) in relation to Northern Ireland, a district council;

“statutory undertaker” means a person who is, or is deemed to be, a statutory undertaker for the purposes of any provision of any of the following—

(a) Part 11 of the Town and Country Planning Act 1990 (c. 8);

(b) Part 10 of the Town and Country Planning (Scotland) Act 1997 (c. 8);

(c) the Planning (Northern Ireland) Order 1991 (S.I. 1991/1220 (N.I. 11)).

(3) For the purposes of the definition of “public office holder” in subsection (1)—

“devolved legislation” means legislation passed by a devolved legislature;

“devolved legislature” means—

(a) the Scottish Parliament;

(b) the National Assembly for Wales;

(c) the Northern Ireland Assembly.

(4) Subsection (5) applies to the question of which waters, or parts of the sea, of any particular description—

(a) are adjacent to Northern Ireland (and, in consequence, are not adjacent to England, Wales or Scotland), or

(b) are not adjacent to Northern Ireland (and, in consequence, are not precluded from being adjacent to England, Wales or Scotland).

(5) The question is to be determined by reference to an Order in Council under section 98(8) of the Northern Ireland Act 1998 (c. 47) if, or to the extent that, the Order in Council is expressed to apply—

(a) by virtue of this subsection, for the purposes of this Act, or

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- (b) if no provision has been made by virtue of paragraph (a), for the general or residual purposes of that Act.
- (6) Subsection (7) applies to the question of which waters, or parts of the sea, of any particular description—
  - (a) are adjacent to Wales (and, in consequence, are not adjacent to England), or
  - (b) are not adjacent to Wales (and, in consequence, (but subject to subsections (4) and (5)) are adjacent to England).
- (7) The question is to be determined by reference to an order or Order in Council made under or by virtue of section 158(3) or (4) of the Government of Wales Act 2006 (c. 32) (apportionment of sea areas) if, or to the extent that, the order or Order in Council is expressed to apply—
  - (a) by virtue of this subsection, for the purposes of this Act, or
  - (b) if no provision has been made by virtue of paragraph (a), for the general or residual purposes of that Act.
- (8) Subsection (9) applies to the question of which waters, or parts of the sea, of any particular description—
  - (a) are adjacent to Scotland (and, in consequence, are not adjacent to England), or
  - (b) are not adjacent to Scotland (and, in consequence, (but subject to subsections (4) and (5)) are adjacent to England).
- (9) The question is to be determined by reference to an Order in Council made under section 126(2) of the Scotland Act 1998 (c. 46) if, or to the extent that, the Order in Council is expressed to apply—
  - (a) by virtue of this subsection, for the purposes of this Act, or
  - (b) if no provision has been made by virtue of paragraph (a), for the general or residual purposes of that Act.

### 323 Extent

- (1) Subject to the following provisions of this section, this Act extends to England and Wales only.
- (2) The amendment or repeal of any enactment (including an enactment comprised in subordinate legislation) by, or in consequence of, the following provisions of this Act has the same extent as the enactment amended or repealed—
  - (a) Part 1 (the MMO);
  - (b) Part 2 (exclusive economic zone, UK marine area and Welsh zone), other than paragraph 2 of Schedule 4;
  - (c) Chapter 3 of Part 7 (migratory and freshwater fish);
  - (d) Chapter 4 of Part 7 (obsolete fisheries enactments);
  - (e) Part 9 (coastal access);
  - (f) in Part 10—
    - (i) sections 311 and 312 (Natural England);
    - (ii) section 313 (Countryside Council for Wales);
    - (iii) section 314 (which inserts Part 4A into the Energy Act 2008 (c. 32));
  - (g) Schedule 14 (minor and consequential amendments relating to IFC authorities).

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- (3) Subject to subsection (2)—
- (a) any repeal in Schedule 22 (and section 321 so far as relating to the repeal) has the same extent as the provisions of this Act to which the repeal relates, but
  - (b) paragraph (a) is subject to any provision in the notes in that Schedule.
- (4) Subject to subsection (2), the following provisions also extend to Scotland—
- (a) Part 1 (the MMO);
  - (b) Part 2 (exclusive economic zone, UK marine area and Welsh zone);
  - (c) Part 3 (marine planning);
  - (d) Part 4 (marine licensing), other than paragraph 1 of Schedule 8;
  - (e) Chapter 1 of Part 5 (MCZs), other than section 146 and Schedules 11 and 12;
  - (f) in Chapter 1 of Part 6, sections 165, 166 and 186 (powers of IFC officers etc);
  - (g) in Part 7 (fisheries)—
    - (i) sections 212 and 213 (crabs and lobsters);
    - (ii) section 232 (keeping, introduction and removal of fish);
  - (h) in Part 8 (enforcement), Chapters 1 to 5 and section 295;
  - (i) this Part (other than section 321 and Schedule 22, except as provided by subsection (2) or (3)).
- (5) Subject to subsection (2), the following provisions also extend to Northern Ireland—
- (a) Part 1 (the MMO);
  - (b) Part 2 (exclusive economic zone, UK marine area and Welsh zone);
  - (c) Part 3 (marine planning);
  - (d) Part 4 (marine licensing), other than paragraph 1 of Schedule 8;
  - (e) Chapter 1 of Part 5 (MCZs), other than section 146 and Schedules 11 and 12;
  - (f) in Part 8 (enforcement), Chapters 1 to 5 and section 295;
  - (g) this Part (other than section 321 and Schedule 22, except as provided by subsection (2) or (3)).
- (6) The amendments and repeals made by this Act to provisions of the Food and Environment Protection Act 1985 (c. 48) do not extend to any of the Channel Islands or any British overseas territory.
- (7) Her Majesty may by Order in Council—
- (a) provide for any of the provisions of Part 4 (marine licensing) or this Part, so far as relating to Part 4, to extend, with or without modifications, to any of the territories specified in subsection (8), and
  - (b) where any such provision is made in relation to any of those territories, repeal any provisions of Part 2 or 4 of the Food and Environment Protection Act 1985 (deposits in the sea etc) as they have effect as part of the law of that territory.
- (8) The territories mentioned in subsection (7) are—
- (a) the Bailiwick of Jersey;
  - (b) the Falkland Islands;
  - (c) South Georgia and the Sandwich Islands;
  - (d) St Helena and Dependencies.
- (9) In section 24 of the Sea Fish (Conservation) Act 1967 (c. 84) (power to extend provisions of that Act to Isle of Man or Channel Islands), as it applies in relation to the



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Bailiwick of Guernsey, any reference to a provision of that Act includes a reference to that provision as amended by any provision of Chapter 1 of Part 7 of this Act.

- (10) The amendments made by—
- (a) paragraph 2 of Schedule 4 (amendments to the Fishery Limits Act 1976 (c. 86)),
  - (b) section 212 (taking of crabs and lobsters for scientific purposes), and
  - (c) section 213 (orders prohibiting the taking and sale of certain lobsters),
- do not extend to the Isle of Man or the Channel Islands.

### **324 Commencement**

- (1) The following provisions of this Act come into force on the day on which this Act is passed—
- (a) in Part 3 (marine planning)—
    - (i) paragraphs 4(1) to (4), 5 and 6 of Schedule 5 (statement of public participation relating to MPS) and, so far as relating to those paragraphs, paragraphs 1 and 2 of that Schedule;
    - (ii) sections 44(1)(b) and (5) and 45(4), so far as relating to those paragraphs;
  - (b) this Part, other than section 321 and Schedule 22;
  - (c) any power of a Minister of the Crown, the Scottish Ministers, the Welsh Ministers or a Northern Ireland department to make regulations or an order under or by virtue of this Act;
  - (d) any power to make an Order in Council under the Government of Wales Act 2006 (c. 32) by virtue of the amendments made by section 43 and paragraph 6 of Schedule 4 (Welsh zone).
- (2) So far as not already brought into force by virtue of subsection (1), the following provisions of this Act come into force at the end of the period of 2 months beginning with the day on which this Act is passed—
- (a) Part 3 (marine planning);
  - (b) in Part 5—
    - (i) Chapter 1 (MCZs), so far as not relating to MCZs in Wales;
    - (ii) Chapter 2 (other conservation sites), so far as not relating to Wales;
  - (c) sections 190 to 193 (inshore fisheries in Wales);
  - (d) Part 9 (coastal access).
- (3) Subject to subsection (4), the other provisions of this Act come into force on an appointed day.
- (4) Any repeal in Schedule 22 (and section 321 so far as relating to the repeal) comes into force in the same way as the provisions of this Act to which the repeal relates.
- (5) In this section “appointed day” means such day or days as the Secretary of State may by order appoint.
- (6) The power conferred by subsection (5) is exercisable by the Welsh Ministers (and not the Secretary of State) in relation to the following provisions—
- (a) so far as relating to MCZs in Wales—
    - (i) Chapter 1 of Part 5 (MCZs);

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- (ii) the repeals in Schedule 22 relating to that Chapter;
    - (iii) section 321 so far as relating to those repeals;
  - (b) Chapter 2 of Part 5 (other conservation sites), so far as relating to Wales;
  - (c) so far as relating to sea fisheries districts in Wales, or any part of a sea fisheries district lying in Wales—
    - (i) in Part 6, section 187 (repeal of the Sea Fisheries Regulation Act 1966 (c. 38));
    - (ii) the repeals in Schedule 22 relating to that section;
    - (iii) section 321 so far as relating to that section and those repeals.
- (7) An order under subsection (5) may appoint different days for different purposes.
- (8) In this section “Wales” includes the Welsh inshore region.

### **325 Short title**

This Act may be cited as the Marine and Coastal Access Act 2009.

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