



Marine and Coastal Access Act 2009

2009 CHAPTER 23

PART 3 U.K.

MARINE PLANNING

CHAPTER 4 U.K.

IMPLEMENTATION AND EFFECT

Decisions affected by an MPS or marine plan

58 Decisions affected by marine policy documents U.K.

- (1) A public authority must take any authorisation or enforcement decision in accordance with the appropriate marine policy documents, unless relevant considerations indicate otherwise.
- (2) If a public authority takes an authorisation or enforcement decision otherwise than in accordance with the appropriate marine policy documents, the public authority must state its reasons.
- (3) A public authority must have regard to the appropriate marine policy documents in taking any decision—
 - (a) which relates to the exercise of any function capable of affecting the whole or any part of the UK marine area, but
 - (b) which is not an authorisation or enforcement decision.
- (4) An “authorisation or enforcement decision” is any of the following—
 - (a) the determination of any application (whenever made) for authorisation of the doing of any act which affects or might affect the whole or any part of the UK marine area,
 - (b) any decision relating to any conditions of such an authorisation,

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- (c) any decision about extension, replacement, variation, revocation or withdrawal of any such authorisation or any such conditions (whenever granted or imposed),
- (d) any decision relating to the enforcement of any such authorisation or any such conditions,
- (e) any decision relating to the enforcement of any prohibition or restriction (whenever imposed) on the doing of any act, or of any act of any description, falling within paragraph (a),

but does not include any decision on an application for an order granting development consent under the Planning Act 2008 (c. 29) (in relation to which subsection (3) has effect accordingly).

- (5) In section 104(2) of the Planning Act 2008 (matters to which Panel or Council must have regard in deciding application for order granting development consent) after paragraph (a) insert—
 - “(aa) the appropriate marine policy documents (if any), determined in accordance with section 59 of the Marine and Coastal Access Act 2009;”.

- (6) In this section—
 - “act” includes omission;
 - “appropriate marine policy document” is to be read in accordance with section 59;
 - “authorisation” means any approval, confirmation, consent, licence, permission or other authorisation (however described), whether special or general.

59 The appropriate marine policy documents U.K.

- (1) This section has effect for the purpose of determining what are the appropriate marine policy documents for a public authority taking a decision falling within subsection (1) or (3) of section 58.
- (2) For that purpose—
 - (a) subsection (3) has effect, subject to subsection (4), for determining whether any marine plan is an appropriate marine policy document, and
 - (b) subsection (5) has effect for determining whether an MPS is an appropriate marine policy document.
- (3) To the extent that the decision relates to a marine plan area, any marine plan which is in effect for that area is an appropriate marine policy document.
- (4) A marine plan for an area in a devolved marine planning region is an appropriate marine policy document in relation to the exercise of retained functions by a public authority only if—
 - (a) it contains a statement under section 51(8) that it includes provision relating to retained functions,
 - (b) it was adopted with the agreement of the Secretary of State under paragraph 15(2) of Schedule 6, and
 - (c) it was prepared and adopted at a time when an MPS was in effect which governed marine planning for the marine planning region.

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- (5) Any MPS which is in effect is an appropriate marine policy document for each of the following public authorities—
- (a) any Minister of the Crown;
 - (b) any government department;
 - (c) if a devolved policy authority has adopted the MPS, the devolved policy authority and any primary devolved authority related to it;
 - (d) any non-departmental public authority, so far as carrying out functions in relation to the English inshore region or the English offshore region;
 - (e) any non-departmental public authority, so far as carrying out retained functions in relation to a devolved marine planning region;
 - (f) any non-departmental public authority, so far as carrying out secondary devolved functions in relation to a marine planning region whose marine plan authority is a policy authority which adopted the MPS.
- (6) For the purposes of subsection (5)(f)—
- (a) the Scottish Ministers are to be treated as if they were the marine plan authority for the Scottish inshore region, and
 - (b) the Department of the Environment in Northern Ireland is to be treated as if it were the marine plan authority for the Northern Ireland inshore region.
- (7) In this section—
- “adopted”, in relation to an MPS, means adopted and published in accordance with Schedule 5 (but see also section 48(4));
- “Counsel General” means the Counsel General to the Welsh Assembly Government;
- “devolved marine planning region” means any marine planning region other than—
- (a) the English inshore region, and
 - (b) the English offshore region;
- “devolved policy authority” means—
- (a) the Scottish Ministers;
 - (b) the Welsh Ministers;
 - (c) the Department of the Environment in Northern Ireland;
- “First Minister” has the same meaning as in the Government of Wales Act 2006 (c. 32);
- “non-departmental public authority” means any public authority other than—
- (a) a Minister of the Crown or government department;
 - (b) the Scottish Ministers;
 - (c) the Welsh Ministers, the First Minister or the Counsel General;
 - (d) a Northern Ireland Minister or a Northern Ireland department;
- “Northern Ireland Minister”—
- (a) has the same meaning as in the Northern Ireland Act 1998 (c. 47), but
 - (b) includes a reference to the First Minister and the deputy First Minister, within the meaning of that Act;
- “primary devolved authority”, in relation to a devolved policy authority, means—

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- (a) in the case of the Welsh Ministers, the First Minister or the Counsel General;
 - (b) in the case of the Department of the Environment in Northern Ireland, a Northern Ireland Minister or a Northern Ireland department;
- “retained functions” is defined for the purposes of this Part in section 60;
“secondary devolved functions” has the same meaning as in section 60.

60 Meaning of “retained functions” etc **U.K.**

- (1) For the purposes of this Part, the functions of a public authority which are “retained functions” as respects any marine planning region are those functions of the public authority which, as respects that region, are not any of the following—
- (a) Scottish Ministerial functions (see subsection (2));
 - (b) Welsh Ministerial functions (see subsection (2));
 - (c) Northern Ireland government functions (see subsection (2));
 - (d) secondary devolved functions (see subsection (3));
 - (e) relevant ancillary functions (see subsection (5)).
- (2) In this section—
- “Northern Ireland government functions” means—
- (a) any functions exercisable by a Northern Ireland Minister or a Northern Ireland department, other than joint functions and concurrent functions (see subsection (9));
 - (b) any concurrent functions, so far as exercised by a Northern Ireland Minister or a Northern Ireland department;
 - (c) the function exercised by a Northern Ireland Minister or a Northern Ireland department when exercising a joint function;
- “Scottish Ministerial functions” means—
- (a) any functions exercisable by the Scottish Ministers, other than joint functions and concurrent functions;
 - (b) any concurrent functions, so far as exercised by the Scottish Ministers;
 - (c) the function exercised by the Scottish Ministers when exercising a joint function;
- “Welsh Ministerial functions” means—
- (a) any functions exercisable by the Welsh Ministers, the First Minister or the Counsel General, other than joint functions and concurrent functions;
 - (b) any concurrent functions, so far as exercised by the Welsh Ministers, the First Minister or the Counsel General;
 - (c) the function exercised by the Welsh Ministers, the First Minister or the Counsel General when exercising a joint function.
- (3) “Secondary devolved functions” means—
- (a) as respects the Scottish inshore region or the Scottish offshore region, any secondary devolved Scottish functions;
 - (b) as respects the Welsh inshore region or the Welsh offshore region, any secondary devolved Welsh functions;
 - (c) as respects the Northern Ireland inshore region or the Northern Ireland offshore region, any secondary devolved Northern Ireland functions.

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See subsection (4) for the definition of each of those descriptions of secondary devolved functions.

(4) In this section—

“secondary devolved Northern Ireland functions” means any of the following—

- (a) any functions exercisable by a Northern Ireland non-departmental public authority;
- (b) any functions exercisable by any other non-departmental public authority, so far as relating to transferred or reserved matters (within the meaning of the Northern Ireland Act 1998 (c. 47));

“secondary devolved Scottish functions” means any of the following—

- (a) any functions exercisable by a Scottish non-departmental public authority;
- (b) any functions exercisable by any other non-departmental public authority, so far as not relating to reserved matters (within the meaning of the Scotland Act 1998 (c. 46));

“secondary devolved Welsh functions” means any of the following—

- (a) any functions exercisable by a Welsh non-departmental public authority;
- (b) any functions conferred or imposed on a non-departmental public authority by or under a Measure or Act of the National Assembly for Wales;
- (c) any functions exercisable by a non-departmental public authority, so far as relating to matters within the legislative competence of the National Assembly for Wales;

but the definitions in this subsection are subject to subsection (6) (which excludes certain functions in relation to which functions are exercisable by a Minister of the Crown or government department).

(5) “Relevant ancillary functions” means any functions exercisable by a non-departmental public authority in relation to any of the following—

- (a) a Scottish Ministerial function;
- (b) a Welsh Ministerial function;
- (c) a Northern Ireland government function;
- (d) a secondary devolved function;

but this subsection is subject to subsection (6).

(6) Where functions are exercisable by a Minister of the Crown or government department in relation to a function of a non-departmental public authority, the function of the non-departmental public authority is not—

- (a) a secondary devolved Scottish function;
- (b) a secondary devolved Welsh function;
- (c) a secondary devolved Northern Ireland function;
- (d) a relevant ancillary function;

but this subsection is subject to subsection (7).

(7) Functions are not to be regarded as exercisable by a Minister of the Crown or government department in relation to functions of a non-departmental public authority merely because—

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- (a) the agreement of a Minister of the Crown or government department is required to the exercise of a function of the non-departmental public authority;
 - (b) a Minister of the Crown or government department must be consulted by the non-departmental public authority, or by a primary devolved authority, about the exercise of a function of the non-departmental public authority;
 - (c) a Minister of the Crown or government department may exercise functions falling within subsection (8) in relation to functions of the non-departmental public authority.
- (8) The functions mentioned in subsection (7)(c) are—
- (a) functions under section 2(2) of the European Communities Act 1972 (c. 68);
 - (b) functions by virtue of section 57(1) of the Scotland Act 1998 (c. 46) ([^F1EU] obligations) or under section 58 of that Act (international obligations);
 - (c) functions under section 26 or 27 of the Northern Ireland Act 1998 (c. 47) (international obligations and quotas for international obligations);
 - (d) functions by virtue of section 80(3) of, or paragraph 5 of Schedule 3 to, the Government of Wales Act 2006 (c. 32) ([^F1EU] obligations) or under section 82 of that Act (international obligations etc);
 - (e) functions under section 152 of that Act (intervention in case of functions relating to water etc).
- (9) In this section—
- “concurrent function” means a function exercisable concurrently with a Minister of the Crown or government department;
- “Counsel General” means the Counsel General to the Welsh Assembly Government;
- “devolved policy authority” means—
- (a) the Scottish Ministers;
 - (b) the Welsh Ministers;
 - (c) the Department of the Environment in Northern Ireland;
- “First Minister” has the same meaning as in the Government of Wales Act 2006 (c. 32);
- “joint function” means a function exercisable jointly with a Minister of the Crown or government department;
- “non-departmental public authority” has the same meaning as in section 59;
- “Northern Ireland Minister”—
- (a) has the same meaning as in the Northern Ireland Act 1998 (c. 47), but
 - (b) includes a reference to the First Minister and the deputy First Minister, within the meaning of that Act;
- “Northern Ireland non-departmental public authority” means any non-departmental public authority so far as exercising functions in relation to which functions are exercisable by a Northern Ireland Minister or a Northern Ireland department;
- “primary devolved authority” means any of the following—
- (a) the Scottish Ministers;
 - (b) the Welsh Ministers, the First Minister or the Counsel General;
 - (c) a Northern Ireland Minister or a Northern Ireland department;

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“Scottish non-departmental public authority” means any non-departmental public authority so far as exercising functions in relation to which functions are exercisable by the Scottish Ministers;

“Welsh non-departmental public authority” means any non-departmental public authority so far as exercising functions in relation to which functions are exercisable by the Welsh Ministers, the First Minister or the Counsel General.

Textual Amendments

F1 Words in Act substituted (22.4.2011) by [The Treaty of Lisbon \(Changes in Terminology\) Order 2011 \(S.I. 2011/1043\)](#), [arts. 3, 6](#) (with [art. 3\(2\)\(3\)4\(2\)6\(4\)6\(5\)](#))

Monitoring and reporting

61 Monitoring of, and periodical reporting on, implementation **U.K.**

- (1) This section makes provision for and in connection with imposing the following duties on a marine plan authority—
 - (a) where it has prepared and adopted a marine plan, a duty to keep the matters specified in subsection (3) under review for so long as the marine plan is in effect (see subsections (2) and (3));
 - (b) in any such case, a duty to prepare and publish, and lay a copy of, a report on those matters at intervals of not more than 3 years (see subsections (4) to (9));
 - (c) in any case, a duty to prepare, and lay, at intervals of not more than 6 years ending before 1st January 2030, a report on—
 - (i) any marine plans it has prepared and adopted,
 - (ii) its intentions for their amendment, and
 - (iii) its intentions for the preparation and adoption of any further marine plans,(see subsections (10) to (13)).
- (2) For so long as a marine plan is in effect, the marine plan authority must keep under review each of the matters in subsection (3).
- (3) The matters are—
 - (a) the effects of the policies in the marine plan;
 - (b) the effectiveness of those policies in securing that the objectives for which the marine plan was prepared and adopted are met;
 - (c) the progress being made towards securing those objectives;
 - (d) if an MPS governs marine planning for the marine plan authority's region, the progress being made towards securing that the objectives for which the MPS was prepared and adopted are met in that region.
- (4) The marine plan authority must from time to time prepare and publish a report on the matters kept under review pursuant to subsection (2).
- (5) Where the marine plan authority publishes a report under subsection (4), the authority must lay a copy of the report before the appropriate legislature.

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- (6) After publishing a report under subsection (4), the marine plan authority must decide whether or not to amend or replace the marine plan.
- (7) The first report under subsection (4) must be published before the expiration of 3 years beginning with the date on which the marine plan was adopted.
- (8) After the publication of the first report under subsection (4), successive reports under that subsection must be published at intervals of no more than 3 years following the date of publication of the previous report.
- (9) Any reference in this section to the replacement of a marine plan is a reference to—
 - (a) preparing and adopting, in accordance with the provisions of this Part, a fresh marine plan (whether or not for the identical marine plan area), and
 - (b) if the marine plan authority has not already done so, withdrawing the marine plan that is to be replaced.
- (10) Each marine plan authority must from time to time prepare and lay before the appropriate legislature a report which—
 - (a) identifies any marine plans which the authority has prepared and adopted;
 - (b) describes any intentions the authority may have for the amendment of any marine plans which it has prepared and adopted;
 - (c) describes any intentions the authority may have for the preparation and adoption of any further marine plans.
- (11) The first report prepared under subsection (10) by each marine plan authority must be laid before the appropriate legislature before the expiration of the period of 6 years beginning with the date of the passing of this Act.
- (12) After a marine plan authority has prepared and laid its first report under subsection (10), it must prepare and lay successive reports under that subsection at intervals of no more than 6 years following the laying of the previous report.
- (13) No report under subsection (10) is required to be laid in a case where the period of 6 years following the laying of the previous report ends on or after 1st January 2030.
- (14) For the purposes of this section, the “appropriate legislature” is—
 - (a) in the case of the Secretary of State, Parliament;
 - (b) in the case of the Scottish Ministers, the Scottish Parliament;
 - (c) in the case of the Welsh Ministers, the National Assembly for Wales;
 - (d) in the case of the Department of the Environment in Northern Ireland, the Northern Ireland Assembly.

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