

Marine (Scotland) Act 2010

2010 asp 5

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Marine (Scotland) Act 2010

2010 asp 5

The Bill for this Act of the Scottish Parliament was passed by the Parliament on 4th February 2010 and received Royal Assent on 10th March 2010

An Act of the Scottish Parliament to make provision in relation to functions and activities in the Scottish marine area, including provision about marine plans, licensing of marine activities, the protection of the area and its wildlife including seals and regulation of sea fisheries; and for connected purposes.

PART 1

THE SCOTTISH MARINE AREA

1 The "Scottish marine area"

(1) For the purposes of this Act, the "Scottish marine area" means the area of sea within the seaward limits of the territorial sea of the United Kingdom adjacent to Scotland and includes the bed and subsoil of the sea within that area.

(2) The boundaries between the parts of the territorial sea of the United Kingdom adjacent to Scotland and the parts not so adjacent are to be determined by reference to an Order in Council made under section 126(2) of the Scotland Act 1998 (c.46) to the extent that the Order in Council is expressed to apply for the purposes of that Act.

2 "Sea"

In this Act, unless the context otherwise requires, "sea" includes—

(a) any area submerged at mean high water spring tide,

(b) the waters of every estuary, river or channel, so far as the tide flows at mean high water spring tide.

(See section 66 for the meaning of "sea" for the purposes of Part 5.)

PART 2

GENERAL DUTIES

3 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.

4 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.

PART 3

MARINE PLANNING

Marine plans

5 National marine plan and regional marine plans

(1) The Scottish Ministers must prepare and adopt in accordance with schedule 1 a national marine plan for the Scottish marine area.

(2) The Scottish Ministers may prepare and adopt in accordance with that schedule a regional marine plan for any Scottish marine region (see subsection (5)).

(3) A national marine plan or (as the case may be) a regional marine plan is a document which—

(a) states the Scottish Ministers' policies (however expressed) for and in connection with the sustainable development of the area to which the plan applies,

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

(i) Nature Conservation MPAs (namely areas designated as such by order under section 67(1)(a)), and

(ii) sites falling within section 79(4),

to the protection and enhancement of the area to which the plan applies,

(c) states that it is a national marine plan or (as the case may be) a regional marine plan prepared and adopted for the purposes of this section.

(4) 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.

(5) The Scottish Ministers may by order designate any part of the Scottish marine area as a Scottish marine region; and any such order must identify the boundaries of the Scottish marine region.

(6) A national marine plan or (as the case may be) a regional marine plan may also include statements or information relating to policies contained in the plan.

(7) If to any extent a policy stated in a national marine plan or a regional marine plan conflicts with any other statement or information in the plan, that conflict must be resolved in favour of the policy.

6 Conformity of marine plans with other documents

(1) A national marine plan and a regional marine plan must be in conformity with any marine policy statement currently in effect for the Scottish marine area, unless relevant considerations indicate otherwise.

(2) A regional marine plan must be in conformity with any national marine plan currently in effect, unless relevant considerations indicate otherwise.

(3) For the purposes of this Part, a marine policy statement is "currently in effect" for the Scottish marine area if—

(a) the statement has been adopted by the Scottish Ministers in accordance with Schedule 5 to the 2009 Act,

(b) the statement has been published in accordance with paragraph 12 of that Schedule,

(c) the statement has not been replaced by a later marine policy statement (see section 45(3) of that Act),

(d) the Scottish Ministers have not withdrawn from the statement in accordance with section 48 of that Act, and

(e) the statement has not been withdrawn (by virtue of the withdrawal of the Secretary of State in accordance with that section).

7 Coming into effect of marine plans

A national marine plan or (as the case may be) a regional marine plan comes into effect when the plan is published by the Scottish Ministers in accordance with schedule 1.

8 Amendment of marine plans

(1) A national marine plan or (as the case may be) a regional marine plan may be amended from time to time by the Scottish Ministers.

(2) Any amendment of any such plan must be prepared and adopted in accordance with schedule 1.

9 Withdrawal of marine plans

(1) The Scottish Ministers may withdraw a national marine plan or (as the case may be) a regional marine plan where they consider it appropriate to do so.

(2) If they do so, they must publish notice of withdrawal in the Edinburgh Gazette; and the marine plan concerned ceases to have effect on the date of such publication.

(3) The Scottish Ministers must also take such further steps as they consider appropriate to secure that the withdrawal of the marine plan concerned is brought to the attention of interested persons.

(4) In this section, "interested persons" means—

(a) any persons appearing to the Scottish Ministers to be likely to be interested in, or affected by, the withdrawal of the marine plan concerned,

(b) members of the general public.

(5) Following withdrawal of a national marine plan, the Scottish Ministers must prepare and adopt in accordance with schedule 1 a new national marine plan for the Scottish marine area as soon as is reasonably practicable.

10 Effect of withdrawal from or of marine policy statement or of national marine plan

(1) Where the Scottish Ministers withdraw from a marine policy statement in accordance with section 48 of the 2009 Act, or a marine policy statement is withdrawn (by virtue of the withdrawal of the Secretary of State under that section), the withdrawal does not affect—

(a) the continuing validity or effect of a national marine plan or regional marine plan, or

(b) until such time as a new marine policy statement is in effect in relation to the Scottish marine area, the construction of any national or regional marine plan.

(2) Where the Scottish Ministers withdraw a national marine plan, the withdrawal does not affect—

(a) the continuing validity or effect of a regional marine plan, or

(b) until such time as a new national marine plan is in effect, the construction of any regional marine plan.

11 Duty to keep relevant matters under review

(1) The Scottish Ministers must keep under review the matters which may be expected to affect the exercise of their functions relating to—

(a) the designation of any area as a Scottish marine region,

(b) the preparation, adoption, amendment or withdrawal of a national marine plan or (as the case may be) a regional marine plan,

(c) keeping under review under section 16 in relation to any such plan the matters in subsection (2) of that section.

(2) The matters include—

(a) as regards a national marine plan—

(i) the physical, environmental, social, cultural and economic characteristics of the Scottish marine area and of the living resources which the area supports,

(ii) the purposes for which any part of the area is used,

(iii) the communications, energy and transport systems for the area,

(iv) any other considerations which may be expected to affect those matters,

(b) as regards a regional marine plan—

(i) the physical, environmental, social, cultural and economic characteristics of the Scottish marine region to which the plan applies and of the living resources which the region supports,

(ii) the purposes for which any part of the region is used,

(iii) the communications, energy and transport systems of the region,

(iv) any other considerations which may be expected to affect those matters.

(3) The matters also include—

(a) any changes which could reasonably be expected to occur in relation to any matter referred to in subsection (2),

(b) as regards a national marine plan, the effect that any such changes may have in relation to the sustainable development of the Scottish marine area, its natural resources, or the living resources dependent on the area,

(c) as regards a regional marine plan, the effect that any such changes may have in relation to the sustainable development of the Scottish marine region to which the plan applies, its natural resources, or the living resources dependent on the region.

(4) The reference—

(a) in subsection (2)(a)(i) to the cultural characteristics of the Scottish marine area includes a reference to characteristics of the area which are of a historic or archaeological nature,

(b) in subsection (2)(b)(i) to the cultural characteristics of a Scottish marine region includes a reference to characteristics of the region which are of a historic or archaeological nature.

Delegation of functions relating to regional marine plans

12 Delegation of functions relating to regional marine plans

(1) The Scottish Ministers may give directions under this section which—

(a) designate any of the delegable functions in relation to a regional marine plan which would (apart from directions under this section) be exercisable by the Scottish Ministers,

(b) direct that the functions so designated (the "designated functions"), instead of being so exercisable, are to be exercisable by such delegate acting on behalf of the Scottish Ministers as is designated in the direction.

(2) The delegate so designated 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.

(3) 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.

(4) The Scottish Ministers may give a direction under this section only with the consent of any public authority referred to in subsection (2).

(5) 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).

(6) The delegate—

(a) must comply with the direction,

(b) is to be taken to have all the powers necessary to do so.

(7) In this section "delegable functions in relation to a regional marine plan" means the following functions in relation to any such plan—

(a) those under sections 5, 8 or 11,

(b) those under section 16 (monitoring etc. of implementation),

but excluding the excepted functions.

(8) The excepted functions are the following functions in relation to any such plan—

(a) deciding under paragraph 4 of schedule 1 whether to prepare and publish a statement of public participation,

(b) deciding under paragraph 6 of that schedule whether to revise a statement of public participation,

(c) deciding under paragraph 9 of that schedule whether to publish a consultation draft,

(d) deciding under paragraph 14 of that schedule whether to publish a regional marine plan or any amendment of such a plan.

13 Directions under section 12: supplementary provision

(1) Where the Scottish Ministers give a direction under section 12, they must publish it in such manner as they consider most likely to bring it to the attention of persons likely to be interested in or affected by it.

(2) For so long as any such direction remains in effect, the designated functions are exercisable by the delegate acting on behalf of the Scottish Ministers (and are not exercisable by the Scottish Ministers).

(3) But subsection (2) is subject to any provision to the contrary which—

(a) is made by the direction, or

(b) is included in a direction under section 14.

(4) A direction under section 12 may include—

(a) such terms or conditions,

(b) such obligations or requirements,

(c) such financial provisions,

as the Scottish Ministers may determine.

(5) A direction under section 12 may make different provision for different cases, different areas or different delegates.

(6) The Scottish Ministers may make grants to a delegate for the exercise of the designated functions.

14 Directions to delegates as regards performance of designated functions

(1) This section applies where any functions are exercisable by a delegate by virtue of a direction given under section 12.

(2) The Scottish Ministers may from time to time give directions to the delegate with respect to the performance of the functions.

(3) Before giving any direction under this section, the Scottish Ministers must consult the delegate.

(4) A delegate given a direction under this section must comply with the direction.

(5) Where the Scottish Ministers give a direction under this section, they must publish it in such manner as they consider most likely to bring it to the attention of persons likely to be interested in or affected by it.

Decisions of public authorities affected by a marine plan

15 Decisions of public authorities affected by marine plans

(1) A public authority must take any authorisation or enforcement decision in accordance with the appropriate marine plans, unless relevant considerations indicate otherwise.

(2) If a public authority makes an authorisation or enforcement decision otherwise than in accordance with the appropriate marine plans, it must state its reasons.

(3) A public authority must have regard to the appropriate marine plans in making any decision—

(a) which relates to the exercise by them of any function capable of affecting the whole or any part of the Scottish marine area, but

(b) which is not an authorisation or enforcement decision.

(4) In this section—

(a) an "authorisation or enforcement decision" is any of the following—

(i) 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 Scottish marine area,

(ii) any decision relating to any conditions of any such authorisation,

(iii) any decision about extension, replacement, variation, revocation or withdrawal of any such authorisation or any such conditions (whenever granted or imposed),

(iv) any decision relating to the enforcement of any such authorisation or any such conditions,

(v) 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 sub-paragraph (i),

(b) "the appropriate marine plans" are—

(i) a national marine plan which is in effect,

(ii) to the extent that a decision falling within subsection (1) or (3) relates to a Scottish marine region, any regional marine plan which is in effect for the region.

(5) In this section—

"act" includes omission,

"authorisation" means any approval, confirmation, consent, licence, permission or other authorisation (however described), whether special or general.

Monitoring and reporting

16 Monitoring of and periodical reporting on implementation of marine plans

(1) For so long as a national marine plan or (as the case may be) a regional marine plan is in effect, the Scottish Ministers must keep under review in relation to each such plan the matters in subsection (2).

(2) The matters are—

(a) the effects of the policies in the plan,

(b) the effectiveness of the policies in securing that the objectives for which the plan was prepared and adopted are met,

(c) the progress being made towards securing the objectives,

(d) the progress being made towards securing that the objectives in the regional marine plan secure the objectives in the national marine plan.

(3) The Scottish Ministers must from time to time prepare and publish a report on the matters kept under review in pursuance of subsection (1).

(4) After publishing a report under subsection (3), the Scottish Ministers must decide whether or not to amend or replace the national marine plan or (as the case may be) the regional marine plan.

(5) The first report must be published before the expiry of 5 years beginning with the date on which the marine plan concerned was adopted.

(6) After the publication of the first report, successive reports must be published at intervals of no more than 5 years following the date of publication of the previous report.

(7) Any reference in this section to the replacement of a national marine plan or (as the case may be) a regional marine plan is a reference to—

(a) preparing and adopting, in accordance with the provisions of this Part, a fresh national marine plan or (as the case may be) a regional marine plan (and as respects a regional marine plan whether or not it is for the identical Scottish marine region),

(b) if the Scottish Ministers have not already done so, withdrawing the marine plan that is to be replaced.

Validity of marine plans

17 Validity of national marine plans and regional marine plans

(1) A relevant document must not be questioned in any legal proceedings, except in so far as is provided by this section.

(2) A person aggrieved by a relevant document may make an application to the Court of Session on any of the following grounds—

(a) that the document is not within the appropriate powers,

(b) that a procedural requirement has not been complied with.

(3) Any such application must be made not later than 6 weeks after the publication of the relevant document.

(4) In this section and section 18—

(a) "the appropriate powers" means in the case of a national marine plan, a regional marine plan or an amendment of any such plan, the powers conferred on the Scottish Ministers by sections 5 to 12,

(b) "procedural requirement" means any requirement—

(i) under the appropriate powers, or

(ii) in directions under section 12 or 14,

which relates to the preparation, adoption or publication of a relevant document,

(c) "relevant document" means—

(i) a national marine plan,

(ii) an amendment of a national marine plan,

(iii) a regional marine plan,

(iv) an amendment of a regional marine plan.

18 Powers of the Court of Session on an application under section 17

(1) This section applies in any case where an application is made to the Court of Session ("the Court") under section 17.

(2) The Court may make an interim order suspending the operation of the relevant document—

(a) wholly or in part,

(b) generally or as it affects a particular area,

and an interim order has effect until the proceedings are finally determined.

(3) Subsection (4) applies if the Court is satisfied as to any of the following—

(a) that a relevant document is to any extent outside the appropriate powers,

(b) that the interests of the applicant have been substantially prejudiced by failure to comply with a procedural requirement.

(4) The Court may—

(a) quash the relevant document,

(b) remit the relevant document to the Scottish Ministers.

(5) If the Court remits the relevant document under subsection (4)(b), it may give directions as to the action to be taken in relation to the relevant document.

(6) Directions under subsection (5) may in particular—

(a) require the relevant document to be treated (generally or for specified purposes) as not having been adopted or published,

(b) require specified steps in the process that has resulted in the adoption of the relevant document to be treated (generally or for specified purposes) as having been taken or not having been taken,

(c) require action to be taken by the Scottish Ministers.

(7) The powers of the Court under subsections (4) and (5) are exercisable in relation to the whole or any part of the relevant document.

Interpretation of Part 3

19 Interpretation of Part 3

In this Part—

"adopted", in the case of a national marine plan or a regional marine plan, is to be construed in accordance with section 5(1) and paragraph 14 of schedule 1; and related expressions are to be construed accordingly,

"marine policy statement" is to be construed in accordance with sections 44 and 47 of the 2009 Act,

"national marine plan" has the meaning given in section 5 (and any reference to a national marine plan includes a reference to it as amended),

"regional marine plan" has the meaning given in section 5 (and any reference to a regional marine plan includes a reference to it as amended).

PART 4

MARINE LICENSING

Requirement for licence

20 Requirement for licence

(1) No person may—

(a) carry on a licensable marine activity, or

(b) cause or permit any other person to carry on such an activity,

except in accordance with a marine licence granted by the Scottish Ministers.

(2) Subsection (1) is subject to any exemptions and special cases provided for by virtue of sections 32 to 37.

Licensable marine activities

21 Licensable marine activities

(1) For the purposes of this Part, it is a licensable marine activity to do any of the following—

1 To deposit any substance or object within the Scottish marine area, either in the sea or on or under the seabed, from any of the following—

(a) a vehicle, vessel, aircraft or marine structure,

(b) a container floating in the sea, or

(c) a structure on land constructed or adapted wholly or mainly for the purpose of depositing solids in the sea.

2 To deposit any substance or object anywhere in the sea or on or under the seabed from a vehicle, vessel, aircraft, marine structure or floating container which was loaded with the substance or object either—

(a) in Scotland, or

(b) in the Scottish marine area.

3 To scuttle any vessel or floating container in the Scottish marine area.

4 To scuttle any vessel or floating container anywhere at sea, if the vessel or container has been towed or propelled for the purpose of that scuttling either—

(a) from Scotland, or

(b) from the Scottish marine area (except where the towing or propelling began outside that area).

5 To construct, alter or improve any works within the Scottish marine area either—

(a) in or over the sea, or

(b) on or under the seabed.

6 To use a vehicle, vessel, aircraft, marine structure or floating container to remove any substance or object from the seabed within the Scottish marine area.

7 To carry out any form of dredging within the Scottish marine area (whether or not involving the removal of any material from the sea or seabed).

8 To deposit or use any explosive substance or article within the Scottish marine area either in the sea or on or under the seabed.

9 To incinerate any substance or object on any vehicle, vessel, marine structure or floating container in the Scottish marine area.

10 To load a vehicle, vessel, marine structure or floating container in Scotland or in the Scottish marine area with any substance or object for incineration anywhere at sea.

(2) In subsection (1)—

(a) in item 7, "dredging" includes using any device to move any material (whether or not suspended in water) from one part of the sea or seabed to another part,

(b) in item 10, "incineration" means the combustion of a substance or object for the purpose of its thermal destruction (and in item 9 "incinerate" is to be read accordingly),

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

(3) The Scottish Ministers may by order—

(a) amend subsection (1) so as to add or remove any activity from the list of licensable marine activities,

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

(4) In deciding whether to make an order under subsection (3), the Scottish Ministers must have regard to—

(a) the need to protect the environment,

(b) the need to protect human health,

(c) the need to prevent interference with legitimate uses of the sea,

(d) such other matters as the Ministers consider relevant.

Pre-application consultation

22 Pre-application consultation: preliminary

(1) The Scottish Ministers may by regulations prescribe classes or descriptions of licensable marine activity.

(2) Where a licensable marine activity is of such a class or description, section 23 applies to a prospective applicant for a marine licence in respect of that activity.

(3) 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 23 does not apply to the application.

(4) Regulations under subsection (1) may also make provision—

(a) as to the right of a prospective applicant for a marine licence to notify the Scottish Ministers requiring a statement from them as to whether or not, in their opinion, the activity in respect of which the licence is being sought is of such a class or description,

(b) as to the manner in which—

(i) notification under paragraph (a) is to be exercised, including provision as to the information that the prospective applicant is to provide,

(ii) a statement under paragraph (a) is to be provided, including provision as to when a statement must be provided following receipt of sufficient information to determine the matter,

(c) as to the power of the Scottish Ministers to require further information in order to determine the application,

(d) as to the effect of a statement under paragraph (a),

(e) as to any other matter the Scottish Ministers consider necessary or expedient for the purposes of this section.

23 Pre-application consultation: compliance

(1) A person to whom this section applies ("the prospective applicant") must give notice that an application for a marine licence is to be submitted.

(2) A period of at least 12 weeks must elapse between giving the notice and the prospective applicant submitting the application.

(3) Notice under subsection (1) must contain—

(a) a description in general terms of the activity to be carried out,

(b) a plan or chart showing the outline of the location at which the activity is to be carried out (including, as appropriate, the route to be taken in order to carry out the activity), which is sufficient to identify the location,

(c) details as to how the prospective applicant is to be contacted,

(d) such other information as may be prescribed by regulations made by the Scottish Ministers.

(4) Regulations may—

(a) require that the notification be given to persons specified in the regulations,

(b) specify persons who are to be consulted as respects a proposed application and what form that consultation is to take.

(5) Different provision may be made under subsection (4) for different parts of the Scottish marine area (see also section 165(1)).

(6) The Scottish Ministers may, provided that they do so within 21 days of having received the notification, notify the prospective applicant that they require (either or both)—

(a) that the notification under subsection (1) be given to persons additional to those specified under subsection (4) (specifying in the notification who those persons are),

(b) that consultation additional to that required by virtue of subsection (4)(b) be undertaken as regards the proposed activity (specifying in the notification what form that consultation is to take).

(7) In considering whether to give notification under subsection (6), the Scottish Ministers are to have regard to the nature, extent and location of the proposed activity, and to the likely effects at and in the vicinity of that location, of its being carried out.

24 Pre-application consultation report

(1) A person who, before submitting an application for a marine licence, was required to comply with section 23 and who proceeds to submit that application must prepare a report as to what has been done to effect such compliance.

(2) A report under subsection (1) is to be in such form as the Scottish Ministers may by regulations prescribe.

Licences

25 Application for licence

(1) The Scottish Ministers may require an application for a marine licence to be—

(a) made in such form as they may determine,

(b) accompanied by such fee as may be determined by, or in accordance with, regulations made by them.

(2) The Scottish Ministers may determine different forms, and provide for different fees, for different descriptions of applications.

(3) The Scottish Ministers may require an applicant to—

(a) supply such information,

(b) produce such articles,

as in their opinion may be necessary to enable them to determine the application.

(4) 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.

(5) If the Scottish Ministers carry out any investigation, examination or test (whether or not by virtue of subsection (4)) which in their opinion is necessary to enable them to determine an application, they may require the applicant to pay a fee towards the reasonable expenses of the investigation, examination or test.

(6) If an applicant fails to comply with a requirement made by the Scottish Ministers under this section, the Ministers may—

(a) refuse to proceed with the application,

(b) refuse to proceed with it until the failure is remedied.

26 Notice of applications

(1) Having received an application for a marine licence, the Scottish Ministers must either—

(a) publish notice of the application, or

(b) require the applicant to publish notice of it.

(2) Publication under subsection (1) must be in such manner as the Scottish Ministers consider is most likely to bring the application to the attention of any persons likely to be interested in it.

(3) The Scottish Ministers must not proceed with an application unless notice has been published under subsection (1).

(4) If the Scottish Ministers in pursuance of subsection (1)(a) publish notice of an application, they may require the applicant to pay a fee towards the reasonable expenses of the publication.

(5) If an applicant fails to pay a fee required by the Scottish Ministers under subsection (4), the Ministers may—

(a) refuse to proceed with the application,

(b) refuse to proceed with it until the failure is remedied.

(6) This section does not apply in relation to an application where the Scottish Ministers consider that notice of the application should not be published.

27 Determination of applications

(1) In determining an application for a marine licence (including the terms on which it is to be granted and what conditions, if any, are to be attached to it), the Scottish Ministers must have regard to—

(a) the need to—

(i) protect the environment,

(ii) protect human health,

(iii) prevent interference with legitimate uses of the sea,

(b) such other matters as the Scottish Ministers consider relevant.

(2) In considering an application for a licence to authorise an activity mentioned in item 1 or 2 in section 21(1) (deposit of substance or object), the Scottish Ministers must have regard (among other things) to the practical availability of any alternative method of dealing with the substance or object.

(3) In considering an application for a licence to authorise an activity mentioned in item 5 in section 21(1) (constructing, altering or improving works), the Scottish Ministers must have regard (among other things) to the effects of any use intended to be made of the works when constructed, altered or improved.

(4) The Scottish Ministers—

(a) must, in relation to each application, consult such persons or bodies as may be specified by them by order,

(b) may, in relation to any particular application, consult any other person or body they consider appropriate.

(5) The Scottish Ministers must give the applicant the opportunity to make representations to them about any observations made to them by a person or body consulted by them under subsection (4).

(6) The Scottish Ministers must have regard to any representations which they receive from any person having an interest in the outcome of the application.

(7) The Scottish Ministers may by regulations make further provision as to the procedure to be followed in connection with—

(a) applications to them for marine licences,

(b) the grant by them of such licences.

(8) Regulations under subsection (7) may include, in particular, provision as to—

(a) the period within which any function is to be exercised (including when that period is to begin and how it is to be calculated),

(b) notifying the applicant of any licensing determination.

28 Inquiries

(1) The Scottish Ministers may cause an inquiry to be held in connection with their determination of an application for a marine licence.

(2) Subsections (2) to (8) of section 210 of the Local Government (Scotland) Act 1973 (c.65) apply to any inquiry the Scottish Ministers may cause to be held under subsection (1) as they apply to inquiries under that section.

(3) Where—

(a) an inquiry is caused by the Scottish Ministers to be held under subsection (1), and

(b) in the case of some other matter required or authorised to be the subject of an inquiry ("the other inquiry"), it appears to the relevant authority or authorities that the matters are so far cognate that they should be considered together,

the relevant authority or authorities may direct that the two inquiries be held concurrently or combined as one inquiry.

(4) In subsection (3), "the relevant authority or authorities" means the Scottish Ministers or, where causing the other inquiry to be held is the function of some other person or body, the Scottish Ministers and that other person or body acting jointly.

29 Grant or refusal of licence

(1) The Scottish Ministers, having considered an application for a marine licence, must—

(a) grant the licence unconditionally,

(b) grant the licence subject to such conditions as they consider appropriate, or

(c) refuse the application.

(2) The conditions that may be attached to a licence under subsection (1)(b) may relate to any of the following—

(a) the activities authorised by the licence,

(b) precautions to be taken or works to be carried out (whether before, during or after the carrying out of the authorised activities) in connection with or in consequence of those activities,

(c) monitoring of the activities authorised by the licence.

(3) The conditions include in particular conditions—

(a) that no activity authorised by the licence be carried out until the Scottish Ministers have (or some other specified person has) given such further approval of the activity as may be specified,

(b) as to the provision, maintenance, testing or operation of equipment for measuring or recording specified matters relating to any activity authorised by the licence,

(c) as to the keeping of records or the making of returns or giving of other information to the authority,

(d) for the removal at the end of a specified period of any object or works to which the licence relates,

(e) for the carrying out at the end of a specified period of such works as may be specified for the remediation of the site or of any object or works to which the licence relates,

(f) that any activity authorised by the licence must take place at a specified site, whether or not in the Scottish marine area.

(4) A licence may provide that—

(a) it is to expire unless the activity it authorises is begun or completed within a specified period,

(b) it is to remain in force indefinitely or for a specified period of time (which may be determined by reference to a specified event).

(5) A licence authorising any activity mentioned in item 5 in section 21(1) (constructing, altering or improving works) may provide that the conditions attached to it are to bind any other person who for the time being owns, occupies or enjoys any use of the works in question (whether or not the licence is transferred to that other person).

(6) The Scottish Ministers must not grant a licence to carry on any activity which is contrary to international law.

(7) In subsection (4), "specified" means specified in the licence concerned.

30 Variation, suspension, revocation and transfer

(1) The Scottish Ministers may by notice vary, suspend or revoke a licence granted by them if it appears to them that there has been a breach of any of its provisions.

(2) The Scottish Ministers may by notice vary, suspend or revoke a licence granted by them if it appears to them that—

(a) in the course of the application for the licence the applicant either—

(i) supplied information to them that was false or misleading, or

(ii) failed to supply information that the applicant might reasonably have been expected to supply, and

(b) if the correct information had been supplied—

(i) they would have, or

(ii) it is likely that they would have,

refused the application or granted the licence in different terms.

(3) The Scottish Ministers may by notice vary, suspend or revoke a licence granted by them if it appears to them that the licence ought to be varied, suspended or revoked for any of the following reasons—

(a) because of a change in circumstances relating to the environment or human health,

(b) because of increased scientific knowledge relating to either of those matters,

(c) in the interests of safety of navigation,

(d) for any other reason that appears to the Ministers to be relevant.

(4) Any suspension under subsection (1), (2) or (3) is for such period as the Scottish Ministers may specify in the notice of suspension.

(5) The Scottish Ministers may by further notice extend the period of the suspension.

(6) But a licence may not by virtue of this section be suspended in total for a period exceeding 18 months.

(7) 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.

(8) On an application made by a licensee, the Scottish Ministers—

(a) may transfer the licence from the licensee to another person, and

(b) if they do so, must vary the licence accordingly.

(9) A licence may not be transferred except in accordance with subsection (8).

31 Pre-variation, suspension or revocation procedure

(1) This section applies where the Scottish Ministers propose to vary, suspend or revoke a licence under section 30.

(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.

Exemptions from licensing requirements

32 Exemptions specified by order

(1) The Scottish Ministers may by order specify activities which—

(a) are not to need a marine licence,

(b) are not to need a marine licence if conditions specified in the order are satisfied.

(2) The conditions that may be specified in an order under subsection (1) include conditions enabling the Scottish Ministers to require a person to obtain their approval before the person does anything for which a licence would be needed but for the order.

(3) Approval under subsection (2) may be either—

(a) without conditions, or

(b) subject to such conditions as the Scottish Ministers consider appropriate.

(4) In deciding whether to make an order under subsection (1), the Scottish Ministers must have regard to—

(a) the need to protect the environment,

(b) the need to protect human health,

(c) the need to prevent interference with legitimate uses of the sea,

(d) such other matters as the Ministers consider relevant.

(5) The Scottish Ministers must consult such persons as they consider appropriate as to any order the Ministers propose to make under subsection (1).

33 Activities below specified threshold of environmental impact

(1) The Scottish Ministers may by regulations provide that licensable marine activities which fall below a specified threshold of environmental impact—

(a) are not to need a marine licence, but

(b) are instead to be registered.

(2) Regulations under subsection (1) may—

(a) define or elaborate the meaning of—

(i) "fall below",

(ii) "registered",

(iii) "specified threshold of environmental impact",

(b) make further provision in relation to registration of the activities, including in particular the procedure in relation to registration.

(3) The regulations may also—

(a) create offences,

(b) provide that any offence created is triable summarily or on indictment,

(c) provide for any offence created to be punishable—

(i) on summary conviction, by a fine not exceeding £50,000,

(ii) on conviction on indictment, by a fine, imprisonment for a period not exceeding 2 years, or both.

(4) The Scottish Ministers must consult such persons as they consider appropriate as to any regulations the Ministers propose to make under subsection (1).

34 Oil and gas, defence or pollution

Nothing in this Part applies to—

(a) any activity relating to a matter which is a reserved matter by virtue of Section D2 (oil and gas) in Part II of Schedule 5 to the Scotland Act 1998 (c.46) and which is an activity outside controlled waters (within the meaning of section 30A(1) of the Control of Pollution Act 1974 (c.40)),

(b) any activity relating to a matter which is a reserved matter by virtue of paragraph 9 (defence) in Part I of that Schedule,

(c) any activity falling within the subject matter of Part 6 (pollution) of the Merchant Shipping Act 1995 (c.21).

Special provision for certain cases

35 Special procedure for applications relating to certain electricity works

(1) This section applies where—

(a) a person who proposes to carry out an activity must first make both—

(i) an application for a marine licence, and

(ii) an application for consent under section 36 of the Electricity Act (consent for construction etc. of generating stations) (a "generating station application") in relation to the activity or other works to be undertaken in connection with the activity,

(b) the person makes both applications, or one of them, and

(c) the Scottish Ministers—

(i) decide that both applications are to be considered together and, as the case may be, if only one of the applications has been made that it is not to be considered without the other, and

(ii) give the person notice of their decision.

(2) Both of the applications are to be considered together; but this is subject to any provision that may be made in an order under subsection (3).

(3) The Scottish Ministers may by order do any of the following—

(a) provide that such procedural provisions of this Part as are specified in the order are not to apply to the person's application for the marine licence,

(b) provide that such procedural provisions of the Electricity Act as are so specified are to apply to the application instead,

(c) modify the procedural provisions of the Electricity Act in their application to the marine licence by virtue of paragraph (b),

(d) in relation to cases where the Scottish Ministers come to the conclusion that either the application for the marine licence or the generating station application is not going to be made, make additional provision modifying either—

(i) such procedural provisions of this Part as are specified in the order, or

(ii) such procedural provisions of the Electricity Act as are specified in the order.

(4) In this section—

"the Electricity Act" means the Electricity Act 1989 (c.29),

"procedural provisions" means any provisions for or in connection with the procedure for determining an application.

36 Electronic communications apparatus

(1) The Scottish Ministers must not issue a licence to carry out any activity which amounts to or involves the exercise of a right conferred by paragraph 11 of the electronic communications code set out in Schedule 2 to the Telecommunications Act 1984 (c.12) (works in connection with electronic communications apparatus) unless they are satisfied that adequate compensation arrangements have been made.

(2) For the purposes of subsection (1), adequate compensation arrangements are adequate arrangements for compensating any persons who appear to the Scottish Ministers to be owners of interests in the tidal water or lands on, under or over which the right is to be exercised, for any loss or damage sustained by those persons in consequence of the activity being carried out.

37 Submarine cables

(1) This section applies where a stretch of exempt submarine cable—

(a) is proposed to be laid,

(b) is in the course of being laid,

(c) has been laid,

beyond the seaward limits of the territorial sea.

(2) The Scottish Ministers must grant any application made to them for a marine licence for the carrying on of a licensable marine activity in the course of laying any stretch of the cable in the Scottish marine area.

(3) The Scottish Ministers have the same powers to attach conditions to a marine licence granted by virtue of subsection (2) as they have in relation to any other marine licence (see section 29(1) to (3)).

(4) Nothing in this Part applies to anything done in the course of maintaining any stretch of the cable in the Scottish marine area.

(5) For the purposes of this section a submarine cable is "exempt" unless it is a cable constructed or used in connection with any of the following—

(a) the exploration of the UK sector of the continental shelf,

(b) the exploitation of the natural resources of that sector,

(c) the operations of artificial islands, installations and structures under the jurisdiction of the United Kingdom,

(d) the prevention, reduction or control of pollution from pipelines.

(6) In this section—

"natural resources" means—

(a) the mineral and other non-living resources of the sea bed and subsoil, together with

(b) living organisms belonging to sedentary species,

"living organisms belonging to sedentary species" means organisms which, at the harvestable stage, are either—

(a) immobile on or under the sea bed, or

(b) unable to move except in constant physical contact with the sea bed or the subsoil,

"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).

Appeals against licensing decisions

38 Appeals against licensing decisions

(1) The Scottish Ministers must by regulations make provision for any person who applies for a marine licence to appeal to the sheriff against a decision under section 29.

(2) The regulations required by subsection (1) must come into force on the day on which this Part comes into force.

(3) The regulations may include provision—

(a) as to the procedure to be followed as respects an appeal,

(b) for or in connection with suspending or varying any conditions subject to which the licence was granted, pending determination of the appeal,

(c) as to the powers of the sheriff to whom the appeal is made.

Offences

39 Breach of requirement for, or conditions of, licence

(1) A person who—

(a) contravenes section 20(1), or

(b) fails to comply with any condition of a marine licence,

commits an offence.

(2) A person who is bound by a condition of a licence by virtue of section 29(5) is not to be taken as having failed to comply with the condition unless the requirements of subsection (3) are satisfied.

(3) The requirements are that—

(a) the Scottish Ministers have served the person with a notice under this subsection which specifies the condition together with a period (which must be a reasonable period, in all the circumstances of the case) within which the person must comply with the condition,

(b) the person has failed to comply with the condition within that period.

(4) A person guilty of an offence under subsection (1) is liable—

(a) on summary conviction, to a fine not exceeding £50,000,

(b) on conviction on indictment, to a fine or to imprisonment for a period not exceeding 2 years, or to both.

40 Defences: action taken in an emergency

(1) It is a defence for a person charged with an offence under section 39(1) in relation to any activity to prove that—

(a) the activity was carried out for the purpose of saving life, or for the purpose of securing the safety of a vessel, aircraft or marine structure, and

(b) the person took steps within a reasonable time to inform the Scottish Ministers of the matters set out in subsection (2).

(2) The matters are—

(a) the fact that the activity was carried out,

(b) the locality and circumstances in which it was carried out, and

(c) any substances or objects concerned.

(3) The defence provided by subsection (1) is not available to a person where—

(a) the court is not satisfied that the activity either—

(i) was necessary for any of the purposes mentioned in subsection (1)(a), or

(ii) was a reasonable step to take in the circumstances, or

(b) the necessity for the activity was due to the fault of the accused or a person acting under the accused's direction or control.

41 Defences: electronic communications: emergency works

(1) It is a defence for a person charged with an offence under section 39(1) in relation to any activity to prove that—

(a) for the purposes of paragraph 23 of the electronic communications code (undertaker's works), the person is the operator or a relevant undertaker, and

(b) the activity was carried out for the purpose of executing emergency works, within the meaning of that code.

(2) In this section "the electronic communications code" means the code set out in Schedule 2 to the Telecommunications Act 1984 (c.12).

42 Offences relating to information

(1) A person who, for any of the purposes set out in subsection (2)—

(a) makes a statement which is false or misleading in a material way, knowing the statement to be false or misleading,

(b) makes a statement which is false or misleading in a material way, being reckless as to whether the statement is false or misleading, or

(c) intentionally fails to disclose any material information,

commits an offence.

(2) The purposes are—

(a) the purpose of procuring the issue, variation or transfer of a marine licence,

(b) the purpose of complying with, or purporting to comply with, any obligation imposed by the provisions of this Part or the provisions of a marine licence.

(3) A person guilty of an offence under subsection (1) is liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum,

(b) on conviction on indictment, to a fine.

Enforcement notices

43 Compliance notice

(1) If it appears to the Scottish Ministers that subsection (3) is satisfied in relation to a person carrying on an activity, they may issue a compliance notice to that person.

(2) A compliance notice is a notice requiring a person to take such steps (falling within subsection (4)(b)) as are specified in it.

(3) This subsection is satisfied if—

(a) a person holding a marine licence—

(i) has carried on, or is carrying on, a licensable marine activity under the licence,

(ii) in carrying on that activity has failed, or is failing, to comply with a condition of the licence, and

(b) the carrying on of the activity has not caused, and is not likely to cause, any of the following—

(i) serious harm to the environment,

(ii) serious harm to human health,

(iii) serious interference with legitimate uses of the sea.

(4) A compliance notice must—

(a) state the Scottish Ministers' grounds for believing that subsection (3) is satisfied,

(b) require the person to take such steps as the Scottish Ministers consider appropriate to ensure that the condition in question is complied with,

(c) state the period before the end of which those steps must be taken.

44 Remediation notice

(1) If it appears to the Scottish Ministers that subsection (3) is satisfied in relation to a person carrying on an activity, they may issue a remediation notice to the person.

(2) A remediation notice is a notice requiring a person to do either or both of the following—

(a) to take such steps (falling within subsection (5)(b)) as are specified in it,

(b) to pay to the Scottish Ministers any sum (falling within subsection (5)(c)) as is specified in it.

(3) This subsection is satisfied if—

(a) a person has carried on, or is carrying on, a licensable marine activity,

(b) the carrying on of the activity has involved, or involves, the commission of an offence under section 39(1), and

(c) the carrying on of the activity has caused, or is causing or is likely to cause, any of the following—

(i) harm to the environment,

(ii) harm to human health,

(iii) interference with legitimate uses of the sea.

(4) Before issuing a remediation notice, the Scottish Ministers must consult the person to whom it is proposed to be issued as to the steps or (as the case may be) the sum to be specified in the notice.

(5) A remediation notice—

(a) must state the Scottish Ministers' grounds for believing that subsection (3) is satisfied,

(b) may require the person to take such remedial or compensatory steps as the Scottish Ministers consider appropriate,

(c) may require the person to pay a sum representing the reasonable expenses of any remedial or compensatory steps taken, or to be taken, by the Scottish Ministers whether under section 59 (power to take remedial action) or otherwise,

(d) must state the period before the end of which the steps must be taken or (as the case may be) that sum must be paid.

(6) In subsection (5)(b) and (c) "remedial or compensatory steps" means steps taken (or to be taken) for any one or more of the purposes mentioned in subsection (7) (whether or not the steps are taken at or near the place where the harm or interference mentioned in subsection (3)(c) has been, is being, or is likely to be, caused or the activity in respect of which the notice is issued is or has been carried on).

(7) The purposes are—

(a) protecting the environment,

(b) protecting human health,

(c) preventing interference with legitimate uses of the sea,

(d) preventing or minimising, or remedying or mitigating the effects of, the harm or interference mentioned in subsection (3)(c),

(e) restoring (whether in whole or in part) the condition of any place affected by that harm or interference to the condition, or a condition reasonably similar to the condition, in which the place would have been had the harm or interference not occurred,

(f) such purposes not falling within the preceding paragraphs as the Scottish Ministers consider appropriate in all the circumstances of the case.

45 Further provision as to compliance and remediation notices

(1) A compliance notice or remediation notice—

(a) must be served on any person carrying on or in control of the activity to which the notice relates,

(b) if a marine licence has been granted in relation to that activity, may also be served on the licensee.

(2) The Scottish Ministers may by a further notice—

(a) revoke a compliance notice or remediation notice,

(b) vary a compliance notice or remediation notice so as to extend the period specified in accordance with section 43(4)(c) or (as the case may be) section 44(5)(d).

(3) A person who fails to comply with—

(a) a compliance notice, or

(b) a remediation notice,

commits an offence.

(4) A person guilty of an offence under subsection (3) is liable—

(a) on summary conviction, to a fine not exceeding £50,000,

(b) on conviction on indictment, to a fine or to imprisonment for a period not exceeding 2 years, or to both.

Civil sanctions

46 Fixed monetary penalties

(1) The Scottish Ministers may by order make provision about the imposition of fixed monetary penalties on persons in relation to offences under this Part.

(2) Provision under subsection (1) must provide that—

(a) fixed monetary penalties may only be imposed where the Scottish Ministers are satisfied beyond reasonable doubt that a person has committed an offence under this Part,

(b) fixed monetary penalties are to be imposed by notice,

(c) the amount of the penalty which can be imposed in relation to an offence may not exceed the maximum amount of the fine that may be imposed on summary conviction for that offence.

(3) For the purpose of this Part, a "fixed monetary penalty" is a requirement to pay to the Scottish Ministers a penalty of a specified amount.

(4) For the purposes of this section "specified" means specified in an order made under this section.

47 Fixed monetary penalties: procedure

(1) Provision under section 46(1) must secure the results in subsection (2).

(2) The results are that—

(a) where the Scottish Ministers propose to impose a fixed monetary penalty on a person, they must serve on the person a notice of what is proposed (a "notice of intent") which complies with subsection (3),

(b) the notice of intent also offers the person the opportunity to discharge the person's liability for the fixed monetary penalty by payment of a specified sum (which must be less than or equal to the amount of the penalty),

(c) if the person does not so discharge liability—

(i) the person may make written representations and objections to the Scottish Ministers in relation to the proposed imposition of the fixed monetary penalty, and

(ii) the Scottish Ministers must at the end of the period for making representations and objections decide whether to impose the fixed monetary penalty,

(d) where the Scottish Ministers decide to impose the fixed monetary penalty, the notice imposing it ("the final notice") complies with subsection (5), and

(e) the person on whom a fixed monetary penalty is imposed may appeal to the sheriff against the decision to impose it.

(3) To comply with this subsection the notice of intent must include information as to—

(a) the grounds for the proposal to impose the fixed monetary penalty,

(b) how payment to discharge the liability for a fixed monetary payment may be made,

(c) the effect of payment of the sum referred to in subsection (2)(b),

(d) the right to make representations and objections,

(e) the circumstances in which the Scottish Ministers may not impose the fixed monetary penalty,

(f) the period within which liability to the fixed monetary penalty may be discharged, which must not exceed the period of 28 days beginning with the day on which the notice of intent was received, and

(g) the period within which representations and objections may be made, which must not exceed the period of 28 days beginning with the day on which the notice of intent was received.

(4) Provision to secure the result in subsection (2)(c)(ii)—

(a) must secure that the Scottish Ministers may not decide to impose a fixed monetary penalty on a person where they are satisfied that the person would not, by reason of any defence, be liable to be convicted of the offence in relation to which the penalty is proposed to be imposed, and

(b) may include provision for other circumstances in which the Scottish Ministers may not decide to impose a fixed monetary penalty.

(5) To comply with this subsection the final notice must include information as to—

(a) the grounds for imposing the penalty,

(b) how payment may be made,

(c) the period within which payment must be made,

(d) the early payment discounts or late payment penalties,

(e) rights of appeal, and

(f) the consequences of non-payment.

(6) Provision to secure the result in subsection (2)(e) must secure that the grounds on which a person may appeal against a decision of the Scottish Ministers include that—

(a) the decision was based on an error of fact,

(b) the decision was wrong in law,

(c) the decision was unreasonable.

(7) In this section "specified" means specified in an order made under section 46.

48 Variable monetary penalties

(1) The Scottish Ministers may by order make provision about the imposition of variable monetary penalties on persons in relation to offences under this Part.

(2) Provision under subsection (1) must provide that—

(a) variable monetary penalties may only be imposed where the Scottish Ministers are satisfied beyond reasonable doubt that a person has committed an offence under this Part,

(b) variable monetary penalties are to be imposed by notice.

(3) For the purposes of this Part a "variable monetary penalty" is a penalty of such amount as the Scottish Ministers may in each case determine.

49 Variable monetary penalties: procedure

(1) Provision under section 48 must secure the results in subsection (2).

(2) The results are that—

(a) where the Scottish Ministers propose to impose a variable monetary penalty on a person, they must serve on the person a notice (a "notice of intent") which complies with subsection (3),

(b) the person may make written representations and objections to the Scottish Ministers in relation to the proposed imposition of the penalty,

(c) after the end of the period for making such representations and objections the Scottish Ministers must decide whether to impose a penalty and, if so, the amount of the penalty,

(d) where the Scottish Ministers decide to impose a penalty, the notice imposing it (the "final notice") complies with subsection (6), and

(e) the person on whom a penalty is imposed may appeal to the sheriff against the decision as to the imposition or amount of the penalty.

(3) To comply with this subsection the notice of intent must include information as to—

(a) the grounds for the proposal to impose the penalty,

(b) the right to make representations and objections,

(c) the circumstances in which the Scottish Ministers may not impose the penalty, and

(d) the period within which representations and objections may be made, which may not be less than the period of 28 days beginning with the day on which the notice of intent is received.

(4) Provision to secure the result in subsection (2)(c)—

(a) must secure that the Scottish Ministers may not decide to impose a penalty on a person where they are satisfied that the person would not, by reason of any defence raised by that person, be liable to be convicted of the offence in question, and

(b) may include provision for other circumstances in which the Scottish Ministers may not decide to impose a penalty.

(5) Provision to secure the result in subsection (2)(c) must also include provision for—

(a) the person on whom the notice of intent is served to be able to offer an undertaking as to action to be taken by that person (including the payment of a sum of money) to benefit any person affected by the offence,

(b) the Scottish Ministers to be able to accept or reject such an undertaking, and

(c) the Scottish Ministers to take any undertaking so accepted into account in their decision.

(6) To comply with this subsection the final notice must include information as to—

(a) the grounds for imposing the penalty,

(b) how payment may be made,

(c) the period within which the payment must be made,

(d) any early payment discounts or late payment penalties,

(e) rights of appeal, and

(f) the consequences of non-payment.

(7) Provision to secure the result in subsection (2)(e) must secure that the grounds on which a person may appeal against a decision of the Scottish Ministers include that—

(a) the decision was based on an error of fact,

(b) the decision was wrong in law,

(c) the amount of the penalty is unreasonable,

(d) the decision was unreasonable for any other reason.

50 Further provision about civil sanctions

Schedule 2 makes further provision about civil sanctions under this Part.

Delegation

51 Delegation of functions relating to marine licensing

(1) The Scottish Ministers may make an order which—

(a) designates any of the delegable marine licensing functions which would (apart from any order under this section) be exercisable by the Scottish Ministers, and

(b) provides that the functions so designated (the "designated functions"), instead of being so exercisable, are to be exercisable by such delegate, acting on behalf of the Scottish Ministers as is designated in the order.

(2) The delegate so designated may be either—

(a) a public authority, or

(b) a group of persons comprising (either or both)—

(i) persons nominated by such public authorities with an interest in the Scottish marine area as the Scottish Ministers consider appropriate,

(ii) persons nominated by the Scottish Ministers.

(3) The Scottish Ministers may make an order under this section—

(a) where the proposed delegate is a public authority, only with the consent of the authority,

(b) where the proposed delegate is a group of persons referred to in paragraph (b) of subsection (2), only with the consent of any public authority responsible for nominating under sub-paragraph (i) of that paragraph.

(4) The delegate—

(a) must comply with the order, and

(b) is to be taken to have all the powers necessary to do so.

(5) In this section "delegable marine licensing functions" means functions of the Scottish Ministers under this Part other than excepted functions.

(6) The excepted functions are functions under—

(a) section 21(3) (altering the list of licensable marine activities),

(b) section 25(1)(b) (making regulations regarding the fee for an application),

(c) section 27(4)(a) (making order specifying consultees for licence applications),

(d) section 27(7) (making regulations as to the procedure for applications),

(e) section 32(1) and (5) (making orders specifying activities which do not require a marine licence and consulting in relation to such orders),

(f) section 33(1) (making regulations regarding activities falling below specified levels of environmental impact),

(g) section 35(3) (making orders providing for special procedures for certain applications),

(h) section 38(1) (making regulations regarding appeals against licensing decisions),

(i) sections 46(1) and 48(1) (making orders conferring powers to impose civil sanctions),

(j) this section and section 53,

(k) section 54(3) (making regulations regarding a register of licensing information),

(l) section 61 (making regulations regarding appeals against notices issued under sections 30, 43, 44, 55 or 57).

52 Orders under section 51: supplementary provisions

(1) For so long as an order made under section 51 remains in force, the designated functions are exercisable by the delegate acting on behalf of the Scottish Ministers (and are not exercisable by the Scottish Ministers).

(2) Subsection (1) is subject to any provision to the contrary which is included in the order.

(3) An order under section 51 may include—

(a) such terms or conditions,

(b) such obligations or requirements,

(c) such financial provisions,

as the Scottish Ministers may determine.

(4) The provision that may be made under subsection (3) includes, in particular, provision (where appropriate) as to—

(a) the manner in which the delegate is to exercise any of the functions,

(b) the form and manner in which licence applications must be made to the delegate,

(c) the persons to whom notice of an application should be published under section 26, and the circumstances in which such notice should not be published,

(d) matters (in addition to those set out in section 27) to which the delegate must have regard in determining applications for licences,

(e) the circumstances in which the delegate must exercise the power to consult under section 27(4), and the persons who must or may be consulted,

(f) the form and content of any licence granted,

(g) appeals from any decision of the delegate (whether to the Scottish Ministers, a court, tribunal or (as the case may be) person to which, or whom, the appeal is made),

(h) any other provision that may be made by virtue of section 27(7).

(5) An order under section 51 may make different provision for different cases or different delegates.

(6) Where an order has been made under section 51 that a delegate is to grant licences—

(a) the delegate may (in accordance with subsections (1) to (3) and (8) of section 30) vary, suspend, revoke or transfer a licence granted before making the order, and

(b) any reference in those subsections to a licence granted by the Scottish Ministers includes a reference to a licence granted by the delegate.

(7) The Scottish Ministers may make grants to a delegate for the exercise of the designated functions.

53 Directions to delegates as regards the performance of the marine licensing designated functions

(1) This section applies where any functions are exercisable by a delegate by virtue of an order made under section 51 by the Scottish Ministers.

(2) The Scottish Ministers may from time to time give directions to the delegate with respect to the performance of the functions.

(3) Before giving any direction under this section, the Scottish Ministers must consult the delegate.

(4) A delegate to whom directions are given under this section must comply with the directions.

(5) The Scottish Ministers must publish any direction given under this section in such manner as they consider is most likely to bring the direction to the attention of persons likely to be affected by it.

Register of licensing information

54 Register of licensing information

(1) The Scottish Ministers must maintain a register of marine licensing information.

(2) The register must contain prescribed particulars of or relating to—

(a) applications for licences,

(b) licences granted,

(c) variations of licences,

(d) revocations of licences,

(e) information supplied in connection with any licence in pursuance of any provision of this Part,

(f) convictions for any offence under this Part,

(g) any other action taken to enforce any provision of this Part,

(h) occasions on which any remedial action has been taken,

(i) such other matters relating to licences or the licensable marine activities as may be prescribed.

(3) The register must be maintained in accordance with regulations made by the Scottish Ministers.

(4) The Scottish Ministers must make arrangements—

(a) for the register to be available for inspection at all reasonable times by members of the public free of charge,

(b) for copies of entries in the register to be supplied, on request, to members of the public on payment of a reasonable charge.

(5) Information must not appear in the register if the Scottish Ministers determine that its disclosure in the register would adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate commercial interest.

(6) The Scottish Ministers must review a determination to exclude information under subsection (5) every 4 years.

(7) On a review under subsection (6), the Scottish Ministers must include information in the register unless, on the application of any person to whom the information relates, the Scottish Ministers determine that it should continue to be excluded.

(8) Where information of any description is excluded from a register by virtue of subsection (5), a statement must be entered in the register indicating the existence of information of that description.

(9) In this section "prescribed" means prescribed in regulations made under this section.

Stop notices and emergency safety notices

55 Notice to stop activity causing serious harm etc.

(1) If it appears to the Scottish Ministers that subsection (3) is satisfied in relation to a person carrying on an activity, they may issue a stop notice to the person.

(2) A stop notice is a notice prohibiting a person from carrying on an activity specified in the notice.

(3) This subsection is satisfied if—

(a) a person is carrying on, or is likely to carry on, a licensable marine activity (whether or not in accordance with a marine licence),

(b) the carrying on of the activity to be specified in the notice—

(i) is causing or is likely to cause any of the effects in subsection (4), or

(ii) is creating or is likely to create an imminent risk of any of those effects.

(4) The effects are—

(a) serious harm to the environment,

(b) serious harm to human health,

(c) serious interference with legitimate uses of the sea.

(5) A stop notice (in addition to specifying the activity to which it relates)—

(a) must state the Scottish Ministers' grounds for believing that subsection (3) is satisfied,

(b) must state the date and time from which the prohibition is to take effect (which may be a time on the date of the notice but must allow a period for compliance which is reasonable in all the circumstances of the case),

(c) may require the person to take such steps as the Scottish Ministers consider appropriate to ensure that the cessation of the activity takes place safely.

(6) Except in a case falling within subsection (8), a stop notice—

(a) ceases to have effect at the end of the period of 7 days (or such shorter period as may be specified in the notice) beginning with the date on which the prohibition takes effect, but

(b) may be renewed for a period specified in a further notice.

(7) A stop notice may be renewed more than once under subsection (6)(b), but not so that it has effect for a total period exceeding 35 days.

(8) If a stop notice relating to a licensable marine activity is issued to a person who does not hold a marine licence authorising the activity, the notice may remain in force until such time (if any) as such a licence is granted to the person.

56 Further provision as to stop notices

(1) A stop notice issued by the Scottish Ministers—

(a) must be served on any person carrying on or in control of the activity to which the notice relates,

(b) if a marine licence has been granted in relation to that activity, may also be served on the licensee.

(2) The Scottish Ministers may by a further notice—

(a) revoke a stop notice,

(b) vary a stop notice so as to substitute a later date for the date specified in accordance with section 55(5)(b).

(3) A person who fails to comply with a stop notice commits an offence.

(4) A person guilty of an offence under subsection (3) is liable—

(a) on summary conviction, to a fine not exceeding £50,000,

(b) on conviction on indictment, to a fine or to imprisonment for a period not exceeding 2 years, or both.

57 Emergency safety notices

(1) This section applies if it appears to the Scottish Ministers that serious interference with legitimate uses of the sea is occurring, or is likely to occur, as a result of—

(a) any works for the carrying out of which a marine licence is or was needed, or

(b) any substantial and unforeseen change in the state or position of any such works.

(2) The Scottish Ministers may issue a notice (an "emergency safety notice") to any person who is in control of the works to which the notice relates.

(3) By issuing an emergency safety notice to a person, the Scottish Ministers impose on that person such requirements as are specified in the notice with respect to any of the matters specified in subsection (4).

(4) The matters are—

(a) the provision of lights, signals or other aids to navigation,

(b) the stationing of guard ships.

(5) An emergency safety notice (in addition to specifying the requirements which it imposes)—

(a) must state the Scottish Ministers' grounds for believing that serious interference with legitimate uses of the sea is occurring, or is likely to occur,

(b) must state the date and time from which the requirements are to take effect (which may be at a time on the date of the notice but must allow a period for compliance which is reasonable in all the circumstances of the case),

(c) may require the person to take such steps as the Scottish Ministers consider appropriate to ensure that compliance with the requirements takes place safely.

58 Further provision as to emergency safety notices

(1) An emergency safety notice issued by the Scottish Ministers must be served on each of the following—

(a) if a marine licence has been granted authorising the carrying out of the works, the licensee,

(b) if there is in effect a stop notice which relates to the works, any person on whom the stop notice was served.

(2) The Scottish Ministers may by a further notice—

(a) revoke an emergency safety notice,

(b) vary an emergency safety notice so as to substitute a later date for the date specified in accordance with section 57(5)(b).

(3) A person who fails to comply with an emergency safety notice commits an offence.

(4) A person guilty of an offence under subsection (3) is liable—

(a) on summary conviction, to a fine not exceeding £50,000,

(b) on conviction on indictment, to a fine or to imprisonment for a period not exceeding 2 years, or to both.

Other powers

59 Power to take remedial action

(1) If it appears to the Scottish Ministers that a licensable marine activity has been carried on otherwise than under a marine licence and in accordance with its conditions, they may carry out any works that appear to them to be necessary or expedient for any one or more of the following purposes—

(a) protecting the environment,

(b) protecting human health,

(c) preventing interference with legitimate uses of the sea,

(d) preventing or minimising, or remedying or mitigating the effects of, any harm or interference falling within subsection (2),

(e) restoring (whether in whole or in part) the condition of any place affected by any such harm or interference to the condition, or a condition reasonably similar to the condition, in which the place would have been had the harm or interference not occurred.

(2) The harm or interference mentioned in subsection (1)(d) and (e) is any of the following which has been, is being, or is likely to be, caused by the carrying on of the licensable marine activity—

(a) harm to the environment,

(b) harm to human health,

(c) interference with legitimate uses of the sea.

60 Power to test and charge for testing certain substances

(1) The Scottish Ministers may, at the request of any person, conduct tests for the purpose of ascertaining the probable effect on the marine environment of using any substance for treating fouling matter—

(a) on or under the surface of the sea or of the seabed, or

(b) on any surface of a vessel, vehicle, aircraft or marine structure in, on or over the sea or on the seabed.

(2) In this section "fouling matter" means—

(a) oil or chemicals, or

(b) algae or other living or dead organisms.

(3) The Scottish Ministers may recover any expenses reasonably incurred in conducting any tests under subsection (1) from any person at whose request the tests were conducted.

Appeals against notices under this Part

61 Appeals against notices

(1) The Scottish Ministers must by regulations make provision for any person to whom a notice listed in subsection (2) is issued, to appeal to the sheriff against that notice.

(2) The notices are those issued under—

(a) section 30 (notice varying, suspending or revoking marine licence for breach of conditions),

(b) section 43 (compliance notice),

(c) section 44 (remediation notice),

(d) section 55 (stop notice), or

(e) section 57 (emergency safety notice).

(3) The regulations must come into force on the day on which this Part comes into force.

(4) The regulations may include provision—

(a) as to the procedure to be followed with respect to an appeal,

(b) suspending the notice pending determination of the appeal,

(c) as to the powers of the sheriff to whom the appeal is made.

Offences: supplementary provision

62 General defence of due diligence

(1) In any proceedings for an offence under this Part, it is a defence for the person charged ("the accused") to prove that the accused took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(2) The defence provided by subsection (1) is to be taken to be established—

(a) if the accused—

(i) acted under an employer's instructions,

(ii) did not know and had no reason to suppose that the acts done constituted a contravention of the provision in question, and

(iii) took all such steps as reasonably could be taken to ensure that no offence would be committed, or

(b) if the accused—

(i) acted in reliance on information supplied by another person,

(ii) did not know and had no reason to suppose that the information was false or misleading, and

(iii) took all such steps as reasonably could be taken to ensure that no offence would be committed.

(3) Subsection (2) does not affect the generality of subsection (1).

(4) If in any proceedings the defence provided by subsection (1) involves the allegation that the commission of the offence was due to—

(a) an act or default of another person (other than the giving of instructions to the accused by an employer), or

(b) reliance on information supplied by another person,

the accused is not, without leave of the court, entitled to rely on the defence unless the requirement in subsection (5) is satisfied.

(5) The requirement is that—

(a) at least 7 clear days before the hearing, and

(b) if the accused has previously appeared before a court in connection with the alleged offence, within one month of the first such appearance,

the accused has served on the prosecutor a notice giving such information identifying or assisting in the identification of the other person as was then in the accused's possession.

Power by order to provide marine fish farming is not "development"

63 Power by order to provide marine fish farming is not "development"

(1) The Town and Country Planning (Scotland) Act 1997 (c.8) is amended as follows.

(2) In section 26(1) (meaning of "development"), after "section" where it first occurs insert "and to section 26AB".

(3) After section 26AA, insert—

"26AB Power by order to provide marine fish farming is not "development"

(1) The Scottish Ministers may by order provide that—

(a) section 26(6) does not apply as respects the placing or assembly of equipment for the purpose of fish farming in waters identified in the order (the "relevant waters"),

(b) section 26(6AA) does not apply as respects any material change in the use of equipment so placed or assembled for that purpose, and

(c) the operation of a marine fish farm in the relevant waters in the circumstances specified in section 26AA is not "development" for the purposes of this Act.

(2) An order under subsection (1) may be made only with the agreement of the planning authority (or planning authorities) for the relevant waters; and in this subsection the "planning authority" means the planning authority specified in an order under section 26(6D).".

(4) In section 275 (regulations and orders)—

(a) in subsection (4), after "26(2)(f), (6A) and (6C)," insert "26AB(1),",

(b) in subsection (5A), after "26(6A) or (6C)" insert "or 26AB(1)".

Interpretation of Part 4

64 Interpretation of Part 4

(1) In this Part—

"marine licence" means a licence granted under this Part,

"vessel" includes—

(a) hovercraft,

(b) any other craft capable of travelling on, in or under water, whether or not self propelled.

(2) In this Part any reference to the environment includes a reference to any site (including any site comprising, or comprising the remains of, any vessel, aircraft or marine structure) which is of historical or archaeological interest.

PART 5

MARINE PROTECTION AND ENHANCEMENT: THE SCOTTISH MARINE PROTECTION AREA

The Scottish marine protection area

65 The Scottish marine protection area

(1) For the purposes of this Act, the "Scottish marine protection area" means the Scottish marine area, excluding any waters upstream of the fresh-water limit of estuarial waters.

(2) In this Part, "estuarial waters" means any waters within the limits of transitional waters, within the meaning of Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for Community action in the field of water policy (as amended from time to time).

66 "Sea" for the purposes of this Part

For the purposes of this Part, "sea" has the meaning given in section 2, except that it does not include any waters upstream of the fresh-water limit of estuarial waters.

Designation of marine protected areas

67 Marine protected areas

(1) The Scottish Ministers may by order (a "designation order") designate any area of the Scottish marine protection area as—

(a) a nature conservation marine protected area (a "Nature Conservation MPA"),

(b) a demonstration and research marine protected area (a "Demonstration and Research MPA"),

(c) a historic marine protected area (a "Historic MPA").

(2) The reference in subsection (1) to any area of the Scottish marine protection area includes a reference to any island in that area of sea, whether or not any part of the island lies above mean high water spring tide.

(See sections 68 to 73 for additional requirements relating to designating, and additional areas that may be included in, these marine protected areas).

Nature Conservation MPAs

68 Nature Conservation MPAs: additional requirements relating to designation

(1) An area may be designated by a designation order as a Nature Conservation MPA if the Scottish Ministers consider it desirable to do so for any of the following purposes—

(a) conserving marine flora or fauna,

(b) conserving—

(i) marine habitats or types of such habitat,

(ii) features of geological or geomorphological interest.

(2) The Scottish Ministers must—

(a) prepare and publish guidance setting out scientific criteria to inform consideration of whether an area should be designated a Nature Conservation MPA, and

(b) have regard to such guidance in exercising their functions under section 67.

(3) The designation order must state—

(a) the protected feature or features in,

(b) the conservation objectives for,

the Nature Conservation MPA.

(4) 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 79(2)).

(5) For the purposes of subsection (1)(a), conserving marine flora or fauna includes (in particular) conserving any species that is rare or threatened because of—

(a) the limited number of individuals of that species,

(b) the limited number of locations in which that species is present.

(6) For the purposes of subsection (1)(a) and (b)(i), 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.

(7) 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.

(8) In considering whether it is desirable to designate an area as a Nature Conservation MPA, the Scottish Ministers may have regard to any social or economic consequences of designation.

(9) In considering whether to designate an area, the Scottish Ministers may have regard in particular to the views of any relevant delegate as to the desirability of conserving—

(a) marine flora or fauna,

(b) marine habitats or types of such habitat,

(c) features of geological or geomorphological interest,

in the area.

(10) In considering whether to designate a Nature Conservation MPA for a purpose referred to in subsection (1)(b), the matters to which the Scottish Ministers may have regard include the degree to which a marine habitat or type of such habitat or (as the case may be) a feature of geological or geomorphological interest is representative of its type.

(11) For the purposes of—

(a) this section, conserving a thing includes—

(i) assisting in its conservation,

(ii) enabling or facilitating its recovery or increase,

(b) subsection (9), a "relevant delegate" means any delegate designated in a direction under section 12(1)(b) to exercise functions in relation to a regional marine plan for the Scottish marine region in which any part of the proposed Nature Conservation MPA lies.

69 Nature Conservation MPAs: further provision

(1) A designation order designating an area as a Nature Conservation MPA—

(a) must identify the area's boundaries,

(b) may provide for a boundary to be determined by, or by reference to, mean high water spring tide.

(2) A Nature Conservation MPA may include (in addition to an area of sea referred to in section 67(1)) an area of seashore lying above mean high water spring tide if—

(a) the area of seashore adjoins the area of sea, and

(b) any of the conditions in subsection (3) is satisfied.

(3) The conditions are that—

(a) the protected feature or features leading to the designation of the area of sea is or are also present in the area of seashore,

(b) the area of sea is designated for the purpose of conserving marine flora or fauna which are dependent (wholly or in part) on anything which takes place in, or is present in, the area of seashore,

(c) without the inclusion of the area of seashore, the identification of the boundary of the Nature Conservation MPA (either in the order designating the MPA or on the ground for the purposes of exercising functions in relation to it) would be impossible or impracticable.

70 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 103, in particular subsections (1) and (3)(d)).

Demonstration and Research MPAs

71 Demonstration and Research MPAs: additional requirements relating to designation

(1) An area may be designated by a designation order as a Demonstration and Research MPA if the Scottish Ministers consider it desirable to do so for any of the following purposes—

(a) demonstration of sustainable methods of marine management or exploitation,

(b) research into such matters.

(2) The order must state—

(a) whether it is for the purpose of demonstration or research, or both,

(b) the method or methods of marine management or exploitation to be demonstrated or researched.

(3) In considering whether to designate an area, the Scottish Ministers may—

(a) have regard in particular to the views of any relevant delegate as to the desirability of demonstrating or researching sustainable methods of marine management or exploitation in the area,

(b) have regard to any social or economic consequences of designation.

(4) For the purposes of subsection (3)(a), a "relevant delegate" means any delegate designated in a direction under section 12(1)(b) to exercise functions in relation to a regional marine plan for the Scottish marine region in which any part of the proposed Demonstration and Research MPA lies.

72 Demonstration and Research MPAs: further provision

(1) A designation order designating an area as a Demonstration and Research MPA—

(a) must identify the area's boundaries,

(b) may provide for a boundary to be determined by, or by reference to, mean high water spring tide.

(2) A Demonstration and Research MPA may include (in addition to an area of sea referred to in section 67(1)) an area of seashore lying above mean high water spring tide if—

(a) the area of seashore adjoins the area of sea, and

(b) the inclusion of the area of seashore is necessary to further or support the purpose for which the area of sea is designated.

Historic MPAs

73 Historic MPAs: additional requirements etc.

(1) An area may be designated by a designation order as a Historic MPA if the Scottish Ministers consider it desirable to do so for the purpose of preserving a marine historic asset of national importance which is, or which they are satisfied may be, located in the area.

(2) The order must—

(a) specify any marine historic asset located, or which the Scottish Ministers are satisfied may be located, within the area,

(b) state the preservation objectives for the asset and the area,

(c) identify the area's boundaries.

(3) For the purpose of subsection (2)(c), an order may provide for the boundary to be determined by, or by reference to, mean high water spring tide.

(4) A Historic MPA may include (in addition to an area of sea referred to in section 67(1)) an area of seashore lying above mean high water spring tide if the area of seashore adjoins the area of sea.

(5) For the purposes of this Part, a marine historic asset is any of the following—

(a) a vessel, vehicle or aircraft (or a part of a vessel, vehicle or aircraft),

(b) the remains of a vessel, vehicle or aircraft (or a part of such remains),

(c) an object contained in, or formerly contained in, a vessel, vehicle or aircraft,

(d) a building or other structure (or a part of a building or structure),

(e) a cave or excavation,

(f) a deposit or artefact (whether or not formerly part of a cargo of a ship) or any other thing which evidences, or groups of things which evidence, previous human activity.

Amendment or revocation of designation orders

74 Amendment or revocation of designation orders

A designation order may be amended or revoked by a further such order.

Consultation, urgent designation, representations etc.

75 Publicity and consultation etc. before designation

(1) Before making a designation order (or an order amending or revoking any such order), the Scottish Ministers must (except where section 77 provides otherwise)—

(a) publish notice of their proposal to make the order,

(b) consult such persons as they consider are likely to be interested in or affected by the making of the order—

(i) including, in particular, any local authority whose area is adjacent to the likely boundaries of the area proposed to be designated,

(ii) including those specified by virtue of section 27(4)(a).

(2) Notice under subsection (1)(a) must—

(a) be published in such manner as the Scottish Ministers consider is most likely to bring the proposal to the attention of any persons likely to be affected by the making of the order,

(b) contain a statement of the terms of the proposed order,

(c) indicate where a plan or chart identifying the area's boundaries can be obtained or inspected.

76 Publicity in relation to designation orders

(1) This section applies where the Scottish Ministers have made a designation order (or an order amending or revoking any such order).

(2) The Scottish Ministers must publish notice of the making of the order.

(3) The notice under subsection (2) must—

(a) be published in such a manner as the Scottish Ministers consider is most likely to bring the order to the attention of any persons likely to be affected by the making of it,

(b) give an address at which a copy of the order may be inspected.

(4) The Scottish Ministers must—

(a) make a copy of the order available for inspection at the address specified under subsection (3)(b) at all reasonable hours,

(b) provide a copy of the order to any person who requests one.

(5) The Scottish Ministers may charge a fee, not exceeding their expenses, for providing a copy under subsection (4)(b).

77 Urgent designation

(1) In any case where the Scottish Ministers consider there is an urgent need to protect the area proposed to be designated or (as the case may be) to protect a marine historic asset within the area (and so an urgent need to make a designation order)—

(a) they need not publish notice of their proposals under section 75(1)(a) or consult under section 75(1)(b),

(b) the order remains in force for such period, not exceeding 2 years, as is specified in it (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).

(2) 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 75(1)(a),

(b) consulting under section 75(1)(b).

78 Representations and hearing in relation to proposed designation order

(1) The Scottish Ministers may, before deciding whether to make a designation order (or an order amending or revoking any such order), give any person the opportunity of making oral or written representations to them or to any person appointed by them for that purpose at a hearing.

(2) The Scottish Ministers may make regulations providing for the procedure to be followed (including decisions as to expenses) at any hearing held under subsection (1).

Duties relating to network

79 Creation of network of conservation sites

(1) In order to contribute to the achievement of the objective in subsection (2), the Scottish Ministers must designate areas as Nature Conservation MPAs under section 67.

(2) The objective is that the areas designated as Nature Conservation MPAs by the Scottish Ministers, taken together with any areas designated as marine conservation zones under section 116 of the 2009 Act and any relevant conservation sites in the UK marine area, form a network which satisfies the conditions in subsection (3).

(3) The conditions are—

(a) that the network contributes to the conservation or improvement of the marine environment in the UK marine area,

(b) that the features which are protected by the sites comprised in the network represent the range of features present in the UK marine area,

(c) that the designation of sites comprised in the network reflects the fact that the conservation of a feature may require the designation of more than one site.

(4) For the purposes of subsection (2), the following are "relevant conservation sites"—

(a) any European marine site,

(b) any European offshore marine site,

(c) the whole or part of any site of special scientific interest,

(d) the whole or part of any Ramsar site.

(5) When complying with the duty imposed by subsection (1), the Scottish Ministers must have regard to any obligations under EU or international law that relate to the conservation or improvement of the marine environment.

(6) Before the end of the period of 2 months beginning with the date on which this section comes into force, the Scottish Ministers must—

(a) prepare a statement setting out such principles relating to the achievement of the objective in subsection (2) as the Scottish Ministers intend to follow when complying with the duty imposed by subsection (1), and

(b) lay of copy of the statement before the Parliament.

(7) A statement prepared by the Scottish Ministers under this section may also set out other matters relating to the achievement of that objective which they intend to take into account when complying with the duty imposed by subsection (1).

(8) The Scottish Ministers must—

(a) keep under review any statement they have prepared under this section, and,

(b) if they consider it appropriate in consequence of a review, prepare a revised statement of the principles referred to in subsection (6)(a) and lay a copy of it before the Parliament.

(9) In this section—

"European offshore marine site" means any site within the meaning of the Offshore Marine Conservation (Natural Habitats, &c) Regulations 2007 (S.I. 2007/1842),

"feature" means—

(a) marine flora or fauna,

(b) marine habitats or types of such habitat,

(c) features of geological or geomorphological interest,

"Ramsar site" has the same meaning as in section 37A of the Wildlife and Countryside Act 1981 (c.69),

"site of special scientific interest" includes a site within the meaning of Part 2 of the Wildlife and Countryside Act 1981.

Advice etc. as regards protection of certain marine areas

80 Advice etc. by Scottish Natural Heritage as regards Nature Conservation MPAs and Demonstration and Research MPAs

(1) Scottish Natural Heritage may give advice and guidance as to—

(a) the matters which are capable of damaging or otherwise affecting any protected feature (or the protected features) of a Nature Conservation MPA or (as the case may be) a stated purpose for a Demonstration and Research MPA,

(b) the matters which are capable of affecting any ecological or geomorphological process on which the conservation of any such protected feature or features or (as the case may be) any such stated purpose is (wholly or in part) dependent,

(c) how any stated conservation objectives for a Nature Conservation MPA or any stated purpose for a Demonstration and Research MPA may be furthered, or how the achievement of any such objectives or purpose may be hindered,

(d) how the effect of any activity or activities on any Nature Conservation MPA, Demonstration and Research MPA or such marine protected areas generally may be mitigated,

(e) which activities are, or are not, of equivalent environmental benefit (for the purposes of section 83(4)(b)(iii) (public authorities authorising certain acts)) to any particular damage to the environment (within the meaning of that provision).

(2) Advice or guidance as to any of the matters in paragraphs (a) to (e) of subsection (1) may be given—

(a) in relation to—

(i) a particular Nature Conservation MPA or Demonstration and Research MPA,

(ii) each such category of marine protected area, or all such marine protected areas, generally,

(b) in relation to a particular public authority or public authorities generally.

(3) Scottish Natural Heritage must give such advice to a public authority if the authority requests it.

81 Advice and guidance by the Scottish Ministers as regards MPAs

(1) The Scottish Ministers may give advice and guidance as to—

(a) the matters in section 80(1)(a) to (e),

(b) the matters which are capable of damaging or otherwise affecting any marine historic asset in a Historic MPA,

(c) how any stated preservation objectives for a Historic MPA may be furthered, or how the achievement of any such objectives may be hindered,

(d) the assessment by a public authority of the matters in section 83(4)(b)(i) and (ii) including what factors the authority should take into account.

(2) Advice or guidance as to any of the matters in paragraph (a) or (d) of subsection (1) may be given—

(a) in relation to—

(i) a particular Nature Conservation MPA, Demonstration and Research MPA or Historic MPA,

(ii) each such category of marine protected area, or all such marine protected areas, generally,

(b) in relation to a particular public authority or public authorities generally.

General duties of public authorities

82 Duties of public authorities in relation to marine protected areas etc.

(1) Where a public authority has any function the exercise of which is capable of affecting (other than insignificantly)—

(a) any protected feature of a Nature Conservation MPA,

(b) a stated purpose for a Demonstration and Research MPA,

(c) a marine historic asset in a Historic MPA,

(d) any ecological or geomorphological process on which the conservation of any protected feature in a Nature Conservation MPA, or on which a stated purpose for a Demonstration and Research MPA, is (wholly or in part) dependent,

the authority must comply with the requirements imposed by this section.

(2) The authority must (so far as is consistent with the proper exercise of its functions)—

(a) exercise its functions in the manner which it considers best furthers (as the case may be)—

(i) the stated conservation objectives for the Nature Conservation MPA,

(ii) the stated purpose for the Demonstration and Research MPA,

(iii) the stated preservation objectives for the Historic MPA,

(b) where it is not possible to exercise its functions in a manner which furthers the objectives or (as the case may be) the purpose, exercise them in the manner which the authority considers least hinders the achievement of the objectives or (as the case may be) the purpose.

(3) If the authority considers that any of its functions is such that the exercise of the function would or might significantly hinder the achievement of the relevant objectives or (as the case may be) purpose, it must inform the Scottish Ministers and (if appropriate) Scottish Natural Heritage of that fact.

(4) Subject to subsection (6), subsection (5) applies in any case where a public authority intends to do an act which is capable of affecting (other than insignificantly) any feature, purpose, asset or process mentioned in paragraphs (a) to (d) of subsection (1).

(5) If the authority believes that there is or may be a significant risk of the act hindering the achievement of the objectives or purpose mentioned in subsection (2)(a), the authority must notify the Scottish Ministers and (if appropriate) Scottish Natural Heritage of that fact.

(6) Subsection (5) does not apply where—

(a) in relation to acts of a particular description—

(i) Scottish Natural Heritage has given advice or guidance to the authority under section 80,

(ii) the Scottish Ministers have given advice or guidance to the authority under section 81,

(b) the act which the authority intends to do is an act of that description, and

(c) the advice or guidance has not ceased to apply.

(7) Where the authority has given notification under subsection (5), it must wait until the expiry of 28 days beginning with the date that the Scottish Ministers and (if appropriate) Scottish Natural Heritage are notified (and if such notification is given on different dates, the later of those dates) before deciding whether to do the act.

(8) Subsection (7) does not apply where—

(a) the Scottish Ministers notify the authority that it need not wait until the end of the period referred to in that subsection, or

(b) the authority thinks that there is an urgent need to act.

(9) 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 79(2)).

(10) If a public authority considers that there has been any act or omission falling within subsection (11), it must inform the Scottish Ministers and (if appropriate) Scottish Natural Heritage of that fact.

(11) The act or omission is one—

(a) in relation to which the public authority exercises functions,

(b) which the authority believes to be an offence, and

(c) which the authority considers will or may significantly hinder the achievement of (as the case may be)—

(i) the stated conservation objectives for a Nature Conservation MPA,

(ii) a stated purpose for a Demonstration and Research MPA,

(iii) the stated preservation objectives for a Historic MPA.

(12) In carrying out its duties under this section, a public authority must have regard to any advice or guidance given by Scottish Natural Heritage under section 80 or by the Scottish Ministers under section 81.

(13) For the purposes of subsections (3), (5) and (10) it is appropriate to inform Scottish Natural Heritage where the exercise of the public authority's functions or the act or omission in question relates to a Nature Conservation MPA or a Demonstration and Research MPA.

83 Duties of public authorities in relation to certain decisions

(1) This section applies where—

(a) a public authority has the function of determining an application (whenever made) for authorisation of the doing of any act, and

(b) the act is capable of affecting (other than insignificantly)—

(i) a protected feature in a Nature Conservation MPA,

(ii) a stated purpose for a Demonstration and Research MPA,

(iii) a marine historic asset in a Historic MPA,

(iv) any ecological or geomorphological process on which the conservation of any protected feature in a Nature Conservation MPA, or on which the stated purpose for a Demonstration and Research MPA, is (wholly or in part) dependent.

(2) The public authority must notify the Scottish Ministers and (if appropriate) Scottish Natural Heritage if it believes that there is or may be a significant risk of the act hindering the achievement of (as the case may be)—

(a) the stated conservation objectives for the Nature Conservation MPA,

(b) the stated purpose for the Demonstration and Research MPA,

(c) the stated preservation objectives for the Historic MPA.

(3) Where the authority has given notification under subsection (2), it must wait until the expiry of the period of 28 days beginning with the date of the notification before deciding whether to grant authorisation for the doing of the act, unless either—

(a) the Scottish Ministers notify the authority that it need not wait until the end of that period, or

(b) the authority thinks there is an urgent need to grant authorisation for the doing of the act.

(4) The authority must not grant authorisation for the doing of the act unless either—

(a) the person applying for the authorisation satisfies the authority that there is no significant risk of the act hindering the achievement of (as the case may be)—

(i) the stated conservation objectives for the Nature Conservation MPA,

(ii) the stated purpose for the Demonstration and Research MPA,

(iii) the stated preservation objectives for the Historic MPA,

(b) that person is not able to satisfy the authority as mentioned in paragraph (a) but—

(i) satisfies it that there is no other means of proceeding with the act which would create a substantially lower risk of hindering the achievement of those objectives or (as the case may be) that purpose,

(ii) satisfies it that the benefit to the public of proceeding with the act clearly outweighs the risk of damage to the environment (or the marine historic asset) that will be created by proceeding with it, and

(iii) in relation to a Nature Conservation MPA or a Demonstration and Research MPA, satisfies it and the Scottish Ministers that the person will undertake, or make arrangements for the undertaking of, measures of equivalent environmental benefit to the damage which the act will or is likely to have in or on the marine protected area concerned.

(5) The reference in subsection (4)(b)(i) to other means of proceeding with an act includes a reference to proceeding with it—

(a) in another manner, or

(b) at another location.

(6) In a case which relates to a Nature Conservation MPA or a Demonstration and Research MPA and which falls within paragraph (b) of subsection (4) the authority must—

(a) if it has power to grant the authorisation subject to conditions, exercise that power so as to make it a condition of the authorisation that the measures mentioned in sub-paragraph (iii) of that paragraph are undertaken,

(b) notify the Scottish Ministers that it proposes to grant the authorisation and of the conditions subject to which it proposes to grant it,

(c) wait until the expiry of the period of 28 days beginning with the date of the notification before so granting the authorisation, unless the Scottish Ministers notify the authority that it need not wait until the end of that period.

(7) In a case which relates to a Historic MPA and which falls within paragraph (b) of subsection (4) the authority must—

(a) if it has power to grant the authorisation subject to conditions, exercise that power so as to make it a condition of the authorisation that before the act in question is commenced, a detailed archaeological investigation of the area is carried out,

(b) notify the Scottish Ministers that it proposes to grant the authorisation and of the conditions subject to which it proposes to grant it,

(c) wait until the expiry of the period of 28 days beginning with the date of the notification before so granting the authorisation, unless the Scottish Ministers notify the authority that it need not wait until the end of that period.

(8) In carrying out its duties under this section, a public authority must have regard to any advice or guidance given by Scottish Natural Heritage under section 80 or by the Scottish Ministers under section 81.

(9) For the purpose of subsection (2), it is appropriate to inform Scottish Natural Heritage where the act in question relates to a Nature Conservation MPA or a Demonstration and Research MPA.

(10) In this section—

"act" includes omission,

"authorisation" means any approval, confirmation, consent, licence, permission or other authorisation (however described), whether special or general,

"damage" includes the prevention of an improvement.

84 Failure to comply with duties

(1) In relation to a Nature Conservation MPA or a Demonstration and Research MPA if, in the opinion of Scottish Natural Heritage, a public authority has failed—

(a) to act in accordance with advice or guidance given by Scottish Natural Heritage under section 80,

(b) to comply with any of its duties under section 82(2) or 83(3) or (4),

Scottish Natural Heritage may request from the authority an explanation in writing for the failure.

(2) Scottish Natural Heritage must send a copy of a request by it under subsection (1) to the Scottish Ministers.

(3) On receiving a request under this subsection (1), the public authority must—

(a) provide Scottish Natural Heritage with the requested explanation for the failure,

(b) send a copy of the explanation to the Scottish Ministers.

(4) If, in the opinion of the Scottish Ministers, a public authority has failed to act in accordance with advice or guidance given by them under section 81, they may request from the authority an explanation in writing of the failure, and the authority must provide them with it.

(5) In relation to a Historic MPA if, in the opinion of the Scottish Ministers, a public authority has failed to comply with any of its duties under section 82(2) or 83(3) or (4), the Ministers may request from the authority an explanation in writing for the failure, and the authority must provide them with it.

Marine conservation orders

85 Marine conservation orders

(1) The Scottish Ministers may make one or more orders ("marine conservation orders") for any or all of the following purposes—

(a) that of furthering the stated conservation objectives for a Nature Conservation MPA,

(b) that of furthering a stated purpose for a Demonstration and Research MPA,

(c) that of furthering the stated preservation objectives for a Historic MPA,

(d) where any such marine protected area—

(i) includes all or part of (or is included in whole or part in) a European marine site, or

(ii) adjoins a European marine site,

that of protecting the European marine site.

(2) An order under this section may be made so as to apply to any area in Scotland.

(3) Section 86 provides some examples of the provision that may be made by a marine conservation order.

(4) An order under this section—

(a) may provide that paragraph (b) of section 97(1) does not apply in relation to—

(i) an offence under section 94 of contravening the order,

(ii) an offence under section 95 (where the order is made for the purpose of furthering the stated conservation objectives for a Nature Conservation MPA),

(iii) an offence under section 96 (where the order is made for the purpose of furthering the stated preservation objectives for a Historic MPA),

(b) may be made subject to specified exceptions,

(c) may make different provision for different cases, including (in particular)—

(i) different parts of the protected area,

(ii) different times of the year,

(iii) different means or methods of carrying out any activity.

(5) In this section and section 86—

(a) the conservation objectives for a European marine site mean the protection of the natural feature by reason of which the site is considered to be of significance in relation to the Habitats Directive or the Wild Birds Directive,

(b) "natural feature" in relation to a European marine site, means—

(i) any of its flora or fauna,

(ii) any natural habitat existing in it,

(c) "specified" means specified in the order.

86 Example provisions for marine conservation orders

(1) The provision that may be made by a marine conservation order includes provision prohibiting, restricting or regulating—

(a) entry into or movement, activity or works in the area protected by the order ("the protected area") by a—

(i) person,

(ii) animal,

(iii) vessel (or a specified type of vessel), or

(iv) vehicle or thing (or a specified type of vehicle or thing),

(b) the anchoring of any vessel (or types of vessel) within the protected area (including the fixing of moorings or anchors to the seabed),

(c) the killing, taking, destruction, molestation or disturbance of animals or plants of any description in the protected area,

(d) the removal of all or part of any thing (or category of things) from the protected area, including in particular all or part of a marine historic asset,

(e) the depositing (by any means) of anything in a protected area,

(f) the doing of anything in the protected area which, in the opinion of the Scottish Ministers, may—

(i) interfere with or damage the seabed,

(ii) damage or disturb any object in the protected area (including a marine historic asset),

(iii) otherwise cause harm to the protected area.

(2) The provision that may be made may also—

(a) restrict the speed at which any vessel or vehicle may move in the protected area or in any specified area outside the protected area where that movement might hinder—

(i) where the protected area is a Nature Conservation MPA, the stated conservation objectives for it,

(ii) where the protected area is a Demonstration and Research MPA, a stated purpose for it,

(iii) where the protected area is a Historic MPA, the stated preservation objectives for it,

(iv) where the protected area is a European marine site, the conservation objectives for it,

(b) include provision prohibiting or restricting entry into, or any movement or other activity on, any part of the seashore that adjoins the protected area by persons, animals or vehicles.

(3) For the purposes of subsection (1)(a), the reference to works or activities includes reference to—

(a) the use of equipment (or types of equipment),

(b) surveying or exploring a site (whether or not by intrusive methods),

(c) fixing or attaching anything to the seabed or (if appropriate) the seashore.

87 Procedure for marine conservation orders

(1) Before making a marine conservation order (or an order amending or revoking any such order), the Scottish Ministers must comply with subsections (2) to (7) (except where section 88 provides otherwise).

(2) The Scottish Ministers must send a copy of a draft of the order to any persons the Ministers consider are likely to be interested in or affected by the making of the order.

(3) The Scottish Ministers must place a copy of the draft of a marine conservation order or (as the case may be) the draft of an order amending or revoking any such order in such place or places as they consider is or are likely to be most convenient for the purpose of enabling it to be inspected by persons likely to be affected by the making of the order.

(4) The Scottish Ministers—

(a) must provide a copy of a draft of an order to any person who requests one,

(b) may charge a fee, not exceeding their expenses in doing so, for providing a copy under this subsection,

(5) Where the proposed order would apply to an area any part of which is land, the Scottish Ministers must provide a copy of a draft to the planning authority in whose district the land is situated.

(6) The Scottish Ministers must publish notice of their proposal to make an order.

(7) The notice must—

(a) be published in such manner as the Scottish Ministers consider is most likely to bring the proposal to the attention of any persons who are likely to be affected by the making of it,

(b) state where the copy or copies of the draft order have been placed by the Scottish Ministers in accordance with subsection (3),

(c) state the time within which representations about the draft order must be made to the Scottish Ministers.

(8) In subsection (5), "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).

88 Urgent orders

(1) In any case where the Scottish Ministers consider there is an urgent need to protect an area as respects which a marine conservation order may be made (and so an urgent need to make a marine conservation order), section 87 does not apply in relation to the making of the order.

(2) In such a case, the order (an "urgent marine conservation order")—

(a) comes into force on such date as is specified in it,

(b) remains in force (unless revoked) for such period, not exceeding 12 months, as is specified in it.

(3) The Scottish Ministers must publish notice of the making of an urgent marine conservation order.

(4) The notice must—

(a) be published in such manner as the Scottish Ministers consider is most likely to bring the urgent marine conservation order to the attention of any persons who are likely to be affected by the making of it,

(b) state that a copy of the order may be inspected at such office of the Scottish Ministers as is specified in the notice,

(c) state that the Scottish Ministers have power to revoke the order and that any person affected by the making of the order may make representations to them.

(5) The Scottish Ministers must keep under review the need for an urgent marine conservation order to remain in force.

(6) The Scottish Ministers may, by an order under this subsection (an "urgent continuation order"), provide that an urgent marine conservation order is to remain in force for such period, not exceeding 12 months, beyond that specified under subsection (2)(b) as is specified in the urgent continuation order.

(7) The Scottish Ministers may not make an urgent continuation order unless—

(a) they intend to make a marine conservation order (a "permanent order") in respect of the marine protected area concerned (in accordance with the requirements of section 87), and

(b) they have published notice of their proposal to make the permanent order.

89 Publicity in relation to marine conservation orders and urgent continuation orders

(1) The Scottish Ministers must send a copy of any order mentioned in subsection (2) to any persons they consider are likely to be interested in or affected by the order.

(2) The orders are—

(a) a marine conservation order (whether made in accordance with section 87 or an urgent marine conservation order made in accordance with section 88),

(b) an order amending or revoking a marine conservation order,

(c) an urgent continuation order.

(3) The Scottish Ministers must—

(a) make a copy of any order referred to in subsection (2) available for inspection at one of their offices at all reasonable hours,

(b) provide a copy of any such order to any person who requests one.

(4) The Scottish Ministers may charge a fee, not exceeding their expenses, for providing a copy under subsection (3)(b).

90 Representations and hearings in relation to proposed marine conservation orders etc.

(1) The Scottish Ministers may, before deciding to do any of the following—

(a) make a marine conservation order (whether in accordance with section 87 or an urgent marine conservation order in accordance with section 88),

(b) amend a marine conservation order,

(c) revoke a marine conservation order,

give any person the opportunity of making oral or written representations to them or to any person appointed by them for that purpose at a hearing.

(2) The Scottish Ministers may make regulations providing for the procedure to be followed (including decisions as to expenses) at any hearing held under subsection (1).

91 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 85(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 88.

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

92 Authorisation of things prohibited, regulated etc. by a marine conservation order

(1) A marine conservation order may provide for the Scottish Ministers to issue permits authorising anything which would, apart from any such permit, be unlawful under the order.

(2) The Scottish Ministers may attach to any such permit any condition which they consider appropriate.

(3) A marine conservation order may, in so far as it applies to a Historic MPA, also provide for the Scottish Ministers—

(a) by direction issued to any persons (or categories of persons) specified in the order to authorise the doing by the persons of anything (or any category of thing) specified in the direction which would, apart from the direction, be unlawful under the order,

(b) by direction issued generally to authorise the doing by any person of any thing or category of thing specified in the order which would, apart from the direction, be unlawful under the order.

(4) A direction under subsection (3) may attach to any authorisation given by it any condition which the Scottish Ministers consider appropriate.

(5) Any provision in a marine conservation order of the kind referred to in this section may include provision for the procedure to apply in relation to the making of applications, and the determination of applications, for such permits or authorisations.

93 Delegation of issuing permits or authorisations

(1) A marine conservation order may provide for the Scottish Ministers by direction to delegate to any person (or group of persons) specified in the direction the issuing of permits of the kind described in section 92(1), or such permits in relation to such things (or such things in such circumstances) as are specified in the order.

(2) A marine conservation order may, in so far as it applies to a Historic MPA, provide for the Scottish Ministers by direction to delegate to any person (or group of persons) specified in the direction the issuing of authorisations of the kind described in section 92(3), or such authorisations in relation to such things (or things in such circumstances) as are specified in the order.

Offences

94 Offences: contravening a marine conservation order

(1) A person who contravenes a marine conservation order commits an offence.

(2) A person who is guilty of an offence under this section is liable—

(a) on summary conviction, to a fine not exceeding £50,000,

(b) on conviction on indictment, to a fine.

(3) In determining the amount of any fine to be imposed on a person convicted of an offence under this section, the court must in particular have regard to any financial benefit which has accrued or appears likely to accrue to the person in consequence of the offence.

(4) In this section "contravene" includes fail to comply.

95 Offences relating to protected features of a Nature Conservation MPA

(1) A person commits an offence under this section if the person—

(a) intentionally or recklessly does a prohibited act in a Nature Conservation MPA (the "protected area"), and

(b) the act has significantly hindered, or may significantly hinder, the achievement of the stated conservation objectives for the protected area.

(2) For the purposes of subsection (1), a person does a prohibited act if the person—

(a) kills or injures any animal in the protected area which is a protected feature of the area,

(b) picks, collects, cuts, uproots or destroys any plant in the protected area which is a protected feature of the area,

(c) takes anything from the protected area which is, or forms part of, a protected feature of that area,

(d) damages or destroys any habitat or feature which is a protected feature of the protected area.

(3) A person who does anything which would, but for this subsection, amount to an offence under this section does not commit the offence if it is shown that—

(a) the act was the incidental result of a lawful operation,

(b) the person who carried out the lawful operation—

(i) took reasonable precautions for the purpose of carrying out the act, or

(ii) did not foresee, and could not reasonably have foreseen, that the act would be an incidental result of the carrying out of the lawful operation, and

(c) the person took such steps as were reasonably practicable in all the circumstances to minimise the hindrance (or potential hindrance) to the conservation objectives.

(4) A person who is guilty of an offence under this section is liable—

(a) on summary conviction, to a fine not exceeding £50,000,

(b) on conviction on indictment, to a fine.

(5) In determining the amount of any fine to be imposed on a person convicted of an offence under this section, the court must in particular have regard to any financial benefit which has accrued or appears likely to accrue to the person in consequence of the offence.

96 Offences relating to marine historic assets

(1) A person commits an offence under this section if the person—

(a) intentionally or recklessly does a prohibited act in a Historic MPA (the "protected area"), and

(b) the act has significantly hindered, or may significantly hinder, the achievement of the stated preservation objectives for the protected area.

(2) For the purposes of subsection (1), a person does a prohibited act if the person—

(a) carries out works or activities in the area which (or which are likely to)—

(i) damage or interfere with a marine historic asset,

(ii) have a significant impact on the protected area,

(b) removes, alters or disturbs a marine historic asset.

(3) A person who does anything which would, but for this subsection, amount to an offence under this section does not commit the offence if it is shown that—

(a) the act was the incidental result of a lawful operation,

(b) the person who carried out the lawful operation—

(i) took reasonable precautions for the purpose of carrying out the act, or

(ii) did not foresee, and could not reasonably have foreseen, that the act would be an incidental result of the carrying out of the lawful operation, and

(c) the person took such steps as were reasonably practicable in all the circumstances to minimise the hindrance (or potential hindrance) to the preservation objectives.

(4) A person who is guilty of an offence under this section is liable—

(a) on summary conviction, to a fine not exceeding £50,000,

(b) on conviction on indictment, to a fine.

(5) In determining the amount of any fine to be imposed on a person convicted of an offence under this section, the court must in particular have regard to any financial benefit which has accrued or appears likely to accrue to the person in consequence of the offence.

97 Exceptions to offences under section 94, 95 or 96

(1) A person is not guilty of an offence under section 94, 95, or 96 if the act which is alleged to constitute the offence—

(a) was an exercise of functions carried out in accordance with section 82(2) by a public authority,

(b) was expressly authorised by an authorisation granted by a public authority or was necessarily incidental to an act so authorised (and this paragraph is not disapplied in relation to the offence by virtue of section 85(4)(a)),

(c) was done in accordance with—

(i) a permit of the kind described in section 92(1), or

(ii) an authorisation of the kind described in section 92(3),

(d) was necessary—

(i) in the interests of national security,

(ii) in the interests of the prevention or detection of crime,

(iii) for securing public health.

(2) It is a defence for a person who is charged with an offence under section 95 or 96 to show that—

(a) the act which is alleged to constitute the offence was—

(i) an act done for the purpose of, and in the course of, sea fishing, or

(ii) an act done in connection with such an act, and

(b) the effect of the act on the protected feature or (as the case may be) the marine historic asset in question could not have reasonably been avoided.

(3) The Scottish Ministers may by order amend this section so as to remove, or restrict the application of, the defence provided by subsection (2).

(4) For the purposes of this section, "act" includes omission.

98 Prohibited act taken in an emergency

(1) It is a defence for a person charged with an offence under section 94, 95 or 96 to prove that—

(a) the act alleged to constitute the offence was carried out for the purpose of any of the following—

(i) saving life,

(ii) securing the safety of a vessel, aircraft or marine installation, and

(b) the person took steps within a reasonable time to inform the Scottish Ministers of the matters set out in subsection (2).

(2) The matters are—

(a) the fact that the act was carried out,

(b) the locality and circumstances in which it was carried out, and

(c) any substances or objects concerned.

(3) The defence provided by subsection (1) is not available to a person where—

(a) the court is not satisfied that the act either—

(i) was necessary for any of the purposes mentioned in subsection (1)(a), or

(ii) was a reasonable step to take in the circumstances, or

(b) the necessity for the act was due to the fault of the accused or a person acting under the accused's direction or control.

Marine management schemes

99 Marine management schemes

(1) A relevant authority (or 2 or more relevant authorities acting together) may establish one or more marine management schemes for any or all of the following areas—

(a) any Nature Conservation MPA,

(b) any Demonstration and Research MPA,

(c) any European marine site situated within the Scottish marine protection area and which—

(i) is included in whole or in part in,

(ii) includes all or part of, or

(iii) adjoins,

a Nature Conservation MPA or a Demonstration and Research MPA.

(2) A marine management scheme is a scheme under which the relevant authority's (or authorities') functions must be exercised for the purpose of furthering any or all of the following—

(a) the stated conservation objectives for any Nature Conservation MPA to which the scheme applies,

(b) the stated purposes for any Demonstration and Research MPA to which the scheme applies,

(c) the protection of any European marine site to which the scheme applies.

(3) A marine management scheme may also impose the same requirement in relation to the exercise of any functions of the relevant authority (or authorities) which are not exercisable within the area (or areas) to which the scheme applies but the exercise of which may have an impact on the protection of that area (or those areas).

(4) A marine management scheme may be made for a period of time specified in it.

(5) The relevant authority (or authorities) making a marine management scheme may amend it from time to time.

(6) In this section and sections 100 to 102, a "relevant authority" means—

(a) any public authority exercising functions in the Scottish marine protection area, or

(b) the Scottish Ministers.

100 Review of schemes

(1) A marine management scheme which is in effect at the end of a period mentioned in subsection (2) must be reviewed and updated by the relevant authority or authorities concerned by the end of that period.

(2) The periods are—

(a) the period of 5 years beginning with the date on which it was made,

(b) each subsequent period of 5 years.

101 Marine management schemes: consultation etc.

(1) Before making or amending a marine management scheme, the relevant authority (or authorities acting together) must consult Scottish Natural Heritage.

(2) Where a relevant authority (or authorities) has (or have) made or amended a marine management scheme, they must forthwith send a copy of the scheme as made or amended to the Scottish Ministers and Scottish Natural Heritage.

102 Directions as to making, amending or revocation of schemes

(1) The Scottish Ministers may give directions to a relevant authority (or any 2 or more such authorities) as to the making of marine management schemes.

(2) A direction under subsection (1) may in particular—

(a) require one or more schemes to be made,

(b) require conservation or other measures specified in the direction to be included in a scheme,

(c) where a scheme is to be made by more than one relevant authority acting together, appoint one such authority to co-ordinate the making of it,

(d) set time limits within which any steps in relation to the making of a scheme are to be taken,

(e) require the approval of the Scottish Ministers before a scheme is made,

(f) require any relevant authority to give to the Scottish Ministers such information relating to the making of a scheme as may be specified in the direction.

(3) The Scottish Ministers may give directions (whether general or specific) to a relevant authority (or any 2 or more such authorities) as to the amendment of a marine management scheme.

(4) The Scottish Ministers may revoke a marine management scheme by a direction given by them to the relevant authority (or authorities) which made the scheme.

(5) A direction under this section must be in writing.

(6) A relevant authority given a direction under subsection (1) or (3) must comply with it.

Reports to Parliament

103 Reports to Parliament

(1) Before the end of each relevant period, the Scottish Ministers must lay before the Parliament a report setting out the information mentioned in subsection (3).

(2) A report under subsection (1) may be in the form of a report combined with a report under section 124 of the 2009 Act.

(3) The information referred to in subsection (1) is—

(a) the number of—

(i) Nature Conservation MPAs,

(ii) Demonstration and Research MPAs,

(iii) Historic MPAs,

in designation orders made during the relevant period,

(b) in relation to each Nature Conservation MPA—

(i) its size,

(ii) the stated conservation objectives,

(c) in relation to each Demonstration and Research MPA—

(i) its size,

(ii) the stated purpose,

(d) in relation to each Nature Conservation MPA (whether in a designation order made before or during the relevant period)—

(i) the extent to which in the opinion of the Scottish Ministers the stated conservation objectives have been achieved,

(ii) any further steps which in their opinion are required to be taken in order to contribute to the achievement of those objectives,

(e) in relation to each Demonstration and Research MPA (whether in a designation order made before or during the relevant period)—

(i) the extent to which in the opinion of the Scottish Ministers the stated purpose has been achieved,

(ii) any further steps which in their opinion are required to be taken in order to contribute to the achievement of that purpose,

(f) information about any amendments made during the relevant period to any designation order by order under section 74,

(g) in relation to each Historic MPA (whether in a designation order made before or during the relevant period), a summary of the things for which authorisation by—

(i) permits of the kind described in section 92(1),

(ii) authorisations of the kind described in section 92(3),

has been sought during the relevant period,

(h) information about any marine conservation order or urgent continuation order made, or any amendment of any such order, during the relevant period,

(i) information about any marine management scheme made, or any amendment of any such scheme, during the relevant period,

(j) the extent to which in the opinion of the Scottish Ministers the exercise by them of the power in section 67(1)(a) to designate Nature Conservation MPAs contributes to the objective in section 79(2).

(4) In this section "the relevant period" means—

(a) the period beginning on the date on which this section comes into force and ending on 31 December 2012,

(b) each subsequent period of 6 years.

Licences granted under Wildlife and Countryside Act 1981

104 Grant of certain licences under Wildlife and Countryside Act 1981

(1) Section 16 of the Wildlife and Countryside Act 1981 (c.69) (power to grant licences) is amended as follows.

(2) After subsection (8A) (inserted by section 10(2) of the 2009 Act) insert—

"(8B) In this section, in the case of a licence under any of subsections (1) to (4), so far as relating to the Scottish marine area, "the appropriate authority" means the Scottish Ministers.".

(3) In subsection (9) (meaning of appropriate authority), at the beginning insert "Except as provided by subsection (8B)"—

(4) After subsection (9) insert—

"(9ZA) The Scottish Ministers may by direction delegate their power to grant licences in relation to the Scottish marine area under any of subsections (1) to (4) to Scottish Natural Heritage.

(9ZB) Delegation under subsection (9ZA) may be—

(a) in relation to a specific case,

(b) in relation to specific species of animal,

(c) in relation to a particular type of licence,

(d) in relation to a particular area.

(9ZC)A direction under subsection (9ZA) must be in writing.".

(5) After subsection (12) (inserted by section 10(4) of the 2009 Act), add—

"(13) In this section, the "Scottish marine area" has the meaning given by section 1(1) of the Marine (Scotland) Act 2010 (asp 5).".

Penalties in regulations implementing Habitats Directive

105 Penalties in regulations implementing the Habitats Directive for the Scottish marine area

Regulations under section 2(2) of the European Communities Act 1972 (c.68) for the purpose of implementing the Habitats Directive in relation to the Scottish marine area may, despite paragraph 1(1)(d) of Schedule 2 to that Act (which limits the penalties which may be imposed for criminal offences), create offences punishable—

(a) on summary conviction, with a fine not exceeding £50,000,

(b) on conviction on indictment, with an unlimited fine.

Interpretation of Part 5

106 Interpretation of Part 5

In this Part—

"animal" includes any egg, larva, pupa or other immature stage of an animal,

"protected feature", in relation to a Nature Conservation MPA or proposed Nature Conservation MPA, means any flora, fauna, habitat or feature which is sought to be conserved by the making of the order designating the area,

"seashore" means—

(a) the foreshore, that is to say, land which is covered and uncovered by the ordinary movement of the tide, and

(b) any land, whether or not covered intermittently by water, which is in apparent continuity (determined by reference to the physical characteristics of the land) with the foreshore, as far landward as any natural or artificial break in that continuity,

"stated conservation objectives" for a Nature Conservation MPA means the conservation objectives stated (in the designation order designating the area) as the conservation objectives for the area,

"stated preservation objectives" for a Historic MPA means the preservation objectives stated (in the designation order designating the area) as the preservation objectives for the area,

"stated purpose" for a Demonstration and Research MPA means a purpose stated (in the designation order designating the area) as a purpose for which the order is made,

"urgent marine conservation order" is to be construed in accordance with section 88 (being a marine conservation order made in accordance with that section, instead of section 87),

"vehicle" includes—

(a) a bicycle and other non-motorised form of transport,

(b) hovercraft,

"vessel" includes—

(a) hovercraft,

(b) aircraft capable of landing on water,

(c) any other craft capable of travelling on, in or under water, whether or not capable of carrying any person.

PART 6

CONSERVATION OF SEALS

Offence: killing, injuring or taking seals

107 Offence: killing, injuring or taking seals

Killing, injuring or taking a live seal (intentionally or recklessly) is an offence.

108 Exceptions: alleviating suffering

(1) It is not an offence under section 107 for a person to end a seal's life humanely (or to injure a seal when attempting to do so) if—

(a) it has been seriously disabled (otherwise than by the person's unlawful conduct),

(b) it has no reasonable chance of recovering, and

(c) ending its life—

(i) is the only satisfactory way to end its suffering, and

(ii) is not detrimental to the maintenance of the population of any species of seal at a favourable conservation status in their natural range (within the meaning of Article 1(e) of the Habitats Directive).

(2) It is not an offence under section 107 for a person to take a seal (or to kill or injure a seal when attempting to take it) if—

(a) it has been disabled (otherwise than by the person's unlawful conduct),

(b) it is (or is to be) taken only in order to—

(i) tend it with a view to releasing it after it has recovered, or

(ii) release it after it has been tended,

(c) it is (or is to be) taken in a manner and in circumstances unlikely to cause the seal to suffer unnecessarily, and

(d) taking it—

(i) is the only satisfactory way to help it to recover, and

(ii) is not detrimental to the maintenance of the population of any species of seal at a favourable conservation status in their natural range (within the meaning of Article 1(e) of the Habitats Directive).

(3) It is the duty of a person who kills, injures or takes a seal in a manner which is lawful by virtue of this section to report the matter to the Scottish Ministers as soon as reasonably practical after doing so.

(4) Failure to comply with the reporting duty is an offence.

109 Exceptions: licensed activity

It is not an offence under section 107—

(a) to kill or take a seal in accordance with a seal licence,

(b) to take a seal in order to, or to injure a seal when attempting to, kill it in accordance with a seal licence,

(c) to kill or injure a seal when attempting to take it in accordance with a seal licence, or

(d) to do anything in accordance with a licence granted under regulation 44 of the Conservation (Natural Habitats, &c.) Regulations.

Seal licences

110 Seal licences

(1) The Scottish Ministers may grant a licence (a "seal licence") authorising the killing or taking of seals—

(a) for scientific, research or educational purposes,

(b) to conserve natural habitats,

(c) to conserve seals or other wild animals (including wild birds) or wild plants,

(d) in connection with the introduction of seals, other wild animals (including wild birds) or wild plants to particular areas,

(e) to protect a zoological or botanical collection,

(f) to protect the health and welfare of farmed fish,

(g) to prevent serious damage to fisheries or fish farms,

(h) to prevent the spread of disease among seals or other animals (including birds) or plants,

(i) to preserve public health or public safety, or

(j) for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment.

(2) Before granting a seal licence under subsection (1)(g), 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)(g) 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.

111 Methods of killing or taking seals under seal licence

(1) A seal licence must specify the method which the licensee must use to kill or take seals.

(2) 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.

(3) A seal licence must not authorise a person to do anything which would contravene regulation 41 of the Conservation (Natural Habitats, &c.) Regulations.

This subsection does not restrict the things for which a licence may be granted under regulation 44 of those Regulations.

112 Seal licence conditions

(1) A seal licence must impose conditions—

(a) specifying the maximum number of seals which may be killed or taken, and

(b) 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.

(2) 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 carcases.

(3) A seal licence may impose other conditions.

(4) Conditions may, for example, specify—

(a) the area in which seals may be killed or taken,

(b) the species of seal which may be killed or taken,

(c) the circumstances in which seals may be killed or taken,

(d) 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.

(5) Failure to comply with a condition imposed is an offence.

(6) In any proceedings for such an offence, it is a defence for the person charged to prove that the person took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

113 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.

114 Variation or revocation of seal licence

A seal licence may be varied or revoked at any time.

115 Seal licence fees

(1) The Scottish Ministers may require an application for a seal licence or a variation of a seal licence to be accompanied by such fee as may be determined by, or in accordance with, regulations made by them.

(2) Regulations may provide for different fees for different descriptions of applications.

116 Consultation and consent

(1) The Scottish Ministers must consult the Natural Environment Research Council before granting or varying a seal licence.

(2) The Scottish Ministers must obtain the consent of Scottish Natural Heritage before granting or varying a seal licence authorising the killing or taking of seals in a protected area for a purpose mentioned in any of paragraphs (b) to (e) of section 110(1).

"protected area" means—

(a) a Nature Conservation MPA,

(b) a Demonstration and Research MPA,

(c) a Historic MPA,

(d) a site of special scientific interest,

(e) an area in respect of which a nature conservation order or land management order made under Part 2 of the Nature Conservation (Scotland) Act 2004 (asp 6) has effect,

(f) a nature reserve (within the meaning of Part 3 of the National Parks and Access to the Countryside Act 1949 (c.97)), or

(g) a European site (within the meaning of regulation 10 of the Conservation (Natural Habitats, &c.) Regulations).

Protection at haul-out sites

117 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.

Seal conservation areas

118 Seal conservation areas

(1) The Scottish Ministers may designate an area as a "seal conservation area" where they consider it necessary to do so in order to ensure the proper conservation of seals.

(2) The Scottish Ministers must consult the Natural Environment Research Council before designating a seal conservation area.

(3) The Scottish Ministers must—

(a) publish a designation in a manner which they consider most likely to bring the proposal to the attention of persons likely to be affected by it,

(b) make a copy of a designation available for inspection at one of their offices at all reasonable hours, and

(c) provide a copy of a designation to any person who requests one.

(4) The Scottish Ministers may charge a fee, not exceeding their expenses, for providing a copy under subsection (3)(c).

119 Effect of seal conservation area status: licensing decisions

The Scottish Ministers must not grant a seal licence authorising the killing or taking of seals in a seal conservation area unless they are satisfied—

(a) that there is no satisfactory alternative way of achieving the purpose for which the licence is granted, and

(b) that the killing or taking authorised by the licence will not be detrimental to the maintenance of the population of any species of seal at a favourable conservation status in their natural range (within the meaning of Article 1(e) of the Habitats Directive).

Authorisations to enter land

120 Power to enter land to obtain information about seals

(1) The Scottish Ministers may, after consulting the Natural Environment Research Council, authorise any person to enter any land to obtain information about seals in order to enable or assist the Scottish Ministers to perform their functions under this Part.

(2) Before granting such an authorisation, the Scottish Ministers must give notice to the occupier of the land setting out their intention to do so.

(3) An authorisation must specify—

(a) the land to be entered, and

(b) the period (of no more than 8 weeks) during which the land may be entered.

(4) An authorisation may be conditional.

121 Power to enter land to protect fisheries or fish farms from seals

(1) The Scottish Ministers may, after consulting the Natural Environment Research Council, authorise a person to enter land in order to kill or take seals in accordance with a seal licence granted for the purpose of preventing them from causing serious damage to fisheries or fish farms.

(2) Before granting such an authorisation, the Scottish Ministers must—

(a) give notice to the occupier of the land—

(i) setting out their intention to grant the authorisation, and

(ii) informing the occupier of the right to make representations to the Scottish Ministers within 28 days of the notice, and

(b) have regard to any timeous representations made by the occupier.

(3) An authorisation must specify—

(a) the land to be entered, and

(b) the period (of no more than 8 weeks) during which the land may be entered, and

(c) the number and species of seals that may be killed or taken.

(4) An authorisation may be conditional.

(5) Any seals killed or taken in pursuance of an authorisation belong to the Scottish Ministers (and may be disposed of as they think fit).

122 Duty to notify occupier

(1) The duty to notify an occupier under section 120(2) or 121(2)(a) may be fulfilled—

(a) by hand delivering the notice to the occupier,

(b) by sending the notice, by first class post or by a registered or recorded delivery postal service, in an envelope addressed to the occupier at—

(i) where sent to an individual, the individual's principal place of business or usual or last known abode,

(ii) where sent to a body corporate, the body's registered or principal office, or

(iii) in any other case, the occupier's last known address,

(c) by sending the notice to the occupier in some other way (including by email, fax or other electronic means)—

(i) which is legible and capable of being used for subsequent reference, and

(ii) which the sender reasonably considers likely to cause it to be delivered on the same or next day, or

(d) where the occupier's name or address cannot be ascertained after reasonable enquiry—

(i) by hand delivering the notice to a responsible person on the land concerned, or

(ii) by fixing the notice to a conspicuous object on the land concerned.

(2) A notice is, unless the contrary is proved, to be treated as having been given—

(a) where hand delivered, on the day of delivery,

(b) where posted, on the day on which it would be delivered in the ordinary course of post,

(c) where sent in a way described in subsection (1)(c), on the day after it is sent, or

(d) where fixed to an object, on the day it is so fixed.

123 Duty to produce authority

A person doing anything authorised under section 120 or 121 must produce evidence of the person's authority if asked to do so.

124 Obstructing an authorised person

Preventing or obstructing a person from doing anything which the person is authorised to do under section 120 or 121 (intentionally or recklessly) is an offence.

Supplementary

125 Advice on seal population

The Scottish Ministers must have regard to any advice about the management of seal populations which is given to them by the Natural Environment Research Council.

126 Police powers: search and seizure

A constable may stop any person who the constable suspects with reasonable cause of committing an offence under this Part and may—

(a) without warrant, search any vehicle or vessel which the constable reasonably believes to have been used in connection with the commission of the offence,

(b) seize any seal, seal skin or other thing liable to be forfeited under section 127.

127 Forfeiture

The court by which a person is convicted of an offence under this Part may order the forfeiture of—

(a) any seal or seal skin in respect of which the offence was committed, or

(b) any thing which the person possessed or controlled at the time of the offence which was capable of being used in connection with the offence.

128 Penalties

(1) A person guilty of an offence under section 107 or 117 is liable, on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding level 5 on the standard scale, or to both.

(2) A person guilty of an offence under section 108(4) is liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.

(3) A person guilty of an offence under section 112(5) or 113(4) is liable, on summary conviction, to imprisonment for a term not exceeding 3 months or to a fine not exceeding level 5 on the standard scale, or to both.

(4) A person guilty of an offence under section 124 is liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.

129 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 110 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.

130 Repeal

The Conservation of Seals Act 1970 (c.30) is repealed.

PART 7

COMMON ENFORCEMENT POWERS ETC.: LICENSING AND MARINE PROTECTION ETC.

Powers of marine enforcement officers

131 Enforcement of marine licensing regime

(1) For the purposes of enforcing Part 4 a marine enforcement officer has—

(a) the common enforcement powers conferred by this Act,

(b) the power conferred by section 150 (to require information relating to certain substances and objects).

(2) Subject to subsection (3), the powers which a marine enforcement officer has for the purposes of enforcing Part 4 may be exercised in the Scottish marine area and in any other part of Scotland.

(3) Those powers may not be exercised in relation to any British warship.

(4) In this section and section 132, "British warship" means a ship belonging to Her Majesty and forming part of Her Majesty's armed forces.

132 Enforcement of marine protection and nature conservation legislation

(1) For the purposes of enforcing the marine protection and nature conservation legislation, a marine enforcement officer has the common enforcement powers conferred by this Act.

(2) In this section, "the marine protection and nature conservation legislation" means—

(a) marine conservation orders,

(b) sections 95, 96, 107, 112(5) and 117,

(c) sections 1, 5 to 7, 9, 11, 13, 14 and 14A of the Wildlife and the Countryside Act 1981 (c.69),

(d) regulations 39, 41 and 43 of the Conservation (Natural Habitats, &c.) Regulations,

(e) any byelaws made by virtue of regulation 36 of those Regulations.

(3) Subject to subsections (4) and (5), the powers which a marine enforcement officer has for the purposes of enforcing the marine protection and nature conservation legislation may be exercised in the Scottish marine area and in any other part of Scotland.

(4) The powers which a marine enforcement officer has for the purposes of enforcing the marine protection and nature conservation legislation may not be exercised in relation to a British warship.

(5) Any of those powers may also not be exercised in relation to any vessel mentioned in subsection (6) unless, in the case of a third country vessel (other than a vessel falling within paragraph (b) or (c) of that subsection), the United Kingdom is entitled under international law to exercise those powers without the consent of the flag state.

(6) The vessels are—

(a) a third country vessel,

(b) a warship that is being used by the government of a State other than the United Kingdom,

(c) any other vessel that is being used by such a government for any non-commercial purpose.

(7) In this section—

"flag state", in relation to a vessel, is the State whose flag the vessel is flying or is entitled to fly,

"third country vessel" means a vessel which—

(a) is flying the flag of, or is registered in, any State or territory (other than Gibraltar) which is not a member State, and

(b) is not registered in a member State,

"vessel" does not include aircraft.

The common enforcement powers

133 The "common enforcement powers"

In this Part, the "common enforcement powers" means the powers under sections 134 to 149.

Common enforcement powers of entry, search and seizure

134 Power to board and inspect vessels and marine installations

(1) For the purposes of carrying out any relevant functions, a marine enforcement officer may at any time board and inspect a vessel or marine installation.

This is subject to section 137 (which provides that a warrant is necessary to enter a dwelling).

(2) For the purposes of exercising the power conferred by subsection (1), the officer may require a vessel or marine installation—

(a) to stop,

(b) to do anything else that will facilitate the boarding of that or any other vessel or marine installation.

(3) A marine enforcement officer who has boarded a vessel or marine installation may, for the purposes of disembarking from the vessel or installation, require that or any other vessel or marine installation—

(a) to stop,

(b) to do anything else that will enable the officer, and any person accompanying the officer, to disembark from the vessel or installation.

(4) A marine enforcement officer may require any person on board a vessel or marine installation to afford such facilities and assistance with respect to matters under that person's control as the officer considers would facilitate the exercise of any power conferred by this section.

135 Power to enter and inspect premises

(1) For the purposes of carrying out any relevant functions, a marine enforcement officer may enter and inspect any premises.

This is subject to section 137 (which provides that a warrant is necessary to enter a dwelling).

(2) The officer may exercise the power conferred by this section only at a reasonable time, unless it appears to the officer that there are grounds for suspecting that the purpose of entering the premises may be frustrated if the officer seeks to enter at a reasonable time.

(3) A marine enforcement officer may require any person in or on the premises to afford such facilities and assistance with respect to matters under that person's control as the officer considers would facilitate the exercise of the power conferred by this section.

136 Power to enter and inspect vehicles

(1) For the purposes of carrying out any relevant functions, a marine enforcement officer may at any time—

(a) enter and inspect any vehicle,

(b) stop and detain any vehicle for the purposes of entering and inspecting it.

This is subject to section 137 (which provides that a warrant is necessary to enter a dwelling).

(2) Where a marine enforcement officer—

(a) has stopped a vehicle under this section, and

(b) considers that it would be impracticable to inspect the vehicle in the place where it has stopped,

the officer may require the vehicle to be taken to such place as the officer directs to enable the vehicle to be inspected.

(3) A marine enforcement officer may require—

(a) any person travelling in a vehicle,

(b) the registered keeper of a vehicle,

to afford such facilities and assistance with respect to matters under that person's control as the officer considers would facilitate the exercise of any power conferred by this section.

(4) The powers conferred by this section may be exercised in any place (whether or not it is a place to which the public has access).

(5) In this section "vehicle" does not include a vessel.

137 Dwellings

(1) A marine enforcement officer may not by virtue of section 134, 135 or 136 enter a dwelling unless a justice has issued a warrant authorising the officer to enter it.

(2) A justice may issue such a warrant only if, on an application by the officer, the justice is satisfied—

(a) that the officer has reasonable grounds for believing that there is material in the dwelling which for the purposes of carrying out any relevant functions the officer wishes to inspect, examine or seize, and

(b) that any of the following conditions is satisfied—

(i) that it is not practicable to communicate with any person entitled to grant entry to the dwelling,

(ii) that it is not practicable to communicate with any person entitled to grant access to the material,

(iii) that entry to the dwelling is unlikely to be granted unless a warrant is produced,

(iv) the purposes of entry may be frustrated or seriously prejudiced unless a marine enforcement officer arriving at the dwelling can secure immediate entry to it.

(3) Schedule 3 contains further provision about warrants issued under this section.

138 Powers of search, examination, etc.

(1) Where a marine enforcement officer is exercising a power of inspection conferred by section 134, 135 or 136, the officer may—

(a) search the relevant premises for any item,

(b) examine anything that is in or on the relevant premises.

(2) Where a marine enforcement officer reasonably believes that a person is or has been carrying on a relevant activity, the officer may—

(a) search or examine anything which appears to be in the person's possession or control,

(b) stop and detain the person for the purposes of such search or examination.

(3) A marine enforcement officer may carry out any measurement or test of anything which the officer has power under this section to examine.

(4) The power conferred by subsection (3) includes power to take a sample from any live animal or plant.

(5) For the purposes of exercising any power conferred by this section, a marine enforcement officer may, so far as is reasonably necessary for the purpose, break open any container or other locked thing.

(6) Where a marine enforcement officer is exercising a power of inspection conferred by section 134, 135 or 136, the officer may require any person in or on the relevant premises to afford such facilities and assistance with respect to matters under the person's control as the officer considers would facilitate the exercise of any power conferred by this section.

(7) Where a marine enforcement officer reasonably believes that a person is or has been carrying on a relevant activity, the officer may require the person to afford such facilities and assistance with respect to matters under that person's control as the officer considers would facilitate the exercise in relation to that person of any power conferred by this section.

(8) Nothing in this section confers any power to search a person.

(9) The reference in subsection (1) to anything that is in or on the relevant premises includes a reference to—

(a) anything that is attached to or otherwise forms part of the relevant premises,

(b) anything that is controlled from the relevant premises.

(10) In this section—

"animal" includes any eggs, larvae, pupae or other immature stage of an animal,

"item" includes—

(a) any document or record (in whatever form it is held),

(b) any animal or plant,

"sample" means a sample of blood, tissue or other biological material.

139 Power to require production of documents, etc.

(1) This section applies where a marine enforcement officer is exercising a power of inspection conferred by section 134, 135 or 136.

(2) The officer may require any person in or on the relevant premises to produce any document or record that is in the person's possession or control.

(3) A reference in this section to the production of a document includes a reference to the production of—

(a) a hard copy of information recorded otherwise than in hard copy form,

(b) information in a form from which a hard copy can readily be obtained.

(4) For the purposes of this section—

(a) information is recorded in hard copy form if it is recorded in a paper copy or similar form capable of being read (and references to hard copy have a corresponding meaning),

(b) information can be read only if—

(i) it can be read with the naked eye,

(ii) to the extent that it consists of images (for example photographs, pictures, maps, plans or drawings), it can be seen with the naked eye.

140 Powers of seizure, etc.

(1) A marine enforcement officer who is exercising a power of inspection conferred by section 134, 135 or 136 may—

(a) seize and detain or remove any item found on the relevant premises,

(b) take copies of or extracts from any document or record found on the relevant premises.

(2) Where a marine enforcement officer reasonably believes that a person is or has been carrying on a relevant activity, the officer may seize and detain or remove any item which appears to be in the person's possession or control.

(3) A marine enforcement officer to whom any document or record has been produced in accordance with a requirement imposed under section 139(2) may—

(a) seize and detain or remove the document or record,

(b) take copies or extracts from the document or record.

In this subsection, "document" includes anything falling within paragraph (a) or (b) of section 139(3).

(4) The powers conferred by this section may be exercised only—

(a) for the purposes of determining whether a relevant offence has been committed, or

(b) in relation to an item which a marine enforcement officer reasonably believes to be evidence of the commission of a relevant offence.

(5) Subject to subsection (6), a marine enforcement officer who is exercising a power of inspection conferred by section 134, 135 or 136 may not remove from the relevant premises any item which is required by law to be kept on the relevant premises.

(6) A marine enforcement officer may remove such an item from a vessel while it is being detained in a port.

(7) Nothing in this section confers power on a marine enforcement officer to seize an item which the officer has reasonable grounds to believe would in legal proceedings be protected from disclosure on grounds of confidentiality of communications.

141 Further provision about seizure

(1) Where—

(a) any items which a marine enforcement officer wishes to seize and remove are in a container, and

(b) the officer reasonably considers that it would facilitate the seizure and removal of the items if they remained in the container for that purpose,

any power to seize and remove the items conferred by section 140 includes power to seize and remove the container.

(2) Where—

(a) any items which a marine enforcement officer wishes to seize and remove are not in a container, and

(b) the officer reasonably considers that it would facilitate the seizure and removal of the items if they were placed in a container suitable for that purpose,

the officer may require the items to be placed into such a container.

(3) If, in the opinion of a marine enforcement officer, it is not for the time being practicable for the officer to seize and remove any item, the officer may require—

(a) the person from whom the item is being seized, or

(b) where the officer is exercising a power of inspection conferred by section 134, 135 or 136, any person in or on the relevant premises,

to secure that the item is not removed or otherwise interfered with until such time as the officer may seize and remove it.

(4) Where a marine enforcement officer is exercising a power of inspection conferred by section 134, 135 or 136, the officer may require any person in or on the relevant premises to afford such facilities and assistance with respect to matters under that person's control as the officer considers would facilitate the exercise of any power conferred by section 140 or this section.

(5) Where a marine enforcement officer reasonably believes that a person is or has been carrying on a relevant activity, the officer may require that person to afford such facilities and assistance with respect to matters under that person's control as the officer considers would facilitate the exercise in relation to that person of any power conferred by section 140 or this section.

(6) In Part 1 of Schedule 1 to the Criminal Justice and Police Act 2001 (c.16) (powers of seizure to which section 50 applies), after paragraph 73L (inserted by section 253(7) of the 2009 Act) insert—

"*Marine (Scotland) Act 2010 (asp 5)*

73M Each of the powers of seizure conferred by section 140(1) and (3) of the Marine (Scotland) Act 2010.".

142 Retention of seized items

(1) This section applies to any item seized in the exercise of a power conferred by section 140.

(2) The item may be retained so long as is necessary in all the circumstances and in particular—

(a) for use as evidence at a trial for a relevant offence,

(b) for forensic examination or for investigation in connection with a relevant offence.

(3) No item may be retained for either of the purposes mentioned in subsection (2) if a photograph or a copy would be sufficient for that purpose.

Miscellaneous and ancillary common enforcement powers

143 Power to record evidence of offences

(1) A marine enforcement officer may use any device for the purpose of taking visual images of anything which the officer believes is evidence of the commission of a relevant offence.

(2) The power conferred by this section is exercisable in relation to anything that—

(a) is in or on,

(b) is attached to or otherwise forms part of,

(c) is controlled from,

any vessel, marine installation, premises or vehicle.

(3) The officer may require any person in or on the vessel, marine installation, premises or vehicle to afford such facilities and assistance with respect to matters under the person's control as the officer considers would facilitate the exercise of the power conferred by this section.

144 Power to require name and address

Where a marine enforcement officer reasonably believes that a person has committed a relevant offence, the officer may require the person to provide the person's name and address.

145 Power to require production of licence, etc.

(1) Where a marine enforcement officer reasonably believes that—

(a) a person is or has been carrying on a relevant activity, and

(b) the person requires a licence or other authority to carry on the activity,

the officer may require the person to produce the licence or other authority.

(2) If the person is unable to produce the licence or other authority when required to do so, the person must produce it at such place, and within such period of time, as the officer may specify.

146 Power to require attendance of certain persons

(1) Where a marine enforcement officer has—

(a) boarded a vessel or marine installation,

(b) entered any premises,

for the purpose of carrying out any relevant functions, the officer may require the attendance of any of the persons mentioned in subsection (2).

(2) The persons are—

(a) the person who is for the time being in charge of the vessel or marine installation,

(b) any other person who is on board the vessel or marine installation,

(c) the owner or occupier of the premises,

(d) any person who is on the premises.

147 Power to direct vessel or marine installation to port

(1) Where a marine enforcement officer—

(a) considers that it would not be reasonably practicable to exercise a power which the officer wishes to exercise in relation to a vessel or marine installation without detaining it in a port, or

(b) reasonably believes that—

(i) a vessel or marine installation is itself evidence of the commission of a relevant offence, and

(ii) the only reasonably practicable way to preserve the evidence is to detain the vessel or marine installation in a port,

the officer may do any of the things in subsection (2).

(2) The things are—

(a) take, or arrange for another person to take, the vessel or marine installation and its crew to the port which appears to the officer to be the nearest convenient port,

(b) require the person who is for the time being in charge of the vessel or marine installation to take it and its crew to that port.

(3) When the vessel or marine installation has been taken to a port, the officer may—

(a) detain it there,

(b) require the person for the time being in charge of it to do so.

(4) A marine enforcement officer who detains a vessel or marine installation under this section must serve a notice on the person who is for the time being in charge of it.

(5) The notice must state that the vessel or marine installation is to be detained until the notice is withdrawn.

(6) A notice served under subsection (4) may be withdrawn by service of a further notice signed by any marine enforcement officer.

148 Assistance, etc.

(1) To assist in carrying out any relevant functions, a marine enforcement officer may bring—

(a) any other person,

(b) any equipment or materials.

(2) A person who is brought by a marine enforcement officer to provide assistance may exercise any powers conferred by this Act which the officer may exercise, but only under the supervision or direction of the officer.

149 Power to use reasonable force

(1) A marine enforcement officer may use reasonable force, if necessary, in the exercise of any power conferred by this Act.

(2) A person assisting a marine enforcement officer under section 148 may use reasonable force, if necessary, in the exercise of any power conferred by this Act.

Licensing: further enforcement powers

150 Power to require information relating to certain substances and objects

(1) A marine enforcement officer may require any person—

(a) to give details of any substance or objects on board a vehicle, vessel, aircraft or marine structure,

(b) to give information concerning any substances or objects lost from a vehicle, vessel, aircraft or marine structure.

(2) A statement made by a person in response to a requirement made under this section may not be used against the person in criminal proceedings in which the person is charged with an offence to which this subsection applies.

(3) Subsection (2) applies to any offence other than an offence under section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (c.39) (statements made otherwise than on oath).

(4) In this section, "vessel" has the same meaning as in section 64(1).

Duties of marine enforcement officers

151 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.

152 Duty to state name and purpose, etc.

(1) Before exercising any power conferred by this Part, a marine enforcement officer must if requested to do so give the information mentioned in subsection (3).

(2) Before exercising any power conferred by this Part, any person assisting a marine enforcement officer by virtue of section 148 must, if requested to do so, give the information mentioned in paragraph (b) and (c) of subsection (3).

(3) The information is—

(a) the person's name,

(b) the power the person is proposing to exercise,

(c) the grounds for proposing to do so.

(4) A person may exercise a power conferred by this Part only if the person complies with the duty imposed by subsection (1) or (as the case may be) that imposed by subsection (2).

153 Disapplication of sections 151 and 152 in relation to dwellings

Sections 151 and 152 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 137 authorising a marine enforcement officer to enter a dwelling, in particular in paragraphs 6 to 9).

Liability of marine enforcement officers

154 Liability of marine enforcement officers

(1) A person mentioned in subsection (2) is not to be liable in any civil or criminal proceedings for anything done (or omitted to be done) in or in connection with the discharge or purported discharge of the person's functions under this Act.

(2) The persons are—

(a) any marine enforcement officer,

(b) any person assisting a marine enforcement officer by virtue of section 148.

(3) Subsection (1) does not apply—

(a) if the act or omission is shown to have been in bad faith,

(b) if the act was carried out without reasonable skill or care,

(c) if there were no reasonable grounds for the act or omission,

(d) so as to prevent an award of damages in respect of the act or omission on the ground that it was unlawful as a result of section 6(1) of the Human Rights Act 1998 (c.42) (acts of public authorities incompatible with Convention rights).

Offences in relation to marine enforcement officers

155 Offences in relation to marine enforcement officers

(1) A person commits an offence if the person—

(a) fails without reasonable excuse to comply with a requirement reasonably made, or a direction reasonably given, by a marine enforcement officer in the exercise of any power conferred by the Act,

(b) prevents any other person from complying with any such requirement or direction.

(2) But a person does not commit an offence by reason of a failure to comply with a requirement under section 145(1) (to produce a licence or other authority for the carrying on of a relevant activity) if the person complies with section 145(2) (production of licence or other authority at a place and within a period specified by the marine enforcement officer).

(3) A person who provides information in pursuance of a requirement reasonably made by a marine enforcement officer in the exercise of the power conferred by section 150 (requiring information relating to certain substances or objects) commits an offence if—

(a) the information is false in a material particular and the person—

(i) knows that it is,

(ii) is reckless as to whether it is,

(b) the person intentionally fails to disclose any material particular.

(4) A person who intentionally obstructs a marine enforcement officer in the performance of any of the officer's functions under this Act commits an offence.

(5) A person who assaults a marine enforcement officer in the performance of any of the officer's functions under this Act commits an offence.

(6) A person who, with intent to deceive, falsely pretends to be a marine enforcement officer commits an offence.

(7) A person who is guilty of an offence under subsection (1), (3) or (6) is liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum,

(b) on conviction on indictment, to a fine.

(8) A person who is guilty of an offence under subsection (4) is liable on summary conviction to a fine not exceeding £20,000.

(9) A person who is guilty of an offence under subsection (5) is liable on summary conviction to a fine not exceeding £50,000.

(10) In this section, any reference to a marine enforcement officer includes a reference to a person assisting a marine enforcement officer by virtue of section 148.

General

156 General

The powers conferred on a marine enforcement officer by this Part are without prejudice to any powers exercisable by the officer apart from the Part.

Interpretation of Part 7

157 Interpretation of Part 7

(1) In this Part—

"justice" means a sheriff, stipendiary magistrate or justice of the peace,

"marine enforcement officer" means a person appointed as such an officer by the Scottish Ministers,

"premises" includes land, but does not include any vehicle, vessel or marine installation,

"relevant activity" in relation to a marine enforcement officer, means any activity in respect of which the officer has functions,

"relevant function" in relation to a marine enforcement officer, means any function of the officer,

"relevant offence" in relation to such an officer, means any offence in respect of which the officer has functions,

"the relevant premises", in relation to such an officer exercising a power of inspection conferred by section 134, 135 or 136, means the vessel, marine installation, premises or vehicle in relation to which the power is being exercised.

(2) In this Part, except where otherwise provided, any reference to a vessel includes a reference to—

(a) any ship or boat or any other description of vessel used in navigation,

(b) any hovercraft, submersible craft or other floating craft,

(c) any aircraft,

but does not include a reference to anything that permanently rests on, or is permanently attached to, the seabed.

PART 8

SEA FISHERIES

158 Extension of modifications relating to Sea Fish (Conservation) Act 1967

(1) The modifications to the Sea Fish (Conservation) Act 1967 (c.84) made by Chapter 1 of Part 7 of, and Schedules 15 and 22 to, the 2009 Act, except those mentioned in subsection (2), extend to Scotland.

(2) The modifications made by sections 194(4) and (5), 196 and 198(3) of, and paragraph 1(4) of Schedule 15 to, the 2009 Act do not extend to Scotland.

159 Modification of section 22A of Sea Fish (Conservation) Act 1967

(1) Section 22A (application to Scotland) of the Sea Fish (Conservation) Act 1967 is modified as follows.

(2) In subsection (2) after "sections" insert "1(3B) and (9), 5(8),".

(3) After subsection (2) insert—

"(2A) In section 1—

(a) for subsections (3) and (3A) substitute—

"(3B) Sea fish of any description which do not meet the requirements as to size prescribed in relation to sea fish of that description by an order of the Scottish Ministers must not be carried, whether within or outside the Scottish zone, on a Scottish fishing boat; and an order under this subsection may prohibit the carrying by a relevant British fishing boat or a foreign vessel in the Scottish zone of sea fish of any description prescribed by the order which do not meet the requirements as to size so prescribed in relation to sea fish of that description.",

(b) in subsection (8) for "(3)" substitute "(3B)",

(c) for subsection (9) substitute—

"(9) In this section—

"foreign vessel" means any vessel other than a relevant British fishing boat or a Scottish fishing boat,

"relevant British fishing boat" means a vessel, other than a Scottish fishing boat, which—

(a) is registered in the United Kingdom under Part 2 of the Merchant Shipping Act 1995 (c.21), or

(b) is owned wholly by persons qualified to own British ships for the purposes of that Part of that Act.".

(2B) In section 3—

(a) in subsection (2A) for "adjacent to England and Wales" substitute "of the United Kingdom adjacent to Scotland",

(b) for subsection (2B) substitute—

"(2B) In subsection (2A) above—

(a) the Scottish Ministers are "the appropriate national authority",

(b) the boundaries between the parts of the territorial sea of the United Kingdom adjacent to Scotland and the parts not so adjacent are to be determined by reference to an Order in Council made under section 126(2) of the Scotland Act 1998 (c.46) to the extent that the Order in Council is expressed to apply for the purposes of that Act.".

(4) For subsection (6) substitute—

"(6) In section 5—

(a) in subsection (1), for "appropriate national authority" substitute "Scottish Ministers",

(b) for subsection (8) substitute—

"(8) An order under this section may make provision—

(a) applying to Scottish fishing boats whether within or outside the Scottish zone,

(b) in any other case, applying to fishing boats within the Scottish zone.".

(5) After subsection (9) insert—

"(9A) In section 11(1)(a), for "4(3), (6) or (9A)" substitute "4(3) or (6)".

160 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).".

161 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—

(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),

(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 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 the standard scale" substitute "£50,000".

(4) 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.

(5) 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".

PART 9

GENERAL PROVISIONS

162 Crown application

(1) This Act binds the Crown and applies in relation to Crown land as it applies in relation to any other land.

(2) Nothing in Part 4 is to be taken as in any way affecting Her Majesty in her private capacity.

(3) The modifications made by schedule 4 bind the Crown to the extent that the enactments modified bind the Crown.

(4) No contravention by the Crown of any provision made by or under this Act makes the Crown criminally liable.

(5) But the Court of Session may, on the application of the Scottish Ministers or any public body or office-holder having responsibility for enforcing the provision, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(6) Despite subsection (4), any provision made by or under the provisions of this Act applies to persons in the public service of the Crown as it applies to other persons.

(7) For the purposes of subsection (1), "Crown land" means land an interest in which—

(a) belongs to Her Majesty in right of the Crown or in right of Her private estates,

(b) belongs to an office-holder in the Scottish Administration or a government department or is held in trust for Her Majesty for the purposes of the Scottish Administration or a government department.

(8) In subsection (7)(a), the reference to Her Majesty's private estates is to be construed in accordance with section 1 of the Crown Private Estates Act 1862 (c.37).

163 Offences by bodies corporate

(1) Where—

(a) an offence under this Act has been committed by a body corporate or a Scottish partnership or other unincorporated association,

(b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of—

(i) a relevant individual, or

(ii) an individual purporting to act in the capacity of a relevant individual,

the individual as well as the offender is guilty of the offence and is liable to be proceeded against and punished accordingly.

(2) In subsection (1), "relevant individual" means—

(a) in relation to a body corporate—

(i) a director, manager, secretary or other similar officer of the body,

(ii) where the affairs of the body are managed by its members, the members,

(b) in relation to a Scottish partnership, a partner,

(c) in relation to an unincorporated association other than a Scottish partnership, a person who is concerned in the management or control of the association.

164 Ancillary provision

(1) The Scottish Ministers may by order make such incidental, supplemental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes, or in consequence, of, or for giving full effect to, this Act or any provision of it.

(2) An order under this section may modify any enactment, instrument or document.

165 Orders and regulations

(1) Any power of the Scottish Ministers to make orders or regulations under this Act—

(a) may be exercised so as to make different provision for different purposes,

(b) includes power to make such incidental, consequential, supplemental, transitional, transitory or saving provision as the Scottish Ministers consider appropriate.

(2) Any power of the Scottish Ministers to make orders or regulations under this Act must be exercised by statutory instrument.

(3) But subsection (2) does not apply to an order made under section 67(1) (order designating a Nature Conservation MPA, a Demonstration and Research MPA or a Historic MPA).

(4) A statutory instrument containing an order or regulations made under this Act (except an order made under section 168(1)) is (except where subsection (5) provides otherwise) subject to annulment in pursuance of a resolution of the Parliament.

(5) A statutory instrument containing—

(a) an order under section 5(5), 21(3) or 32(1),

(b) regulations under section 33(1) or 38(1),

(c) an order under section 46(1), 48(1) or 51(1),

(d) regulations under section 61(1),

(e) an order under section 97(3),

(f) an order under section 164(1) containing provisions which add to, replace or omit any part of the text of an Act,

is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Parliament.

166 Interpretation: general

(1) In this Act—

"the 2009 Act" means the Marine and Coastal Access Act 2009 (c.23),

"the Conservation (Natural Habitats, &c.) Regulations" means the Conservation (Natural Habitats, &c.) Regulations 1994 (S.I. 1994/2716),

"European marine site" has the same meaning as in regulation 2(1) of the Conservation (Natural Habitats, &c.) Regulations,

"fish farm" means a place where fish or shellfish (including any kind of crustacean or mollusc) are bred, reared or kept,

"the Habitats Directive" means Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna or flora (as amended from time to time),

"marine installation" means any artificial island, installation or structure (other than a vessel),

"marine structure" means a platform or other artificial structure at sea, other than a pipeline,

"UK marine area" has the meaning given in section 42 of the 2009 Act,

"the Wild Birds Directive" means Council Directive 79/409/EEC on the conservation of wild birds (as amended from time to time).

(2) The expressions listed in schedule 5 are defined or otherwise explained for the purposes of this Act by the provisions indicated in the schedule.

167 Consequential modifications

Schedule 4 makes modifications consequential on the provisions of this Act.

168 Commencement and short title

(1) The provisions of this Act, except this section and sections 1, 2, 19, 64, 65, 66, 106, 133, 157, 165 and 166, come into force on such day as the Scottish Ministers may by order appoint.

(2) This Act may be cited as the Marine (Scotland) Act 2010.

SCHEDULE 1
(introduced by sections 5(1) and 8(2))

PREPARATION, ADOPTION ETC. OF MARINE PLANS OR ANY AMENDMENT

Scottish Ministers to notify decision to prepare any marine plan

1 (1) Where the Scottish Ministers decide to prepare a national marine plan they must, before beginning to prepare the plan, give notice of their intention to do so—

(a) to any planning authority the district of which adjoins the Scottish marine area,

(b) to the Secretary of State,

(c) to the Department of the Environment in Northern Ireland.

(2) Where the Scottish Ministers decide to prepare a regional marine plan they must, before beginning to prepare the plan, give notice of their intention to do so—

(a) to any planning authority the district of which adjoins the Scottish marine region to which the plan is to apply,

(b) where the Scottish marine region to which the plan is to apply adjoins the area of sea within the seaward limits of the territorial sea of the United Kingdom adjacent to England, to the Secretary of State,

(c) where the Scottish marine region to which the plan is to apply adjoins the area of sea within the seaward limits of the territorial sea of the United Kingdom adjacent to Northern Ireland, to the Department of the Environment in Northern Ireland.

(3) In this paragraph—

"adjacent to England" and "adjacent to Northern Ireland", in relation to areas of sea within the seaward limits of the territorial sea of the United Kingdom, are to be construed in accordance with subsections (4) to (9) of section 322 of the 2009 Act,

"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).

Interpretation

2 In this schedule—

"consultation draft" is to be read in accordance with paragraph 9,

"interested persons" means—

(a) any persons appearing to the Scottish Ministers to be likely to be interested in, or affected by, policies proposed to be included in the national marine plan or (as the case may be) the regional marine plan,

(b) members of the general public,

"SPP" means a statement of public participation under paragraph 4 and includes an SPP revised under paragraph 6.

Regional marine plans to be compatible with certain other plans

3 (1) In preparing or amending a regional marine plan for a Scottish marine region ("area A"), the Scottish Ministers must take all reasonable steps to secure that the plan is compatible with any regional marine plan for any Scottish marine region which adjoins area A.

(2) They must also take all reasonable steps to secure that any regional marine plan is compatible with the development plan for any area which adjoins area A.

(3) In this paragraph, "development plan" is to be read in accordance with section 24 of the Town and Country Planning (Scotland) Act 1997.

Statement of public participation

4 (1) Before preparing a national marine plan or a regional marine plan, the Scottish Ministers must prepare and publish a statement of public participation in relation to each such category of plan (an "SPP").

(2) An SPP is a statement of the policies settled by the Scottish Ministers as to when consultation is likely to take place and with whom, its likely form, and the steps to be taken to involve the general public in the stages of preparation or review of the proposed national marine plan or (as the case may be) the proposed regional marine plan.

(3) An SPP must invite the making of representations in accordance with it as to matters to be included in the proposed marine plan.

(4) The Scottish Ministers must publish an SPP in such manner as they consider is most likely to bring it to the attention of interested persons.

(5) The Scottish Ministers must take all reasonable steps to comply with an SPP.

Further provision about content of an SPP

5 (1) An SPP must include a proposed timetable.

(2) The proposed timetable must include such provision as the Scottish Ministers consider reasonable for each of the following—

(a) the preparation and publication of a consultation draft under paragraph 9,

(b) the making of representations about the consultation draft,

(c) the settling of the text of a national marine plan or (as the case may be) a regional marine plan with a view to adoption and publication under paragraph 14,

(d) laying a draft of a proposed national marine plan before the Parliament under paragraph 13,

(e) the adoption and publication of a national marine plan or (as the case may be) a regional marine plan under paragraph 14.

(3) An SPP may include provision for or in connection with the holding of public meetings about a consultation draft.

(4) An SPP must include provision about the making of—

(a) representations in response to the invitation issued under paragraph 4(3) about the matters to be included in a proposed national marine plan or (as the case may be) a proposed regional marine plan,

(b) representations under paragraph 10 about a consultation draft.

(5) Provision to be made under sub-paragraph (4) includes provision about—

(a) the manner in which representations may be made,

(b) the time within which representations must be made.

Review and revision of an SPP

6 (1) The Scottish Ministers must keep an SPP under review.

(2) If at any time the Scottish Ministers consider it necessary or expedient to revise an SPP they must do so.

(3) Where the Scottish Ministers revise an SPP they must publish the SPP as revised.

Advice and assistance

7 (1) In connection with the preparation of a national marine plan or (as the case may be) a regional marine plan, or of any proposals for any such plan, the Scottish Ministers may seek advice or assistance from any body or person in relation to any matter in which the body or person has particular expertise.

(2) The steps that the Scottish Ministers may take for the purposes of facilitating the involvement of interested persons in—

(a) the development of proposals for inclusion in a proposed national marine plan or regional marine plan,

(b) consultation in connection with such proposals,

include the convening of groups of persons for such purposes and in such manner as the Scottish Ministers consider appropriate.

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

8 (1) The matters to which the Scottish Ministers are to have regard in preparing—

(a) a national marine plan include the matters in sub-paragraph (2),

(b) a regional marine plan include the matters in sub-paragraph (3).

(2) The matters, as regards a national marine plan, are—

(a) the requirement under section 6(1) for a national marine plan to be in conformity with any marine policy statement currently in effect for the Scottish marine area unless relevant considerations indicate otherwise,

(b) the effect which any proposal for inclusion in the plan is likely to have on any area which adjoins the Scottish marine area,

(c) the results of the review required by section 11,

(d) the SPP relating to preparation of the plan,

(e) any representations made in response to the invitation issued in pursuance of paragraph 4(3),

(f) any advice received in pursuance of paragraph 7(1),

(g) any plan (not falling within paragraph 3(1) or (2)) prepared by a public or local authority in connection with the management or use of the sea or the coast or of marine or coastal resources, in the Scottish marine area or in any adjoining or adjacent area in the United Kingdom or the UK marine area,

(h) the powers and duties of the Crown Estate Commissioners under the Crown Estate Act 1961 (c.55),

(i) such other matters as the Scottish Ministers consider relevant.

(3) The matters, as regards a regional marine plan, are—

(a) the requirement under section 6(1) for a regional marine plan to be in conformity with any marine policy statement currently in effect for the Scottish marine area unless relevant considerations indicate otherwise,

(b) the requirement under section 6(2) for a regional marine plan to be in conformity with any national marine plan currently in effect, unless relevant considerations indicate otherwise,

(c) the effect which any proposal for inclusion in the plan is likely to have on any area which adjoins the Scottish marine region to which the plan is to apply,

(d) the results of the review required by section 11,

(e) the SPP relating to the plan,

(f) any representations made in response to the invitation issued in pursuance of paragraph 4(3),

(g) any advice received under paragraph 7(1),

(h) any plan (not falling within paragraph 3(1) or (2)) prepared by a public or local authority in connection with the management or use of the sea or the coast, or of marine or coastal resources, in the Scottish marine region to which the plan is to apply or in any adjoining or adjacent area in the United Kingdom or the UK marine area,

(i) the powers and duties of the Crown Estate Commissioners under the Crown Estate Act 1961,

(j) such other matters as Scottish Ministers consider relevant.

Preparation and publication of a consultation draft

9 (1) The Scottish Ministers must publish in such manner as they consider appropriate a draft containing their proposals for inclusion in a national marine plan or (as the case may be) a regional marine plan (a "consultation draft").

(2) The Scottish Ministers must also take such steps as they consider appropriate to secure that the proposals contained in a consultation draft are brought to the attention of interested persons.

Representations about a consultation draft

10 (1) Any person may make representations about a consultation draft.

(2) Any such representations are to be made in accordance with the SPP applicable to the draft.

(3) If any representations are made about a consultation draft, the Scottish Ministers must consider them in the course of settling the text of the national marine plan or (as the case may be) the regional marine plan with a view to adoption and publication under paragraph 14.

Independent investigation

11 (1) Where the Scottish Ministers have published a consultation draft in accordance with paragraph 9, they must consider appointing an independent person to investigate the proposals contained in the draft and to report on them.

(2) In deciding whether to appoint such a person, the Scottish Ministers must have regard to—

(a) any representations received about the matters to be included in the proposed national marine plan or (as the case may be) the proposed regional marine plan in response to the invitation issued in pursuance of paragraph 4(3),

(b) any representations received about the proposals published in the consultation draft,

(c) such other matters as Scottish Ministers consider relevant.

(3) The person so appointed must—

(a) make recommendations,

(b) give reasons for the recommendations.

(4) The Scottish Ministers must publish the recommendations and the reasons given for them in the report.

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

12 The Scottish Ministers, in settling the text of a national marine plan or (as the case may be) a regional marine plan with a view to adoption and publication under paragraph 14, must have regard to—

(a) any recommendations made by any person appointed under paragraph 11,

(b) the reasons given by any such person for any such recommendations,

(c) such other matters as the Scottish Ministers consider relevant.

Laying settled text of draft national marine plan before the Parliament

13 (1) The Scottish Ministers must not adopt a national marine plan unless they have complied with the requirements of this paragraph.

(2) The Scottish Ministers must lay before the Parliament a copy of the draft plan containing the text settled in accordance with paragraph 12.

(3) If, during the period for Parliamentary consideration the Parliament passes a resolution with regard to the draft, the Scottish Ministers must lay before the Parliament a statement setting out their response to the resolution.

(4) In this paragraph, "the period for Parliamentary consideration" means the period of 40 days beginning on the day on which a copy of the draft plan is laid before the Parliament under sub-paragraph (2); and in reckoning that period no account is to be taken of any time during which the Parliament is—

(a) dissolved,

(b) in recess for more than 4 days.

Adoption and publication of marine plan

14 (1) A national marine plan or (as the case may be) a regional marine plan is adopted by the Scottish Ministers when they decide to publish the plan.

(2) A national marine plan which the Scottish Ministers decide to publish may be—

(a) the same as the draft laid before the Parliament under paragraph 13,

(b) that draft with such modifications as the Scottish Ministers consider appropriate.

(3) A regional marine plan which the Scottish Ministers decide to publish may be—

(a) the same as the proposals published in the consultation draft relating to it, or

(b) those proposals with such modifications as the Scottish Ministers consider appropriate.

(4) Where the Scottish Ministers adopt a national marine plan or a regional marine plan, they must publish it as soon as reasonably practicable after its adoption, together with statements of each of the following—

(a) any modifications that have been made to the proposals published in the consultation draft for the plan,

(b) the reasons for those modifications,

(c) if any recommendations made by any independent person appointed under paragraph 11 have not been implemented in the plan, the reasons why any such recommendations have not been implemented,

(d) if any matter in a resolution of the Parliament in pursuance of paragraph 13 has not been implemented in a national marine plan published under this paragraph, the reasons why any such matter has not been implemented.

(5) The Scottish Ministers must lay a copy of the adopted national marine plan before the Parliament as soon as is reasonably practicable after the plan's adoption.

SCHEDULE 2
(introduced by section 50)

FURTHER PROVISION ABOUT CIVIL SANCTIONS UNDER PART 4 (MARINE LICENSING)

Interpretation

1 In this schedule "civil sanction" means a fixed monetary penalty or a variable monetary penalty.

Fixed monetary penalties: other sanctions

2 (1) Provision under section 46 must secure that, in a case where a notice of intent referred to in section 47(2)(a) is served on a person—

(a) no criminal proceedings for the offence to which the notice relates may be instituted against the person in respect of the act or omission to which the notice relates before the end of the period in which the person may discharge liability to the fixed monetary penalty pursuant to section 47(2)(b),

(b) if the person so discharges liability, the person may not at any time be convicted of the offence to which the notice relates in relation to that act or omission.

(2) Provision under section 46 must also secure that, in a case where a fixed monetary penalty is imposed on a person—

(a) the person may not at any time be convicted of the offence in relation to which the penalty is imposed in respect of the act or omission giving rise to the penalty,

(b) the Scottish Ministers may not issue a compliance notice or a remediation notice to that person in respect of the act or omission giving rise to the penalty.

Variable monetary penalties: other sanctions

3 Provision under section 48 must secure that, in a case where a variable monetary penalty is imposed on a person—

(a) the person may not at any time be convicted of the offence in relation to which the penalty is imposed in respect of the act or omission giving rise to the penalty,

(b) the Scottish Ministers may not issue a compliance notice to the person in respect of the act or omission giving rise to the penalty.

Combination of sanctions

4 (1) Provision may not be made under section 46 and section 48 in relation to the same offence unless it secures that—

(a) the Scottish Ministers may not serve a notice of intent referred to in section 47(2)(a) on a person in relation to any act or omission where a variable monetary penalty has been imposed on the person in relation to the act or omission,

(b) the Scottish Ministers may not serve a notice of intent referred to in section 49(2)(a) on a person in relation to any act or omission where—

(i) a fixed monetary penalty has been imposed on the person in relation to the act or omission, or

(ii) the person has discharged liability to a fixed monetary penalty in relation to that act or omission pursuant to section 47(2)(b).

(2) Provision under section 46 which results in the Scottish Ministers having power to impose a fixed monetary penalty or to issue a stop notice in relation to the same offence must secure that—

(a) the Scottish Ministers may not serve a notice of intent referred to in section 47(2)(a) on a person in relation to any act or omission where a stop notice has been served on the person in relation to the act or omission,

(b) the Scottish Ministers may not serve a stop notice on a person in relation to any act or omission where—

(i) a fixed monetary penalty has been imposed on the person in relation to the act or omission, or

(ii) the person has discharged liability to a fixed monetary penalty in relation to the act or omission pursuant to section 47(2)(b).

Monetary penalties

5 An order under section 46 or 48 which enables the Scottish Ministers to require a person to pay a fixed monetary penalty or a variable monetary penalty may include provision—

(a) for early payment discounts,

(b) for the payment of interest or other financial penalties for late payment of the penalty (such interest or other financial penalties not in total to exceed the amount of that penalty),

(c) for enforcement of the penalty.

Recovery of expenses

6 (1) Provision under section 48 may include provision for the Scottish Ministers, by notice, to require a person on whom a variable monetary penalty is imposed to pay the expenses incurred by the Scottish Ministers in relation to the imposition of the penalty up to the time of its imposition.

(2) In sub-paragraph (1), the reference to expenses includes in particular—

(a) investigation expenses,

(b) administration expenses,

(c) the expenses of obtaining expert advice (including legal advice).

(3) Provision under this paragraph must secure that, in any case where a notice requiring payment of expenses is served—

(a) the notice specifies the amount required to be paid,

(b) the Scottish Ministers may be required to provide a detailed breakdown of that amount,

(c) the person required to pay the expenses is not liable to pay any expenses shown by the person to have been unnecessarily incurred,

(d) the person required to pay the expenses may appeal against—

(i) the decision of the Scottish Ministers to impose the requirement to pay expenses,

(ii) the decision of the Scottish Ministers as to the amount of the expenses.

(4) Provision under this paragraph may include the provision referred to in paragraph 5(b) and (c).

(5) Provision under this paragraph must secure that the Scottish Ministers are required to publish guidance about how they will exercise the power conferred by the provision.

Appeals

7 (1) An order under section 46 or 48 which makes provision for an appeal in relation to the imposition of any requirement or service of any notice may include provision—

(a) suspending the requirement or notice pending determination of the appeal,

(b) as to the powers of the sheriff to whom the appeal is made.

(2) The provision referred to in sub-paragraph (1)(b) includes provision conferring on the sheriff to whom the appeal is made power to—

(a) withdraw the requirement or notice,

(b) confirm the requirement or notice,

(c) take such steps as the Scottish Ministers could take (by virtue of this Act) in relation to the act or omission giving rise to the requirement or notice,

(d) remit the decision whether to confirm the requirement or notice, or any other matter relating to that decision, to the Scottish Ministers.

Consultation

8 (1) Before making an order under section 46 or 48, the Scottish Ministers must consult the following (in addition to any persons who must be consulted under paragraph 9)—

(a) such organisations as appear to the Scottish Ministers to be representative of persons substantially affected by the proposals,

(b) such other persons as the Scottish Ministers consider appropriate.

(2) If, as a result of any consultation required by sub-paragraph (1), it appears to the Scottish Ministers that it is appropriate substantially to change the whole or any part of the proposals, the Scottish Ministers must undertake such further consultation with respect to the changes as they consider appropriate.

(3) If, before the day on which this schedule comes into force, any consultation was undertaken which, had it been undertaken after that day, would to any extent have satisfied the requirements of this paragraph, those requirements may to that extent be taken to have been satisfied.

Guidance as to use of civil sanctions

9 (1) Where the Scottish Ministers make provision about the imposition of civil sanctions under section 46 or 48 the provision must secure the results in sub-paragraph (2).

(2) The results are that—

(a) the Scottish Ministers must publish guidance about their use of the sanction,

(b) in the case of guidance relating to a fixed monetary penalty or a variable monetary penalty, the guidance must contain the relevant information,

(c) the Scottish Ministers must revise the guidance where appropriate,

(d) the Scottish Ministers must consult such persons as the provision may specify before publishing any guidance or revised guidance,

(e) the Scottish Ministers must have regard to the guidance or the revised guidance in exercising their functions under Part 4.

(3) In the case of guidance relating to a fixed monetary penalty, the relevant information referred to in sub-paragraph (2)(b) is information as to—

(a) the circumstances in which the penalty is likely to be imposed,

(b) the circumstances in which it may not be imposed,

(c) the amount of the penalty,

(d) how liability for the penalty may be discharged and the effect of the discharge,

(e) rights to make representations and objections and rights of appeal.

(4) In the case of guidance relating to a variable monetary penalty, the relevant information referred to in sub-paragraph (2)(b) is information as to—

(a) the circumstances in which the penalty is likely to be imposed,

(b) the circumstances in which it may not be imposed,

(c) the matters likely to be taken into account by the Scottish Minister in determining the amount of the penalty (including, where relevant, any discounts for voluntary reporting of non-compliance), and

(d) rights to make representations and objections and rights of appeal.

Guidance as to enforcement of offences

10 (1) Where the Scottish Ministers make provision about the imposition of civil sanctions under section 46 or 48 in relation to an offence they must also prepare and publish guidance about how the offence is enforced.

(2) The guidance must include guidance as to—

(a) the sanctions (including criminal sanctions) to which a person who commits the offence may be liable,

(b) the action which the Scottish Ministers may take to enforce the offence, whether by virtue of section 46 or 48 or otherwise, and

(c) the circumstances in which the Scottish Ministers are likely to take any such action.

(3) The Scottish Ministers may from time to time revise guidance published by them under this paragraph and publish the revised guidance.

(4) The Scottish Ministers must consult such persons as they consider appropriate before publishing any guidance or revised guidance under this paragraph.

Publication of enforcement action

11 (1) Where the Scottish Ministers make provision about the imposition of civil sanctions under section 46 or 48 the provision must (except where sub-paragraph (4) applies) secure the result in sub-paragraph (2).

(2) The result is that the Scottish Ministers must from time to time publish reports specifying—

(a) the cases in which the civil sanction has been imposed,

(b) where the civil sanction is a fixed monetary penalty, the cases in which liability to the penalty has been discharged pursuant to section 47(2)(b), and

(c) where the civil sanction is a variable monetary penalty, the cases in which an undertaking referred to in section 49(5) is accepted from such a person.

(3) In sub-paragraph (2)(a), the reference to cases in which the civil sanction has been imposed does not include cases where the sanction has been imposed but overturned on appeal.

(4) The provision need not secure the result in sub-paragraph (2) in cases where the Scottish Ministers consider that it would be inappropriate to do so.

Disclosure of information

12 (1) Information held by or on behalf of a person mentioned in sub-paragraph (2) may be disclosed to the Scottish Ministers where—

(a) the person has an enforcement function in relation to the offence, and

(b) the information is disclosed for the purpose of the exercise by the Scottish Ministers of any powers conferred on them under section 46 or 48 in relation to the offence.

(2) The persons are—

(a) a Procurator Fiscal,

(b) a constable of a police force in Scotland.

(3) It is immaterial for the purposes of sub-paragraph (1) whether the information was obtained before or after the coming into force of this paragraph.

(4) A disclosure under this paragraph is not to be taken to breach any restriction on the disclosure of information (however imposed).

(5) Nothing in this paragraph authorises the making of a disclosure in contravention of—

(a) the Data Protection Act 1998 (c.29), or

(b) Part 1 of the Regulation of Investigatory Powers Act 2000 (c.23).

(6) This paragraph does not affect a power to disclose which exists apart from this paragraph.

SCHEDULE 3
(introduced by section 137(3))

WARRANTS ISSUED UNDER SECTION 137

Introductory

1 (1) This schedule has effect in relation to the issue to marine enforcement officers of warrants under section 137.

(2) Entry into a dwelling under such a warrant is unlawful unless it complies with the provisions of this schedule.

Applications for warrants

2 (1) Where a marine enforcement officer applies for a warrant, the officer must—

(a) state the ground on which the application is made,

(b) state the enactment under which the warrant would be issued,

(c) specify the dwelling which it is desired to enter and inspect,

(d) identify, so far as is practicable, the purpose for which entry is desired.

(2) An application for a warrant must be made without notice and must be supported by evidence on oath.

(3) The officer must answer on oath any question that the justice hearing the application asks the officer.

Safeguards in connection with power of entry conferred by warrant

3 A warrant authorises entry on one occasion only.

4 (1) A warrant must specify—

(a) the name of the person who applies for it,

(b) the date on which it is issued,

(c) the enactment under which it is issued,

(d) the dwelling to be entered.

(2) A warrant must identify, so far as is practicable, the purpose for which entry is desired.

5 (1) 2 copies are to be made of a warrant.

(2) The copies must be clearly certified as copies.

Execution of warrants

6 A warrant may be executed by any marine enforcement officer.

7 (1) A warrant may authorise persons to accompany any marine enforcement officer who is executing it.

(2) A person authorised under this paragraph has the same powers as the officer whom the person is accompanying in respect of the execution of the warrant, but may exercise those powers only in the company of, and under the supervision of, an enforcement officer.

8 (1) Execution of a warrant must be within 3 months from the date of its issue.

(2) Execution of a warrant must be at a reasonable time, unless it appears to the officer executing it that there are grounds for suspecting that the purpose of entering the dwelling may be frustrated if the officer seeks to enter at a reasonable time.

9 (1) Where the occupier of a dwelling that is to be entered under a warrant is present at the time when a marine enforcement officer seeks to execute the warrant, the following requirements must be satisfied—

(a) the occupier must be told the officer's name,

(b) the officer must produce to the occupier documentary evidence of the fact that the officer is a marine enforcement officer,

(c) the officer must produce the warrant to the occupier,

(d) the officer must supply the occupier with a certified copy of it.

(2) Where—

(a) the occupier of a dwelling that is to be entered under a warrant is not present when a marine enforcement officer seeks to execute it, but

(b) some other person who appears to the officer to be in charge of the dwelling is present,

sub-paragraph (1) has effect as if any reference to the occupier were a reference to that other person.

(3) If there is no person present who appears to the marine enforcement officer to be in charge of the dwelling, the officer must leave a certified copy of the warrant in a prominent place there.

Return of warrants

10 (1) A warrant which—

(a) has been executed, or

(b) has not been executed within the time authorised for its execution,

must be returned to the appropriate person.

(2) In sub-paragraph (1), the appropriate person is—

(a) in the case of a warrant issued by a sheriff, the sheriff clerk,

(b) in the case of a warrant issued by a justice of the peace or stipendiary magistrate, the clerk of the justice of the peace court.

(3) A warrant that is returned under this paragraph must be retained by the person to whom it is returned for a period of 12 months.

(4) If during that period the occupier of the dwelling to which the warrant relates asks to inspect it, the occupier must be allowed to do so.

SCHEDULE 4
(introduced by section 167)

CONSEQUENTIAL MODIFICATIONS

PART 1

MARINE LICENSING

Coast Protection Act 1949 (c.74)

1 In the Coast Protection Act 1949—

(a) Part II is repealed,

(b) in section 49, subsection (2A) is repealed.

Merchant Shipping Act 1988 (c.12)

2 Section 36 of the Merchant Shipping Act 1988 is repealed.

Energy Act 2004 (c.20)

3 In section 99 of the Energy Act 2004, subsections (4) and (5) are repealed.

PART 2

MARINE PROTECTION AND ENHANCEMENT: THE SCOTTISH MARINE PROTECTION AREA

Protection of Wrecks Act 1973 (c.33)

4 Section 1 of the Protection of Wrecks Act 1973 is repealed.

Wildlife and Countryside Act 1981 (c.69)

5 In the Wildlife and Countryside Act 1981—

(a) in the italic heading immediately preceding section 34A, the words ", marine nature reserves" are repealed,

(b) sections 36 and 37 are repealed,

(c) in section 67, in subsection (2), the words ", 36" are repealed,

(d) Schedule 12 is repealed.

Territorial Sea Act 1987 (c.49)

6 In the Territorial Sea Act 1987—

(a) in section 3, in subsection (2), paragraph (b) is repealed,

(b) in Schedule 1, paragraph 6 is repealed.

Local Government (Wales) Act 1994 (c.19)

7 In the Local Government (Wales) Act 1994, in Schedule 16, in paragraph 65, sub-paragraphs (4) and (10) are repealed.

Local Government etc.(Scotland) Act 1994 (c.39)

8 In the Local Government etc. (Scotland) Act 1994, in Schedule 13, in paragraph 125, sub-paragraph (3) is repealed.

Water Industry (Scotland) Act 2002 (asp 3)

9 In the Water Industry (Scotland) Act 2002, in schedule 7, in paragraph 11, sub-paragraph (3) is repealed.

PART 3

SEA FISHERIES

Sea Fisheries Act 1968

10 In the Sea Fisheries Act 1968 (c.77), in section 15 (amendments of Sea Fisheries (Shellfish) Act 1967), subsection (2A) is repealed.

Fisheries Act 1981

11 (1) The Fisheries Act 1981 (c.29) is modified as follows.

(2) The following provisions are repealed—

(a) section 19(2)(c),

(b) section 22(2)(a) and (3),

(c) section 28.

(3) In paragraph 33 of Part 2 of Schedule 4 (offences to which section 33(5) applies)—

(a) for "Sea Fisheries (Conservation) Act 1967" substitute "Sea Fish (Conservation) Act 1967",

(b) for "smaller than the prescribed size" substitute "which do not meet the prescribed size requirements".

Sea Fish (Conservation) Act 1992

12 In the Sea Fish (Conservation) Act 1992 (c.60), paragraph (b) of section 5 is repealed.

Criminal Justice and Public Order Act 1994

13 In the Criminal Justice and Public Order Act 1994 (c.33), in Part 1 of Schedule 8 (increase in penalties), the entry relating to section 7(4) of the Sea Fisheries (Shellfish) Act 1967 is repealed.

SCHEDULE 5
(introduced by section 166(2))

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