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Marine and Coastal Access Bill

Changes made by the House of Lords

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Summary

The Marine and Coastal Access Bill continues to attract broad cross-party, stakeholder and public support. Pre-legislative scrutiny of a draft Bill was completed by a Joint Committee of both Houses (Chaired by Lord Greenway) and the Efra Select Committee (chaired by Michael Jack MP) during April-July 08. The Government response included numerous improvements to the Bill introduced to the House of Lords on 4th December 08.

The House of Lords had seventeen sessions of debate on over 1,000 amendments. The Bill entering the House of Commons includes some notable improvements:

- i. **Stronger and clearer general objective for the Marine Management Organisation** in relation to sustainable development, its use of science and other evidence to underpin decision-making; and its relationship with the Infrastructure Planning Commission;
- ii. **Additional provisions for parliamentary scrutiny** with new duties on Ministers to report on marine planning progress, to make a statement to Parliament on principles to be followed in implementing the duty to contribute to a network of marine conservation sites, to lay sustainable development guidance for the MMO before Parliament;
- iii. requirement on Government to publish a **sustainability appraisal of the marine documents**;
- iv. **Clearer description of roles for local authorities** in marine licensing and coastal access;
- v. **Clearer duty to designate marine conservation zones**, introduction of 12 month time limit to designation once intention has been published, and the addition of reckless damage into general offence;
- vi. **Addition of procedure for making objections and representations about coastal access reports.**

A duty on marine plan authorities to “seek to ensure” whole coverage of its marine planning region was inserted against the Government’s wishes. The Government is currently assessing with the Devolved Administrations the impact of this amendment.

This list does not include minor drafting changes from parliamentary counsel.

Part 1 - Marine Management Organisation

1. **Sustainable development.** Clause 2 amendment to enable the MMO in the pursuit of its general objective to take any action which it considers necessary or expedient for the purposes of furthering any social, economic or environmental purposes. It also requires the MMO to take into account all relevant facts and matters which include: scientific evidence, evidence relating to social economic or environmental elements of sustainable development, and any other facts and matters that the MMO considers appropriate. A further amendment to the clause requires the guidance that the Secretary of State will give to the MMO on its sustainable development duty to be laid before each House of Parliament and the guidance will be subject to negative resolution procedure. Clause 36 amended to require the Secretary of State to consult any such other bodies or persons as the Secretary of State considers appropriate on the guidance given to the MMO on its sustainable development duty.
2. **Infrastructure Planning Commission.** New clause 23 inserted to reflect the MMO's role in advising the IPC and to amend the Planning Act 2008 to reflect the MMO's role as statutory consultee at the pre-application stage and interested party once the IPC has accepted an application for consideration.
3. **Local authorities** – amendment to Clause 20 to allow local authorities who are harbour authorities to work together to discharge any functions given to them by the MMO, if it is appropriate. It includes local authorities which are operating both executive and non-executive arrangements.
4. **Research** - new subsection (3) added to Clause 23 to make it clear that any requirement for the MMO to disclose results of research does not apply to information which would be exempt from disclosure under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004.
5. **Chief Science Advisor** - new paragraph inserted into Schedule 1 requiring the MMO to appoint a Chief Science Adviser, who will advise the Board on marine science.
6. **MMO board** – amendment to limit the Secretary of State's power to make an order to amend the number of MMO Board members so that the minimum number of members will be fixed at 5.

Part 3 - Marine Planning

7. **Marine planning reporting duty** - amendments to introduce two new elements into the general duty in clause 58 to report on marine plans every 3 years. Firstly, marine plan authorities will also be required to report every 6 years until 2030 on the marine planning activity they have undertaken in their marine planning region(s), and on what future planning activity is intended. Secondly, these reports and the triennial reports produced on individual marine plans will have to

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be laid before the ‘appropriate legislature’ to ensure appropriate legislative oversight of marine planning activity.

8. **Marine Policy Statement** – clarification of the process for legislative scrutiny of the draft Marine Policy Statement, ensuring that all UK legislatures are given sufficient time properly to consider the draft MPS.
9. **Marine planning duty** – amendment inserting marine planning duty (clause 51(2)), requiring marine plan authorities to “seek to ensure” whole coverage of its marine planning region.
10. **Independent investigations**- clarification of the importance of independent investigation in helping to resolve outstanding issues after the public consultation on a plan.
11. **Historic / Archaeological** - amendment clarified the scope of duty on marine plan authorities to keep under review matters which might be expected to affect their marine planning activities making clear that “cultural” characteristics includes “historic and archaeological” characteristics. Similar amendments made in Part 5.
12. **Sustainability appraisal** - new paragraph (7) inserted into Schedule 5 to require a sustainability appraisal of the Marine Policy Statement prior to its publication in draft for public consultation.

Part 4 - Marine Licensing

13. **Local authorities** – amendment to Clause 67 introduced requirement for the licensing authority to notify, or the applicant to notify, local authorities in whose area the activity is proposed to take place.
14. **Exemptions** – amendment to Clause 73 to make clear that when exempting activities from the need for a licence using the order-making power, licensing authorities must have regard to the need to protect the environment; the need to protect human health; the need to prevent interference with legitimate users of the sea; and such other matters as the authority thinks relevant.
15. **Remediation notice** - clause 88 amended to ensure that if someone has caused harm or interference, they can be made to make amends for that harm or interference, for instance by restoring the condition of places affected by that harm to the condition they would have been in had the harm not been caused. Clause 103 was amended to enable the enforcement authority to prevent harm or interference, and to restore the condition of a place affected by the harm or interference to that which it would have been had the interference not occurred.

Part 5 - Marine Nature Conservation

16. **Time limit for designation of MCZs** - amendments inserted a new para (10) to clause 123, requiring the Secretary of State to designate each zone within 12

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months of formally publishing a notice under clause 120(2) of an intention to designate.

17. **Network of sites**- amendment inserted new paras (6, 7 & 8) to clause 123 requiring the appropriate authority to make a statement to Parliament on the principles and other factors it intends to follow in implementing the duty to contribute to the “network of sites”.
18. **Reckless damage** - amendments to clause 140 to add “reckless” to the general offence of causing damage to the protected features of a marine conservation zone.
19. **Historic / Archaeological** - amendment to Clause 117 clarified the Secretary of State may consider the “historical and archaeological” consequences of Marine Conservation Zone site designations in the definition of “social” set out in 117 (7).
20. **Duty to designate** - amendments to Clause 123 to clarify duty to designate marine conservations zones, and to do so to contribute the creation of a network, and to include Ramsar sites and Sites of Special Scientific Interest in our network of protected areas.

Part 6 - Inshore Fisheries and Conservation Authorities

21. **IFCA duties** - amendment to the main duties of Inshore Fisheries and Conservation Authorities, which added into clause 153 (2) a requirement to “make a contribution to the achievement of sustainable development” in managing the exploitation of sea fisheries in its district, and introduced a duty on the Secretary of State to give each IFCA guidance as to how it is to make such a contribution.
22. **IFCA membership** – amendments to remove the power of the Secretary of State to alter clause 147(2)(a) and (b) so that descriptions of members appointed to an IFC authority cannot be amended – they can only be added to. This means that members must always comprise persons acquainted with the needs and opinions of the fishing community and persons with knowledge of, or expertise in, marine environmental matters.

Part 8- Enforcement

23. **Enforcement Officers** – amendments to enable marine enforcement officers to go into inshore areas and on land anywhere in the UK to investigate a suspected nature conservation or licensing offence which was committed in the area where they have jurisdiction. This will mirror powers British Sea Fishery Officers have to investigate fisheries offence.
24. **Penalties** - clarification that someone cannot be subject to penalties created under Part 8 as well as Part 4 for the same offence.

Part 9 - Coastal access

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25. **Involvement of access authorities in preliminary activities** - amendments to clause 292 require Natural England to: publish the approach it will take when deciding whether it would be appropriate for an access authority to carry out any preliminary activity; consider whether it would be appropriate for the access authority to carry out any preliminary activity; and if so to take all reasonable steps to enter into an agreement with the access authority. It also gives “access authorities” powers to enter into such agreements in relation to their area.
26. **Procedure for making objections and representations about coastal access reports** - amendment to clause 296 (55E) providing for the insertion of a new schedule as schedule 1A to the National Parks and Access to the Countryside Act 1949 (“the 1949 Act”) setting out the procedure for making and considering objections and representations about coastal access reports. Amendment inserting new para 16 (3) into schedule 19 setting out the circumstances in which the Secretary of state can depart from the finding of the appointed person in relation to a statement of fact made to support an objection to the Coastal Access report.
27. **River estuaries** – amendment to Clause 291 requiring Natural England to have regards to a number of detailed matters before making a recommendation as to how to treat any estuary as part of the English coast. These matters include eg the nature of the land; the topography of the shoreline and the recreational benefit to the public of including such land.
28. **Maps of the boundary of access land.** – amendment to Clause 292 requires Natural England to include in its report a map showing the landward boundary of the relevant coastal land where it is not able to provide a description of the boundary which is sufficient to identify the relevant coastal margin. It also requires Natural England to provide a copy of the map to the person with a relevant interest in affected land. This follow discussion in committee of the importance of ensuring that there could be clarity for landowners over what land the rights of access apply to.
29. **Existing right of access**– amendment to Clause 293 extends section 20 of the CROW Act, which deals with the code of conduct and other steps that Natural England must take to inform the public and persons interested in access land. Natural England will be required to ensure that in relation to land which is coastal margin the public are informed that the right of access conferred by the CROW Act does not affect any other right of access that may exist in relation to that land. It also makes clear that a separate code of conduct may be drawn up for coastal land.

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