

Sustainability Committee

12th February 2009

SC(3)-03-09 P5

Paper for The National Assembly for Wales Sustainability Committee 12 February 2009

Prepared by:

Jane Davidson AM

Minister for Environment, Sustainability and Housing

Marine and Coastal Access Bill

Purpose

1. This paper provides an update, as requested by the Committee, on the main changes made to the Marine and Coastal Access Bill since its publication in draft on 3 April 2008 and the implication of these changes for Wales.

2. The following areas are covered:

A Background

B Content of the Bill - main changes and implications for Wales:

Part 1 - Marine Management Organisation

Part 2 - Exclusive Economic Zone, UK Marine Area and Welsh Zone

Part 3 - Marine Planning

Part 4 - Marine Licensing

Part 5 - Nature Conservation

Part 6 - Management of Inshore Fisheries

Part 7 - Fisheries

Part 8 - Enforcement

Part 9 - Coastal Access

Part 10 - Miscellaneous

A. Background

1. The draft Marine Bill was published on 3 April 2008 for public consultation. It was also subject to pre-legislative scrutiny by a Joint Committee of made up from members of both the House of Lords and House of Commons. The Joint Committee published its Report and recommendations on 30 July 2008.

2. The UK Government published its response to the pre-legislative scrutiny and the public consultation in its Command paper "Taking Forward the Marine Bill: The Government response to pre-legislative scrutiny and public consultation" on 25 September 2008. The Welsh Assembly Government has worked closely with Defra throughout this process.

3. Following public consultation and pre-legislative scrutiny the Bill has been revised and was introduced into the House of Lords as the Marine and Coastal Access Bill on 4 December 2008. The Bill received its Second Reading on 15 December 2008.

4. A Marine and Coastal Access Bill Policy Document was published by Defra on 5 December 2008 to provide more detailed explanation on the key areas within the Bill.

B. Content of the Bill - Main Changes and Implications for Wales

Part 1 - Marine Management Organisation

5. This part deals with the creation and operation of the Marine Management Organisation (MMO). The MMO will operate mainly in English and UK Offshore waters but will have responsibilities in Wales for non-devolved issues such as the licensing of offshore wind farms with a capacity of 100mw or below.

The revised Bill provides:

6. A clearer and unambiguous general objective for the MMO to ensure that activity in the marine areas is managed, regulated and controlled in a consistent and co-ordinated way, taking into account the effect that decisions on one area will potentially have on other areas and making a contribution towards the achievement of sustainable development.

Part 2 - Exclusive Economic Zones, UK Marine Area and Welsh Zone

7. This (new) Part defines the UK Marine Area in which the other powers and duties in the Bill will be exercisable. It also allows for a Exclusive Economic Zone to be designated around UK waters, simplifying and replacing existing zones. In addition it provides for the creation of a Welsh zone for fisheries, bringing Wales into line with similar arrangements in Scotland and Northern Ireland.

Implications for Wales:

8. The creation of a Welsh zone for fisheries will give Welsh Ministers fisheries competence beyond the territorial seas of Wales, but within British Fisheries Limits, for the management of fisheries functions.

9. Currently the Welsh Ministers have fisheries functions in the area out to 12 nautical miles. In the area between the territorial adjacent to Wales and the median line between Wales and Ireland, Defra exercises the fisheries functions. The creation of the 'Welsh Zone' will allow the Welsh Ministers to exercise a more cohesive fisheries regime for the seas around Wales.

Part 3 - Marine Planning

10. This Part establishes a new system of spatial planning in the UK Marine Area including:

Ability to prepare, agree, amend and withdraw a marine policy statement.

Ability to make, amend, withdraw and review marine plans.

The effect of marine plans on decisions.

Monitoring and reporting.

Marine Policy Statements

11. The marine policy statement sits at the pinnacle of the marine planning system, articulating a framework of high level objectives for the marine environment and how it should be managed in order to enable sustainable economic development to progress within environmental limits.

The revised Bill:

12. Establishes Scottish Ministers as a policy authority, thus enabling them to jointly agree a UK wide marine policy statement together with UK Government, the Welsh Ministers and Northern Ireland Executive.

13. Provides for the Marine Policy Statement to be subject to legislative procedure and to be laid before the appropriate legislature before adoption.

14. Creates a requirement for policy authorities periodically to review the marine policy statement.

15. Provides that the withdrawal of a devolved administration from the marine policy statement does not render the statement withdrawn for all purposes.

Implications for Wales:

16. Establishing Scottish Ministers as a policy authority means that a marine policy statement can be created for the whole of the UK waters - it enables Welsh Ministers to work with UK Government, Scottish Ministers and Northern Ireland Executive to develop and jointly adopt a Marine Policy Statement.

17. A consultation draft of a proposed marine policy statement must be laid before the National Assembly for Wales. In addition, if the National Assembly for Wales passes a resolution, or a Committee of the National Assembly for Wales makes a recommendation, with respect to the consultation draft of the marine policy statement, the Welsh Ministers must lay a statement before the National Assembly for Wales, setting out their response to the resolution or the recommendation.

18. The Bill also enables the Welsh Ministers to withdraw from the marine policy statement if they no longer support its policies. In such circumstances the marine policy statement will remain in effect so that it continues to have statutory effect on non-devolved decision making in the Welsh inshore and offshore regions.

Marine Plans

19. Marine plans sit underneath the marine policy statement and are intended to apply the strategic policy set out in the marine policy statement in more detail within specific parts of the UK marine area.

The revised Bill:

20. Makes provision to distinguish between devolved and holistic plans for devolved administrations' offshore regions and the Welsh inshore region ("holistic" plans are marine plans which include provision relating to non-devolved functions).

21. Allows the Welsh Ministers, as a marine plan authority, to prepare marine plans for the offshore area adjacent to Wales. Any such plans must be agreed by the UK Government before they are put in place.

22. Subjects the ability of the devolved administrations to prepare, consult upon and adopt holistic marine plans to a requirement for the agreement of the Secretary of State.

23. Subjects the ability of the devolved administrations to prepare, consult upon and adopt devolved marine plans for their offshore regions to a requirement for the agreement of the Secretary of State.

24. However it also empowers the Welsh Ministers to prepare, consult upon and adopt devolved marine plans for the Welsh inshore region without the agreement of the Secretary of State. Non-devolved decision making will not be bound by devolved marine plans.

Implications for Wales:

25. The Welsh Ministers will be the marine plan authority for the Welsh inshore region and the Welsh offshore region. This will enable the Welsh Ministers to prepare and adopt a holistic marine spatial plan for all waters adjacent to Wales.

26. The Welsh Ministers will agree the final version of any plan produced in the Welsh offshore area with the Secretary of State.

27. If the Secretary of State does not agree the Welsh Ministers' marine plan, non-devolved decision making in the Welsh inshore or offshore regions will not be bound by the plan.

Part 4 - Marine Licensing

28. This part establishes a licensing system that brings together a number of different licensing regimes and creates a wider list of licensable activities under a Marine Act licence.

29. The Coast Protection Act 1949 (CPA) Part 2 consent in relation to navigation and navigational safety impacts of an activity will be combined with Food and Environment Protection Act 1985 (FEPA) Part 2. All forms of dredging, including aggregates dredging will be licensable and all vessels, aircraft or structures, regardless of their country of origin, will need a licence for certain activities if they are undertaken within the UK marine licensing area.

30. The Welsh Ministers will be the Licensing Authority within Welsh waters under the Marine Act, other than in relation to certain non-devolved activities. They will be able to amend, by Order, the list of licensable activities set out in the Bill; will be able to exempt certain activities from the need for a licence and the Welsh Ministers may make regulations to make further provision as to the procedure to be followed for the application and granting of Marine Act licenses.

The revised Bill:

31. Sets out detailed transitional provisions for marine licensing in relation to FEPA and CPA regimes mainly. The transitional provisions set out how we will move from the old licensing system to the new and how existing licences will be treated under the new regime.

32. Places a duty on each appropriate licensing authority to establish an appeals mechanism for handling of appeals against license decisions.

Implications for Wales:

33. The Welsh Ministers will need to establish the appeals mechanisms in Wales.

Part 5 - Nature Conservation

34. This Part establishes a system for designating and protecting Marine Conservation Zones (MCZs) in the UK marine area for the conservation of rare, threatened and representative habitats and species.

35. The Bill confers power to make orders designating such zones and the conservation objectives for them. All public authorities will have a duty to exercise their functions in ways that further the conservation objectives for MCZs, or in ways which least hinder the achievement of those objectives. In addition the Bill provides for conservation orders to be made controlling the activities which may take place within the zones.

36. The Welsh Ministers will be the designating and conservation order-making authority for MCZs in Welsh territorial waters.

The revised Bill:

37. Imposes a duty on the appropriate authority to exercise the designation power so that marine conservation zones, taken together with any European marine sites, form a network of marine protected areas.

38. Imposes a duty on the appropriate authority to report to the appropriate legislature on the extent to which the network of marine

protected areas has been achieved and any further steps which are required to be taken in order to contribute to the achievement of the network.

39. Introduces a general offence of deliberately damaging a feature of an MCZ.

Implications for Wales:

40. The Welsh Ministers as the appropriate authority in relation to Wales will be under a duty to designate marine conservation zones to contribute to the creation of a network of conservation sites in Welsh waters and across the UK. Welsh Ministers will also be under a duty to report to the National Assembly for Wales, in 2012 and every 6 years thereafter, on progress made in creating a network of sites.

41. The general offence of deliberately damaging a feature of an MCZ will apply equally in Wales. This provision is intended to deal with potential acts of environmental vandalism that would be difficult to predict and control through conservation orders.

42. Scottish Ministers will be the appropriate authority for designating marine conservation zones in the offshore area adjacent to Scotland - therefore no impact upon Wales.

Part 6 - Management of Inshore Fisheries

43. This Part modernises inshore fisheries and environmental management arrangements in England and Wales. It provides the ability to establish Inshore Fisheries and Conservation Authorities (IFCAs) to manage inshore fisheries out to 12 nautical miles and sets out the membership, funding and operation of IFCAs.

The revised Bill:

44. Provides the Welsh Ministers with sufficient powers to manage inshore fisheries area in Wales to the same standard as IFCAs in England.

45. Enables the Welsh Ministers to make appropriate legislation to manage inshore fisheries.

Implications for Wales:

46. The Welsh Ministers will assume full responsibility for managing fisheries in Wales following the dissolution of Sea Fisheries Committees in England and Wales. The clauses enable appropriate legislation to be made to manage inshore fisheries and the issues associated with them.

Part 7 - Fisheries

47. This Part of the Bill updates a range of existing fisheries legislation to reflect latest developments within the fishing fleet and in fisheries management. It also repeals spent or obsolete enactments.

The revised Bill:

48. There have been no significant changes to this part of the Bill.

Part 8 - Enforcement

49. This Part covers the enforcement of marine fisheries, nature conservation and licensing offences. The Bill modernises enforcement powers for sea fisheries, marine licensing and nature conservation and creates a set of common enforcement powers. The powers include the power to board and inspect vessels, enter and inspect premises and vehicles, require information and production of documents, etc.

50. The Bill provides for the Marine Management Organisation and Welsh Ministers to appoint Marine Enforcement Officers with these common enforcement powers.

The revised Bill provides:

51. For the Welsh Ministers and MMO to appoint Marine Enforcement Officers, who can enforce across borders in England and Wales. Previously the Bill specified Welsh Enforcement Officers in Welsh waters and Marine Enforcement Officers in English waters.

Implications for Wales

52. The general category of Marine Enforcement Officers - all with the same common enforcement powers - will enable enforcement of all parts of the Bill to be more streamlined and effective across England and Wales.

Part 9- Coastal Access

53. This Part creates a duty on the Secretary of State and Natural England to secure improved public access to the English coast, including the establishment and maintenance of a long distance footpath around the English coast.

The revised Bill:

54. Requires Natural England to conduct a review of early implementation of the coastal access Scheme.

55. Provides legislative competence, in the form of framework powers under the Government of Wales Act 2006, on coastal access for the National Assembly for Wales.

Implications for Wales

56. The new framework powers will confer new legislative competence on the National Assembly for Wales in relation to public access to, and routes at, the Welsh coast.

57. The framework powers will add two new Matters within Schedule 5 of the Government of Wales Act 2006 under the field 'sport and recreation'. The first Matter will enable an Assembly Measure or Measures to be brought forward for the establishment and maintenance of a route or a number of routes to enable the public to make recreational journeys around the coast. The second Matter will enable an Assembly Measure or Measures to be prepared to secure public access to land at the coast of Wales and to land which can be used in association with that land, as well as to land which can be used in association with any coastal route, again for recreational purposes.

58. These powers are intended to complement and add value to the Assembly Government's existing Coastal Access Improvement Programme - for example by clarifying the extent of public access rights at the coast and by securing new areas of land for public access, neither of which can be delivered by the current programme due to the limitations on our existing powers.

Part 10- Miscellaneous

59. This Part contains provisions relating to the extent of Natural England's remit and amendments to the Harbours Act 1964, which are set out in Schedule 20.

The revised Bill

60. Amends part VII of the Environmental Protection Act 1990 to clarify the Countryside Council for Wales' geographical remit.

Implications for Wales

61. This provision will clarify that the Countryside Council for Wales' functions are exercisable in the Welsh territorial sea - which is out to 12 nautical miles.

62. Whilst it is currently clear that CCW can exercise certain functions in Welsh waters, for example in respect of marine nature reserves, there has been doubt as to whether CCW can exercise its functions in the territorial sea more generally; hence this clarification

63. The Countryside Council for Wales will also be able to exercise some of its general functions in the Welsh zone (the Welsh offshore area) so as to be able to advise the Welsh Ministers on nature conservation matters arising through the exercise of the Welsh Ministers functions in relation to fisheries or marine planning in the Welsh zone.