

Concordat with Northern Ireland – Marine Planning Annex

Marine Planning

Under the Marine and Coastal Access Act 2009, (referred to as “the Act”) marine planning consists of two elements– a Marine Policy Statement (MPS) and marine plans that articulate that Statement in more detail and apply locally relevant policies in connection with the sustainable development of the area spatially.

The Department of the Environment (DOE) is the marine plan authority for Northern Ireland’s offshore region. It is the intention to introduce a Northern Ireland Marine Bill for the inshore region to the Northern Ireland Assembly in 2011. Subject to the approval of the Northern Ireland Executive the enactment of the Bill will provide the opportunity to create marine plans to cover both Northern Ireland’s inshore and offshore regions.

Marine Policy Statement

The Act provides that the Secretary of State, the Scottish Ministers, the Welsh Ministers and the DOE are policy authorities for the purpose of developing, adopting, reviewing and amending the MPS.

There is a joint commitment to deliver a MPS that describes a shared vision for the whole of the UK seas from 0-200nm (or the median line as appropriate).

The policy authorities jointly published and adopted the Marine Policy Statement on 18 March 2011 following an earlier draft MPS which was laid before the UK Parliament and the Northern Ireland Assembly . This has provided for democratic accountability to both legislatures and for their comments and concerns to be taken on board before agreement. A Summary of Differences between the draft and final UK Marine Policy Statement, published by the policy authorities alongside the Marine Policy Statement, outlines how these comments and concerns have been addressed.

The DOE, any Northern Ireland Ministers, other Northern Ireland departments, and also any non-departmental public authorities exercising secondary devolved functions, in the Northern Ireland inshore and offshore regions (as those terms are defined in the Act), must now follow the content of the MPS in accordance with section 58 of the Act when carrying out their activities. It also means that the DOE must ensure that any marine plans prepared for the Northern Ireland offshore and inshore regions are in conformity with the MPS, unless relevant considerations indicate otherwise.

Preparing and reviewing the MPS

Sections 45 to 48 of and Schedule 5 to the Act set out the process for preparing, coming into effect, review, amendment and withdrawal from or of the MPS. The Secretary of State and the DOE will work together throughout this process. The work will be led by Defra with regular discussions with Northern Ireland officials and

other Devolved Administration officials and one-to-one discussions as necessary. Defra will also lead on preparing and suggesting revisions to the Statement of Public Participation, working closely with Northern Ireland and other Devolved Administration officials to ensure the participation and input of Northern Ireland's stakeholders.

Any policy authority which has adopted the MPS but has major concerns with the Statement may call for a review. The Secretary of State, the DOE, and the other policy authorities will then work together to address the issue, and if necessary consider whether any amendments are needed. If the issues cannot be resolved, either by discussion or amendment of the MPS, and if either the DOE or the Secretary of State is no longer happy with their involvement in the MPS, they can withdraw at any time. In circumstances where either the DOE or the Secretary of State were to withdraw agreement to the MPS, transitional arrangements will apply to provide for an orderly process with as much joint working as possible.

It is a requirement under the Act to review a MPS if the policy authorities consider it appropriate to do so. The MPS is expected to be reviewed about every five years but a review can be undertaken at any time prompted by key changes. These may include any changes to the Northern Ireland Executive's responsibilities and fundamental changes in policy. When considering whether to review the MPS, the authorities will consider whether there has been a significant change in the evidence underpinning the policies set out in the MPS, whether relevant new policies have been introduced that need to be reflected in the MPS and whether the policy objectives in the MPS need to be amended. This will be informed by implementation and monitoring of the marine plans.

When a review of the MPS is considered necessary, Defra will take the lead working closely with Northern Ireland officials and other Devolved Administration officials and follow the process for creating the MPS.

Marine Plans

Drawing up marine plans in an inclusive and interactive way will be key to developing the shared vision for the UK marine area. The process offers an opportunity to learn and share in achieving our common vision. Under the Act, the DOE is the marine plan authority for the Northern Ireland offshore region. As the marine plan authority, the DOE may develop plans addressing both devolved and retained matters in the offshore region provided they have adopted the MPS and the plans are in conformity with the MPS, unless relevant considerations otherwise indicate. These plans must be agreed by the Secretary of State before they can be adopted and take effect. Joint working arrangements will ensure the involvement of the Secretary of State throughout the plan-making process to provide guidance on retained functions and smooth the final, formal agreement to the plan.

Once a plan is in place, all Ministers and public authorities will have to follow the content of the plan when carrying out their functions and making decisions in accordance with section 58 of the Act.

In the event that the DOE and the Secretary of State cannot agree a plan for NI's offshore region the exercise of public authorities' functions in the region, in accordance with section 58 of the Act, will be limited to devolved matters. The DOE's and other relevant Northern Ireland departments' existing functions, and any to be conferred, imposed or transferred in the future, are neither diminished nor constrained by the fact that certain marine planning functions under the Act are subject to the Secretary of State's agreement. This is not a desirable outcome, so the DOE and the Secretary of State will work closely together to avoid the need to proceed in this way.

Preparing and reviewing Marine Plans

Schedule 6 to the Act sets out how marine plans for the offshore region are to be prepared and adopted. The DOE must notify the Secretary of State before beginning to prepare a marine plan. When the DOE proposes to include provisions relating to retained functions in Northern Ireland's marine plan, it must seek the Secretary of State's agreement to its Statement of Public Participation, and any amendments; and to its draft plan, prior to public consultation. The Secretary of State's agreement is required for the final draft of all plans.

The DOE will consult the UK Government throughout the development of the plan for advice and information on retained matters.

The Secretary of State and the DOE will need to be satisfied that the marine plan in the Northern Ireland offshore region contributes appropriately to the overall requirements of UK policy set out in the MPS. Officials from each country will work together to ensure this as they plan. In order to be able to give agreement to the final plan, the DOE should allow the Secretary of State access to consultation representation and reports of any independent investigations.

The DOE will allow sufficient time for UK Government input to the marine planning process, recognising that Defra will need to consult the Marine Management Organisation and other Government departments before the Secretary of State can give the necessary approvals.

Co-ordination across boundaries

The UK Administrations are committed to the co-ordination of marine and terrestrial planning across administrative boundaries. This includes planning for activities which extend across national or plan area boundaries. Co-ordination will also be needed with other Member States and countries sharing the same regional seas, including the Republic of Ireland with which the UK shares a land and sea boundary. If marine plans in the Northern Ireland or English offshore regions impact or may impact on each other they should explain clearly how the plans interact.

Transitional arrangements for withdrawal from the MPS or agreement to a marine plan

The Act provides for each marine policy authority to withdraw from the MPS (section 48). Before publishing a notice of withdrawal, the policy authority must notify the other policy authorities.

A marine plan may also be withdrawn at any time by the marine plan authority, and the Secretary of State may also withdraw agreement to an adopted marine plan. Under section 53(4) of the Act, once the Secretary of State gives notice of withdrawal, the marine plan authority must publish notice of the withdrawal and the plan is withdrawn from the date of that notice.

The provisions on withdrawal are expected to be used only as a last resort. The withdrawal by the Secretary of State of the MPS, or of her agreement to a Northern Ireland marine plan, could have an impact on devolved as well as retained matters. In recognition of this, there should be appropriate transitional arrangements in place to minimise the potential for confusion and disruption should it become necessary to use these powers.

General principles governing transitional arrangements for withdrawal

There are a number of general principles that should govern these transitional arrangements.

“No surprises”

Issues which could develop into a need for an amendment or withdrawal of/from the MPS or plan should be discussed between the Secretary of State and the DOE as soon as possible after they are identified, to enable appropriate discussion and consideration.

Amendment before withdrawal

The Secretary of State and the DOE will seek to resolve issues by negotiating and amending the relevant document before resorting to withdrawal. They will co-operate in expediting amendments of this kind, provided that each authority is content with the amendment. Where an amendment proposed by the Secretary of State relates solely to a retained matter, and (in the case of a plan) is in conformity with the MPS, it is expected that the agreement of the DOE to amending the plan will be given and vice versa for matters that have been devolved.

Publication of reasons

If circumstances did arise in which it became necessary to withdraw the MPS or plan, the provisions of the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 (including the presumption in favour of disclosure) should govern the decision whether to proactively publish the reasons for that withdrawal. The reasons should be published,

unless they would be exempt from disclosure in response to a request under that legislation.

