MARINE BILL

EXPLANATORY AND FINANCIAL MEMORANDUM

INTRODUCTION

1. This Explanatory and Financial Memorandum has been prepared by the Department of the Environment in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.

2. The Memorandum needs to be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause or Schedule does not seem to require an explanation or comment, none is given.

BACKGROUND AND POLICY OBJECTIVES

3. It is accepted that the United Kingdom's marine environment is not a limitless resource, and that the potential for competition and conflict between the various activities which take place there is increasing. Those activities, both separately and cumulatively, may also have environmental impacts in the long term which would require mitigation.

4. In addition, the current framework of domestic and international legislation used to manage the United Kingdom's seas is complex.

5. In recognition of this situation, the United Kingdom Government and devolved administrations committed jointly to the introduction of new marine legislation based on sustainable development principles.

6. This commitment was first formalised by the Northern Ireland Executive in March 2008 when it agreed to new marine legislation being introduced in Northern Ireland. The aim was to establish a new framework for the marine environment based on a strategic system of marine planning that would balance environmental, social and economic needs.

7. However, due to the nature of the devolution settlement for Northern Ireland, and the complex mix of devolved and non-devolved functions, that framework could only be achieved in Northern Ireland through three interlocking pieces of legislation:

   - the Marine and Coastal Access Act 2009 (c.23), which received Royal Assent on 12 November 2009;
   - United Kingdom-wide Marine Strategy Regulations 2010 (No.1627), which came into operation on 15 July 2010, and which transpose the Marine Strategy Framework Directive (2008/56/EC); and
   - the Marine Bill for Northern Ireland.

8. The Bill will build on the provisions set out in the Marine and Coastal Access Act 2009. It will establish a strategic system of marine planning in Northern Ireland's inshore region (out to 12 nautical miles) that will be proactive, co-ordinated and responsive; assist in the delivery of a modernised licensing and enforcement regime that is streamlined, consistent and promotes integrated decision making; and contribute to the delivery of the United Kingdom's aim of establishing an "ecologically coherent network of Marine Protected Areas", so that marine biodiversity is protected and international and European commitments are met.

9. It will contribute ultimately to the United Kingdom's vision of clean, healthy, safe, productive and biologically diverse oceans and seas.

CONSULTATION

10. The policies reflected in the Bill have been informed by a series of consultation exercises undertaken over a number of years, including the 2004 Marine Spatial Planning Project in the Irish Sea.

11. There was also a United Kingdom-wide consultation on proposals for a United Kingdom Marine Bill in March 2006, the responses from which provided a significant evidence base that contributed to further assessment of the proposals and led to the publication of a United Kingdom Marine Bill White Paper in 2007. This was followed by consultation on a draft United Kingdom Marine Bill in 2008, and ultimately introduction of the Marine and Coastal Access Act 2009.

12. The Department has been closely associated with each of these consultations and a number of associated stakeholder events, all of which helped inform its consultation on the policy proposals for the Bill.

13. The Department consulted on those policy proposals between 10 April and 9 July 2010, receiving 41 responses (including 5 no comments) from a variety of interests. All of those who provided responses were supportive of the policy proposals and no substantive changes were sought.

14. Responses emphasised the importance of widespread stakeholder engagement; called for flexible, simple and clear processes; and sought assurances that the optimum environmental, social and economic benefits would be achieved.

15. The Assembly's Environment Committee was provided with a synopsis of responses, and on 2 December 2010 indicated that it was content for the Department to proceed with the policy. Executive approval to draft the Bill on the basis of this policy was obtained on 16 December 2010.

16. The consultation paper and synopsis of responses can be accessed at: www.doeni.gov.uk/index/protect_the_environment/water.htm.

OPTIONS CONSIDERED

17. The Department assessed the implications of not introducing a Bill for Northern Ireland against the implications of introducing one. It determined that not to introduce a Bill would risk the future health and sustainability of Northern Ireland's marine environment, and could additionally place Northern Ireland's marine businesses at a competitive disadvantage.

OVERVIEW

18. The Bill consists of 48 clauses, 5 Parts and 2 Schedules.

19. Part 1: The Northern Ireland Inshore Region.

20. Part 2: Marine Planning.

21. Part 3: Marine Protection.

22. Part 4: Marine Licensing: Generating Stations.

23. Part 5: Supplementary.

24. Schedule 1: Marine plans: preparation and adoption.

25. Schedule 2: Further provision about fixed monetary penalties under clause 33.

COMMENTARY ON CLAUSES

26. A commentary on the provisions follows below. Comments are not given where the wording is self-explanatory.

Part 1: THE NORTHERN IRELAND INSHORE REGION

Clause 1: The Northern Ireland inshore region

27. This clause defines the geographical area referred to elsewhere in this Bill for the purposes of managing Northern Ireland's maritime space. It includes the sea and seabed within the territorial sea (out to 12 nautical miles) adjacent to Northern Ireland and describes the landward limit of the marine area. This includes areas that would be open to the tide, apart from the fact that they are generally isolated from it by an artificial barrier such as a closed weir, but where seawater may flow or be caused to flow.

Part 2: MARINE PLANNING

Clause 2: Marine plans for Northern Ireland inshore region

28. This clause provides for the creation of marine plans, and sets out certain basic requirements as to their content and the way in which they are to be prepared.

29. *Subsection (1)* allows the Department to prepare marine plans for "marine plan areas" within the Northern Ireland inshore region.

30. *Subsection (2)* places a duty on the Department to seek to ensure that marine plans are prepared for all parts of the Northern Ireland inshore region where the Marine Policy Statement (MPS) (prepared in accordance with the Marine and Coastal Access Act 2009) "governs marine planning" (see *subsection (10)*).

31. *Subsection (3)* defines a marine plan and requires that a marine plan must:

    - be prepared and adopted by the Department;
    - be prepared in accordance with the process set out in Schedule 1; and
    - state the policies of the "relevant Northern Ireland departments" (see *subsection (11)*).

32. *Subsection (5)* specifies that a marine plan must be in conformity with any MPS which "governs marine planning" in the Northern Ireland inshore region, unless relevant considerations indicate otherwise. Marine plans are intended to set out how the policies and objectives stated in the MPS apply at the local level, based on information about specific activities and processes taking place in that area.

This ensures that there is a close link between the general policy in the MPS and how it is applied in specific situations in marine plans.

33. *Subsection (10)* explains that a MPS "governs marine planning" where the MPS has been adopted and published by the Department (under Schedule 5 to the Marine and Coastal Access Act 2009), has not been replaced or withdrawn and the Department has not withdrawn from it.

Clause 4: Withdrawal of marine plans

34. This clause enables the Department (after consultation with the relevant Northern Ireland departments) to withdraw a marine plan. When a marine plan is withdrawn the Department must bring the withdrawal to the attention of anyone likely to be interested in or affected by it, as well as members of the general public and must publish a notice in the Belfast Gazette.

35. This clause also allows the Secretary of State to withdraw his agreement to a plan (if his agreement was required to the plan's adoption). If the Secretary of State decides to withdraw agreement to the plan, he must give notice to the Department, which then has 7 days to withdraw the plan (by publishing a notice in the Belfast Gazette).

Clause 5: Duty to keep relevant matters under review

36. This clause requires the Department to keep under review matters which may affect its functions of identifying marine plan areas and preparing etc. marine plans. This is to ensure that the Department stays up to date with what is happening in the Northern Ireland inshore region, in order to make effective planning decisions.

37. *Subsection (2)* sets out a non-exhaustive list of the matters which the Department must keep under review.

38. *Subsection (3)* requires the Department, on a review, to consider how the matters described in subsection (2) might be expected to change, and the effect that any such changes might have on the Northern Ireland inshore region and its sustainable development.

Clause 6: Decisions affected by a marine plan

39. This clause makes provision about the effect which "any appropriate marine plans" are to have on the taking of certain decisions by "a public authority".

40. *Subsection (1)* provides that all authorisation and enforcement decisions must be taken in accordance with any appropriate marine plans, unless relevant considerations indicate otherwise. *Subsection (2)* requires that "a public

authority" give its reasons if making decisions which do not follow the marine plan.

41. *Subsection (3)* requires "a public authority" to have regard to any appropriate marine plan when taking any decision which relates to a function capable of affecting the Northern Ireland inshore region that is not an authorisation or enforcement decision.

42. *Subsection (4)* defines "authorisation or enforcement decisions". These decisions relate to the licensing (or other authorisation) of particular activities which affect, or might affect, the Northern Ireland inshore region; the conditions attached to those authorisations; and the enforcement action to be taken with a view to securing that any such activities are carried out only under licence, and in accordance with any conditions attached to the licence, and not in breach of any prohibition or restriction.

43. *Subsections (6)* and *(7)* describe when a marine plan will be an appropriate marine plan and, therefore, affect decisions. The effect of subsection (6) is that any marine plan for an area is an appropriate marine plan for the purposes of decisions relating to that area, subject to subsection (7). The effect of subsection (7) is that a marine plan for an area in the Northern Ireland inshore region is not an "appropriate marine plan" for the purposes of decisions relating to the exercise of "retained functions" (defined in section 60 of the Marine and Coastal Access Act 2009) unless the marine plan states that:

- it includes provisions for retained functions;
- it was adopted with the agreement of the Secretary of State; and
- it was prepared and adopted whilst an MPS governed marine planning for the Northern Ireland inshore region.

Clause 7: Monitoring of, and periodical reporting on, marine plans

44. Clause 7 sets out the duties imposed on the Department in relation to the monitoring of and reporting on marine plans. *Subsection (1)* sets out the duty on the Department to keep the effects, effectiveness and progress of marine plans under review. Such reports must also cover any progress made in the Northern Ireland inshore region towards achieving the objectives set in a MPS.

45. *Subsections (2), (3)* and *(4)* require that the Department reports on a review at least every three years after each marine plan is adopted, and must decide after each report whether or not the plan needs to be amended or replaced. These reports must be laid before the Assembly.

46. *Subsections (6), (7)* and *(8)* impose a second reporting duty, requiring the Department to report at least every six years until 2030 on the marine plans it has

prepared, and its intentions as to the amendment of existing plans or preparation of additional plans. Again, these reports must be laid before the Assembly.

Clause 8: Validity of marine plans

47. This clause sets out how and when people may challenge a marine plan or an amendment to a marine plan. The only grounds for challenge are that the plan or amendment to the plan is not within the "appropriate powers" (*subsection 4*), or that a "procedural requirement" (*subsection 4*) has not been complied with. A challenge must be brought within 6 weeks of publication.

Clause 9: Powers of the High Court on an application under clause 8

48. This clause sets out the powers of the High Court when hearing a challenge to the validity of a marine plan (and amendments).

49. *Subsection (2)* enables the High Court to make an interim order suspending the operation of all or part of the marine plan or amendment generally or in relation to a particular area until the legal proceedings are over.

50. *Subsection (3)* sets out the conditions which must be satisfied before the High Court may grant any of the remedies set out in *subsection (4).* The High Court must be satisfied either that the marine plan or amendment is outside or beyond the "appropriate powers" or that the applicant has been substantially prejudiced by a failure to meet a "procedural requirement".

51. If the High Court is satisfied that one of the conditions in subsection (3) has been met, subsection (4) enables it to quash the marine plan or amendment or remit it to the Department.

52. Where the High Court remits the plan or amendment to the Department *subsections (5)* and *(6)* then enable the High Court to give directions relating to whether the marine plan or amendment should be treated as not having been adopted or published, relating to whether procedural or other steps should be treated as having been taken or as not having been taken, or requiring action by the Department. This means that whatever was wrong with the document can be put right, without necessarily having to start the whole preparation process from the beginning.

53. *Subsection (7)* provides that the High Court is able to quash or remit the whole or only parts of a marine plan or amendment.

Part 3: MARINE PROTECTION

Clause 11: Designation of marine conservation zones

54. This clause provides a power for the Department to designate areas as marine conservation zones (MCZs) by means of an administrative order.

55. *Subsections (2)* and *(3)* identify those areas within which an MCZ may be designated. The 'Northern Ireland inshore region' is defined in clause 1.

56. *Subsection (5)* states that the Department may not designate an MCZ without agreement from the Secretary of State.

Clause 12: Grounds for designation of MCZ

57. This clause sets out the circumstances in which the Department may designate an MCZ. This must be for the purpose of conserving species of marine flora and fauna, particularly if they are rare or threatened, or for conserving the diversity of marine flora or fauna, habitat, or features of geological or geomorphological interest whether or not they are considered rare or threatened (*subsections (1), (4)* and *(5)*).

58. *Subsection (2)* provides that the order designating the MCZ must state both the protected features and the conservation objectives for the MCZ. The level of protection for an individual MCZ will depend on the site's conservation objectives, which may take account of relevant conservation, social and economic considerations. The conservation objectives will need to be clear to ensure that all public authorities understand the implications of the duties placed on them by clauses 20 and 21.

59. *Subsection (7)* allows the Department to take account of the economic or social consequences of designation. This ensures MCZs may be designated in such a way as to conserve biodiversity and ecosystems whilst minimising any economic and social impacts. Where an area contains features which are rare, threatened or declining, or informs a biodiversity hotspot, greater weight is likely to be attached to ecological considerations. Where there is a choice of alternative areas which are equally suitable on ecological grounds, socio-economic factors could be more significant in deciding which areas may be designated as an MCZ.

60. *Subsection (8)* clarifies that the reference to "social" consequences of designating an MCZ includes any consequences of doing so for sites of historic or archaeological interest.

Clause 13: Further provisions as to orders designating MCZs

61. This clause sets out further requirements for MCZ designations, including the requirement to specify the boundaries of the designated area.

62. *Subsection (3)* provides for the inclusion in an MCZ of any island regardless of whether the land lies above mean high water spring tide. Islands which should be excluded from an MCZ may be identified in the designation order.

63. *Subsections (4)* and *(5)* allow the Department to extend the boundary of an MCZ to include an additional adjacent area of seashore above mean high water spring tide if certain conditions apply. These conditions include the feature(s) which comprise the grounds for designating the MCZ being present in the extended area. This may be appropriate where a threatened species is also present in the area of land above mean high water spring tide and protection depends on extending the boundary of the MCZ.

64. *Subsection (5)* further requires that an MCZ includes land whether or not it is covered in water (which will include the sea bed and foreshore).

Clause 14: Consultation before designation

65. This clause requires the Department to carry out public consultation before designating an MCZ.

66. *Subsections (2)* and *(3)* require notice of a proposed designation order to be published. This enables any party likely to be affected by a proposed order the opportunity to have their interests taken into account.

67. *Subsection (5)* requires the Department to make a decision regarding designation of an individual MCZ within 12 months of publishing the notice. Failure to designate a site within that time will mean that the process will need to begin again before an area may be designated as an MCZ.

68. *Subsections (6)* and *(7)* provide an exemption from the general requirements of publication and consultation if there is an urgent need to designate an MCZ, although the Department will still need to consult with the Secretary of State. In such cases, an urgent order may only remain in force for up to two years unless the Department makes an order confirming the designation within those two years. Publication and consultation in accordance with *subsections (2)* to *(4)* are required in relation to an order confirming the designation (and subsection (5) applies accordingly).

Clause: 15: Publication of orders

69. This clause makes provision for the Department to publish notice of the making of an order. This clause requires that the notice is published in a way most likely to bring it to the attention of interested individuals and requires that a copy of the order is made available for inspection and anyone who asks for a copy is provided with one. The Department may charge a fee for providing a copy.

Clause 16: Hearings

70. This clause allows the Department to hold hearings before deciding whether to make an order under clause 11 to designate an MCZ.

71. *Subsection (2)* gives the Department discretion to give any persons the opportunity of being heard by an appointed person, either orally or in writing.

72. *Subsection (4)* requires these representations to be reported back to the Department.

Clause 17: Review of orders

73. This clause requires the Department to review any order designating an MCZ if it receives representations, that the order should be amended or revoked, from the Secretary of State, the Scottish Ministers or the department of the Government of Ireland with responsibility for marine nature conservation.

Clause 18: Creation of network of conservation sites

74. This clause places a duty on the Department to designate MCZs so as to contribute to the creation of a network of marine sites.

75. *Subsections (1)* and *(2)* set out the duty to designate MCZs and the objective for such designation.

76. *Subsection (3)* sets out what the network of MCZs should achieve, listing three conditions.

77. *Subsection (4)* provides that the network of relevant conservation sites may include European Sites notified under the Wild Birds and Habitats Directives, Areas of Special Scientific Interest and wetland sites designated under the Ramsar Convention.

78. *Subsection (5)* requires the Department to have regard to relevant obligations under EU and international law when complying with the duty in subsection (1).

79. *Subsection (6)* requires the Department to prepare a statement setting out the principles which it will apply in designating MCZs to help create the UK network. It is a requirement to lay the statement before the Assembly, and it must be reviewed and, if necessary, updated periodically.

Clause 19: Reports

80. This clause requires the Department to report to the Assembly on progress in designating a network of MCZs.

81. *Subsection (2)* sets out the information that must appear in the report.

Clause 20: General duties of public authorities in relation to MCZs

82. This clause places a general duty on public authorities (defined in clause 46) to carry out their functions in the manner that they consider best furthers – or least hinders - the conservation objectives set for MCZs. The duty only applies so far as is consistent with the proper exercise of a public authority's functions and only where such functions may have a more than insignificant effect on the MCZ.

83. If a public authority (other than the Department) thinks that the exercise of its functions will or might significantly hinder the conservation objectives of an MCZ, it has to notify the Department.

84. *Subsections (4)* to *(8)* provide that a public authority must inform the Department if it intends to carry out an activity which might significantly hinder the conservation objectives of the MCZ. This duty does not apply if standing advice from the Department under clause 22 applies.

85. Where a public authority has notified the Department under *subsection (5)*, the authority must wait 28 days before deciding whether to go ahead as planned. However, this 28-day rule does not apply if the Department notifies the authority that it need not wait or if the situation is urgent.

86. *Subsections (9)* and *(10)* require a public authority to inform the Department when it considers that an offence (in relation to which it has functions) has occurred that will or may significantly hinder the achievement of an MCZ's conservation objectives.

87. *Subsection (11)* requires public authorities to have regard to any advice issued by the Department under clause 22.

Clause 21: Duties of public authorities in relation to certain decisions

88. This clause applies to all public authorities (other than the Department) with responsibility for authorising applications for certain activities capable of affecting a protected feature of an MCZ or any geological or geomorphological processes on which the conservation of a feature is partially or wholly dependent. It does not apply where the effect is insignificant, in order to avoid capturing very minor matters.

89. *Subsection (2)* requires a public authority to inform the Department if it believes a proposed activity will hinder the achievement of the conservation objectives of an MCZ.

90. *Subsection (3)* states that no authorisation may be granted until 28 days have passed since notice was given. This does not apply, however, where the Department informs the authority that it does not need to wait 28 days or where the authority thinks there is an urgent need to grant the authorisation.

91. *Subsections (5), (6)* and *(7)* impose a duty on an authority not to grant authorisation unless it is satisfied that there is no significant risk that the activity will hinder the achievement of the conservation objectives or if certain conditions in subsection (7) are met. These conditions are: there is no other way to carry out the act which is less likely to hinder the objectives; the benefit of the act to the public clearly outweighs the risk of environmental damage; and the person seeking authorisation will take measures of equivalent environmental benefit to the damage that will be, or is likely to be, caused.

92. *Subsection (10)* requires public authorities to have regard to any advice or guidance given by the Department under clause 22.

Clause 22: Advice and guidance by the Department

93. This clause confers powers and duties on the Department to give advice or guidance to public authorities in respect of MCZs. Public authorities are required to have regard to this advice or guidance when carrying out their duties under clauses 20 and 21.

94. *Subsections (1)* and *(2)* specify the issues on which advice or guidance may be given and allows it to be issued in respect of one or more MCZs and to one or more authorities. Advice and guidance may be issued more generally on MCZs.

Clause 23: Failure to comply with duties, etc.

95. This clause enables the Department to obtain an explanation if it thinks a public authority has failed to exercise its functions to further (or where permissible, least hinder), the conservation objectives, or failed to act in accordance with the guidance provided by the Department. This clause has effect even when the public authority did not initially request the advice or guidance.

Clause 24: Byelaws for protection of MCZs

96. This clause gives the Department the power to make byelaws to protect MCZs in the Northern Ireland inshore region or in any other part of Northern Ireland.

97. *Subsection (3)* sets out some of the activities which may be controlled through the making of byelaws. These are primarily activities which are not otherwise controlled (for example under the marine licensing system). Research has shown that unregulated activities may threaten biodiversity.

98. *Subsection (4)* allows the Department to control specific activities on the seashore adjacent to the MCZ, for the purpose of protection (for example to control noise disturbance from vehicles or music).

99. *Subsections (5)* and *(6)* enable byelaws to provide for the Department to issue permits (with whatever conditions it feels appropriate) to authorise activities which would otherwise be unlawful under the byelaws.

Clause 25: Byelaws: procedure

100. This clause requires the Department to carry out public consultation before making any byelaws. It must publicise its intention to make byelaws and provide a copy of the draft byelaws, if asked, for which it may charge a fee to cover the cost of doing so.

101. Byelaws must be confirmed by the Secretary of State before they come into operation. Once confirmed, the Department must publish notice of the making of the byelaws.

Clause 26: Emergency byelaws

102. This clause enables the Department to make byelaws (under clause 24) urgently, without having to comply with the usual consultation and publication requirements and without confirmation by the Secretary of State. This is only permitted where the Department considers there is an urgent need to protect an MCZ.

103. A notice that the emergency byelaws have been made must be published (*subsection (3)*). Those affected may then make representations to the Secretary of State – who has the power to revoke emergency byelaws.

104. The Department must keep the emergency byelaws under review. Under *subsection (2)*, emergency byelaws remain in force for a maximum of 12 months (although they may be extended by up to a further six months by the Department (*subsections (7)* to *(9)*).

Clause 27: Interim byelaws for MCZ

105. This clause enables the Department to make interim byelaws to protect features in an area where the Department considers there may be reasons for the Department to designate an MCZ and where there is an urgent need for protection. Delay in providing protection through byelaws could otherwise result in harm to the site. Byelaws under this clause are essentially the same as emergency byelaws made by virtue of clause 26 except that they apply to areas which are not yet designated as MCZs.

106. As there will be no MCZs designated in these cases, *subsection (3)* requires that the interim byelaws clearly state the boundaries to which they will apply.

107. As with the emergency byelaws, interim byelaws can be made without consultation, publication or confirmation by the Secretary of State, although the Department must then publish notice of them being made and the Department must keep the need for them under review.

108. *Subsection (5)* provides for interim byelaws to remain in operation for up to 12 months, unless revoked by the Secretary of State. In cases where the period specified in the byelaws is under 12 months, they may be subsequently extended by the Department (under *subsection (10)*) – but the byelaws cannot remain in force for more than 12 months in total.

109. If, while interim byelaws are in place, the Department gives notice of a proposal to make an order (under clause 11) to designate any part of the area as an MCZ, the Department may direct that the interim byelaws are to remain in place until the Department decides whether to make the order and until any such order comes into effect.

Clause 28: Byelaws: supplementary

110. This clause sets out the administrative and notification requirements in relation to byelaws (whether they are made urgently or not) and interim byelaws.

Clause 29: Hearings

111. This clause makes provision for either the Secretary of State or the Department to hold a hearing before deciding whether to make byelaws or interim byelaws, to confirm byelaws or to revoke emergency or interim byelaws.

112. *Subsection (3)* gives the Secretary of State or the Department the discretion to give any person the opportunity of being heard by an appointed person, either orally or in writing.

113. *Subsection (5)* requires these representations to be reported back to the Secretary of State or the Department.

114. *Subsection (4)* allows the Department to make regulations setting out the procedure to be followed, including the awarding of costs.

Clause 30: Offence of contravening byelaws

115. This clause provides that breaching byelaws is an offence.

116. *Subsection (2)* sets out the level of fine for a person guilty of the offence. A level 5 fine is a fine up to £5,000 (based on the current amount of a level 5 fine).

Clause 31: Offence of damaging, etc. protected features of MCZ

117. This clause creates a general offence to catch deliberate or reckless acts of damage to protected features of an MCZ.

118. *Subsections (1)* and *(2)* set out the circumstances in which a person is guilty of the offence. The offence is committed where a person intentionally or recklessly causes damage or harm to the protected features of an MCZ. This includes killing or injuring plants and animals and removing anything that is a protected feature from an MCZ. In order to be guilty of the offence, it is necessary that the person knows, or ought to have known, that the feature was in, or formed part of, an MCZ. In addition, an offence is committed only where the person's actions have significantly hindered, or may significantly hinder, the achievement of the conservation objectives of the MCZ.

119. *Subsection (5)* provides that a court determining the fine should have regard to any financial benefit the person obtained by committing the offence: the greater the gain, the higher the penalty is likely to be.

120. *Subsection (6)* states that an offence may be tried in any part of Northern Ireland.

Clause 32: Exceptions

121. This clause sets out the circumstances in which a person will not be guilty of an offence under clauses 30 and 31.

122. *Subsection (1)* sets out a number of exceptions.

123. *Subsection (3)* provides that a person is not also guilty of contravening byelaws by virtue of doing anything that would make that person guilty of the general offence.

124. *Subsection (4)* provides a defence to the general offence under clause 31 where the accused person proves the relevant act was done in the course of sea fishing and the damage could not reasonably have been avoided. If damage were caused for example by the use of illegal fishing gear where it would not have been so caused had legal fishing gear been used, then this defence would not be available. Such damage could reasonably have been avoided by using legal fishing gear, and therefore the person would not have met the condition in subsection (4)(b).

125. *Subsection (5)* provides a power for the Department to restrict or remove the defence set out in subsection (4). The power would have to be exercised within any relevant constraints of the Common Fisheries Policy.

Clause 33: Fixed monetary penalties

126. This clause enables the Department to make an order which confers a power on the Department to issue fixed monetary penalties for the breach of byelaws.

127. The Department may only impose a fixed monetary penalty when satisfied beyond reasonable doubt that the person has committed the relevant offence.

128. *Subsection (4)* provides for the maximum fixed financial penalty, which will be £200 (based on the current amount of a level 1 fine). A fixed monetary penalty may differ in amount according to whether the person liable is an individual or part of a corporate body. This level of fine reflects the nature of the likely offences, which will tend to be minor breaches of byelaws by an individual.

Clause 34: Fixed monetary penalties: procedure

129. This clause specifies certain minimum requirements that must be included in any fixed monetary penalty regime. In particular, when imposing the penalty, the Department must issue a notice of intent to the person setting out the information specified in *subsection (3)* of this clause and provide the person with the opportunity to discharge liability by payment of a prescribed sum which will be lower or equal to the amount of the penalty. If the sum is not paid, a person may make representations and objections to the Department. Having considered those representations, the Department will come to a decision on whether to impose a fixed monetary penalty (“final notice”) setting out the information specified in *subsection (5)*. A person on whom a final notice is served has a right of appeal.

130. *Subsection (6)* provides that an order allowing the Department to impose fixed monetary penalties must provide for the grounds for appeal set out in that subsection.

Clause 35: Fixed monetary penalties: further provision

131. This clause gives effect to the further provisions about fixed monetary penalties set out in Schedule 2.

Clause 36: Enforcement officers

132. This clause enables the Department to appoint officers for the purpose of enforcing any byelaws made under clause 24 or 27 and enforcing clause 31. The enforcement powers that may be exercised are “common enforcement powers”. Such powers may be exercised in the Northern Ireland inshore region and in any other part of Northern Ireland. The powers may not be exercised in relation to any British warship.

133. Additionally, the powers may not be exercised in relation to a third country vessel, a non-UK warship or any other vessel that is being used by a country other than the UK for any non-commercial purpose. The exception to this is where in the case of a third country vessel (other than a warship or a vessel being used by a third country for any non-commercial purpose) the United Kingdom is entitled under international law to exercise those powers without the consent of the flag state.

Clause 37: The common enforcement powers

134. This clause defines the "common enforcement powers" as those set out in Chapter 2 of Part 8 of the Marine and Coastal Access Act 2009 and further explains how the powers conferred under clause 36(2) are to apply.

Clause 38: Repeals and transitional provisions

135. This clause makes the repeals and transitional amendments relating to this Part of the Bill.

Clause 39: Interpretation of this Part

136. This clause contains definitions for words or expressions used in this Part of the Bill.

Part 4: MARINE LICENSING: GENERATING STATIONS

Clause 40: Special procedure for applications relating to generating stations

137. This clause provides for the situation where both a marine licence, and a consent under Article 39 of the Electricity (Northern Ireland) Order 1992 (in relation to offshore generating stations), are required.

138. In such cases the Department of Enterprise, Trade and Investment is to determine consent under Article 39 of the Electricity (Northern Ireland) Order 1992 and, in conjunction with the Department, may issue a notice to the applicant stating that both the application for an Article 39 consent and the application for a marine licence will be subject to the same administrative procedure. That procedure will secure that the two related applications for the two different permissions are dealt with in parallel at the same time rather than in sequence. In cases where only one of the applications has been received, that application must not be dealt with until the other application is received. When both applications have been received the process that the applications will go through is that which is to be determined by the Department in any order made under *subsection (6)*. That order may disapply any provision of the marine licensing process to the marine licence application, apply the process specified in the Electricity (Northern Ireland) Order 1992 to that application instead and modify the last process in its application to that marine licence application.

Part 5: SUPPLEMENTARY

Clause 41: Regulations and Orders

139. This clause contains general provisions for making regulations and orders under the Bill.

Clause 42: Offences: companies, etc

140. This clause provides for individual liability in cases where there is also corporate liability.

Clause 43: Disapplication of requirement for consent to certain prosecutions

141. Section 3 of the Territorial Waters Jurisdiction Act 1878 provides that a person who is not a British subject may not be prosecuted for an indictable offence committed in the territorial sea without the consent of the Secretary of State. This clause has the effect of disapplying section 3 of the 1878 Act in relation to proceedings for offences committed under the Bill.

Clause 44: Supplementary, incidental, consequential, transitional provision etc

142. This clause allows the Department to make, by order, supplementary and transitional provisions and savings for the Bill.

Clause 45: Crown application

143. The clause states that the Crown is bound by the provisions of the Bill.

Clause 46: Interpretation

144. This clause contains definitions of expressions used in the Bill.

SCHEDULES

Schedule 1: Marine plans: preparation and adoption

145. This Schedule sets out the procedure which must be followed when preparing and adopting marine plans under clause 2.

146. Paragraph 1 places duties on the Department to notify other “relevant authorities” of its intention to plan. These “relevant authorities” are the Secretary of State, Scottish Ministers, terrestrial planning authorities and the department in the Republic of Ireland with responsibility for marine planning in any area adjoining or adjacent to the marine plan area.

147. This is so that the other “relevant authorities” may consider how they might want to be involved.

148. Paragraph 2 sets out what must go into a notice to the Secretary of State under paragraph 1. This includes statements as to whether the marine plan will include provisions relating to “retained functions” (defined under section 60 of the Marine and Coastal Access Act 2009) and whether it will not be prepared in conformity with any MPS which governs the marine plan area. The Department must also advise the Secretary of State of any changes in its intentions by way of further notices.

149. Paragraph 3 provides that the Department must take all reasonable steps to secure compatibility between a marine plan for a marine plan area and marine plans or terrestrial development plans for “related” areas (that is, areas which adjoin or are adjacent to the area of the proposed marine plan, or which affect, or might be affected by, the area of the proposed marine plan).

150. Paragraph 4 places a duty on the Department to consult with the other relevant Northern Ireland departments at key stages of the plan preparation.

151. Paragraphs 5 to 7 set out the process and requirements relating to the preparation and publication by the Department of a “Statement of Public Participation” (“SPP”) for the marine plan. The SPP must set out how and when the Department intends to involve “interested parties” (as defined in paragraph 5(8)) in the planning process; the area which is to be planned for; and must invite people to make representations on what the plan should include.

152. The SPP must state whether the plan is to include provisions relating to “retained functions”, and in such cases the Department must not publish the SPP without the agreement of the Secretary of State.

153. The Department must keep the SPP under review, must amend it when necessary and must re-publish it as amended (subject to the Secretary of State’s agreement where it includes provisions relating to “retained functions”).

154. An SPP must contain a timetable for the various stages of preparing the plan, and must also set out how and when representations about the content of the plan or the consultation draft (paragraph 11) should be made.

155. The Department is obliged to take all reasonable steps to comply with the SPP.

156. Paragraph 8 relates to the provision of advice and assistance to the Department by any body or individual with relevant expertise, including from groups or people convened by it for that purpose.

157. Paragraph 9 sets out a non-exhaustive list of matters to which the Department must have regard in preparing a marine plan.

158. Paragraph 10 requires that the Department undertakes a sustainability appraisal for the policies proposed for inclusion in the plan. The Department is required to produce a report of the results of these appraisals which is to be published at the same time as the consultation draft. The results of the appraisals are to inform which proposals the Department takes forward, and these should only be included where the results indicate that it is appropriate to do so.

159. Paragraph 11 sets out the requirements for publication of the "consultation draft" of a marine plan. It must be published by the Department (only with the agreement of the Secretary of the State if it includes provisions relating to "retained functions") and the Department must take steps to bring it to the attention of interested persons.

160. Paragraph 12 provides that anybody may make representations about the consultation draft, in accordance with the SPP. The Department is obliged to consider such representations before finalising the text of the marine plan.

161. Paragraph 13 requires the Department to consider holding an independent investigation into the consultation draft. Sub-paragraph (2) sets out the factors to which the Department must have regard when deciding whether to hold an independent investigation, and sub-paragraph (3) requires the investigator to make recommendations and give reasons for them. Sub-paragraph (4) requires the Department to publish the recommendations and reasons given by the investigator.

162. Paragraph 14 sets out the matters the Department must consider before deciding to adopt a marine plan, these include the recommendations and reasons given by any independent investigator that it appointed.

163. Paragraph 15 sets out the process for adopting and publishing a marine plan in its final form. The Department "adopts" a marine plan by making the decision to publish it, and, if the plan contains provisions relating to "retained functions", it can only do so with the agreement of the Secretary of State.

Schedule 2: Further provision about fixed monetary penalties under clause 33

164. This Schedule sets out the further provisions about fixed monetary penalties. Paragraph 1 states that an order allowing the imposition of fixed monetary penalties must provide that, where a fixed monetary penalty is imposed on a person, that person must not also be liable to criminal prosecution in respect of the relevant offence.

165. Paragraph 2 states that such an order may provide for discounts for early payment or interest for late payment of the original penalty. The total amount of any late payment penalty must not exceed the total amount of the penalty imposed.

166. This paragraph also provides for the enforcement of unpaid penalties (and any interest or late payment charges) through the civil courts.

167. Paragraph 3 makes provisions for appeals.

168. Paragraph 4 requires the Department, when it proposes to make an order allowing the use of fixed monetary penalties, to consult relevant organisations which it considers represent the interests of persons substantially affected by the proposals and such other persons the Department considers appropriate.

169. If, as a result of this consultation, there are substantial changes to any part of the proposals, the Department will be required to undertake such further consultation on the revised proposals as it considers appropriate.

170. Paragraph 5 provides that an order enabling the imposition of fixed monetary penalties must also require that the Department publishes guidance in relation to the use of these powers ("Penalty Guidance"). The Department must revise the Penalty Guidance where appropriate and must consult specific persons before publishing or revising the Penalty Guidance. The order must also state that the Department should have regard to the Penalty Guidance when exercising its functions.

171. The Penalty Guidance must contain information about the circumstances in which the sanction is likely to be imposed, the amount of the penalty and the person's right of appeal.

172. Paragraph 6 requires that where the Department makes an order enabling the imposition of fixed monetary penalties in relation to an offence, the Department must prepare and publish guidance regarding the manner in which the offence is enforced ("Enforcement Policy"). The Enforcement Policy must set out the sanctions for committing an offence, the action the Department may take and the circumstances in which the Department is likely to take such action. The Enforcement Policy, in contrast to Penalty Guidance, is focused on how particular offences are enforced.

173. Paragraph 7 provides that any order enabling the imposition of fixed monetary penalties must (unless inappropriate to do so) require the Department to publish information concerning its use of those powers in cases where either a fixed monetary penalty has been imposed (but not overturned on appeal) or liability to a penalty has been discharged by payment of a prescribed sum.

174. Paragraph 8 permits those persons listed in sub-paragraph (2) to disclose information to the Department that has had the new enforcement powers conferred on it under clause 33. Information may only be disclosed where the person listed has an enforcement function in relation to offences and for the purposes of the Department exercising one of the new powers. The police will not have access to the new enforcement powers but if, for example, they have begun a criminal investigation but consider that it no longer merits a criminal prosecution, this provision would allow them to pass information to the Department so that it could determine whether to issue an alternative sanction.

FINANCIAL EFFECTS OF THE BILL

175. The Bill provides for enabling legislation, and as such it has been necessary to rely on certain assumptions based on experience of land-based systems, together with information drawn from pilot projects in the United Kingdom and elsewhere, in order to provide a reasonable assessment of the Bill's potential costs and benefits.

176. Furthermore, the added benefits gained by taking forward the Bill as part of a wider marine programme for Northern Ireland are difficult to quantify fully at this point, particularly in financial terms.

177. Nevertheless, a (draft) final Regulatory Impact Assessment has been prepared which identifies the benefits of providing greater certainty for marine businesses and conservation interests, together with synergies arising from the integrated management of marine activities.

178. This (draft) final Regulatory Impact Assessment can be accessed at: http://www.doeni.gov.uk/index/protect_the_environment/natural_environment/marine_and_coast/marine_policy.htm.

179. It is the Department's intention that the different policy areas associated with the Bill shall be subject to further assessments as they are implemented.

HUMAN RIGHTS ISSUES

180. The provisions of the Bill are, in the Department's view, not incompatible with the provisions of the Human Rights Act 1998.

EQUALITY IMPACT ASSESSMENT

181. A preliminary screening exercise on the policy proposals giving effect to the Bill concluded that there would be no adverse impact on equality of opportunity. A full Equality Impact Assessment was therefore considered unnecessary.

LEGISLATIVE COMPETENCE

182. The Minister of the Environment had made the following statement under section 9 of the Northern Ireland Act 1998:

"In my view, the Marine Bill would be within the legislative competence of the Northern Ireland Assembly."

SECRETARY OF STATE CONSENT

183. The Secretary of State has consented under section 8 of the Northern Ireland Act 1998 to the Assembly considering the Bill.