



Northern Ireland  
Assembly

## Research and Information Service Research Paper

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# The NI Marine Bill: Comparison with other jurisdictions.

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This paper presents some comparisons between the NI Marine Bill, the Marine (Scotland) Act, and the UK Marine and Coastal Access Act.



## Key Points

### **Marine (Scotland) Act:**

- There are a number of reasons for the disparity of length between the NI Marine Bill and the Marine (Scotland) Act as the NI Marine Bill does not contain
  - a Statement of general duties;
  - Historic Marine Protected Areas (MPAs);
  - marine management schemes (MMS); and
  - seal conservation measures.
- There are also a number of other differences between the two pieces of legislation, including:
  - territorial coverage
  - fines for offences under the legislation;
  - marine licensing
  - common enforcement powers; and
  - the notification of relevant authorities.
- Another key difference in the marine management provisions is that the Scottish Government created Marine Scotland as a singular management body for the marine area.

### **Uk Marine and Coastal Access Act:**

- Unlike the UK Act, the NI Marine Bill does not include provisions for:
  - a Marine Management Organisation (MMO);
  - management of fisheries/shellfisheries and commercial/ recreational fishing; and
  - provisions to improve foot access to the coast.
- The MMO is the responsible marine Authority in the UK Act, whereas it is the Department of the Environment in NI
- The UK Act covers a list of activities for marine licensing; the NI bill only covers licensing for power generating stations.
- Existing legislation in England covers historical/archaeological sites, whereas legislation in NI is not as extensive.



## Executive Summary

The NI Marine Bill consists of 48 clauses and two schedules, whereas the Marine (Scotland) Act 2010 consists of 168 clauses and five schedules. There are a number of reasons for this disparity of length, a summary of which is as follows:

- **Statement of general duties:** the Marine (Scotland) Act 2010 contains two clauses setting out the general duties of the legislation.
- **Marine licensing:** With the exception of a specific section on licensing for electricity generating facilities, the NI Marine Bill does not legislate for marine licensing (this is largely provided for in the UK Marine and Coastal Access Act 2009. However, the Scottish legislation makes its own arrangements for marine licensing.
- **Historic Marine Protected Areas:** the NI Marine Bill does not contain provision for the protection of historic assets within a marine zone.
- **Marine management schemes:** the NI Marine Bill makes no provision for such schemes.
- **Seal conservation measures:** the NI Marine Bill does not make separate provision for seal conservation measures. The Scottish legislation contains 24 clauses dealing with the issue of conserving and culling seals.
- **Common enforcement powers:** The NI Marine Bill largely refers to the provision of the UK Marine and Coastal Access Act 2009 for common enforcement powers, whereas the Scottish legislation makes its own provision for such powers, set out within 27 clauses in Part 7 of the Act. However, there are no major differences in the provisions for common enforcement powers.

There are also a number of other differences between the two pieces of legislation, including territorial coverage, fines for offences under the legislation, and the notification of relevant authorities.

Another key difference in the marine management provisions in the two jurisdictions, though not one covered in either piece of legislation, is that the Scottish Government created Marine Scotland as a singular management body for the marine area. In Northern Ireland, the NI Marine Bill places responsibility for marine planning and enforcement with the Department of the Environment.

The main difference between the UK Marine Coastal Access Act (2009), and the NI Marine Bill is the fact that a number of issues addressed under the UK Act have not been included in the NI Marine Bill. These include provisions for:

- a Marine Management Organisation (MMO);
- management of fisheries/ shellfisheries and commercial/ recreational fishing; and
- provisions to improve foot access to the UK coast.

Some of the provisions that exist in the NI Bill are very similar to those in the UK Act, apart from the fact that:

- the Marine Authority in England responsible for marine planning and the development of marine plans is the independent MMO, where it is the Department of the Environment in NI;
- while both the UK and NI have limited provisions for the designation of MCZs due to their scientific, historical or archaeological importance, some sites are covered under existing legislation in England, whereas the main piece of existing legislation in NI does not appear to; and
- in terms of licensing the UK Act covers marine licensing with an extensive list of licensing activities, whereas the NI Bill only provides for power generating stations.

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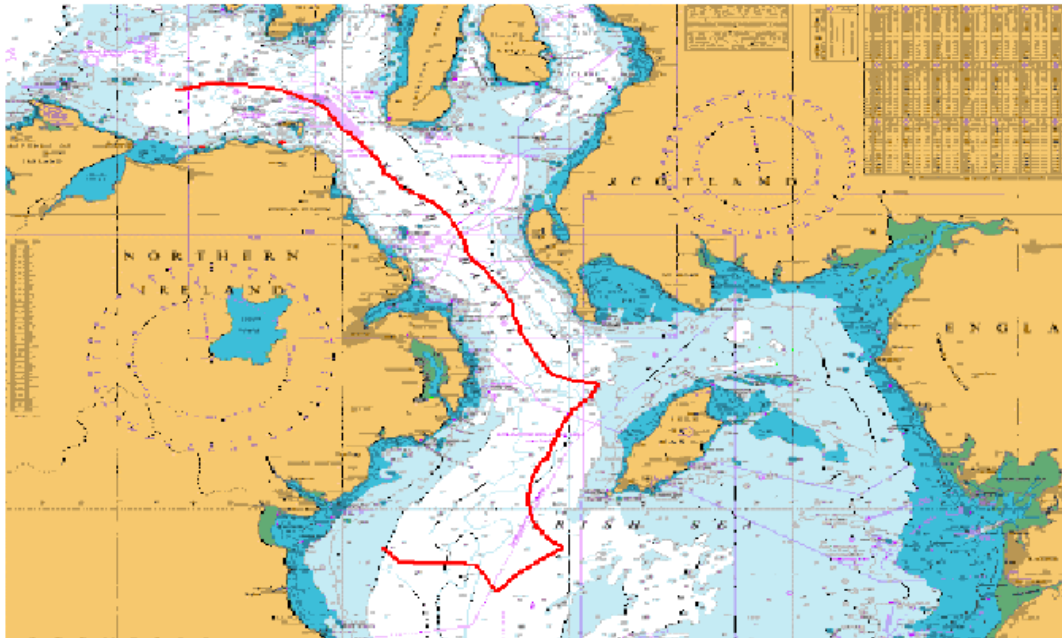


## Comparison with the Marine (Scotland) Act

### 1. Territorial and jurisdictional issues

Section 1 of the Marine (Scotland) Act 2010 sets out the coverage of the ‘Scottish marine area’ as ‘the area of sea within the seaward limits of the territorial sea of the United Kingdom adjacent to Scotland and includes the bed and subsoil of the sea within that area’. The explanatory notes make it clear that this is essentially ‘Scotland’s territorial seas from 0 to 12 nautical miles’<sup>1</sup>. The NI Marine Bill is similar in that it covers ‘the area of sea within the seaward limits of the territorial sea of the United Kingdom adjacent to Northern Ireland, including the bed and subsoil of the sea within that area’, extending to 12 nautical miles.

**Adjacent Waters Boundaries (Northern Ireland) Order 2002 - chart to show “the Northern Ireland Zone” as defined in Order - for information purposes only.**



(Source: DOE Marine Bill Policy Proposals Consultation Document, 2010)<sup>2</sup>

However, while the Scottish legislation covers all of the waters in its inshore zone, the Northern Ireland legislation omits the area currently over-seen by the Loughs Agency (ie Carlingford and Foyle). These areas include the seaward area of Lough Foyle extending 12 nautical miles from the low water mark, and the whole of the sea within a straight line from Cranfield Point (Co Down) and Ballaghan Point (Co Louth). The Loughs Agency is legislated for by the North/South Co-operation (Implementation Bodies) (Northern Ireland) Order 1999 and the British-Irish Agreement Acts 1999 and 2002, and is over-seen by the North-South Ministerial Council.

<sup>1</sup> Marine (Scotland) Act 2010: Explanatory Notes: <http://www.legislation.gov.uk/asp/2010/5/notes/division/2/1>

<sup>2</sup> [http://www.doeni.gov.uk/consultation\\_northern\\_ireland\\_marine\\_bill\\_-\\_policy\\_proposals.pdf](http://www.doeni.gov.uk/consultation_northern_ireland_marine_bill_-_policy_proposals.pdf)

While the Marine (Scotland) Act 2010 contains a stipulation within Schedule 1 that Scottish Ministers will notify relevant and neighbouring jurisdictions, including the Department of the Environment in Northern Ireland, the NI Marine Bill does not refer to the Loughs Agency. The explanatory memorandum makes it clear that the NI Marine Bill is intended to establish a strategic system of marine planning in Northern Ireland's inshore region. However, it is not clear how the agency will be consulted or included within the Northern Ireland marine plan.

## 2. Marine Management Organisation

The Marine (Scotland) Act 2010 does not provide specifically for the creation of a Marine Management Organisation. However, Marine Scotland was created as a directorate of the Scottish Government in advance of the enactment of the legislation with the purpose of delivering many of the provisions of the Act. Its role includes oversight of marine planning and licensing, promoting economic growth from the marine renewables industry, managing fisheries and the aquaculture industries, ensuring a sound evidence base to inform the development of marine policy, and ensuring effective compliance and enforcement arrangements.

Marine Scotland is responsible for activities up to 12 nautical miles. The Marine Management Organisation, established through the UK Marine and Coastal Access Act 2009, is responsible for reserved matters in the seas *beyond* 12 nautical miles (ie up to 200nm), including historic heritage, telecoms, oil and gas, and shipping<sup>3</sup>.

The NI Marine Bill does not include provision for a Marine Management Organisation, though the Minister of the Environment has indicated that he is 'committed to the principle and the operation of a marine management organisation'<sup>4</sup>.

## 3. Marine Conservation Zones versus Marine Protection Areas

The NI Marine Bill makes provision for the establishment of Marine Conservation Zones (MCZ). Section 12 of the Bill states that the department may make a MCZ designation for the purposes of conservation on three grounds:

- a) marine flora or fauna;
- b) marine habitats or types of marine habitat;
- c) features of geological or geomorphological interest.

The Marine (Scotland) Act 2010 makes provision instead for Marine Protection Areas (MPAs). These can take three forms:

- Nature Conservation MPA (this takes a similar form to the MCZ in NI)

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<sup>3</sup> Kenyon, W. 2009. *A Comparison of the Scottish and the UK Marine Bills*. SPICe Briefing 09/59: pp5–6.

<sup>4</sup> The Official Report. 5.3.12. Executive Committee Business - Marine Bill: Second Stage. Mr Attwood (The Minister of the Environment) . <http://nia1.me/sz>

- Demonstration and Research MPA
- Historic Marine Protection Areas

Neither the Demonstration and Research MPA nor the Historic Marine Protection Areas exist as categories of designation in the Northern Ireland Bill.

### 3.1 Demonstration and Research MPA

Section 71 of the Marine (Scotland) Act 2010 makes provision for the creation of Demonstration and Research MPAs for the purposes of:

- a) demonstration of sustainable methods of marine management or exploitation
- b) research into such matters.

### 3.2 Historic Marine Protection Areas

Section 73 of the Marine (Scotland) Act 2010 allows for the designation of Marine Protection Areas 'for the purpose of preserving a marine historic asset of national importance which is, or which they are satisfied may be, located in the area'. Six categories of Historic MPA are specified:

- a) a vessel, vehicle or aircraft (or a part of a vessel, vehicle or aircraft),
- b) the remains of a vessel, vehicle or aircraft (or a part of such remains),
- c) an object contained in, or formerly contained in, a vessel, vehicle or aircraft,
- d) a building or other structure (or a part of a building or structure),
- e) a cave or excavation,
- f) a deposit or artefact (whether or not formerly part of a cargo of a ship) or any other thing which evidences, or groups of things which evidence, previous human activity.

Separate provision is made for the 'urgent designation' of an Historic MPA.

## 4. Marine Management Schemes

Sections 99 to 102 of the Marine (Scotland) Act set out provision for Marine Management Schemes, which may be established 'by relevant authorities for Nature Conservation, and Demonstration and Research MPAs within the Scottish Marine Protected Area'. It is not entirely clear what a Marine Management Scheme is intended to do, but the implication would seem to be that it is to define roles and responsibilities for, for example, local authorities and other relevant parties<sup>5</sup>. The Act states that a Marine Management Scheme 'is a scheme under which the relevant authority's functions must be exercised for the purpose of furthering any or all of the objectives of a Nature Conservation MPA, a Demonstration and Research MPA or EU Marine Site'.

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<sup>5</sup> Kenyon, W, Rehfish, A & Wright, K. 2009. *The Marine (Scotland) Bill*. SPICe Briefing 09/41: p24.

The NI Marine Bill does not make provision for marine management schemes and it is not clear how the roles and responsibilities of relevant public authorities, including district councils, will be taken into account in the management of Marine Conservation Zones. However, in Schedule 1(9) it is stated that the department is to have regard in forming a marine plan to any plan 'prepared by a public authority in connection with the management or use of the sea or the coast, or of marine or coastal resources'. Use of the term 'public authority' can include district councils, as well as 'a Minister of the Crown', any statutory body, a 'statutory undertaker', or 'the holder of any office under the Crown'.

It is also stated in section six of the Bill that 'a public authority must take any authorisation or enforcement decision in accordance with any appropriate marine plan, unless relevant considerations indicate otherwise', and that 'a public authority must have regard to any appropriate marine plan in taking any decision'. In terms of roles and responsibilities, section 20 simply places 'a general duty on public authorities (defined in section 46) to carry out their functions in the manner that they consider best furthers – or least hinders – the conservation objectives set for MCZs'.

The explanatory memorandum for the NI Marine Bill implies that the policies and roles of other public authorities will be stated not in a marine management scheme, but in the text of a marine plan<sup>6</sup>. Section 2(3) defines a marine plan and requires that such a plan must, 'state the policies of the 'relevant Northern Ireland departments'.

## 5 Differences on seal conservation and licence measures

The Marine (Scotland) Act 2010 makes it an offence to kill a seal without a licence, and also makes provision for the licensed killing of seals under certain circumstances. Twenty-four clauses deal with this issue, including details of licence conditions, methods of killing, protection of seal 'haul-out' sites, powers to enter land for the purpose of killing seals, protection of fish farm stocks and other related issues.

The NI Marine Bill does not make provision for seal protection or licensing. The UK Marine and Coastal Access Act 2009 does make some provision – in section 9(2) – but this would appear to extend to England only.

## 6 Offences under the legislation

Sections 31 and 32 specify offences in relation to Marine Conservation Zones. In general, the range of offences is very similar to the Marine (Scotland) Act 2010, in that they relate to killing or injuring animals in a Marine Conservation Zone, collecting or uprooting plants, taking anything from a protected feature, or destroying or damaging any habitat or feature of a Marine Conservation Zone. However, the NI Marine Bill does

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<sup>6</sup> Marine Bill: Explanatory and Financial Memorandum: p 4 <http://nia1.me/su>

not contain the offence of damaging a marine historic asset, whereas the Marine (Scotland) Act 2010 does describe such an offence in section 96.

The NI Marine Bill provides for three different levels of fine to be imposed: level 1 (currently £200), level 5 (currently £5,000), and £50,000, depending on the nature of the offence. The Marine (Scotland) Act 2010 in most cases applies a single fine limit of £50,000, with the single exception of obstructing a marine enforcement officer carrying a fine of £20,000.

## 7 Notification of Scottish authorities

The Marine (Scotland) Act 2010 contains a stipulation within Schedule 1 that Scottish Ministers will notify a number of parties, including the Northern Ireland Department of the Environment, regarding a decision to prepare any marine plan. Paragraph 3 of Schedule 1 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)<sup>7</sup>.

However, the equivalent provision, of the Northern Ireland Minister notifying the Scottish authorities, is not explicitly provided for in the NI Marine Bill. Indeed, the Republic of Ireland (or indeed the Loughs Agency) is also not named as a statutory consultee.

## Comparison with UK Marine and Coastal Access Act

The UK Marine and Coastal Access Act was introduced in the House of Lords on 4th December 2008, it was developed to provide enhanced protection of the marine environment and biodiversity, improved management of freshwater and migratory fisheries in England and Wales, and improved access to the English coast.

Some of the main differences between the NI Marine Bill and the UK Act include:

### 1. Establishment of an MMO

Part 1 of the UK Act establishes an independent body, the Marine Management Organisation (MMO), which is to discharge a number of marine functions on behalf of UK Government. As a Non-Departmental Public Body (NDPB) it is intended that the MMO will be given responsibility for marine Planning by drawing up marine plans for the purposes of the new planning regime. It will also administer marine environmental licensing, make decisions on applications, and set and monitor conditions on marine developments such as wind farms, tidal/wave power projects,

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<sup>7</sup> *Marine Bill: Explanatory and Financial Memorandum*: p 21 <http://nia1.me/su>

aggregate extraction and dredging. It will also administer Harbour Orders and license exemptions from nature conservation legislation. The MMO will improve environmental data and information, including sea bed mapping and developing an internationally recognised centre of excellence for marine information and advice. It will manage marine fisheries, undertake nature conservation functions and use enforcement powers set out in Part 8 of this Act to enforce fisheries, licensing and nature conservation legislation.

Currently in the NI Marine Bill there is no provision for the establishment of a (NI) MMO<sup>8</sup>.

## 2. Marine Planning

The allocation of responsibilities for planning and the procedure to be followed when preparing plans are set out in Part 3 and Schedule 6 of the UK Act. The UK Government will be the marine plan authority in the territorial and offshore waters adjacent to England (i.e. from 0-200 nautical miles). While Government departments will contribute to the development of plans and will sign off the final versions before they come into effect, most of the planning activity in this area will be delegated to the MMO, so references to the “plan authority” means the MMO working on behalf of the UK Government.

Whereas in the NI Marine Bill, the Department of Environment, in consultation with all other Northern Ireland Departments with marine functions<sup>9</sup>, will take the lead in preparing a plan, and will agree the final versions with UK Government.

### 2.1. The Marine Plan:

Under Part 2 s8 of the NI Bill, the validity of a marine plan can be challenged by judicial review only by the person aggrieved by it. The grounds for challenge include: that the plan is not within the appropriate powers, or that a procedural requirement has not been complied with. Any challenges are to be brought within six weeks of the adoption of a marine plan. However this section of the Bill has been criticised for the ‘draconian curbs’ placed on the ability to seek a judicial review of a marine plan, and it puts the UK in danger of breaching its international obligations to provide access to justice in environmental matters.<sup>10</sup> In comparison to the UK Act the provisions of this section do not differ from those contained in Part 3 Chapter 5 (s62).

## 3. Marine Conservation Zones

While the NI Marine Bill and the UK Act both provide power for the designation of MCZs so as to contribute to a network of marine sites, Part 5 of the UK Act ensures

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<sup>8</sup> Policy Paper

<sup>9</sup> 5 main departments: DOE, DARD, DCAL, DRD, DETI

<sup>10</sup> Mark Simpson [Marine Bill needs Improvement to fulfil potential](#) [accessed 16/04/2012]

commitment to designate an ecologically coherent network by 2012 to meet international commitments<sup>11</sup> and the 2013 reporting deadline on MPAs (Marine Protected Areas). However the NI marine Bill does not appear to include a similar timetable marking milestones for the designation of MCZs in NI.

### 3.1 Archaeological/Historical Sites:

There is very little provided in both the NI Marine Bill and the UK Act allowing for the designation of MCZs due to their scientific, historical or archaeological importance. However, similar to the UK Act (Part 5 Ch 1 s 117) reference is made in the NI Bill to these sites in relation to the social consequences of designating a site as a MCZ:

*“The reference in subsection (7) to any social consequences of designating an area as an MCZ includes a reference to any consequences of doing so for any sites in that area (including any sites comprising, or comprising the remains of, any vessel, aircraft or marine installation) which are of historic or archaeological interest.” (Part 3 (s12))*

With little provided for in the UK Act, some sites are covered under existing legislation in the form of the Protection of Wrecks Act 1973<sup>12</sup>. Sites that are landscape features covered by the fluctuation and change of water levels over the years are not provided for in this Act, however, they are provided for under the Ancient Monuments and Archaeological Areas Act 1979<sup>13</sup> that specifically mentions the sea bed. At the same time, the Act states clearly that it does not extend to NI, in fact existing NI legislation such as the 1995 Historic Monuments and Archaeological Objects Order<sup>14</sup> makes brief reference in article 38 to the sea bed, but not the intertidal zone and does not offer the same level of management provided for in MCZs. The UK Marine Policy Statement takes historical and archaeological sites into detailed consideration<sup>15</sup>, however, this level of attention and detail does not appear to have transcended into the new Bill.

### 3.2 Fines:

Part 3 (s 23) of the NI Bill has been criticised for the fact that in the event of a public authority causing harm/damage to an MCZ, all that is required is an explanation from the public authority to the Department of Environment. In fact, the only possible sanction is in relation to a fine for the breach of a bye-law; limited to £5000. Whereas, an individual person guilty of causing damage to an MCZ can be subject to an unlimited fine determined by the court (summary conviction limited to £50,000), and a level 5 fine (up to £5000) in relation to breach of a bye-law (Part3 s 30/31). These are similar conditions as those provided for in the UK Act Part 5 Chapter 1.

<sup>11</sup> The World Summit on Sustainable Development (WSSD) agreement, made by Ministers in 2002, committed signatory members (including the UK countries) to creating representative networks of MPAs by 2012.

<sup>12</sup> <http://www.legislation.gov.uk/ukpga/1973/33?view=extent>

<sup>13</sup> <http://www.legislation.gov.uk/ukpga/1979/46>

<sup>14</sup> <http://www.legislation.gov.uk/nisi/1995/1625/contents/made>

<sup>15</sup> <http://archive.defra.gov.uk/environment/marine/documents/interim2/marine-policy-statement.pdf>

## 4. Fisheries

Part 6 of the UK Act changes the legislation relating to the establishment, organisation and responsibilities of Sea Fisheries Committees, establishing in England new bodies called Inshore Fisheries and Conservation Authorities (IFCAs). It imposes on IFCAs duties in relation to fisheries and nature conservation, and confers on them the power to make byelaws. The membership and funding arrangements of IFCAs are also set out. However the NI Bill does not contain any measures in relation to fisheries, when in fact a requirement of the 2007 Inshore Fisheries Review was to modernise inshore fisheries management.

Part 7 of the UK Act amends existing legislation relating to marine and freshwater fisheries, provides new powers in relation to the regulation of commercial and recreational fishing. It also modifies the way that shellfisheries are established and managed and operated. In addition, this Part gives new powers to the Environment Agency to conserve and manage migratory fish, including powers to make emergency byelaws to respond to unforeseen threats to fish stocks and powers to introduce a new regulatory system for the movement of live fish where necessary, to protect national and local biodiversity. This Part also modifies the fishing licensing regime, introduces an authorisation regime for some fishing activities, and deals with offences relating to fishing and with the powers and duties of the Environment Agency.

## 5. Licensing

The UK Act legislates for marine licensing and covers an extensive list of licensing activities (e.g. depositing of substances, scuttling of vessels, construction/alteration of works in the marine area, dredging etc) in comparison to the NI Bill which only provides for the streamlining of the process for generating stations.

The main aims of or the purpose for marine licensing in the Marine & Coastal Access Act 2009 is: to protect the environment, protect human health and prevent interference with legitimate uses of the sea (s69). This has not been as clearly stated in the NI Bill to illustrate the importance of the principles of sustainable development when making a decision on licensing.

## 6. Seals:

Under the Wildlife NI Order 1985, seals are protected at all times. Part 1 chapter 2 of the UK Act allows for licenses to kill or take seals; however there is no equivalent provision in the NI Bill. This is not a reserved matter as the UK Act clearly states that this is in relation to the whole or any part of England or the English inshore region.



## 7. Coastal Access

Part 9 of the UK Act introduces new powers to extend recreational access to the English coast and to enable the creation, as far as is possible, of a continuous route around the coast wide enough to allow unconstrained passage on foot and recreational space. However, there does not appear to be anything of a similar nature provided for in the NI Bill. The UK Act also contains provisions enabling the National Assembly for Wales to create a coastal path around the Welsh coast, however, in relation to NI there is no provision in the UK Act; it is contained in the Northern Ireland Access to the Countryside Order 1982.