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Marine Bill: Sustainable Development and Climate Change General Duties

This paper looks at the general duties in respect of sustainable development and climate change. It sets the context by giving a brief overview of the situation in the Marine (Scotland) Act and the UK Marine and Coastal Access Act, before exploring the general duties in NI and how they may apply to the Northern Ireland Marine Bill.

Scotland

Part 2 (s3 and s4) of The Marine (Scotland) Act 2010 provides a series of general duties and for the creation of a series of objectives to guide activity in the Scottish marine area from mean high water mark to 12 nm. The general duties are:

- **Sustainable development:** In exercising any function that affects the Scottish marine area Scottish Ministers and public authorities must act in a way best calculated to further the achievement of sustainable development, including the protection and where appropriate enhancement of the health of that area, so far as consistent with the proper exercise of that function; and

- **Climate Change:** In exercising any function that affects the Scottish marine area under this Act, the Climate Change (Scotland) Act 2009 or any other enactment, Scottish Ministers and public authorities must act in a way best calculated to mitigate and adapt to climate change so far as it is consistent with the purpose of the function concerned.

A Scottish Marine plan must also state:

- Ministers' policies in connection with the sustainable development of the area to which the plan applies (Part 3 s 5); and

For the purposes of preparing a national marine plan Scottish Ministers must set

- Economic, social and marine ecosystem objectives; and
- Objectives relating to the mitigation of, and adaptation to, climate change (Part 5 s4).¹

UK

In contrast The Marine and Coastal Access Act 2009 has comparatively little on general duties and objective setting in relation to sustainable development and climate change. However, the Chapter 1 of the Act identifies the Marine Policy Statement as a document which states the policies for contributing to the achievement of sustainable development in the UK marine area:

For the purposes of this Act a “marine policy statement” (an “MPS”) is a document—

(a) in which the policy authorities that prepare and adopt it state general policies of theirs (however expressed) for contributing to the achievement of sustainable development in the UK marine area,²

Northern Ireland

- 1 According to information from the Department of the Environment, there is no requirement to include a sustainable development duty in the Marine Bill as the Northern Ireland (Miscellaneous Provisions) Act 2006 already places such a duty on all public authorities:

¹ Marine (Scotland) Act 2010 http://www.legislation.gov.uk/asp/2010/5/pdfs/asp_20100005_en.pdf

² UK Marine and Coastal Access Act

Section 25 of the Act states that:

(1) A public authority must, in exercising its functions, act in the way it considers best calculated to contribute to the achievement of sustainable development in Northern Ireland, except to the extent that it considers that any such action is not reasonably practicable in all the circumstances of the case.

(2) For this purpose—

(a) a public authority must have regard to any strategy or guidance relating to sustainable development issued by the Department of the Environment, and

(b) a public authority other than a Northern Ireland department must have regard to any guidance relating to sustainable development issued by a Northern Ireland department other than the Department of the Environment.

The Bill does not give a definition of what is meant by ‘sustainable development’, however, part 2 of section 25 states that any public authority must have regard to any strategy/guidance issued by the Department i.e. the Northern Ireland Sustainable Development Strategy (SDS) 2010. **Most importantly there does not appear to be any reference made in the Bill to the Miscellaneous Provisions Act 2006 to inform the reader of the already existing duty.**

2 The Sustainable Development Strategy 2010

The SDS does not directly give a definition of sustainable development; however it refers to sustainable development in a number of ways:

To “ensure socially responsible economic development while protecting the resource base and the environment for the benefit of future generations (UNCED 1992)”

“Sustainable development aims to bring viability, stability and opportunity to all our social, economic and environmental activities and programmes”³

The Strategy also makes a strong connection with the importance of adapting to and mitigating climate change:

“It is clear that climate change is one of the most serious problems facing the world. While we recognise that it requires action internationally, we are determined to play our part in addressing this challenge by reducing our impact on climate change.”⁴

³ NI Sustainable Development Strategy – Everyone’s Involved 2010 (p.1) http://www.ofmdfmi.gov.uk/sustainable-development-strategy-lowres_2_.pdf

⁴ Ibid (p.2)

“As more information becomes available on the likely impacts of climate change it is clear that, as well as efforts to control greenhouse gas emissions, there is a need to adapt and manage the effects.”⁵

The Strategy also states that it is about creating a balance:

“Sustainable development is not only about climate change and the acknowledged consequences that this will bring.....We also want to protect our communities and our economic well-being.”⁶

The Strategy reiterates that all new strategies and policies should be subject to a 'sustainability scan' as part of the Impact Assessment process -

Commitment 1 states:

“In the development of new strategies and policies, we will require departments to incorporate comprehensive ‘sustainability scans’⁷ as one component of their impact assessment process, which will provide SMART⁸ evidence of the inclusion of sustainability criteria.”⁹

Commitment 9 states:

“We will ensure that guidance relating to the existing Statutory Duty on Sustainable Development, contained within Section 25 of the Northern Ireland (Miscellaneous Provisions) Act 2010 is appropriate in supporting our ongoing sustainable development ambitions.”¹⁰

3 The NI Marine Bill

The Department of Environment have informed that the Bill includes several binding provisions in respect of sustainable development:

- Clause 2(3) (b) defines a Marine Plan as a document which states the policies of the relevant Northern Ireland departments (DOE, DCAL, DARD, DETI & DRD) for

⁵ Ibid

⁶ Ibid

⁷ According to DFP, the first step is to screen projects to identify whether they are likely to have a significant sustainability impact. All options should initially be screened against a number of potential social, economic and environmental impacts. Further details on these impacts and a framework for screening are set out in [Workbook 4 of OFMDFM's Policy Toolkit](#). 

⁸ SMART meters send electricity consumption data to the utility. They can also record the energy that you feed back into the distribution network from things such as wind turbines and solar panels. <http://www.nie.co.uk/Network/Future-networks/Smart-meters>

⁹ NI Sustainable Development Strategy – Everyone's Involved 2010 (p5) http://www.ofmdfmi.gov.uk/sustainable-development-strategy-lowres_2_.pdf

¹⁰ Ibid (p.21)

and in connection with sustainable development. For example, PPS1 *General Principles- The Department's Approach to Planning: Sustainable Development states:*

"In working towards sustainable development, the Department will aim to:

- plan for the region's needs for commercial and industrial development, food production, minerals extraction, new homes and other buildings, while respecting environmental objectives;*
- conserve both the archaeological and built heritage and natural resources (including wildlife, landscape, water, soil and air quality), taking particular care to safeguard designations of national and international importance;*
- shape new development patterns in ways which minimise the need to travel;*
- give preference, in the zoning of land, to the development of brownfield sites within built-up areas, before considering the development of greenfield sites, provided that this creates or maintains a good living environment.*
- encourage the use of already developed areas in the most efficient way, while making them more attractive places in which to live and work; and*
- concentrate developments that generate a large number of trips in places well served by public transport".¹¹*

- In addition, paragraph 10 of Schedule 1 requires the Department to undertake a Sustainability appraisal of the proposals for inclusion in a marine plan. The Department can only proceed with these proposals if the appraisal indicates that this is appropriate:

10.– (1) The Department must carry out an appraisal of the sustainability of its proposals for inclusion in any marine plan...

(2) The Department may proceed with those proposals only if it considers that the results of the appraisal indicate that it is appropriate to do so.¹²

4 UK High Level Marine Objectives

The Department has stated that the sustainable development aims for the marine environment were set out in the High level Marine Objectives published jointly by all the UK Administrations in April 2009.¹³ The Government's overall vision of 'clean, healthy,

¹¹ PPS1 General Principles: Sustainable Development

http://www.planningni.gov.uk/index/policy/policy_publications/planning_statements/pp01/pp01_approach/pp01_sustainable_dev.htm

¹² NI Draft Marine Bill http://www.doeni.gov.uk/marine_bill_as_introduced.pdf

¹³ Our seas- a shared resource: high level marine objectives <http://www.scotland.gov.uk/Resource/Doc/1057/0080305.pdf>

safe, productive and biologically diverse oceans and seas is to ensure that 'Good Environmental Status' required by the European Marine Strategy Framework Directive, and 'Good Status' required by the European Water Framework Directive is met¹⁴.

With this in mind, the high level marine objectives are set out to reflect the five principles of sustainable development:¹⁵

- **Achieving a sustainable marine economy** by giving support (i.e. infrastructure) to marine businesses to operate efficiently and competitively, and maximising the sustainable use of the marine environment and its resources, while respecting sustainable limits and social responsibilities.
- **Ensuring a strong, healthy and just society** where people have equal access to the marine environment and its resources, and that they appreciate the diverse assets it has to offer in terms of physical and mental wellbeing, climate change mitigation, and as a defence mechanism for the UK and its interests.
- **Living within environmental limits:** The conservation and protection of biodiversity to support the diverse range of biological communities, and the functioning of healthy, adaptable marine ecosystems, and rare and vulnerable species.
- **Promoting good governance:** Appreciating the different management systems in the UK because of administrative, political or international boundaries; this includes the use of integrated coastal zone management plans to ensure marine, land and water management mechanisms work together based on a spatially planned marine environment that encompasses all aspects, including marine cultural heritage.
- **Using sound science responsibly:** New scientific research and data collection is essential to give the knowledge required for sound evidence and monitoring of the marine environment, which is necessary for effective marine management and policy development. Particular attention is drawn to the Precautionary principle as applied to the UK Government and devolved administrations' sustainable development policy.¹⁶

Climate Change

There is no direct duty in relation to climate change in the NI Marine Bill; however, the Department of Environment has advised that there is a requirement to take the effects of climate change into consideration as part of the marine planning process and the designation of Marine Conservation Zones (MCZ), for example the Department refers to:

¹⁴ DEFRA, 2009 <http://archive.defra.gov.uk/environment/marine/documents/ourseas-2009update.pdf>.

¹⁵ *Our seas- a shared resource: high level marine objectives* <http://www.scotland.gov.uk/Resource/Doc/1057/0080305.pdf>

¹⁶ *ibid*

Clause 2 (5):

Unless relevant considerations indicate otherwise, a marine plan must be in conformity—

(a) with any marine policy statement which governs marine planning for the marine plan area; and

(b) in the case of a plan for part of the Northern Ireland inshore region, with any marine plan in effect for the whole of that region.

There does not appear to be any direct mention of climate change in this clause; therefore it must be assumed that the marine plan is based on the Marine Policy Statement which is developed from the High Level Objectives, where objective 5 is concerned with climate change mitigation (as described in section 4 of this paper)

Clause 5:

The Department must keep under review the matters which may be expected to affect the exercise of its functions.....

The matters include—

2(a) the physical, environmental, social, cultural and economic characteristics of the Northern Ireland inshore region and of the living resources which the region supports.....

3 (b) the effect that any such changes may have in relation to the sustainable development of the region, its natural resources, or the living resources dependent on the region.

Again as there is no direct statement on climate change; it appears that any connection to it is dependent on the regards given to sustainable development. However, the Bill does not give a direct definition of sustainable development and its connection with climate change, but refers “to any strategy or guidance relating to sustainable development issued by the Department of the Environment “i.e. the Sustainable Development Strategy of Northern Ireland 2010 (more detail in sections 1 and 2 of this paper)

Clause 6 (1):

A public authority must take any authorisation or enforcement decision in accordance with any appropriate marine plan, unless relevant considerations indicate otherwise.

As mentioned before, any duty to addressing climate change is dependent on the assumption that a marine plan will have the appropriate regard and consideration given to climate change.

Clause 13 (3):

An MCZ may (in addition to an area of sea) include an area of the seashore lying above mean high water spring tide if—

(a) the area of seashore adjoins the area of sea; and

(b) any of the conditions in subsection (4) is satisfied.

(4) The conditions are that—

(a) the protected feature or features leading to the designation of the area of sea is or are also present in the area of seashore;

(b) the area of sea is designated for the purpose of conserving marine flora or fauna which are dependent (wholly or in part) on anything which takes place in, or is present in, the area of seashore;

(c) without the inclusion of the area of seashore, the identification of the boundary of the MCZ (either in the order designating the area or on the ground for the purposes of exercising functions in relation to it) would be impossible or impracticable.

This clause deals with the designation of MCZs, **however there does not appear to be any direct or indirect mention of climate change, not even through the link with sustainable development.**

Schedule 1 paragraph 9:

(1) The matters to which the Department is to have regard in preparing a marine plan include each of the matters in sub-paragraph (2).E+W+S+N.I.

(2) Those matters are—

(a) the requirement under section 2(5)(a) for a marine plan to be in conformity with any marine policy statement which governs marine planning for the marine plan area, unless relevant considerations indicate otherwise,

(b) the duties imposed by paragraph 3(1) with respect to securing compatibility with marine plans or development plans for areas which are related to the marine plan area,

(c) the effect which any proposal for inclusion in the plan is likely to have on any area which is related to the marine plan area,

(d) the results of the review required by section 5,

- (e) *the SPP,*
- (f) *any representations made in response to the invitation issued pursuant to sub-paragraph (5) of paragraph 5,*
- (g) *any advice received under paragraph 8(1),*
- (h) *any plan (not falling within paragraph 3(1)) prepared by a public authority in connection with the management or use of the sea or the coast, or of marine or coastal resources, in the marine plan area or in any adjoining or adjacent area in Northern Ireland or the UK marine area (within the meaning given by section 42 of the 2009 Act),*
- (i) *the powers and duties of the Crown Estate Commissioners under the Crown Estate Act 1961, and such other matters as the Department considers relevant.*

Similar to Clause 2 (5) there does not appear to be a direct mention of climate change in relation to the list of matters that must be considered in the development of a marine plan. It appears that it is left up to the assumption that the marine plan is based on the Marine Policy Statement which has been developed from the High Level Objectives, where objective 5 is concerned with climate change mitigation (as described in section 4 of this paper).

The UK Climate Change Act 2008

It is worth noting that while the Department has not drawn attention to it, S.60 of the UK Climate Change Act 2008 places a duty on the Department of the Environment to develop a programme for the adaptation to climate change. Most importantly, the Act states that the programme must contribute to sustainable development, illustrating the connection between climate change and sustainable development.

Section 60 states:

“Programme for adaptation to climate change: Northern Ireland

(1) It is the duty of the relevant Northern Ireland department to lay programmes before the Northern Ireland Assembly setting out—

(a) the objectives of the department in relation to adaptation to climate change,

(b) the department's proposals and policies for meeting those objectives, and

(c) the time-scales for introducing those proposals and policies, addressing the risks identified in the most recent report under section 56¹⁷.

¹⁷ This is a report on the impacts of climate change prepared by the Secretary of State, sent to all national authorities.

(2)The objectives, proposals and policies must be such as to contribute to sustainable development.

(3)The second and each subsequent programme under this section must contain an assessment of the progress made towards implementing the objectives, proposals and policies set out in earlier programmes.

(4)Each programme under this section must be laid before the Northern Ireland Assembly as soon as is reasonably practicable after the laying before Parliament of the report under section 56 to which it relates.

(5)The relevant Northern Ireland department must send a copy of each programme under this section to the other national authorities.”¹⁸

However, while this Act places a duty on the Department of the Environment in relation to climate change adaptation, there is no reference made to this in the NI Marine Bill.

¹⁸ UK Climate Change Act (s.60) <http://www.legislation.gov.uk/ukpga/2008/27/section/60>