



Northern Ireland
Assembly

Committee for the Environment

**OFFICIAL REPORT
(Hansard)**

**Marine Bill: Research and Information
Service Briefing**

19 April 2012

NORTHERN IRELAND ASSEMBLY

Committee for the Environment

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Members present for all or part of the proceedings:

Ms Anna Lo (Chairperson)
Mr Simon Hamilton (Deputy Chairperson)
Mr Cathal Boylan
Mr Gregory Campbell
Mr John Dallat
Mr Danny Kinahan
Mr Patsy McGlone
Mr Francie Molloy
Lord Maurice Morrow of Clogher Valley
Mr Peter Weir

Witnesses:

Miss Suzie Cave Research and Information Service

The Chairperson: I welcome Suzie Cave to the meeting. She will speak for 10 or 15 minutes on the Marine Bill, and then we will have members' questions.

Miss Suzie Cave (Research and Information Service): The purpose of this piece of research is to highlight the main differences between the Northern Ireland Bill, the Marine (Scotland) Act 2010 and the UK Marine and Coastal Access Act 2009. I have provided the Committee with a summary table of the main points in the paper.

I will begin by looking at the differences between the Northern Ireland Marine Bill and the Scotland Act. The Northern Ireland Marine Bill does not contain provisions for the protection of historic assets within a marine zone similar to that in the Scottish Act, which specifies six categories of historic marine protection areas (MPAs). There is more detail about that on page 9 of the paper. The Scottish Act sets out provision for marine management schemes for nature conservation in demonstration and research MPAs. They are intended to define the roles and responsibilities of local authorities and relevant parties. The Northern Ireland 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 (MCZs). However, schedule 1 to the Bill states 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.

I move now to roles and responsibilities. Clause 20 simply places a general duty on public authorities to carry out their functions in a manner that they consider best furthers or least hinders the conservation objectives set for MCZs. The explanatory memorandum for the Northern Ireland 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. Clause 2 defines a marine plan and requires that such a plan must state the policies of the relevant Northern Ireland Departments.

As far as seal conservation measures are concerned, the Marine (Scotland) Act makes it an offence to kill a seal without a licence and makes provision for the licensed killing of seals under certain circumstances. Some 24 clauses deal with that issue, including details of licensed 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 Northern Ireland Marine Bill does not make provision for seal protection or licensing. The UK Marine and Coastal Access Act makes some provision in section 9, but it appears that that extends to England only.

I move now to common enforcement powers. The Northern Ireland Marine Bill largely refers to the provision of the UK Marine and Coastal Access Act for common enforcement powers in relation to enforcing requirements across licensing, nature conservation and fishing, but the Scottish legislation makes its own provision for such powers set out within 27 sections in Part 7 of the Act. However, there are no major differences in the provisions for the common enforcement powers.

I move now to territorial coverage. A map on page 7 of the paper shows the boundaries. Both pieces of legislation state that it is in relation to the inshore region, from nought to 12 miles. However, the Scottish legislation covers all of the waters in its inshore zone, while the Northern Ireland legislation omits the areas currently overseen by the Loughs Agency, which is Carlingford lough and Lough Foyle. Although the Marine (Scotland) Act 2010 contains a stipulation in schedule 1 that Scottish Ministers will notify relevant and neighbouring jurisdictions, including the Department of the Environment in Northern Ireland, the Northern Ireland Marine Bill does not refer to the Loughs Agency. The explanatory memorandum makes it clear that the Northern Ireland 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 in the Northern Ireland marine plan.

The Marine (Scotland) Act 2010 does not provide specifically for a marine management organisation (MMO). However, Marine Scotland was created as a directorate of the Scottish Government in advance of the enactment of the legislation. Its role includes oversight of marine planning and licensing, promoting economic growth for 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, which was established under the UK Marine and Coastal Access Act 2009, is responsible for reserved matters in the seas beyond 12 nautical miles, including historic heritage, telecommunications, oil and gas and shipping. The Northern Ireland Marine Bill does not provide for an MMO, although the Minister of the Environment has indicated that he is committed to the principle and operation of an MMO.

The Northern Ireland Marine Bill provides for the establishment of MCZs. Clause 12 of the Bill states that the Department may make an MCZ designation for the purpose of conservation on three grounds: marine flora or fauna; marine habitats or types of marine habitat; or features of geological or geomorphological interest. The Marine (Scotland) Act 2010 instead provides for marine protection areas (MPAs). Those can take three forms: nature and conservation MPAs, which are similar to MCZs in the Northern Ireland Bill; demonstration and research MPAs; and historic MPAs. Neither the demonstration and research MPAs nor the historic MPAs exist as categories of designation in the Northern Ireland Marine Bill.

With the exception of a specific section on licensing for electricity generating facilities, the Northern Ireland Bill does not legislate for marine licensing. However, the Scottish legislation makes its own

arrangements for marine licensing similar to those in the UK Act. Those include a number of activities such as the removal and disposal of marine-dredged material, deposition of substances, coastal and marine developments and wind, wave and tidal power. There are a few other differences highlighted in the paper, but, for now, I will move on to the UK Marine and Coastal Access Act 2009.

The UK Act establishes the MMO, which is a non-departmental public body, as the responsible authority for marine planning, environmental licensing, monitoring of marine developments, management and enforcement of fisheries and nature conservation with a designation of MCZs. There are no provisions for an MMO in the Northern Ireland Marine Bill.

The UK Act contains powers for the management of fisheries, shell fisheries and commercial and recreational fishing. It establishes inshore fisheries and conservation authorities that are responsible for fisheries and nature conservation. There are no equivalent provisions for fisheries in the Northern Ireland Bill.

Under the Wildlife (Northern Ireland) Order 1985, seals are protected at all times. Chapter 2 of Part 1 of the UK Act allows for licences to kill or take seals. There are no equivalent provisions in the Northern Ireland Bill. This is not a reserved matter, as the UK Act clearly states that that provision applies to:

"the whole or any part of England or the English inshore region".

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 possible, of a continuous route around the coast that is wide enough to allow unconstrained passage on foot and recreational space. The UK Act also provides a similar provision for Wales. However, there is no provision for Northern Ireland in that Act. Provision for Northern Ireland is contained in the Access to the Countryside (Northern Ireland) Order 1982.

The marine authority in England responsible for marine planning and the development of marine plans is the independent MMO. Under the Northern Ireland Bill, the Department of the Environment will be responsible for such matters and will have to consult with all Northern Ireland Departments that have marine functions and have the final version agreed by the Secretary of State.

Under Part 2 of the Northern Ireland 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 the plan not being 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 the marine plan. However, that section of the Bill has been criticised for the draconian curbs it places 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. The provisions of this section of the Bill do not differ from those contained in Chapter 5 of Part 3 of the UK Act.

As far as archeological and historical sites are concerned, there is very little provided in the Northern Ireland Marine Bill and the UK Act to allow for the designation of MCZs due to their scientific, historical or archaeological importance. However, similar to the UK Act, reference is made in the Northern Ireland Bill to those sites in relation to the social consequences of designating a site as an MCZ.

With little provision for them in the UK Act, some sites are covered under existing legislation in the form of the Protection of Wrecks Act 1973. Sites that are landscape features, covered by the fluctuation and change of the water levels over the years are not provided for in the UK Act. However, they are provided for under the Ancient Monuments and Archeological Areas Act 1979, which specifically mentions the seabed. At the same time, the UK Act clearly states that its provisions do not extend to Northern Ireland. Existing legislation in Northern Ireland, such as the Historic Monuments and Archeological Objects (Northern Ireland) Order 1995 fails to make any reference to the seabed or to underwater sites, monuments and objects. The UK marine policy statement takes historical and archeological sites into detailed consideration. However, that level of attention and detail does not appear to have transferred to the new Bill.

In relation to the MCZs, although the Northern Ireland Bill and the UK Act both provide for the designation of MCZs so as to contribute to a network of marine sites, Part 5 of the UK Act ensures a commitment to designating an ecologically coherent network by 2012 to meet international commitments and the 2013 reporting deadline on MPAs. However, the Northern Ireland Marine Bill does not appear to include a similar timetable to mark milestones for the designation of MCZs in Northern Ireland.

Finally, in relation to fines, it is worth noting that Part 3 of the Northern Ireland Bill has been criticised for the fact that in the event of a public authority causing harm or damage to an MCZ all that is required from that public authority is an explanation to the Department of the Environment. The only possible sanction is a fine for the breach of a by-law, which is limited to £5,000, whereas an individual who is guilty of causing damage to an MCZ can be subject to an unlimited fine determined by the court and a level 5 fine of up to £5,000 for the breach of any by-law. There are similar conditions provided for in the UK Act.

The Chairperson: Thank you, Suzie. It is very useful to have comparisons with the legislation in England and Scotland. There are some very obvious areas for questions, such as MMOs and seal protection. We have a lot of seals. I cannot understand why we do not have that protection in our Bill. Do you think that without the MMO we have enough safeguards for the administration and implementation of the Bill?

Miss Cave: Having looked at some of the responses, I see that the main issue is the fact that so many different functions are spread across different Departments. That seems to be the main issue and reason why a number of people are pushing for the MMO.

Mr Kinahan: Most of my questions will be for the Minister when we get the chance to meet him. However, I have one query on something that you mentioned at the end. There will be no fines sanction for inshore infractions, but that the public authority will be asked for an apology or an explanation. However, at the same time, are we liable for huge fines from Europe if somebody damages the same areas? Is the balance missing? We could be fined large sums of money, yet we have nothing in the Bill to allow us to take action against people doing the same thing.

Miss Cave: That is definitely something that would need to be looked into, and I can certainly do that. It is an important issue.

Mr Campbell: That was a very interesting presentation. My question revolves around the initial piece. It is not so much about the jurisdictional issue but about the exclusion of Carlingford lough and Lough Foyle, vis-à-vis, the North/South Ministerial Council issue. At some point, we will end up with a Marine Act, and there will be difficulties when it comes to things such as species protection, pollution or whatever the issue might be. There is very clear delineation when we are talking about a land problem because the jurisdictions are very clearly defined. How are we going to deal with a problem that emerges close to, or overlaps in, Carlingford lough or Lough Foyle, where there are areas that are excluded from the Act and where the problem crosses both jurisdictions? Will there be a memorandum of understanding (MOU), or how will it work?

Miss Cave: It is my understanding that there is an MOU at the moment, but that is something that, I hope, the Department will be able to go into a bit more detail with you on.

Mr Campbell: I suppose that anything could happen, but say there was some sort of massive angler pollution issue at or close to a particular point in Carlingford lough or Lough Foyle. There would need to be very close liaison, because we could not have a position in which somebody said that they could deal with the issue up to the point at which their jurisdiction ends but that they have to enter into discussions so that others can deal with the issue on their side. There would need to be a very systematic approach that would allow immediate responses. I presume that nothing like that has happened to date, but things that we thought would not happen five years ago have happened. Can we take it that whatever MOU exists at the moment will be replicated in the Act?

The Chairperson: Gregory, I suppose that we could ask the officials those questions later. Suzie has provided a very good piece of work giving the comparisons and differences. It is, perhaps, unfair to ask her that.

Mr Campbell: That is OK.

The Chairperson: There are no more questions relating to the research paper, so thank you very much, Suzie. I am sure that we will see you again.