

Marine (Scotland) Bill

3rd Marshalled List of Amendments for Stage 2

Comments by Scottish Environment LINK (in red font)

The Bill will be considered in the following order—

Sections 1 to 5	Schedule 1
Sections 6 to 41	Schedule 2
Sections 42 to 122	Schedule 3
Sections 123 to 146	Schedule 5
Section 147	Schedule 4
Section 148	Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 78

Stuart McMillan

235 In section 78, page 45, line 18, at end insert <including the United Kingdom Hydrographic Office, to allow the content of such orders to inform—

- (a) navigational charts, and
- (b) notices to mariners.>

Section 79

Karen Gillon

236 In section 79, page 45, line 31, at end insert—

<(A1) The Scottish Ministers must, before deciding to—

- (a) make a marine conservation order (whether in accordance with section 76 or an urgent marine conservation order in accordance with section 77),
- (b) amend a marine conservation order,

give any persons who considers that their economic position could be materially disadvantaged as a result of any such decision, the opportunity of making oral or written representations to Scottish Ministers or to any person appointed by them for that purpose at a hearing.>

Whilst we understand the policy intention here we are unable to support this amendment as it also includes urgent marine conservation orders. An urgent designation will only be used where there is an urgent need to protect an area or historic asset. As such, it is not appropriate to require Scottish Ministers to give persons the opportunity to make oral or written representations at a hearing in all cases. This raises the possibility that vexatious complaints will be made as a matter of course. We note that, where it is appropriate for a hearing to take place, the power for Scottish Ministers to take this action already exists in section 79. Section 79 as it currently stands already allows *any person* the opportunity of making oral or written representations at a hearing and does not preclude a person who considers that their economic position could be materially disadvantaged as a result of any such decision. In addition, this amendment would confer a duty on Scottish Ministers to hear written or oral representations before making or amending a MCO, but no such duty would exist before revoking a MCO. This amendment would therefore not be in line with the Sustainable Development duty accepted by the RAE Committee on 18th November as it would not make equal provision for social or environmental representations.

Karen Gillon

237 In section 79, page 45, line 40, after <subsection> insert <(A1) or>

After section 79

Liam McArthur

238 After section 79, insert—

<Duty to assess impact of restriction and prohibition of activities

- (1) The Scottish Ministers must assess the potential impact of—
 - (a) the restriction or prohibition of an activity within the area, or
 - (b) the displacement of an activity to another part of the Scottish marine area,where the activity has been restricted or (as the case may be) prohibited as a consequence of an order made under section 74(1)(a), (b) or (d).
- (2) The assessment must include the extent to which the restriction or prohibition of the activity would have an adverse impact on—
 - (a) commercial interests,
 - (b) the environment elsewhere in the Scottish marine area as a result of the activity being displaced.
- (3) Where, following an assessment, the Scottish Ministers identify an adverse impact under subsection (2), they must take such steps as they consider are reasonable to minimise it as far as is practicable.>

There would appear to be a concern that MPAs and their subsequent management may be detrimental to social and economic activities. However, we would maintain that there is a large body of evidence linking better marine health with economic productivity, social well-being and, crucially, climate change mitigation. A 2009 report (*No charge? Valuing the environment*, Natural England) estimates that the potential benefits of a UK network of Marine Conservation Zones could outweigh costs by a factor of between 7 to 40, with estimated benefits of between £7 billion and £19 billion. We are therefore concerned about the emphasis on *adverse* impacts. We would welcome the policy intention here is the amendment was worded in such a way as to reflect all possible impacts (positive and negative) of restriction and prohibition of activities. We would also point out that marine activities may also be displaced for a number of other reasons, for example, where two marine activities being incompatible in the same area. The displacement of marine activities is a factor that must be considered when managing our seas according to the ecosystem approach.

Section 82

Robin Harper

- 189** In section 82, page 46, line 37, at end insert <, imprisonment for a period not exceeding 2 years, or both.>

This amendment seeks to ensure consistency between the penalties for offences in Part 3 and Part 4 of the Bill. Offences for contravening license provisions are punishable by:

- (i) on summary conviction, by a fine not exceeding £50,000,
- (ii) on conviction on indictment, by a fine, imprisonment for a period not exceeding 2 years, or both.

However, with regard to offences for contravening a marine conservation order (s82) or offences relating to protected features of a Nature Conservation MPA (s83), imprisonment is not part of the suite of punishments. **LINK supports this amendment.**

Section 83

Stuart McMillan

- 239** In section 83, page 47, line 27, leave out <£50,000> and insert <£5,000>

LINK do not support this amendment. Section 83(3) lays out a number of circumstances where an act, which would otherwise be an offence under this section, is not considered an offence. Given these provisions we do not believe that a fine of £5000 is a sufficient deterrent.

Robin Harper

- 190** In section 83, page 47, line 28, at end insert <, imprisonment for a period not exceeding 2 years, or both.>

This amendment seeks to ensure consistency between the penalties for offences in Part 3 and Part 4 of the Bill. Offences for contravening license provisions are punishable by:

- (i) on summary conviction, by a fine not exceeding £50,000,
- (ii) on conviction on indictment, by a fine, imprisonment for a period not exceeding 2 years, or both.

However, with regard to offences for contravening a marine conservation order (s82) or offences relating to protected features of a Nature Conservation MPA (s83), imprisonment is not part of the suite of punishments. **LINK supports this amendment.**

Section 84

Stuart McMillan

240 In section 84, page 48, line 15, leave out <£50,000> and insert <£5,000>

LINK do not support this amendment. Section 83(3) lays out a number of circumstances where an act, which would otherwise be an offence under this section, is not considered an offence. Given these provisions we do not believe that a fine of £5000 is a sufficient deterrent.

After section 84

Robin Harper

241 After section 84, insert—

<Offences relating to Surfing MPAs

- (1) A person commits an offence under this section if the person—
 - (a) intentionally or recklessly does a prohibited act in a Surfing MPA (the “protected area”), and
 - (b) the act has significantly hindered, or may significantly hinder, the achievement of the stated objectives for the protected area.
- (2) For the purpose of subsection (1), a person does a prohibited act if the person carries out works or activities in the area which (or which are likely to)—
 - (a) damage or interfere with a Surfing MPA,
 - (b) have a significant impact on the protected area.>

Section 85

Robin Harper

242 In section 85, page 49, line 1, after <act,> insert—

<() the act occurred on the seaward side of the 0-6 nautical mile fisheries zone in a location where foreign vessels have fishing rights,>

Section 85 states that a person cannot be guilty of an offence under section 82 (Contravening a marine conservation order), 83 (Offences relating to protected features of a Nature Conservation MPA) or 84 (Offences relating to marine historic assets) if the act was done whilst fishing and the effect of that act on the protected feature could not reasonably have been avoided. We note that in many instances it is sea fishing that has created the parlous situation that needs rectifying by this Bill. We further note that the RAE Committee remains unconvinced that fishing activity in MPAs requires additional protection under the Bill.

We understand that this defence is designed to prevent discrimination between UK and non-UK fishing vessels under the Common Fisheries Policy in such areas between 6-12nm where there are historic fishing rights. In these areas non-UK vessels cannot be charged under UK law if they are in compliance with the CFP. However, there does not appear to be any justification for such a defence within 6nm or in areas between 6-12nm where there are no historic fishing rights. **LINK supports these amendments.**

Richard Lochhead

75 In section 85, page 49, line 3, at end insert—

<(2A) The Scottish Ministers may by order amend this section so as to remove, or restrict the application of, the defence provided by subsection (2).>

We understand that the sea fishing defence is designed to prevent discrimination between UK and non-UK fishing vessels under the Common Fisheries Policy in such areas between 6-12nm where there are historic fishing rights. In these areas non-UK vessels cannot be charged under UK law if they are in compliance with the CFP. However, there does not appear to be any justification for such a defence within 6nm or in areas between 6-12nm where there are no historic fishing rights. However, this amendment, which is consistent with the approach adopted in the UK Marine and Coastal Access Act allows the defence to be removed or restricted following reform of the Common Fisheries Policy. Our preferred option would be amendments 242 and 243 which would limit the defence to areas between 6-12nm where there are historic fishing rights, but we can see the merit in consistency with the UK Act here.

Robin Harper

243 In section 85, page 49, line 4, at end insert—

<“foreign vessel” means any vessel other than a British vessel, Scottish fishing boat or a Northern Ireland fishing boat.>

The proposed amendment is consequential to amendment 242. **LINK supports this amendment.**

Section 86

Richard Lochhead

76 In section 86, page 49, line 11, leave out <structure,> and insert <installation, and>

Richard Lochhead

77 In section 86, page 49, leave out line 12

Section 87

Bill Wilson

168 In section 87, page 49, line 27, leave out from beginning to <all> in line 28 and insert <A marine management scheme must be established for each>

Post-designation it is essential that conservation objectives are used to develop a management scheme for each MPA. A marine management scheme is necessary to translate the conservation objectives into clear management guidelines, making it easier for public bodies and other organisations and individuals to understand the management requirements and the implications with regard to their own functions and activities. We believe that the best way to provide clarity for all sea users is to require that a management scheme must be developed for every MPA. **LINK supports this amendment.**

Robin Harper

244 In section 87, page 49, line 30, at end insert—

<() any Surfing MPA,>

Robin Harper

245 In section 87, page 49, line 36, after the first <MPA> insert <, a Surfing MPA>

Bill Wilson

169 In section 87, page 50, line 1, leave out <relevant authority's (or authorities') functions> and insert <functions of a relevant authority (or of 2 or more relevant authorities acting together)>

The proposed amendment is consequential to amendment 168. LINK supports this amendment.

Robin Harper

246 In section 87, page 50, line 7, at end insert—

<() the stated preservation objectives for any Surfing MPA to which the scheme applies,>

Bill Wilson

170 In section 87, page 50, line 17, after <area> insert <directed in writing by the Scottish Ministers to establish a marine management scheme (whether on its own or together with another relevant authority or other relevant authorities)>

The proposed amendment is consequential to amendment 168. LINK supports this amendment.

Section 89

Elaine Murray

191 In section 89, page 50, line 28, at end insert—

<() The relevant authority (or authorities acting together) must have regard to any representations made to it by Scottish Natural Heritage under subsection (1).>

Section 89 places a duty on a relevant authority to consult SNH before amending a marine management scheme. However, there is currently no requirement for that authority to have regard to any advice given by SNH. LINK supports this amendment.

After section 90

Elaine Murray

247 After section 90, insert—

<Nature Conservation MPAs: duty to review achievement of stated objectives

Nature Conservation MPAs: duty to review achievement of stated objectives

- (1) At the end of a period mentioned in subsection (3), the appropriate statutory conservation body must carry out an assessment of the extent to which the stated conservation objectives of a designated Nature Conservation MPA have been achieved.
- (2) An assessment under subsection (1) may also include an assessment of the contribution of any relevant marine management scheme to the achievement of the objectives.
- (3) The periods are—
 - (a) the period of 5 years beginning with the date on which the area was designated under section 58(1)(a),
 - (b) each subsequent period of 5 years.>

There is currently no requirement for sites to be monitored. In the absence of such monitoring, it would appear to be impossible for Scottish Ministers to report on the extent to which the stated conservation objectives have been achieved (91(3)). The proposed amendment includes a monitoring requirement for all MPAs in order that progress towards achieving conservation objectives can be assessed. We welcome the recommendation of the RAE Committee that the Cabinet Secretary consider the merits of the Bill requiring MPAs to be regularly monitored and reviewed following designation. **LINK supports this amendment.**

Section 91

Richard Lochhead

- 175** In section 91, page 51, line 20, leave out <120 of the Marine and Coastal Access Act 2009 (c.00)> and insert <124 of the 2009 Act>

Robin Harper

- 248** In section 91, page 51, line 25, at end insert—
<() Surfing MPAs,>

Robin Harper

- 249** In section 91, page 51, line 32, at end insert—
<() in relation to each Surfing MPA—
(i) its size,
(ii) the stated purpose,>

Robin Harper

- 250** In section 91, page 52, line 6, at end insert—
<() in relation to each Surfing MPA (whether in a designation order made before or during the relevant period)—
(i) the extent to which in the opinion of the Scottish Ministers the stated purpose has been achieved,

- (ii) any further steps which in their opinion are required to be taken in order to contribute to the achievement of that purpose,>

Liam McArthur

192 In section 91, page 52, line 17, at end insert—

<() information about—

- (i) any amendment to a marine conservation order, or
- (ii) any amendment to or update of a marine management scheme, made during the relevant period as a result of monitoring the effectiveness of the order or scheme,>

Section 91(3) requires Scottish Ministers to report on the extent to which the stated conservation objectives have been achieved. The World Conservation Union (IUCN) recently produced guidelines for evaluating the effectiveness of MPAs which highlighted the central importance of evaluating management effectiveness of MPAs through a process of adaptive management. Management effectiveness is simply the degree to which management actions are achieving the goals and objectives of a protected area. Adaptive management is the process of testing assumptions, learning from the results of such testing, and subsequently revising and improving management practices – sometimes described as ‘learning by doing’. Adaptive management is a requirement of the Marine Strategy Framework Directive (MSFD) which states under Article 3(5) *Adaptive management on the basis of the ecosystem approach shall be applied with the aim of attaining good environmental status.* The proposed amendment would ensure that International best practice is followed in monitoring and assessing MPAs. **LINK supports this amendment.**

Richard Lochhead

171 In section 91, page 52, line 20, leave out from <an> to the end of line 26 and insert <the objective in section (*Creation of network of conservation sites*)(2).>

Richard Lochhead

172 In section 91, page 52, leave out lines 28 to 30

Richard Lochhead

173 In section 91, page 52, leave out lines 35 and 36

Amendment 171, 172 & 173. The proposed amendments are consequential to amendment 109. **LINK supports these amendments.**

Section 92

Richard Lochhead

79 In section 92, page 53, line 1, leave out <Marine and Coastal Access Act 2009 (c.00)> and insert <2009 Act>

Richard Lochhead

80 In section 92, page 53, line 18, leave out <Marine and Coastal Access Act 2009> and insert <2009 Act>

Section 94

Richard Lochhead

81 In section 94, page 53, line 33, at end insert—

<“animal” includes any egg, larva, pupa or other immature stage of an animal,>

Robin Harper

251 In section 94, page 54, line 13, at end insert—

<“stated preservation objectives” for a Surfing MPA means the preservation objectives stated (in the designation order designating the area) as the preservation objectives for the area,>

After section 94

Robin Harper

272* After section 94, insert—

<PART

MARINE LITTER STRATEGY

Marine litter strategy

- (1) Scottish Ministers must prepare a marine litter strategy for the Scottish marine area.
- (2) The objective of the strategy is to reduce the total load of marine litter in the marine environment, and ensure that the properties and quantity of marine litter is such as to be below a level which causes an adverse impact on—
 - (a) the health of the marine environment,
 - (b) navigational safety.
- (3) The strategy must—
 - (a) define or elaborate on the threshold at which marine litter has such an adverse impact, with reference to—
 - (i) the volume of marine litter on the seabed, on the sea surface, in the water column and on the coastline,
 - (ii) the ecological effects of marine litter,
 - (iii) the degradation of marine litter,
 - (iv) the adverse social and economic consequences of marine litter,
 - (b) include an assessment of the incidence of marine littering and its likely sources,
 - (c) include such maps, diagrams or illustrations as are determined by the Scottish Ministers to be appropriate to the purpose of the strategy, and
 - (d) include policies and programmes aimed at the prevention and removal of marine litter, including awareness raising of the consequences of marine littering.
- (4) For the purposes of this section, “marine litter” includes any persistent, manufactured or processed solid material in the sea or on the seashore.

- (5) Before finalising the text of the strategy, the Scottish Ministers must—
 - (a) consult such persons as they consider are likely to be interested in or affected by the implementation of the strategy, and
 - (b) have regard to any representations made in response.
- (6) The Scottish Ministers must publish the strategy—
 - (a) no later than 3 years after this section comes into force, and
 - (b) in such manner as they consider is most likely to bring it to the attention of interested persons.
- (7) The Scottish Ministers must, no later than 2 years after the publication of the strategy, and within each subsequent 2 years, lay a report before the Parliament assessing the extent to which in the opinion of the Scottish Ministers the objective under subsection (2) has been achieved.
- (8) The Scottish Ministers may—
 - (a) review any strategy they have prepared under this section from time to time and, following such a review, revise it, and
 - (b) consult such persons as they consider are likely to be interested in or affected by the implementation of the strategy before finalising the text of any revised strategy.>

The amount of litter in our seas and on our beaches continues to be a cause for concern. Beach litter surveys carried out by Marine Conservation Society volunteers indicate that, in general, quantities of litter on UK beaches have increased by 110% since 1994, with the density of plastic increasing by 146% in the same period. Average litter densities on UK beaches are now over 2,000 litter items/km surveyed.

In order to prevent items from becoming litter it is important to tackle the sources of litter. Reactive measures, such as beach cleaning, are useful in the short-term but do not provide any long-term solutions to the problem and are only economically viable on amenity beaches where tourist revenue is important. It is also important to realise that marine litter is not simply an aesthetic problem but that it has environmental, ecological and socio-economic impacts.

Although certain elements that contribute to marine litter are being tackled e.g. Fishing for Litter, cigarette butts, Bag It and Bin it, there is at present no single co-ordinated strategy which takes a broad overview of the sources of marine litter and the problems that it causes. A Marine Litter Strategy is required, overseen by a lead body or agency that can co-ordinate resources, campaigns and research into combating this form of pollution. Current policies and responsibilities for marine litter are covered by several agencies and thus there is no coherent management of the problems, with responsibility being passed between agencies. A co-ordinated strategy would enable efficient, joined-up action across all relevant public agencies, integrating work to tackle litter from, amongst others, Combined Sewer Overflows, shipping, fishing and boating, fly-tipping and general littering. Marine Scotland would be best-placed to take on the lead co-ordination role, particularly since the Scottish Government will be committed to meet EU Marine Strategy Framework Directive Qualitative Descriptor 10: *“Properties and quantities of marine litter do not cause harm to the coastal and marine environment”*

LINK supports this amendment.

Robin Harper

273 After section 94, insert—

<PART

CETACEAN SANCTUARY

Cetacean sanctuary

- (1) The Scottish marine area is designated as a cetacean sanctuary.
- (2) If it appears that the action of any person may have resulted, or may have been likely to have resulted in the unintentional killing or injury of a cetacean, that person must report this to Scottish Natural Heritage as soon as reasonably practicable.>

We agree with the view of the Whale and Dolphin Conservation Society that as an introduction to an ecosystem-based management approach, a cetacean sanctuary would highlight the international importance of Scotland's seas for more than 20 species of whales, dolphins and porpoises. **LINK supports this amendment.**

Robin Harper

274 After section 94, insert—

<PART

PROTECTION OF MARINE EUROPEAN PROTECTED SPECIES

Guidance as regards protection of marine European Protected Species

- (1) Scottish Natural Heritage must prepare and issue guidance setting out recommendations, advice and information on—
 - (a) the avoidance of action which may constitute an offence under regulation 39 of the Conservation (Natural Habitats, &c.) Regulations as amended, and
 - (b) the protection from all injury and disturbance,in respect of marine European Protected Species.
- (2) Scottish Natural Heritage must review the guidance from time to time and may, following such a review, revise it.
- (3) Scottish Natural Heritage must—
 - (a) before preparing the guidance, and
 - (b) when reviewing it,consult such persons appearing to it to have an interest in the protection of marine European Protected Species and consult such other persons as it thinks fit.
- (4) Scottish Natural Heritage must—
 - (a) publish the guidance and any revisions to it in such manner (including on the internet or by other electronic means) as it thinks fit, and
 - (b) promote awareness and understanding of the guidance and any revisions to it.
- (5) A person's failure to comply with any provision of the guidance or any revisions to it does not in itself render the person liable to proceedings of any sort.
- (6) In any proceedings for an offence under this Act or any other relevant enactment—

- (a) failure to comply with a relevant provision of the guidance or any revisions to it may be relied upon as tending to establish liability,
 - (b) compliance with a relevant provision of the guidance or any revisions to it may be relied upon as tending to negative liability.
- (7) In this section, “marine European Protected Species” means those species which are listed in Annex IV(a) of the Habitats Directive, and whose natural range includes any part of the Scottish marine area.>

LINK supports this amendment.

Section 95

Elaine Murray

- 275 In section 95, page 54, line 29, after <injuring> insert <, disturbing, harassing>

LINK support the policy intention behind this amendment, to offer seals protection from harassment at their haul-out sites and elsewhere, but we are concerned that the inclusion of ‘disturbing’ in this amendment would also cover non-lethal deterrents around fish farm cages and some river fisheries.

Elaine Murray

- 276 In section 95, page 54, line 29, at end insert—

<() Obstructing access to a seal haul-out site is an offence.>

LINK supports this amendment.

Section 97

Richard Lochhead

- 82 In section 97, page 55, line 23, leave out <or an authorisation granted under section 107>

Richard Lochhead

- 83 In section 97, page 55, line 26, leave out <or an authorisation granted under section 107>

Richard Lochhead

- 84 In section 97, page 55, line 28, leave out <or an authorisation granted under section 107>

Section 98

Elaine Murray

- 262 In section 98, page 56, line 1, at end insert—

<() to protect the health and welfare of farmed fish,>

We recognise that the health and welfare of farmed fish is an important issue but we would expect all alternatives to killing, including anti-predator nets and other non-lethal deterrents, to have been attempted and failed, prior to shooting seals, in line with amendments 277 and 278.

Elaine Murray

- 277 In section 98, page 56, line 2, leave out <to prevent> and insert <following serious damage to fisheries or fish farms, to prevent further>

We do not believe that seals should be shot on a precautionary basis.
LINK supports this amendment.

Elaine Murray

- 278 In section 98, page 56, line 8, at end insert—

- <(2) A licence may only be granted under subsection (1)(f) if the applicant has satisfied the Scottish Ministers that—
- (a) a seal has caused serious damage to a fishery or fish farm, and
 - (b) all non-lethal alternatives to killing have been tried, given sufficient time to succeed, and demonstrably have not prevented serious damage occurring.
- (3) The Scottish Ministers must specify by regulations what constitutes a “non-lethal alternative” under subsection (2).>

LINK supports this amendment.

Robin Harper

- 279* In section 98, page 56, line 8, at end insert—

- <(4) The Scottish Ministers may not grant a licence authorising the killing or taking of seals during the period when females are likely to be in an advanced stage of pregnancy or to have dependent pups.
- (5) For the purposes of subsection (4), the period is—
- (a) for grey seals, that is to say seals of the species *Halichoerus grypus*, from 1 September to 31 December inclusive,
 - (b) for common seals, that is to say seals of the species *Phoca vitulina*, from 1 June to 31 August inclusive.>

This is consistent with the approach taken in the Nature Conservation (Scotland) Act. **LINK supports this amendment.**

Robin Harper

- 280* In section 98, page 56, line 8, at end insert—

- <(6) The Scottish Ministers may not grant a licence authorising the killing or taking of seals to the owner or operator of any fish farm, netting station or other fishery installation any part of which has been placed within one kilometre of a known seal haul-out site.
- (7) Subsection (6) applies only to a fish farm, netting station or other fishery installation constructed or positioned after 31 December 2010.>

Section 99

Elaine Murray

- 281* In section 99, page 56, line 10, at end insert—

<(1A) A licence issued to kill a seal must specify the circumstances in which an individual named on the licence is authorised to shoot seals, including the requirement that there is sufficient visibility and the sea conditions are such to allow a clear shot to be taken.>

LINK supports this amendment.

Elaine Murray

282 In section 99, page 56, line 10, at end insert—

<(1B) A licence issued to kill a seal must specify the circumstances in which an individual named on the licence is authorised to shoot seals, including the requirement that all reasonable steps have been taken to ensure that the seal does not suffer a prolonged or painful death.>

Elaine Murray

283 In section 99, page 56, line 10, at end insert—

<(1C) A licence issued to kill a seal must specify the circumstances in which an individual named on the licence is authorised to shoot seals, including the requirement that—

- (a) the type of firearm to be used is specified under the licence,
- (b) such an individual possesses the appropriate firearms licence, and
- (c) the individual has satisfied the Scottish Ministers that they are a proficient marksman using the specified firearm.>

LINK supports this amendment.

Elaine Murray

284 In section 99, page 56, line 10, at end insert—

<(1D) A licence issued to kill a seal must specify the circumstances in which an individual named on the licence is authorised to shoot seals, including the requirement that a seal must not be shot from a moving boat or other unstable platform.>

Section 100

Robin Harper

263 In section 100, page 56, line 18, after <Ministers> insert <within 30 days, and>

LINK supports this amendment.

Elaine Murray

285 In section 100, page 56, line 18, leave out <as soon as reasonably practical after> and insert <, in accordance with subsection (1A), on the following>

LINK supports this amendment.

Robin Harper

264 In section 100, page 56, line 19, after <practical> insert <within that period>

LINK supports this amendment.

John Scott

286 In section 100, page 56, line 20, after first <seal> insert <, or seals,>

John Scott

287 In section 100, page 56, line 21, after first <seal> insert <, or seals,>

John Scott

288 In section 100, page 56, line 23, after <seal> insert <, or seals,>

Elaine Murray

289 In section 100, page 56, line 24, at end insert—

<() that the licensee has not carried out any of the activities specified in paragraph (b)(i) to (iii).>

LINK supports this amendment.

Elaine Murray

290 In section 100, page 56, line 24, at end insert—

<() requiring that, when a seal has been killed, all reasonable steps be taken to recover its carcass and, if so recovered, the Natural Environment Research Council be notified of the availability of the carcass for post-mortem or research purposes.>

Elaine Murray

291 In section 100, page 56, line 24, at end insert—

<(1A) The licensee must report to the Scottish Ministers within the specified period the information set out under subsection (1)(b) at the end of the period of 3 months after the date on which this section comes into force and at the end of each subsequent period of 3 months.>

LINK supports this amendment.

Elaine Murray

292 In section 100, page 56, line 29, after <taken> insert <, in addition to those specified in section 99(1A), (1B), (1C) and (1D)>

After section 103

Elaine Murray

293 After section 103, insert—

<Seal licences: review

- (1) The Scottish Ministers must, before the end of every second calendar year following the year in which section 98 comes into force, review the operation of seal licences.
- (2) In conducting a review under subsection (1), the Scottish Ministers must—

- (a) take into account scientific evidence on seal biology, welfare and behaviour and such other matters as they consider relevant to the understanding of the purposes for which seal licences may be granted, and
 - (b) consult such persons as they consider are likely to be interested in or affected by the review.
- (3) Following a review under subsection (1), the Scottish Ministers must—
- (a) consider how the operation of the provisions in this Part can be modified in order to reduce to a minimum the killing or taking of seals, and
 - (b) implement any such modifications that are reasonably practicable.>

We believe that it is important to review these matters on a regular basis, taking into account new information as it becomes available. **LINK supports this amendment.**

Section 105

Elaine Murray

294 In section 105, page 58, line 5, after <granted> insert—

<() that, for licences applied for under section 98(1)(f), the Scottish Ministers are satisfied that the conditions under subsection 98(2) have been met by the applicant,>

Section 107

Richard Lochhead

85 In section 107, page 58, line 23, leave out from first <any> to <prevent> and insert <a person to enter land in order to kill or take seals in accordance with a seal licence granted for the purpose of preventing>

Section 117

Richard Lochhead

86 In section 117, page 61, line 10, leave out <and 84> and insert <, 84, 95 and 100(4),>

Stuart McMillan

295 In section 117, page 61, line 15, leave out <subsections (4) and (5)> and insert <subsection (4)>

Stuart McMillan

265 In section 117, page 61, line 21, leave out subsections (5) to (7)

Richard Lochhead

87 In section 117, page 61, line 37, at end insert—
 <“vessel” does not include aircraft.>

Section 126

Richard Lochhead

88 In section 126, page 66, line 26, at end insert—

<() Where a marine enforcement officer reasonably believes that a person is or has been carrying on a relevant activity, the officer may require that person to afford such facilities and assistance with respect to matters under that person's control as the officer considers would facilitate the exercise in relation to that person of any power conferred by section 125 or this section.>

Richard Lochhead

176 In section 126, page 66, line 28, leave out <243(7) of the Marine and Coastal Access Act 2009 (c.00)> and insert <253(7) of the 2009 Act>

Section 132

Liam McArthur

296 In section 132, page 68, line 19, at end insert—

<() Before doing any of the things in subsection (2), the officer must take all reasonable steps to—

- (a) notify the port authority for the port to which the officer proposes that the vessel be taken, and
- (b) seek the views of the port authority as to the appropriateness of so doing.>

Liam McArthur

297 In section 132, page 68, line 28, at end insert—

<() The owner of a vessel or marine installation which has been detained in a port by virtue of subsection (3) is liable to pay compensation to the relevant port authority for any damage or loss of revenue arising from that detention.>

Section 136

Stuart McMillan

266 In section 136, page 69, line 23, leave out <if requested to do so>

Stuart McMillan

267 In section 136, page 69, line 27, leave out subsection (3)

Section 137

Stuart McMillan

268 In section 137, page 69, line 32, leave out <if requested to do so>

Stuart McMillan

269 In section 137, page 69, line 34, leave out <, if requested to do so,>

Stuart McMillan

270 In section 137, page 70, line 4, leave out subsection (5)

Section 138

Stuart McMillan

271 In section 138, page 70, line 17, at end insert—
<() if the act was carried out without reasonable skill or care,>

Section 141

Richard Lochhead

90 In section 141, page 71, leave out lines 26 and 27.

Richard Lochhead

91 In section 141, page 72, line 4, at end insert—
<() any aircraft,>

After section 141

Richard Lochhead

256 After section 141, insert—

<PART

SEA FISHERIES

Extension of modifications relating to Sea Fish (Conservation) Act 1967

- (1) The modifications to the Sea Fish (Conservation) Act 1967 (c.84) made by Chapter 1 of Part 7 of, and Schedules 15 and 22 to, the 2009 Act, except those mentioned in subsection (2), extend to Scotland.
- (2) The modifications made by sections 194(4) and (5), 196 and 198(3) of, and paragraph 1(4) of Schedule 15 to, the 2009 Act do not extend to Scotland.>

Richard Lochhead

257 After section 141, insert—

<Modification of section 22A of Sea Fish (Conservation) Act 1967

- (1) Section 22A (application to Scotland) of the Sea Fish (Conservation) Act 1967 is modified as follows.
- (2) In subsection (2) after “sections” insert “1(3B) and (9), 5(8),”.

(3) After subsection (2) insert—

“(2A) In section 1—

(a) for subsections (3) and (3A) substitute—

“(3B) Sea fish of any description which do not meet the requirements as to size prescribed in relation to sea fish of that description by an order of the Scottish Ministers must not be carried, whether within or outside the Scottish zone, on a Scottish fishing boat; and an order under this subsection may prohibit the carrying by a relevant British fishing boat or a foreign vessel in the Scottish zone of sea fish of any description prescribed by the order which do not meet the requirements as to size so prescribed in relation to sea fish of that description.”,

(b) in subsection (8) for “(3)” substitute “(3B)”,

(c) for subsection (9) substitute—

“(9) In this section—

“foreign vessel” means any vessel other than a relevant British fishing boat or a Scottish fishing boat,

“relevant British fishing boat” means a vessel, other than a Scottish fishing boat, which—

(a) is registered in the United Kingdom under Part 2 of the Merchant Shipping Act 1995 (c.21), or

(b) is owned wholly by persons qualified to own British ships for the purposes of that Part of that Act.”.

(2B) In section 3—

(a) in subsection (2A) for “adjacent to England and Wales” substitute “of the United Kingdom adjacent to Scotland”,

(b) for subsection (2B) substitute—

“(2B) In subsection (2A) above—

(a) the Scottish Ministers are “the appropriate national authority”,

(b) the boundaries between the parts of the territorial sea of the United Kingdom adjacent to Scotland and the parts not so adjacent are to be determined by reference to an Order in Council made under section 126(2) of the Scotland Act 1998 (c.46) to the extent that the Order in Council is expressed to apply for the purposes of that Act.”.

(4) For subsection (6) substitute—

“(6) In section 5—

(a) in subsection (1), for “appropriate national authority” substitute “Scottish Ministers”,

(b) for subsections (8) and (9) substitute—

“(8) An order under this section may make provision—

(a) applying to Scottish fishing boats whether within or outside the Scottish zone,

(b) in any other case, applying to fishing boats within the Scottish zone.”.

(5) After subsection (9) insert—

“(9A) In section 11(1)(a), for “4(3), (6) or (9A)” substitute “4(3) or (6)”.”.>

Richard Lochhead

258 After section 141, insert—

<Extension of modifications relating to Sea Fisheries (Shellfish) Act 1967

The modifications to the Sea Fisheries (Shellfish) Act 1967 (c.83) made by sections 203, 204, 206, 207, 209, 210, 211(1) and (3) and 214 of, and Part 5(A) of Schedule 22 to, the 2009 Act extend to Scotland.>

Richard Lochhead

259 After section 141, insert—

<Modification of Sea Fisheries (Shellfish) Act 1967

(1) The Sea Fisheries (Shellfish) Act 1967 (c.83) is modified as follows.

(2) In section 1 (power to make orders as to fisheries for shellfish)—

(a) omit subsection (4),

(b) after subsection (14) insert—

“(14A) Subsection (14) above has effect in relation to Scotland as if the reference to the Town and Country Planning Act 1990 were a reference to section 26 of the Town and Country Planning (Scotland) Act 1997 (c.8).”.

(3) In section 7 (protection of fisheries), in subsection (4), for “level 3 on the standard scale” substitute “£50,000”.

(4) In paragraph 6 of Schedule 1—

(a) the existing provision is renumbered as sub-paragraph (1),

(b) after that sub-paragraph insert—

“(2) Where the proposed order relates to any portion of the sea shore belonging to Her Majesty in right of the Crown, the appropriate Minister must also have regard to the powers and duties of the Crown Estate Commissioners under the Crown Estate Act 1961 (c.55).”>

Before section 142

Liam McArthur

260 Before section 142, insert—

<Judicial review

(1) In any application for judicial review relating to or arising out of the provisions of this Act, it will be enough for any party to show sufficient interest in order to satisfy the common law tests of title and interest.

- (2) “Sufficient interest” is to be interpreted in accordance with the criteria laid out in Article 9 of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters signed at Aarhus on 25 June 1998 (“the Aarhus Convention”).
- (3) In relation to the expenses associated with any judicial review proceedings under this Act, the court may impose a cap on, or otherwise regulate, the extent of liability for expenses between the parties; and such applications may be competently made at any stage of the proceedings.
- (4) When determining an application made under subsection (3) above, the court is to have regard to the need to remove or reduce financial or other barriers to access to justice, in accordance with the principles laid out in Article 9 of the Aarhus Convention.
- (5) In any application for judicial review under this Act, the court may competently consider both the substantive and the procedural legality of the decision, act or omission under review.>

Access to the Scottish courts to challenge Ministerial decisions on environmental matters is constrained by unhelpful or unclear rules on standing and costs, and by limitations on the scope of judicial review so as to exclude the merits of the decision from challenge.

Under the Aarhus Convention environmental NGOs and indeed members of the public should enjoy access to timely, affordable review procedures that can consider the merits of the decision, not just its procedure. This is called ‘Aarhus-compliant challenge’.

In Scotland and the UK more generally, Ministers have claimed that Judicial Review is adequate. We believe it is inadequate on two grounds in Scotland: the costs involved, and particularly the risk of a punitive costs award; and the limitation to challenge only procedural matters. Clearly this is not specifically a marine question, but we believe that it is important that this issue is raised.

This is particularly pertinent in light of the recent report by Lord Gill which was published on 30th September 2009. We would draw your attention to the following recommendations of this report with regard to title and interest and expenses issues.

At paragraph 25 of chapter 12 Lord Gill made the following recommendation in respect of title and interest:

“On balance, we are persuaded that the current law on standing is too restrictive and that the separate tests of title and interest should be replaced by a single test: whether the petitioner has demonstrated a sufficient interest in the subject matter of the proceedings. In assessing whether a petitioner has a sufficient interest the court would have regard to the factors identified by Lord Clyde in the Scottish Old Peoples Welfare case: that is, the petitioner must demonstrate an interest which is material; the pursuit of an academic point would not be permitted nor would the court give a general pronouncement of the law on facts which are hypothetical; there must be a real issue between the parties. We do not think that it would be possible or desirable to elaborate on the test, the application of which would depend on the facts and circumstances of each case.”

At paragraph 71 of chapter 12 Lord Gill, in discussing the desirability of an express power to make a Protective Costs Order (PCO), stated:

“One advantage of having an express power is that draft rules in an area which is controversial and which involves a careful balancing of the interests of claimants and public bodies could be put out for consultation so that a range of views from interested parties, not just the arguments advanced in any particular litigation, could inform the formulation of the principles to be applied. Another advantage is that prospective litigants are aware that it is open to them to apply for such an order and of the criteria that will have to be satisfied if an order is to be made in their favour. **The status quo leaves room for doubt and may not be sufficient to fulfil the United Kingdom’s obligations under the Aarhus Convention.**”

At paragraph 73 of chapter 12 Lord Gill made the following recommendation in respect of expenses:

“If there were clear authority that it was competent for the Scottish courts to make PCOs then leaving the courts to develop guidelines appropriate for this jurisdiction might be an attractive option. However, as doubts have been raised at Inner House level about the competency of such an order it may be open to question whether the current arrangements satisfy the requirements of the Convention. Furthermore, an important element in striking a fair balance is the ability of the court in England and Wales to make a costs capping order, either limiting the amount which a successful defender can recover from a public interest litigant (a form of limited immunity from liability in expenses) or limiting the amount which a successful public interest litigant, who enjoys the protection of a PCO, may recover from the defender (to avoid the PCO operating as a blank cheque). For these reasons we consider that an express power should be conferred upon the courts in this jurisdiction to make special orders in relation to expenses in cases raising significant issues of public interest.”

Lord Gill does not specify the exact criteria to use; he suggests the following (paragraph 75):

“A reformulated Corner House test might, accordingly, look something like this:

The court may make a protective costs order at any stage of the proceedings and on such conditions as it thinks fit if it is satisfied that:

- the issues raised are of general public importance;
- the public interest requires that those issues be resolved; and
- having regard to the financial resources of the applicant and the respondent and to the amount of expenses that are likely to be involved, it is fair and just to make the order.

In exercising its discretion the court may have regard to:

- whether the applicant is likely to abandon the proceedings and will be acting
- reasonably in so doing if an order is not made; and
- whether the applicants legal representatives are acting on a pro bono basis.

It is for the court, in its discretion, to decide whether it is fair and just to make the order in the light of the considerations set out above.”

LINK are keen to ensure that Ministers can be held legally to account if (*inter alia*):

- They fail to set suitably stringent targets in line with the evidence available to them on the matters they must consider, and the purposes of the Bill;
- They fail to meet the targets they set;
- They fail to set out appropriate policies and proposals to meet the targets; or

They take any other decision which makes it less likely that a target will be met.

LINK supports this amendment.

Section 142

Richard Lochhead

- 92 In section 142, page 72, line 21, leave out <Part> and insert <Act>

Section 145

Liam McArthur

- 193 In section 145, page 73, line 23, leave out subsection (3)

Richard Lochhead

- 93 In section 145, page 73, line 33, at end insert
<() an order under section 85(2A),>

Section 146

Richard Lochhead

- 94 In section 146, page 74, line 2, at end insert—
<“the 2009 Act” means the Marine and Coastal Access Act 2009 (c.23),>

Richard Lochhead

- 95 In section 146, page 74, line 10, at end insert—
<“marine installation” means any artificial island, installation or structure (other than a vessel),>

Richard Lochhead

- 177 In section 146, page 74, line 12, at end insert—
<“UK marine area” has the meaning given in section 42 of the 2009 Act,>

Schedule 5

Richard Lochhead

- 252 In schedule 5, page 88, line 17, at end insert—
<the 2009 Act
- Section 146(1)>

Richard Lochhead

- 253 In schedule 5, page 89, line 5, at end insert—
<marine installation
- Section 146(1)>

Richard Lochhead

- 254 In schedule 5, page 89, line 7, at end insert—

<marine policy statement

Section 15>

Richard Lochhead

255 In schedule 5, page 89, line 25, at end insert—

<UK marine area

Section 146(1)>

Schedule 4

Elaine Murray

174 In schedule 4, page 87, line 18, at end insert—

<*Town and Country Planning (Scotland) Act 1997 (c.8)*

- (1) The Town and Country Planning (Scotland) Act 1997 is amended as follows.
- (2) In section 26—
 - (a) in subsection (1), the words “or the operation of a marine fish farm in the circumstances specified in section 26AA” are repealed,
 - (b) in subsection (6)—
 - (i) after “any”, where it occurs for the third time, there is inserted “inland”,
 - (ii) the words from “which”, where it first occurs, to “miles”, where it first occurs, are repealed,
 - (iii) for the definition of “inland waters”, there is substituted ““inland waters” means waters which do not form part of the sea, as defined in section 2 of the Marine (Scotland) Act 2009 (asp 00),”
 - (iii) the definition of “nautical miles” is repealed,
 - (c) subsections (6C) to (6J) are repealed.
- (3) Section 26AA is repealed.
- (4) Section 31A is repealed.
- (5) In section 275—
 - (a) in subsection (4), for the words“(6A) and (6C), 31A” there is substituted “and (6A)”,
 - (b) in subsection (5A), the words “or (6C)” are repealed.>

Richard Lochhead

298 In schedule 4, page 88, line 13, at end insert—

<**PART**

SEA FISHERIES

Sea Fisheries Act 1968

In the Sea Fisheries Act 1968 (c.77), in section 15 (amendments of Sea Fisheries (Shellfish) Act 1967), subsection (2A) is repealed.

Fisheries Act 1981

- (1) The Fisheries Act 1981 (c.29) is modified as follows.
- (2) The following provisions are repealed—
 - (a) section 19(2)(c),
 - (b) section 22(2)(a) and (3),
 - (c) section 28.
- (3) In paragraph 33 of Part 2 of Schedule 4 (offences to which section 33(5) applies)—
 - (a) for “Sea Fisheries (Conservation) Act 1967” substitute “Sea Fish (Conservation) Act 1967”,
 - (b) for “smaller than the prescribed size” substitute “which do not meet the prescribed size requirements”.

Sea Fish (Conservation) Act 1992

In the Sea Fish (Conservation) Act 1992 (c.60), paragraph (b) of section 5 is repealed.

Criminal Justice and Public Order Act 1994

In the Criminal Justice and Public Order Act 1994 (c.33), in Part 1 of Schedule 8 (increase in penalties), the entry relating to section 7(4) of the Sea Fisheries (Shellfish) Act 1967 is repealed.>

Long Title

Elaine Murray

- 299** In the long title, page 1, line 1, leave out <functions and activities in> and insert <the sustainable development of>

The long title to an Act gives an insight into Parliament’s view of the essential function of the Act. As currently drafted, the long title of the Bill makes no mention of sustainable development in the marine environment. We believe that it is essential for the long title to make reference to the concept of sustainable development, to reflect the commitment to improve the management of our marine resources. This is of particular relevance following the Committee’s acceptance of Amendment 97 which confers a general duty on Scottish Ministers and public authorities to act in the best way calculated to further the achievement of sustainable development.

LINK supports this amendment.