

Annex

Marine Bill – post JMC paper - SCOTLAND

This paper sets out a way forward for executive devolution under agreed circumstances for implementation of the planning and nature conservation elements of the draft Marine Bill. This will deliver the benefits looked for by stakeholders of UK wide systems, operating to resolve practical issues of efficient administration. to deliver strategic planning and protection of nature conservation to the seas around the UK. The intention is that the system encourages co-operation between Scottish and UK ministers, delivering a coherent system to manage the marine environment, which respects the different constitutional positions within the existing devolution settlement. It will also enable the UK to deliver its European and international obligations which require a regional seas approach.

The paper takes on board the point made by the First Minister for Scotland at the Joint Ministerial Committee, that discussion should focus first on executive devolution of planning and nature conservation.

This document will form the basis of a concordat to set out common principles and ways of working which Scottish Ministers and UK Government would use to facilitate an effective planning process and strong working relationship between the UK and Scottish Marine Bills and their implementation.

Marine Planning

Consists of two elements – Marine Policy Statement and the plans to articulate that statement in more detail.

Marine Policy Statement

Current position

Currently Scottish Ministers are not included in the draft UK Bill and would not therefore be involved in drawing up a UK wide marine policy statement with the other administrations.

Proposal

1. Scottish Ministers would be written into the Bill to enable them to participate in the Marine Policy Statement process. It would be intended that a Marine Policy Statement should be drawn up and agreed for the whole of the UK seas from 0-200 nm (or the median line as appropriate). Defra would lead the development of the statement but there would be agreed joint working processes with other UK Departments and the Devolved Administrations with the clear aim to agree a UK wide Statement.
2. UK Government will ensure that the draft MPS is laid before the UK parliament. It will also be laid before the devolved legislatures of those devolved administrations

proposing to agree with it. This would be an opportunity to ensure democratic accountability to all legislatures, and that comments and concerns could be taken on board before agreement. Scottish Ministers will lay the draft MPS before the Scottish Parliament.

3. If Scottish Ministers are content to adopt the final statement, then both Scottish Ministers and Scottish public authorities would have to follow the content of the Marine Policy Statement when carrying out their activities. This would include the way in which Scottish Ministers and public authorities make licensing decisions or designate marine conservation zones. It would also mean that the Scottish Ministers would ensure that any marine plans they prepare, either in the territorial waters (0-12nm) or the offshore area (12-200nm) would be in conformity with that Statement and Scottish Ministers would take any appropriate action to reinforce this in the Scottish Bill.
4. If Scottish Ministers are not content to adopt the final statement, then there would be no legal effect of the MPS on activities within the competence of Scottish Ministers or public authorities.
5. The MPS is expected to be reviewed roughly every 5 years. A review could however be undertaken any time prompted by key changes – such as any further changes to Scottish Ministers' responsibilities. Scottish Ministers, UK Government and the other policy authorities would work together to address any amendments needed. However in the event that issues could not be resolved, the Bill would ensure that if either Scottish Ministers or UK Government are no longer happy with their involvement in the MPS, they can withdraw at any time. Transition arrangements would provide for an orderly process with as much joint working as possible in the event that either Scottish Ministers or the Government were to withdraw agreement to an MPS or to a plan.

Marine Plans

Current Position

Currently Scottish Ministers are not included in the draft UK Bill. UK Government Ministers and Scottish Ministers can therefore each attempt to plan for their own functions in the offshore area, but neither will be able to undertake comprehensive planning. In the territorial waters within Scotland (0-12nm) Scottish Ministers currently intend to take forward marine planning within the Scottish Marine Bill for matters within their competence.

Proposal

6. The provisions by which Scottish Ministers would be given administrative responsibility for marine planning for devolved, reserved and non devolved matters in order to achieve common objectives for marine planning and nature conservation (see below) in the offshore area 12-200nm are set out in the following paragraphs.

7. The arrangements envisage agreement to a MPS incorporating such objectives. However, respecting the devolved competence of Scottish Ministers and accountability to the Scottish Parliament, arrangements will allow also for the possibility (however undesirable) that agreement cannot be reached.
8. The Bill would also provide for Government Ministers to agree any plans before they could be adopted and take effect. However, we would wish to see agreed joint working arrangements to involve the Government in the process of developing plans to provide guidance and information on reserved and non devolved matters. With this in mind, agreement to any plans ought to be a formality. Once the plans are in place, with UK Ministers signed up, Scottish Ministers, the Government and all public authorities would follow the content of the plans when carrying out their activities and making decisions, in the way set out in the Bill. It would be clear that Scottish Ministers cannot adopt those parts of a plan which would affect reserved matters unless they were in conformity with an agreed MPS.
9. Within the UK Bill, Scottish Ministers would become the marine plan authority for this area. The expectation would be that exercise of this authority would only follow agreement of the MPS.
10. Scottish Ministers as the plan authority would follow the broad process for planning set out in the UK Bill (e.g. they would commit to consulting on plans) however this would leave them with considerable flexibility to undertake planning in the way they felt most appropriate.
11. In the event that Scottish Ministers and UK Ministers could not agree these plans, then the process would cease and there would therefore be no comprehensive document under UK legislation which could have any effect on any Ministers or public authorities. Both Scottish Ministers and UK Government Ministers would continue to be responsible for devolved and non devolved decision making respectively as they are now, (other than executive devolution of conservation as proposed below) and would continue to work closely together to ensure the most effective delivery of these separate responsibilities.
12. In respect of the in-shore area, the plan would be drawn up by the Scottish Ministers under the Act resulting from the forthcoming Scottish Marine Bill. However, an order under section 104 of the Scotland Act (consequential on that Act) would provide that, if the plan was approved by UK Ministers, both they and UK public authorities would be required to follow the content of the plans in carrying out their activities and making decisions. As stated in paragraphs 2 and 3, if Scottish Ministers have agreed the MPS, then it would affect the way in which they develop these marine plans, and if they have not agreed the MPS, it would not.

Nature Conservation

Current position

As currently worded the draft Bill provides for the Secretary of State to designate Marine Conservation Zones in all UK offshore waters. But Scottish Ministers and public authorities are specifically excluded from the duties which are intended to protect the MCZs.

Proposal

13. Scottish Ministers would be given the power to designate MCZs in the offshore area (12-200nm) adjacent to Scotland. These designations could be prepared at the same time as they prepared designations for Marine Protected Areas in Scottish waters (0-12nm) if they wished. The UK Bill would provide for MCZs in the offshore area adjacent to Scotland to be referred to as "Marine Protected Areas", to bring them into line with Scotland's inshore provisions. The concordat would provide for arrangements to ensure involvement of Scottish Ministers on proposals for site designations under the EU Birds and Habitats Directives. The UK Government is currently reviewing arrangements for delivery of other nature conservation sites with a view to providing for executive devolution in Scottish offshore waters, subject to ensuring that reserved interests and issues of overriding public interest to the UK can be appropriately protected, to complement the provisions set out in the UK and Scottish Marine Bills.
14. In view of this we would make Scottish Ministers and public authorities subject to the same duties that would apply to UK Government Ministers and public authorities, - to carry out their functions in a manner which best furthered (or least hindered) the conservation objectives of the MCZs¹ (subject to exception on enforcement highlighted below.).
15. In respect of the in-shore zone, UK Ministers would be able (by way of the section 104 order referred to in paragraph 9) to signal approval of Marine Protected Areas designated by Scottish Ministers under Scottish legislation. Where such approval was given, UK ministers and public authorities would be required to carry out their functions in a manner which best furthered the objectives of the MPAs .
16. If we reach agreement on the Marine Policy Statement, both Scottish and UK Ministers would have regard to the content of the Marine Policy Statement, therefore

¹ If the above provisions on MCZs are agreed for Scotland, similar provisions would need to be included in relation to Northern Ireland, whose current position on marine nature conservation under the Bill as drafted is similar to that of Scotland.

any mutually agreed objectives on nature conservation would be reflected during the designation process².

17. In drawing up their proposals for designation of MCZs (MPAs) the appropriate Scottish authorities will consult widely (following similar processes as are planned for other areas of the UK) to ensure reserved, non-devolved and devolved interests are engaged at an early stage and that any potential conflicts are resolved.
18. In order to preserve oversight of UK Ministers in relation to non-devolved matters, the designations (which include conservation objectives and basic management measures) would then be subject to the agreement of the Secretary of State (in practice the Secretaries of State collectively) in relation to the offshore area. If the Secretary of State could not agree to a proposed MCZ (MPA) in the offshore area then the designation could not proceed.
19. Existing resources will be deployed as efficiently as possible and cost implications of significant new commitments evaluated. Scottish Ministers (or Marine Scotland) would be responsible for enforcement of measures to protect MCZs 0 - 200 nm. In taking forward any new commitments, Scottish ministers will have access to existing specialist marine conservation advisory resources. The scope of the duty to designate sites and therefore the enforcement burden in the offshore area needs to be assessed and agreed to ensure they are not placing an unacceptable burden on Scottish ministers.

INTERNATIONAL ISSUES AND MARINE STRATEGY FRAMEWORK DIRECTIVE

20. In relation to areas of Scottish responsibility the Scottish Government will be the competent authority for the implementation of the Marine Strategy Framework Directive in the waters adjacent to Scotland (0-200 nm). As competent authority the Scottish Government would play a leading role in agreeing the UK wide common approaches required by the MSFD and drawing up plans and programmes of measures to deliver GES within the Regional Seas approach as envisaged by the Directive.

² Determination of the objectives for an MCZ to be an integral part of the process of deciding whether or not to designate it.

