

Amendment to the Marine and Coastal Access Bill

Page 41, line 18, insert a new Clause 71(1A) to read “The appropriate licensing authority for an area shall by order under subsection (1) specify, as regards that area, that plough dredging and water jet dredging are activities which are not to need a marine licence.”

Explanatory Note

This is a probing amendment to establish the Government’s intentions regarding the licensing of low risk dredging activities.

The Policy Paper accompanying the Draft Marine Bill (Cm 7351, page 38, paragraphs 3.70 and 3.71) indicated that the Government’s intention was that low risk dredging activities such as maintenance dredging would be exempted from marine licensing under the Bill. The Bill should therefore provide that small scale plough and water jet dredging (as commonly undertaken by marina operators and yacht clubs to maintain their facilities) are activities that will be exempted from requiring a marine licence by way of an order made under Clause 71.

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Page 68, line 21, leave out the words “it thinks that”.

Page 69, line 39, leave out the words “the appropriate authority thinks”.

Page 70, line 1, leave out the words “the appropriate authority thinks”.

Page 70, line 31, leave out the words “the appropriate authority thinks that”.

Page 77, line 1, leave out the words “the MMO thinks”.

Page 77, line 7, leave out the words “the MMO thinks”.

Page 77, line 16, leave out the words “the MMO thinks”.

Page 77, line 28, leave out the words “the MMO thinks that”.

Page 77, line 31, leave out the words “the MMO thinks that”.

Page 77, line 40, leave out the words “the MMO thinks”.

Page 78, line 18, leave out the words “the MMO thinks”.

Page 78, line 35, leave out the words “the MMO thinks”.

Page 79, line 24, leave out the words “the MMO thinks”.

Explanatory Note

The expressions “the appropriate authority thinks” and “the MMO thinks” are nebulous and not open to adequate scrutiny, transparency, stakeholder consultation or accountability and should not therefore be included within the Bill.

The above listed provisions should instead be objective in nature, which would be achieved by leaving out the words indicated above. Such objectivity would provide stakeholders with an opportunity to ensure that the designation of Marine Conservation Zones and the making of byelaws for the protection of Marine Conservation Zones is founded on and underpinned by sound scientific evidence.

It is recognised that the Joint Committee was concerned that the removal of a subjective test in relation to emergency byelaws (page 77, lines 28 and 31) might lead to unacceptable delay. However, it is considered that the use of the expression “the MMO thinks that” is not the appropriate way to address this concern.

The equivalent provisions of Clauses 131, 132 and 133 relating to the protection of Marine Conservation Zones in Wales should be amended similarly.

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Page 69, line 2, leave out the word “may” and insert in its place the word “must”.

Page 69, line 3, insert the words “and to the impact such designation may have on legitimate uses of the sea” at the end of the line.

Explanatory Note

The principles of sustainable development are fundamental to the proposed Marine Policy Statement and marine plans outlined in Part 3 of the Bill. The process for designating Marine Conservation Zones *must* therefore take into account all aspects of sustainable development, namely environmental, social and economic, which Lord Hunt referred to in his speech in winding up the Second Reading Debate on behalf of the Government.

The appropriate authority should also be required to have regard for the public right of navigation and the right of innocent passage. According to the Explanatory Notes accompanying the Bill, Note 201 relating to Clause 66 of the Bill indicates that such rights of navigation (including considerations of navigational safety) are included within the meaning of the phrase “legitimate uses of the sea” that appears in Clause 66(1)(c) of the Bill. Adopting similar language, the process for designating Marine Conservation Zones should include consideration of the impact of such designation on legitimate uses of the sea.

This language should also be reflected in Clause 125 dealing with the making of byelaws for the protection of Marine Conservation Zones.

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Page 76, line 13, leave out the word “recreational” and insert in its place the word “any”.

Explanatory Note

There is no sound reason for the inclusion of the word “recreational” in Clause 125(3)(b). In addition, all other references in Clause 125(3) to vessels are to “any vessel” and the language should be consistent throughout this Clause.

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Page 83, line 44, insert a new Clause 137(1A) to read “In any proceedings for an offence under section 135, it is a defence for the person charged (“the defendant”) to prove that the defendant took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.”

Explanatory Note

It is not appropriate that a breach of a byelaw or order made in relation to a Marine Conservation Zone is effectively a strict liability offence.

In addition, it is not acceptable for legislation to provide for someone to commit a criminal offence in relation to a Marine Conservation Zone where a byelaw or order has an impact on navigation and the relevant provisions of the byelaw or order are not properly marked by physical aids to navigation, by recording on the relevant navigational charts and, in the case of emergency and interim byelaws or orders, by publication as Notices to Mariners.

The offence of breaching a byelaw or order should therefore be qualified by providing a defence for a person who takes all reasonable precautions and exercises all due diligence to avoid committing the offence.

The proposed language reflects that used in Clause 106 in relation to marine licensing.

The proposed new Clause 137(1A) does not need to apply to Clause 136 because Clause 136 relates only to acts committed intentionally.

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Page 84, line 10, leave out Clause 137(4) in its entirety.

Page 84, line 15, leave out the definition of “third country vessel”.

Page 87, line 7, insert the words “but excludes the English offshore region” at the end of the line.

Page 87, line 36, insert the words “but excludes the Welsh offshore region” at the end of the line.

Explanatory Note

This is a probing amendment.

As drafted, Clause 137(4) unfairly and unreasonably prejudices UK and member State vessels. Clause 136 should apply to a person on board *any* vessel in relation to a Marine Conservation Zone located outside the UK’s territorial sea. Article 56 of the 1982 United Nations Convention on the Law of the Sea provides that, in the exclusive economic zone, the coastal State has jurisdiction with regard to the protection and preservation of the marine environment and the Convention does not therefore preclude the UK from extending the application of Clause 136 to third country vessels.

The intended purpose of or rationale for Clause 137(4) is unclear. It is unrelated to the right of innocent passage under Article 17 of the 1982 United Nations Convention on the Law of the Sea, which relates to passage *through* the territorial sea.

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Page 188, line 36, insert a new clause 293(9) to read “In Schedule 1, Part 1 (Excepted Land), insert – “13A. Land used for, or associated with the use of, sporting facilities”.”

Explanatory Note

The proposals for granting coastal access as set out in the Bill make reference to the Countryside and Rights of Way Act 2000 (the “CROW Act”). In particular, the CROW Act excludes from its application “Excepted Land” as defined in Schedule 1 to the CROW Act. The definition of “Excepted Land” set out in this Schedule includes such areas as parks, gardens, golf courses and land within the curtilage of a building but it does not cover some other types of developed land. In particular, the definition does not include an area of land such as that used by a boating club for the storage of recreational boats if that area is separated from the club house. This omission will be of great significance if the CROW Act is to apply to the coastal margin, where many boating clubs are located. The Bill should therefore include a provision amending Schedule 1 to the CROW Act such that Part 1 of that Schedule includes land used for, or associated with the use of, sporting facilities.

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Page 292, line 16, insert a new paragraph 18(1AA) to read “Before deciding the application under paragraph 19, the Secretary of State shall give to the person who made the objection referred to in sub-paragraph (1) an opportunity to make written representations to the Secretary of State in support of their objection and the Secretary of State shall consider such representations before deciding the application”.

Page 292, line 30, insert a new sub-paragraph 18(1C)(ba) to read “national representative organisations, including the Chamber of Shipping, the Royal Yachting Association and the British Marine Federation (and their successors)”.

Explanatory Note

The process provided in the Harbours Act 1964 for the consideration of proposed Harbour Revision Orders and Harbour Empowerment Orders is such that if any objections are made to the making of the Order then the Secretary of State must hold a public inquiry. This potentially leaves the process open to abuse by vexatious objectors.

However, in seeking to address the potential for abuse, the proposed amendments to the Harbours Act 1964 set out in the Bill reduce the scope for responsible stakeholders to make legitimate objections and for such objections to be given due consideration.

The proposed amendments to paragraph 18(1) of Schedule 3 to the Harbours Act 1964 (as set out in Clause 305 of the Bill and paragraph 5 of Schedule 20 to the Bill) should therefore include in the new paragraph 18(1A) an express provision requiring the Secretary of State to provide a person who has made an objection referred to in sub-paragraph (1) with an opportunity to make written representations to the Secretary of State in support of their objection and for such representations to be given due consideration before the application is decided.

In addition, the proposed amendments to paragraph 18(1) of Schedule 3 to the Harbours Act 1964 (as set out in Clause 305 of the Bill and paragraph 5 of Schedule 20 to the Bill) should be amended such that the new paragraph 18(1C) contains a new sub-paragraph providing for responsible stakeholders who object to the making of an Order to be heard at a public inquiry if they should so request.

It is acknowledged that a power may be required to vary the named organisations by Order.