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Marine and Coastal Access Bill [HL]: Committee Stage Report

RESEARCH PAPER 09/79 19 October 2009

This is a report on the House of Commons Committee Stage of the *Marine and Coastal Access Bill* [HL]. It complements Research Paper 09/56, which was prepared for the Commons Second Reading. The Bill was introduced into the House of Lords on 4 December 2008. Having completed its Lords stages, it had its Second Reading in the House of Commons on 23 June 2009.

The Bill would set up a new Marine Management Organisation (MMO); streamline marine licensing; introduce marine planning; reform fisheries management; provide for Marine Conservation Zones; and enable the creation of a route around the English coast.

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Research Paper 09/79

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Contents

Summary

The *Marine and Coastal Access Bill* [HL] would establish a new Marine Management Organisation; provide for Marine Conservation Zones (MCZs); set the framework for marine spatial planning; and reform the organisation of inshore fisheries. It would also enable creation of a route for walkers around the English coast. The provisions of the Bill are set out at a high level of generality. The detail will come in regulations.

At Second Reading, the Government argued that the Bill provided enough flexibility to cope with the various difficulties that might arise in the creation of MCZs and the coastal access route. Critics noted the various conflicts in marine and coastal uses and the difficulties that would be apparent in reconciling these conflicts.

At Committee Stage a number of amendments were made to the Bill. The Government was defeated on one division, which added a purpose of 'furthering' sustainable development into the Marine Policy Statement provisions.

The Minister, **Huw Irranca-Davies**, said that he hoped to be able to return at Report Stage to deal with concerns that MCZs might be damaged by the 'sea fisheries defence' contained in the Bill. **Richard Benyon**, for the Conservatives, said that he may return to the issue of the coastal route appeals process at the Report Stage, to ensure that it was compatible with human rights legislation.

1 Introduction

The *Marine and Coastal Access Bill* [HL] was the result of several years of consultation including two White Papers, in 2006 and 2007, and a draft Bill in 2008. It was introduced into the House of Lords on 4 December 2008. It received its Second Reading in the Lords on 15 December. After the Bill had completed its (unusually long) Committee and Report stages, its Third Reading took place on 8 June 2009. The Bill was introduced into the Commons on 9 June and had its Second Reading on 23 June 2009. The Public Bill Committee met nine times between 30 June and 14 July 2009. (The timetable had allowed for a sitting on 16 July.)

A Library Research Paper was prepared for the Second Reading, Marine and Coastal Access Bill [HL] Research Paper 09/56. A full introduction to the Bill can be found in that document.

The main unifying theme of the Bill was the desire to improve environmental control over coastal waters. The issue is complex, partly because of the many different activities and different organisations involved. The Bill would establish a new organisation – the Marine Management Organisation (MMO). However, many existing organisations will retain their responsibilities. Consents for small offshore wind energy projects will be decided by the MMO, but consents for large ones will be decide by the Infrastructure Planning Commission. Oil and gas extraction would not come under the MMO at all.

The Bill would provide for Marine Conservation Zones (MCZs) but they would have to work within the framework of the EU Common Fisheries Policy. Consequently, fishing would still be allowed within an MCZ. The Bill would also reform the control of inshore fisheries.

An additional, rather separate, measure would provide for access to coastal land in England, other than certain areas such as parks or gardens.

2 Second Reading Debate

Opening the Second Reading Debate[1] on 23 June 2009, **Hilary Benn**, Secretary of State for Environment, Food and Rural Affairs, gave an overview of the Bill, with many interventions.

Several interventions related to Marine Conservation Zones (MCZs); whether the designation would take too much account of social and economic factors; the role of extractive industries within the zones; whether the zones would conflict with the (EU) Common Fisheries Policy. The Secretary of State replied that the general powers in the Bill were flexible enough to take account of these points.

There was concern about duplication resulting from the devolution of fisheries measures to Wales. The Secretary of State said that was a matter for the Welsh Assembly Government. Members also: stressed the rights of farmers to protect livestock against dogs that may be on the proposed coastal path; asked why landowners were not to be compensated; and mentioned equestrian access. The Secretary of State argued that the Bill struck a fair balance between the various interests.

Nick Herbert, Conservative Shadow Secretary of State for Environment, Food & Rural Affairs, regretted the long delay before the appearance of the Bill. The relationship between the MMO and Infrastructure Planning Commission had not been adequately resolved; the MMO should have control over all relevant development. MCZs should provide a sensible balance between sustainable social and economic activity and conservation. He supported

[1] HC Deb 23 June 2009 cc696-768

the principle of a coastal path, but it should be workable and respect the interests of landowners.

Almost all other speakers welcomed the Bill, but only their additional points are noted here. **Elliot Morley** argued that problems would result from the requirement to consider socio-economic factors in designating MCZs. Any organisation facing restrictions could use the clause to challenge the MMO to stop designation of zones, or to weaken them. **Andrew George,** for the Liberal Democrats, said similar legislation worked in other parts of the world; fishermen and conservationists were not always in disagreement. Conservation between 6 and 12 miles from the coast required either bilateral agreements with those countries with an entitlement to fish, or a reform of the Common Fisheries Policy. **Martin Caton** welcomed the approach to devolution adopted in the Bill, which was coherent while respecting the democratic responsibilities of both the UK Government and the Welsh Assembly. The offence of damaging an MCZ should be extended to cover reckless damage as well as intentional damage. **James Gray** noted that farmers and landowners in Wales had been compensated for access to their land, as had happened in relation to the coastal path in the South-West of England. **Sir Peter Viggers** argued that the MMO should be less independent and more accountable to Government. **Nick Ainger** shared the concern that sea fishing would be allowed to damage MCZs. He stressed the enormous benefit to the local economy that has come from the Pembrokeshire coastal path.

John Randall said that his Private Member's Bill in 2001 had started the move towards the present Bill. He stressed the particular importance of MCZs for seabirds. Socio-economic factors should not be taken into account when deciding on the designation of a MCZ, but later in the process, in determining the site management. **Linda Gilroy** regretted that the MMO was to be located in Newcastle, arguing that there should be an enhanced satellite unit at Plymouth. **Graham Stuart** challenged the need for improved coastal access in view of the short distances walked by nine tenths of visitors. There needed to be compensation for landowners suffering loss of income or land. **Angela C. Smith** said that the biggest change needed to the Bill was in designation of MCZs, where she agreed with John Randall's views. The Humber Estuary showed how industry and conservation could co-exist. The Bill currently exempted parks and gardens from the coastal access provisions; this exemption should be removed from parks. **Mark Williams** noted that Cardigan Bay was a Special Area of Conservation (SAC) under the EU Habitats Directive. However, exploratory oil and gas drilling was allowed adjacent to the SAC. Another problem was the growth of industrial-scale scallop dredging in the bay. He welcomed the proposed abolition of sea fisheries committees, which had been too focused on immediate fishing activities rather than on long-term sustainability.

Martin Salter said it was ridiculous that only 2.2% of the coastline was protected, and wanted that figure increased by a factor of ten. The appeals procedure against increased access should be open not only to landowners but also to sporting tenants, as was the case for the *Countryside and Rights of Way Act 2000*. He was glad that recreational sea angling would not normally be banned in an MCZ. **James Gray**, a supporter of rambling, noted that two thirds of the coastline was already open to walkers by voluntary consent. He regretted that the Bill proposed spending at least £50m, and probably more, to obtain access to the rest, for which there was little demand. The exemption on parks and gardens should not be changed; the Government should think again on "spreading space" land inland from the path where people would be allowed to go. **David Drew** said that the Bill should offer protection for inter-tidal wrecks.

Madeleine Moon said that unless the Bill's provisions for MCZ designation were changed, there would be a few sparse MCZs in leftover areas of the sea to which no other social or economic group had laid claim. She regretted that the Bill did not provide any duty towards sustainable inshore fisheries management in Wales – in contrast to the detailed provisions

set out for England. **Bernard Jenkin** said that the Bill needed to protect and improve the sustainability of inshore fisheries. It should also provide for recreational sea fishing, which was an unsung and under-exploited generator of employment and tourist income in the Essex area. **Barry Gardiner** said the prioritisation of short-term socio-economic considerations had led to the setting of quotas for European fish stocks 48% above scientific recommendations resulting in chronic over fishing in the European area.

Desmond Turner stressed the energy potential of offshore waters for wind power, wave power and tidal barrages. The MMO was unsuited for dealing with marine energy projects of less than 100MW, as proposed in the Bill, because they planned to have 1.5 staff to deal with marine energy. The Infrastructure Planning Commission should handle all marine energy projects.

Richard Benyon, Conservative Shadow Environment, Food and Rural Affairs Minister, expressed concern about the state of preparedness for the MMO, particularly since many staff from the Marine and Fisheries Agency were unwilling to move to the MMO. **Huw Irranca-Davies**, Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs, said that after a long period of pre-legislative scrutiny, we now had a very good Bill.

3 Committee Stage

3.1 Marine Management Organisation

The Committee discussed the Marine Management Organisation's (MMO) contribution to sustainable development in its first sitting on 30 June 2009. **Richard Benyon**, for the Conservatives, moved amendment 9 to Clause 44 (discussed in section 3.2 below) that sought to include a duty of 'furthering' sustainable development into the Marine Policy Statement, rather than simply 'making a contribution to it'. Amendments 1 and 2 to Clause 2 were discussed at the same time, which would also have given the MMO the objective of 'furthering' sustainable development.[2]

Martin Salter pointed to Joint Committee recommendations that the role of the MMO in relation to protecting the marine environment needed to be clarified, and that its role was 'ambiguous' at present. He considered the arguments overwhelming for the MMO to 'further' sustainable development 'based on the eco-system approach to managing the marine environment'.[3] **Huw Irranca-Davies**, the Minister, argued that during the Lords stages of the Bill the MMO objective had been strengthened—the MMO is allowed "in pursuit of its general objective, to contribute to the achievement of sustainable development and take any actions it considers necessary or expedient for furthering its social, economic or environmental purposes".[4] In addition, he argued, guidance issued by the Secretary of State will outline the MMO's role in contributing to sustainable development. The guidance is to be scrutinised by Parliament. **Dr Alan Whitehead** thought that concerns regarding the 'furthering' of sustainable development by the MMO, and definitions of sustainable development, could be addressed by amending Schedule 5 of the Bill, which provides for the production of the Marine Policy Statement (see below). **Huw Irranca-Davies**, the Minister, said that he would explore this option further with the devolved administrations.

Amendment 1 was defeated by 8 to 6 so that 'furthering' sustainable development was not added to the functions of the MMO. However, **Huw Irranca-Davies** said that:

> On reflection, I am minded to take constructively my hon. Friend's [**Dr Alan Whitehead**] comments and to work with other Departments, devolved colleagues and

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2 PBC Deb 30 June 2009 c7
3 PBC Deb 30 June 2009 c8
4 PBC Deb 30 June 2009 c16

> members of the Committee in the weeks ahead to try to introduce something on Report that will satisfy my hon. Friend.

Clauses 1 and 2 stood part of the Bill.

3.2 Marine Planning

The Committee covered marine planning in its first session on the morning of 30 June 2009. Clause 44 contains the definition of a Marine Policy Statement (MPS), a new concept that will play an important part in the new marine spatial planning system. **Richard Benyon**, for the Conservatives, moved an amendment to ensure that it included a duty to further sustainable development, rather than merely contribute to it. **Andrew George**, for the Liberal Democrats, moved an amendment to include a definition of sustainable development in the clause. **Huw Irranca-Davies**, the Minister, wanted the phrase "contribute to" because so many different organisations were involved that the MMO could not, on its own, further sustainable development. However the MPS, like other policies and organisations, could contribute to it.[5] Despite problems in defining sustainable development, the UK administrations had adopted five shared principles to set out the basic framework: living within our environmental limits; achieving a just society; a sustainable economy; good governance of the marine environment; sound science.[6] **Charles Walker** tried unsuccessfully to persuade the Minister to veto the proposed Severn Barrage.

The Government was defeated by 8 votes to 5 on amendment 9, replacing "contributing to" by "furthering". Clause 44, as amended, was then agreed.[7]

Schedule 5 was amended by a Government amendment to the timetable for preparation of an MPS or of amendments to an MPS, reflecting a concession at Lords Report Stage to carry out a sustainability appraisal.

Clause 51 was amended by a technical amendment creating a requirement to seek to ensure plan coverage throughout UK waters. The remaining clauses – up to Clause 64 – relating to marine planning were passed without amendment

3.3 Fisheries

Part 6: Management of Inshore Fisheries

Part 6 of the Bill was approved without amendment on the morning of 7 July 2009. Clause 149 would replace sea fisheries committees by new bodies in England called inshore fisheries and conservation authorities – with more money and a duty to protect the marine environment. The Welsh Assembly Government would have responsibility for Welsh waters. However, **Andrew George**, for the Liberal Democrats, noted conflicts of interest in Wales, not only between fishing activities such as scallop dredging and the interests of the marine environment but also within the industry itself.[8]

Andrew George, for the Liberal Democrats, moved an amendment to Clause 153 to require an Inshore Fisheries and Conservation Authority (IFCA) to seek to further the conservation and recovery of marine flora and fauna in the district. The fishing industry itself was keen to protect the marine resource.[9] **Huw Irranca-Davies**, the Minister, was not convinced:

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5 PBC Deb 30 June 2009 c10
6 PBC Deb 30 June 2009 c10
7 PBC Deb 30 June 2009 c22
8 PBC Deb 7 July 2009 c162
9 PBC Deb 7 July 2009 cc162-3

> As Lord Hunt said in the other place, placing an explicit duty on IFCAs to further the conservation of the marine environment outside MCZs would fundamentally alter and unbalance the primary duty to manage the exploitation of sea fisheries resources in a sustainable way. IFCAs are going to have to balance the social and economic benefits of exploiting sea fisheries resources with the need to protect the marine environment. That is consistent with the MMO's position, and is in line with Government's wider commitments to the principles of sustainable development.[10]

The Amendment was withdrawn.

Martin Salter moved an amendment to Clause 168:

> The purpose of this amendment is to provide that the IFC Authorities are able to delegate powers to the Environment Agency to manage all fish species in the upper estuaries.[11]

Ann McKechin, Parliamentary Under-Secretary of State for Scotland, said that she was not able to accept the amendment as drafted, because arrangements for delegation needed to be set out in much more detail than they were in the amendment and in a way that was consistent with the MMO delegation clauses.[12] The amendment was withdrawn.

In a debate on Clause 184 and New Clauses 2, 3 and 4, **Roger Williams**, for the Liberal Democrats, who tabled New Clauses 2 and 3, raised issues relating to fisheries in Wales. IFCAs in England could make emergency byelaws but the Welsh IFCA could not. The Secretary of State had to report on sustainability of fisheries on a four-yearly basis, but there was no equivalent provision for Welsh Ministers. New Clause 2 could impose a duty on Welsh Ministers to report back to the Welsh Assembly. New Clause 3 would amend the *Government of Wales Act 2006* to change the matters which were reserved or devolved. **David Jones**, who tabled New Clause 4, noted widespread criticism of the Welsh regime in the Bill:

> The principal concern is that no corresponding duties are imposed upon Welsh Ministers in connection with the execution of their powers. That has been the subject of criticism from a number of bodies, including the Countryside Council for Wales, which is the Welsh Assembly Government's own adviser, the World Wide Fund for Nature, the Royal Society for the Protection of Birds and the Wales Coastal and Maritime Partnership.[13]

Huw Irranca-Davies, the Minister, said that there were already adequate provisions for accountability for fisheries in the Welsh Assembly, where the Welsh IFCA would be directly managed by the Minister. In England IFCAs were local authority committees, required to report to the Secretary of State each year.[14] He accepted that the Welsh Assembly Government could not make emergency byelaws in the same way as an English IFCA but, through their own powers, Welsh Ministers could create emergency orders that could be enacted just as quickly as emergency byelaws. The New Clauses were not moved and Clause 184 was agreed.

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10 PBC Deb 7 July 2009 c165
11 PBC Deb 7 July 2009 c166
12 PBC Deb 7 July 2009 c173
13 PBC Deb 7 July 2009 c178
14 PBC Deb 7 July 2009 c181

Part 7: Fisheries

In debate on Clause 189, **Martin Salter** pressed the Minister to review his predecessor's decision not to implement the bass minimum landing size.[15] **Huw Irranca-Davies** agreed to the review. **Andrew George**, for the Liberal Democrats, pointed out that the Bill would allow an IFCA to increase the local minimum landing size.

Clause 197 covers powers to make orders as to fisheries for shellfish. **Huw Irranca-Davies**, the Minister, moved four Government amendments and a New Clause. He explained that the Government was fulfilling a commitment made in the Lords:

> Government amendments 56 to 58, 62 and new clause 5 are intended to deliver on that commitment and resolve the current impasse on the granting of new shellfish orders, which has resulted from the Menai strait court case. In simple terms, the Crown is no longer consenting under the present system to any orders where its land is concerned, and shellfish development opportunities are being lost.
>
> All sides agree that the present situation simply cannot continue. (…) I genuinely believe that these amendments and new clause offer the very best solution to shellfishermen and landowners. The Government are committed to ensuring that shellfisheries have a viable future and this is our opportunity to make that commitment a reality.[16]

However, **Richard Benyon**, for the Conservatives, put on record the concerns of shellfish fishermen:

> Those involved in the Menai strait case have made an impassioned plea that the matter not be dealt with at this stage, because they believe that that would "undermine the foundations" of their business. They believe that such an approach would be a laudable attempt to deal with the disease, but that doing so would kill the patient. We need a careful explanation of what the Minister is seeking by trying to solve the impasse between the Crown Estate Commissioners and DEFRA.
>
> Some involved have for years defended their businesses against the proposals to build a marina within the Menai strait fishery. The proposal, in their view, would have crippled the UK's biggest mussel-producing area, which produces £5 million of mussels a year. They have just celebrated a Court of Appeal ruling, but now feel that it is being reversed by the Minister at the eleventh hour. I hear what the Minister says about the length of time that he has been in negotiations, but the Bill has seemingly been going through Parliament for an interminable time, and it is strange that we have reached this clause and are keen to tackle other elements of the Bill, but we are suddenly faced with Government amendments that are causing great concern.[17]

The arguments of the Shellfish Association of Great Britain (SAGB) were stated in written evidence.[18] The general point behind the Government amendments and of those proposed by the SAGB is that there are competing claims for use of estuaries. Shellfish producers have interests that may conflict with those of developers planning to build a new marina, as in the Menai strait case.

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15 PBC Den 7 July 2009 cc185-6
16 PBC Deb 7 July 2009 c189
17 PBC Deb 7 July 2009 c198
18 Memorandum by Shellfish Association of Great Britain (MC06)

Huw Irranca-Davies, the Minister, rejected any idea that the Government amendments would automatically allow development to go ahead, irrespective of the interests of the shellfish industry:

> In respect of the Menai strait, which is where this proposal effectively came to fruition from, a question has been asked. If these amendments were accepted, would the marina on the Menai strait have been built? Could that have gone ahead? It is true that there is a chance that the marina would have been built, but I must say that it is far from certain. First, the developers would have had to apply for permission relating to the development under the new regime that is set out in the Bill, to request that the order be varied, and it is unclear whether that permission would have been granted. If the developers received permission, Welsh Ministers would still have to consider the request to vary the order. What is clear, however, is that the new variation process would have provided the grantees of the Menai strait order with a means of obtaining adequate compensation and the opportunity to vary the order, potentially to provide them with a new area to cultivate shellfish in.[19]

The Government amendments were approved without a vote, but the Minister agreed to undertake further consultation with the industry over the summer.[20]

Clause 221 would amend s.212 of the *Water Resources Act 1991* which gives fishery owners who are affected by certain byelaw changes the right to claim compensation. **Martin Salter** argued that this was outdated. Clause 221 (2) stated that the Environment Agency (EA) "must pay that person such amount by way of compensation as it considers appropriate." The subsection should be deleted because the EA was nervous about making the right byelaws because of the threat of compensation. **Huw Irranca-Davies**, the Minister, agreed that the obligation to pay compensation had sometimes discouraged the EA from proposing byelaws necessary for the conservation of fish stock:

> Let me give my hon. Friend some assurance by stating quite clearly that I consider that compensation should not be paid in circumstances in which the byelaw in question was made for the express purpose of conserving fish stocks, as increases in stocks will ultimately benefit fishery owners.[21]

In a debate on Clause 222 which covers theft of fish from private fisheries, **Martin Salter** noted difficulties arising from different – and probably unenforceable - byelaws in different regions. **Huw Irranca-Davies**, the Minister, said that new byelaws would be drafted in the light of consultation by the EA. He gave an assurance that the EA's current duty to improve, develop and maintain fisheries would continue.[22]

3.4 Marine Conservation Zones

Part 5 of the Bill, which includes Clauses 116 to 148, was debated during the first to fourth sittings of the Public Bill Committee from 30 June to 2 July 2009. No amendments were made to any clauses during this part of the debate.

The debate on Clause 117 (grounds for designating MCZs) focused on the scientific basis of making a designation. The Minister, **Huw Irranca-Davies**, made clear that this would be central to the designation of sites:

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19 PBC Deb 7 July 2009 c200
20 PBC Deb 7 July 2009 c203
21 PBC Deb 7 July 2009 c205
22 PBC Deb 7 July 2009 cc207-8

> Failure to make a designation decision on the basis of scientific evidence would mean, first, that the designating authority did not take account of reasonable considerations; secondly, that it would therefore have acted unreasonably; and thirdly, that the decision could then be considered for judicial review.[23]

He also stated that MCZs would be designated based on the advice and recommendations from Natural England and the Joint Nature Conservation Committee.[24] **Richard Benyon**, for the Conservatives, expressed concerns about how the proposals would tie in with those from the Marine (Scotland) Bill which states that socio-economic factors will be considered only when choosing between two sites of equal value.[25] In a later response the Minister countered that under the Scottish proposals there was no obligation to designate any protected areas.[26] **Nick Ainger** called for reassurance that the Bill's reference to economic issues would not automatically override conservation elements.[27] In response the Minister highlighted the Government's response to the Lords/Commons Joint Committee report:

> We agree that the designation of MCZs should be based on the best scientific evidence, and this should take account of factors such as representivity, uniqueness, vulnerability and sensitivity, but we need to avoid having a strict set of criteria which requires Ministers to designate MCZs purely on the basis of scientific considerations. In addition this should be an opportunity for stakeholders to suggest areas that are of particular importance to them.
>
> We expect the regional projects to take account of the socio-economic value of different areas and potential synergies between environmental protection and economic activities, to ensure that the MPA network achieves its ecological goals in a way that minimises socio-economic costs and maximises the benefits. For representative habitats and species we expect there to be scope to make choices between equally suitable potential sites.[28]

Linda Gilroy asked the Minister how many MCZs would be designated in the next five years. In response the Minister stated that the Government would bring forward proposals for an ecologically coherent network by 2012.[29]

Richard Benyon, for the Conservatives, tabled an amendment that would oblige the Secretary of State to provide guidance on the type of feature that would be protected under the clause and the level of protection provided. The Minister, **Ann McKechin,** responded by stating that:

> The protection required would be different and so it should be on a case-by-case basis. Trying to predict all the restrictions for all the activities for all the habitats and objectives would be disproportionate and not really helpful.[30]

She went on to say that the amendment would commit the Government to do more than could reasonably be achieved and that there must be a degree of flexibility.[31]

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23 PBC Deb 30 June 2009 c44
24 Ibid c45
25 Ibid c47
26 Ibid c60
27 Ibid c52
28 Ibid c53
29 Ibid c53
30 Ibid c63
31 Ibid c64

Clause 117 was agreed to after the amendments were withdrawn. The discussion of Clause 118 focused on whether it would be possible visibly to identify MCZs at sea, on cooperation between different authorities that controlled estuaries and on whether places of refuge for sea vessels would be identified within MCZs.[32] The stand part debates for Clauses 119 and 120 focused on how consultations would be carried out, the process for taking action if an interested party is unhappy, and how designation orders would be publicised.[33]

Clause 121 and 122 were agreed to without debate. No amendments for Clause 123 were debated; however the issue of highly protected areas was raised again during the stand part debate. **Andrew George**, for the Liberal Democrats, called for a network of highly protected sites to be included in MCZs where all extractive and constructive uses are prevented.[34] In his response the Minister, **Huw Irranca–Davies**, said it was the Government's intention to provide higher protection for some areas:

> One size of high-level protection simply does not fit all, and we have recognised that by maintaining flexibility in the Bill to provide the appropriate level of protection in each case, based on the science—whatever that level might be. One important issue that was remarked on in the other place is that we do not want to end up with a two-tier system of highly protected MCZs—the Rolls-Royce, as they were described, that everyone strives for—and a lower class of MCZs that are not quite as deserving of protection and attention. They will all be an essential part of our network.
>
> I do not want to risk any of that happening, but I will give the hon. Member for St. Ives one assurance, regardless of the fact that we are not debating an amendment. MCZs will include areas that have not only a high level of protection, but a high level of protection where extractive industries, for example, are prohibited. I hope that he and my hon. Friend the Member for Carmarthen, West and South Pembrokeshire have been reassured by my comments, not least as the Welsh Ministers have already indicated their intention to introduce such proposals.[35]

The Minister also confirmed that that there would not be a separate designation for highly protected areas.[36]

Clause 124 and 125 were agreed to without debate. During the stand part debate of Clause 126 **Nick Ainger** called for a provision that would require any public authorities that intended to carry out an activity that was a departure from conservation objectives to notify the Government so that it could be called in or subject to a pubic enquiry. In response the Minister highlighted Clause 125 which places a duty on public authorities to carry out their functions in a way that best furthers the conservation objectives of an MCZ.[37] On the issue of advice and guidance from conservation bodies (Clause 127) the Minister made clear that if a developer thinks that the conditions attached to a licence are too onerous or unjustified they will be able to challenge them before an independent body.[38]

Clause 128 was not debated. During the stand part debate of Clause 129 on byelaws for MCZs protection the issue of whether these could be extended to control movement outside

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32 Ibid c68
33 Ibid c70
34 Ibid c74
35 Ibid c75
36 Ibid
37 Ibid c78
38 Ibid c82

MCZs was raised by **Nick Ainger**. The Minister agreed that this was "perfectly conceivable".[39] Clauses 130 to 139 were agreed to without debate.

During the debate on Clause 140 **Andrew George**, for the Liberal Democrats, tabled an amendment to add disturbing any animal (in addition to killing or injuring) as an offence with the aim of bringing the Bill in line with the provisions of the *Wildlife and Countryside Act 1991*. The Minister, **Ann McKechin**, replied as follows:

> The matter comes down, first, to the difference in severity of the impact of what is done. Disturbance might, for example, be caused by people straying too close to a group of animals through innocent curiosity, although I think that if I saw a humpback whale I would move well back. Alternatively, the disturbance might come about because of an organised wildlife watching trip or through the use of machinery that emits a loud noise. A single act of disturbance is likely to have a temporary effect and will often be entirely accidental. In contrast, intentional or reckless acts of damage are likely to have longer-term and more permanent effects.
>
> Secondly, what constitutes disturbance will depend on the protected features and conservation objectives of each MCZ. Byelaws provide a proportionate and effective mechanism to target specific activities in local areas and accordingly are the right way to control acts of disturbance in a MCZ, as opposed to areas of special scientific interest, which are in highly protected areas. MCZs often cover a wider spectrum of protection needs. That is why clause 129(3)(e) specifically states that byelaws may be made to prohibit or restrict the
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> > "killing, taking, destruction, molestation or disturbance of animals of plants of any description in the MCZ".
>
> To give an example of that, an MCZ might be designated to ensure the protection of sea birds. The byelaw provisions in the Bill will allow us to provide targeted protection against disturbance and to impose movement restrictions at certain times of the year. Breeding seasons and nesting periods, which various hon. Members have alluded to this morning, are also relevant. Restrictions would thus be the minimum necessary and would be drafted to specify the offences and to be clearly understood by everyone.
>
> Thirdly, byelaws will often be the most effective means of protecting a site from the general offence. That is because byelaws create strict liability offences. Prosecution under a byelaw will depend on proving not that an anticipated result occurred, but that a prohibited activity, such as movement within a protected area, took place. In contrast, prosecution under the general offence would depend on being able to prove that the defendant intentionally or recklessly carried out a prohibited act that significantly hindered—or could have significantly hindered—MCZ objectives. That is, again, a high level of proof. The hurdle is lower for proving breach of a byelaw.[40]

The Minister went on to say that with regards to the role of the MMO that the Government did not envisage any reluctance to create byelaws and that the body would have a duty to do so.[41]

Clause 141 deals with exceptions to offences of contravening a bylaw or damaging a MCZ. **Richard Benyon**, for the Conservatives, raised the issue of whether it was appropriate for a breach of a bylaw or order made on an MCZ to be a strict liability offence, as is proposed in the Bill. The Minister responded that the power to make bylaws was broad enough to enable

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39 PBC Deb 2 July 2009 (Morning) c85
40 Ibid c91
41 Ibid c93

the MMO to provide a due diligence defence in specific cases where that was appropriate.[42] **Nick Ainger** tabled an amendment which would remove damage caused by sea fishing within the 0-6 mile zone as a reason for exemption. He stated:

> The Bill contains a blanket defence for causing damage within an MCZ if that was the result of sea fishing and if there was no reasonable way of avoiding it. I think that everyone was surprised that the Bill contains such a broad defence. Many organisations have contacted us to raise their concerns and have acted constructively to try to address the issue, which is what my amendment, too, seeks to do. We recognise that, at this stage, no substantial changes can be made in areas covered exclusively by the common fisheries policy. However, the amendment, or something similar, would address the situation in inshore fishing areas—the nought to 6 nautical mile zones—and in 6 to 12 nautical mile areas with no track record of foreign vessels being allowed to fish.
>
> My amendment might not be worded perfectly, but I think that the Minister understands the need to address the problem. Marine habitats have been drastically damaged by some sea fishing activities.[43]

He went on to say that "because commercial fishing is likely to cause the most damage within [MCZs]… if we allow this widely drawn blanket defence, we risk undermining the whole process".[44] **Richard Benyon**, for the Conservatives, called for reassurance from the Government that MCZs would be protected from those few fishermen who might be inclined to misbehave.[45] **Andrew George**, for the Liberal Democrats, said it was important that any provision focused on the most destructive and least selective techniques.[46] In response the Minister stated the following:

> Through inshore fisheries and conservation authority byelaws, we are able to regulate fishing in the area between 0 and 6 nautical miles when necessary. Similarly, we can introduce fisheries orders under the Sea Fish (Conservation) Act 1967, under which only UK fishermen have fishing rights without reference to Brussels. We intend to use both types of instrument when there is good evidence that it is necessary to protect MCZs. If fishing practices are likely to cause significant harm to MCZs, we will regulate them; and we will be able to prosecute offenders.
>
> The sea fisheries defence does not have to be the complete disaster that many suggest. It is available only to those who can show that damage was done in the course of or in connection with sea fishing—and, as important, that the effect of the fishing could not reasonably have been avoided.[47]

And:

> I want to make it absolutely clear that removing the sea fisheries defence as a whole would leave us in clear breach of our EU obligations. There are no ifs or buts about that. It would be illegal for the UK Government to legislate in that way; it would be wide open to infraction proceedings.
>
> However, I listened carefully to the debate this morning and to the interventions. Powerful points have been made and I can see that concern is deeply felt right across

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42 Ibid c94
43 Ibid c98
44 Ibid c97
45 Ibid c100
46 Ibid c102
47 PBC Deb 2 July 2009 (Afternoon) c106

> the Committee. On reflection, therefore, I am prepared to consider what more we can do to address the position, which I myself find less than ideal. I should like to find a way to get rid of the sea fisheries defence in an equitable way that is consistent with EU obligations as soon as possible. I cannot make any promises at the moment, because I need to talk to colleagues in Whitehall and, importantly, in the devolved Administrations. I hope to be able to return on Report with a helpful way forward.[48]

In view of this response the amendment was withdrawn and the clause agreed to. Clauses 142 to 148, together with Schedules 10 to 13, were agreed to without debate.

3.5 Coastal Access

Richard Benyon, for the Conservatives, moved amendment 41 in Clause 290 that sought to "avoid creating new rights of way [under the coastal access provisions of the Bill] which are positioned in close proximity to human dwellings, or buildings used for farm livestock".[49] The amendment would prevent access from being within 20 metres of a dwelling or agricultural building. He said:

> Many residents who live on or very close to the coastline view the coastal access scheme with great concern. Therefore it is reasonable that they should be assured that every effort is being made by the authorities to avoid invading their privacy and the enjoyment of their properties, wherever it is practicable to do so. More importantly, in respect of farm buildings, there is a serious issue of farm biosecurity to be taken into account. As well as the day-to-day management of livestock and agricultural activities, safety for walkers, as well as for livestock, is paramount and must be considered.

Huw Irranca-Davies, the Minister, rejected the amendment, saying:

> We have said that land within 20 m of a dwelling will not be excepted land for the purposes of coastal margin because that would not be appropriate where access would be limited to a margin of land next to the sea. In many cases on the coast, there is already access closer than 20 m from a dwelling and it does not cause problems. Further protection is provided by paragraph 2 of schedule 1 to the CROW Act [Countryside and Rights of Way Act. 2000], which excepts buildings and curtilage.[50]

The Minister also said that "there is also a power in the CROW Act to apply for a restriction or exclusion of access for land management reasons, so those powers are already in place".[51] He went on to say that there will be:

> …further opportunity to debate and discuss the categories of excepted land during the consultation and the debate that we will need to have on the affirmative resolution order under proposed new section 3A of the CROW Act. On that basis, it is not appropriate to accept amendment 41. It would prejudge the results of the consultation on a section 3A order.[52]

The amendments were withdrawn.

Richard Benyon, for the Conservatives, moved amendment 49 to Clause 296 that would describe "how the relationship between the coastal margin and the planning system will work". The Bill, he argued, needed to clarify whether:

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48 Ibid c107
49 PBC Deb 7 July 2009 (Afternoon) c213
50 Ibid c215
51 ibid
52 ibid

> …the coastal path or the coastal margin [will be] a material consideration for planning purposes? Will designation of either serve to restrict or limit development? What guidance will be provided to local planning authorities?[53]

Ann McKechin, the Minister, responded:

> The new right of access to coastal land given under provisions in the CROW Act is a flexible right to allow for the changes in land use. We are holding talks at present with the Department for Communities and Local Government on the nature of the guidance that will be provided to local authorities in terms of the Planning Act.
>
> The consultation, which we discussed in our debate on amendments 42 and 55 and which Natural England will undertake prior to drawing up a coastal access report, will identify likely new developments so that it can take them into account when drawing up the proposals. It is unlikely that Natural England will not be aware of nationally significant developments. Should there be developments after the route has been put in place, Natural England will have a power under section 55 of the National Parks and Access to the Countryside Act 1949 to draw up a report proposing a variation of the route, subject to the full consultation and representation process. I hope that I have reassured hon. Members that there already is adequate provision to cater for any developments that may affect the route, including action by the Secretary of State under the 1949 Act.[54]

The amendment was defeated by 8 votes to 6.

Huw Irranca-Davies, the Minister, responded to concerns about coastal route consultation, and the extent of land set aside either side of the route, by pointing out that there would be further opportunities to comment:

> Natural England may want to consider whether it can give clarification in its scheme, which will set out in more detail the approach it wants to take in implementing this part of its coastal access duty. The scheme will be subject to public consultation once the Bill becomes law. That will be a chance for all Committee Members and others with concerns to have an input into the final scheme, including where the boundary is on the landward side. The final scheme has to be approved by the Secretary of State. I urge Committee Members and those listening to our deliberations who have concerns to input into that consultation so that the final scheme is clear.[55]

Richard Benyon, for the Conservatives, tabled amendment 48 to Schedule 19 of the Bill. He argued that as drafted the Bill would allow the Secretary of State to overturn the decision of the independent appeals body. His amendment was "designed to firm up the objection process in schedule 19 to ensure that the Secretary of State cannot overturn a recommendation of the independent appeal body except in very limited circumstances".[56] **Ann McKechin**, the Minister, responded that a variety of safeguards were in place to ensure that the appeals process would be fair. **Richard Benyon** disagreed, saying:

> I do not believe that the Minister can go round claiming that the Government have listened and yielded an independent right of appeal if they have the right to overrule a decision in every circumstance. I hear what the Minister says about the safeguards that have been put in the Bill, but to introduce this amendment on Third Reading in another

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53 PBC Deb 9 July 2009 (Afternoon) c264
54 ibid c266
55 ibid c270
56 ibid c270

> place in a way that would allow a Secretary of State to overrule decisions reached in a quasi-judicial process is fundamentally wrong.
>
> I will not press the issue at this point, because I want to reserve the right to return to it on Report. I am doing so because the important concerns raised by the pointy heads in another place who understand the ECHR much better than I do are in direct conflict with the assertions made by the Minister. I want to ensure that we are compliant with the ECHR legislation, so we need to revisit the matter on Report.[57]

The amendment was withdrawn and Schedule 19 was agreed to.

[57] ibid c276

Appendix 1 – Membership of the Public Bill Committee

CHAIRMEN: MR ROGER GALE, MR GREG POPE CLERK: MR SHAW

16 MEMBERS

Ainger, Nick (*Carmarthen West and South Pembrokeshire*)
Benyon Mr Richard, (*Newbury*)
Brown, Mr Russell (*Dumfries and Galloway*)
George, Andrew (*St Ives*)
Gilroy, Linda (*Plymouth, Sutton*)
Irranca-Davies, Huw (*Ogmore*)
Jones, Mr David (*Clwyd West*)
Kumar, Dr Ashok (*Middlesbrough South and East Cleveland*)
McKechin, Ann (*Glasgow North*)
Salter, Martin (*Reading West*)
Swire, Mr Hugo (*East Devon*)
Walker, Mr Charles (*Broxbourne*)
Watkinson, Angela (*Upminster*)
Whitehead, Dr Alan (*Southampton, Test*)
Williams, Mr Roger (*Brecon and Radnorshire*)
Wright, David (*Telford*)