

Guidance on Making of Byelaws Under Part 3 of the Marine Act (Northern Ireland) 2013



Department of
**Agriculture, Environment
and Rural Affairs**

An Róinn

**Talmhaíochta, Comhshaoil
agus Gnóthaí Tuaithe**

Department o'

**Fairmin, Environment
an' Kintra Matthers**

www.daera-ni.gov.uk

This document is also available on the DAERA website at:

<https://www.daera-ni.gov.uk/publications/guidance-making-byelaws-under-part-3-marine-act-northern-ireland-2013>

On request, we can arrange to provide other formats of the documents above, such as:

- **Paper Copy**
- **Large Print**
- **Braille**
- **Other Languages**

To request an alternative format, please contact us:

Email: MarinePolicyTeam@daera-ni.gov.uk

Telephone: 028 905 69424

If you have a hearing difficulty, you can contact the Department via **Text Relay**.

Dial: 18001 028 9052 4528

Post: Marine Environment Policy
DAERA Marine and Fisheries Division
Clare House
303 Airport Road West
Sydenham Intake
BT3 9ED

Front cover image credit: “Wrack Stones” in Mill Bay (DAERA).

Contents

Purpose	3
Background	3
Byelaws	3
Byelaw Provisions.....	3
Emergency Byelaws.....	6
Interim Byelaws	7
Stakeholder Involvement	8
Use of Voluntary Measures.....	9
Ensuring Proportionality.....	9
Preventative and Precautionary Measures	10
Hearings.....	10
Offences	11
Contravening Byelaws	11
Damaging Protected Features of a Marine Conservation Zone.	11
Annex 1: Byelaw Creation Process	13
Annex 2: Potential uses of byelaws to control unregulated activities	16
Anchoring & Surface Abrasion	16
Access of vessels	16
Diving.....	17
Annex 3: Offences available under Part 3 of the Marine Act (Northern Ireland) 2013 ...	18
Annex 4: Glossary	20

Purpose

The purpose of this document is to set out how the Department of Agriculture, Environment, and Rural Affairs (the Department) intends to use byelaws to protect Marine Conservation Zones (MCZs), Special Areas of Conservation (SACs) and Special Protected Areas (SPAs) under the Marine Act (Northern Ireland) 2013.

Background

The Marine Act (Northern Ireland) 2013 (the Marine Act)¹ came into operation on 18 September 2013 and makes provision for the protection and management of the marine environment in the Northern Ireland inshore region.

The majority of activities that take place at sea are subject to some form of control through a range of regulatory regimes, which are the responsibility of Government departments and other public authorities. However, it may sometimes be necessary to apply controls through the use of byelaws. Part 3 of the Marine Act enables the Department to make byelaws for the purpose of furthering the conservation objectives of a Marine Conservation Zone and protecting a European Marine Site.

Byelaws

Byelaw Provisions

Sections 26, 28 and 29 of the Marine Act provide the Department with powers to make byelaws in relation to Marine Conservation Zones and areas under consideration for designation.

In addition, section 40 amended the byelaw-making powers contained in the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995². This means that byelaws for

¹ <http://www.legislation.gov.uk/nia/2013/10/enacted/data.pdf>

² <http://www.legislation.gov.uk/nisr/1995/380/introduction/made/data.pdf>

European marine sites (Special Areas of Conservation and Special Protection Areas) are made in the same way as those for Marine Conservation Zones and any byelaws already in force prior to the Marine Act, are applied as if they had been made in this way.

It should be noted that byelaws for the protection of coastal Areas of Special Scientific Interest will continue to be made in accordance with the provisions of the Environment Order (Northern Ireland) 2002.

Byelaws are not statutory rules and are made using an administrative procedure rather than under the Statutory Rules (Northern Ireland) Order 1979. Byelaws will be applied proportionately and based on best available evidence. They may restrict or manage activities within Marine Conservation Zones and European marine sites to prevent damage to protected features. Seasonal or spatial restrictions will be considered where activities can continue without compromising conservation objectives, see Annex 2 for examples.

Byelaws can be made to prohibit or restrict entry into, or any movement, or other activity on, any part of a Marine Conservation Zone or European marine site by people, animals or vehicles e.g. entry into the site, anchoring vessels, speed of vessels, killing, taking animals or plants, depositing material or damaging the seabed. They can also be extended to areas adjacent to a site (including land), where necessary for the protection of the features, although they will usually follow the low water mark.

Byelaws will be designed to provide additional protection to that given by a site's designation as a Marine Conservation Zone / European marine site.

It should be noted that the achievement of the conservation objectives for a Marine Conservation Zone may not require an activity to stop completely. For example, the features might be able to tolerate a certain amount of activity before an impact occurs or may tolerate activities if carried out in a certain way.

A variety of means may be used to control or limit the activity while allowing it to continue at an acceptable level. For example, if an activity is liable to hinder the conservation objectives of a Marine Conservation Zone at particular times of the year, the byelaw will control those activities only during those periods.

Examples of occasions when a 'seasonal' byelaw may be needed, include:

- The protection of birds in seasonal breeding and feeding areas, such as winter-feeding sites, or summer breeding seabird colonies, which may be vulnerable to noise and visual disturbance;
- The protection of seal pupping sites at certain times of the year.
- Near-shore features vulnerable to higher intensities of human presence may require protection in the summer when beach-based activities increase.

Byelaws may make provision for the Department to issue permits for activities which would otherwise be unlawful under the byelaw.

The Department may impose conditions on permits in order to further the conservation objectives of a Marine Conservation Zone or to protect a European marine site.

The wording of byelaws will provide clarity and certainty for both sea users and enforcement officers.

The boundaries of the area to which the byelaw will apply will be clearly stated in the byelaw (both through the use of co-ordinates and on a map). The area to which a byelaw applies will be determined on a case-by-case basis and may vary from one site to another. Byelaws will control only the aspects of an activity that are likely to be damaging i.e. byelaws will be at a level that is appropriate to protect the features of the site and their conservation objectives. For example, the use of boats in an area may be acceptable provided the vessel does not anchor in the area.

Draft byelaws will be subject to public consultation and inclusive stakeholder engagement which will be specific to the site and activity under consideration. The Department will advertise byelaws to ensure that they are brought to the attention of those people who are most likely to be affected. This advertisement may take the form of notices in local and national newspapers, notices in sector-specific publications, e-mail to stakeholders or signs on local beaches. Information on byelaws will also be available from the Department's website and known stakeholders will be advised by e-mail.

The Department is also required to provide copies of byelaws when requested and may charge a fee for this service.

Hearings may also be held to allow for oral and/or written representations to be made.

The byelaw powers in the Marine Act provide for the following types of byelaws:

- **Byelaws** (Section 26) which are subject to consultation and confirmation by the Secretary of State;
- **Emergency byelaws** (Section 28) where there is an urgent requirement to protect areas/features which occur within a Marine Conservation Zone or European marine site. These are not subject to formal consultation or confirmation by the Secretary of State; and
- **Interim byelaws** (Section 29) to protect areas/features in an area that has not yet been designated as a Marine Conservation Zone but where the Department thinks there are or may be reasons for it to consider whether to designate the area as a Marine Conservation Zone, and that there is an urgent need to protect the feature. They do not require formal consultation nor confirmation by the Secretary of State.

Emergency Byelaws

Emergency byelaws may be introduced where the Department considers urgent action is required to prevent significant damage to a Marine Conservation Zone / European marine site.

Emergency byelaws can be made without the Department having to comply with the usual consultation and publication requirements and without confirmation by the Secretary of State. However, it is the Department's intention to inform stakeholders likely to be affected by the byelaw before it comes into operation, where possible.

The Department is committed to the co-design of management measures through engagement with its stakeholders and the valuable insight that this provides. As such the Department intends to consider using emergency byelaws only in exceptional circumstances, for example, when it receives evidence that an activity is causing significant, ongoing damage to a protected feature in a Marine Conservation Zone that will prevent it from achieving its conservation objectives.

Decisions will be made on a case-by-case basis and will be based on best available evidence. Costs of implementing the byelaw, to the Department and other relevant stakeholders will be considered.

Once an emergency byelaw has been made, the Department will publish a notice about the byelaw. The notice will also state that the byelaw can be revoked by the Secretary of State and that those affected by it can make representations to the Secretary of State.

Under the Marine Act, emergency byelaws can remain in force for up to 12 months and must either be replaced by a permanent byelaw or revoked after this period.

The Department has the power to extend the emergency protection (by making a further byelaw) for a maximum of a further 6 months, only when more time is required to put in place a permanent byelaw.

Emergency byelaws will be kept under review.

Interim Byelaws

The Department has the power (under section 29 of the Marine Act) to make interim byelaws. Interim byelaws apply to areas under consideration for Marine Conservation Zone designation, where urgent protection is needed. They follow similar rules to emergency byelaws but cannot apply to European marine sites.

Interim byelaws are essentially the same as emergency byelaws except that they apply to areas that are not yet designated as Marine Conservation Zones. Therefore, the interim byelaws must clearly state the boundaries of the area to which they apply.

An example of where it may be appropriate to make an interim byelaw would be where the Department has reason to consider that there is an imminent risk to any feature in an area that is being proposed as a Marine Conservation Zone.

Like emergency byelaws, interim byelaws can be introduced without consultation and confirmation by the Secretary of State. However, where possible, the Department will inform

stakeholders who are likely to be affected by what is happening before any byelaw comes into operation.

Once an interim byelaw has been made, the Department will publish a notice about the byelaw. The notice will also state that the byelaw can be revoked by the Secretary of State and that those affected by it can make representations to the Secretary of State.

Interim byelaws can remain in operation for up to 12 months unless revoked by the Secretary of State. Interim byelaws can be extended beyond the initial 12-month period if the Department publishes notice of its intention to designate the site as a Marine Conservation Zone. From the date of notice, the Department must make the designation order within 12 months, and interim byelaws can remain in place during this period.

Interim byelaws will be kept under review.

Stakeholder Involvement

The Department will engage with stakeholders throughout the byelaw-making process (where possible) including consideration of the need, suitability and wording of byelaws. This will ensure transparency and help identify alternative measures before byelaws are made.

Early involvement of stakeholders will:

- ensure that potential impacts on stakeholders are identified and considered in the decision-making process.
- help identify whether other measures might be more appropriate.
- ensure that the byelaws are appropriately directed at harmful activities; and
- improve understanding of the reasons for the making of a byelaw amongst stakeholders and thereby improve their effectiveness.

Use of Voluntary Measures

Once an activity that has the potential to hinder the achievement of a site's conservation objectives has been identified, consideration will be given to whether the activity in question may be more effectively controlled by voluntary measures. Such measures may be useful in bringing an activity under control before it reaches a level of frequency or intensity that is likely to cause concern, potentially avoiding the need for a byelaw.

Voluntary measures will be considered where appropriate but will not replace byelaws when urgent action is required or where features are highly vulnerable. For example, where urgent action is required, where the features of a site are especially vulnerable or valuable, or where there is no representative user group with which voluntary measures can be developed and agreed.

Ensuring Proportionality

Byelaws will only be introduced where they are necessary and proportionate, following good regulatory practice. When considering whether a byelaw is needed, the Department will look at:

- How serious the impact could be – for example, whether an activity might damage important habitats or species and prevent the site from meeting its conservation objectives.
- How often the activity happens – an activity that occurs frequently or repeatedly is more likely to need control than something that happens rarely.

Sometimes, a single activity may not cause harm on its own, but when combined with other activities, the overall effect can be damaging. For example, the noise from personal watercraft might not disturb birds or marine mammals by itself, but if it happens alongside other noisy activities on the shore, the combined impact could be significant. In these cases, the Department may need to control one or more activities to reduce the overall risk.

Byelaws are most likely to be required where activities could threaten the conservation objectives of a site. Occasional or one-off incidents may not cause harm, but repeated or cumulative impacts over time can be damaging. The Department will take these cumulative effects into account when deciding whether to act.

These factors will be kept under review. The Department will use a range of measures, including voluntary agreements and byelaws, to manage risks and protect sites based on the level of impact and likelihood of harm.

Preventative and Precautionary Measures

In some instances, it is not possible to determine with certainty whether an activity will harm a site or prevent it from achieving its conservation objectives.

In such situations, the Department may apply the Precautionary Principle. This enables the Department to adopt precautionary measures even when scientific evidence of a causal relationship is not conclusive: a lack of full scientific evidence must not postpone action to protect the marine environment. This is consistent with the Department's Marine Protected Areas Strategy for the Northern Ireland Inshore Region 2025 – 2030.

Hearings

Section 31 of the Marine Act allows hearings to take place before certain decisions are made. A hearing may be held:

- by the Department, before deciding whether to make a byelaw or an interim byelaw;
- by the Secretary of State, before deciding whether to confirm a byelaw or revoke an emergency or interim byelaw.

Both the Department and the Secretary of State have the discretion to offer anyone affected the opportunity to be heard by an appointed person. This can be done either in writing or in person.

If a hearing is held, the Department will appoint an independent person to chair it. After the hearing, the appointed person will prepare recommendations for the Department or the Secretary of State before a decision is made.

Offences

The Marine Act sets out several offences related to marine protection. These are outlined below, with further information provided in Annex 2.

Contravening Byelaws

Section 32 of the Marine Act makes it an offence to breach any byelaw made under that legislation. A person found guilty under this section will be liable, on summary conviction, to a fine not exceeding Level 5 (currently set at £5000) on the standard scale of fines for summary offences. Alternatively, the Department may impose a fixed monetary penalty instead of taking the case to court.

- These penalties are set out in Section 35 and Schedule 2 of the Marine Act and the Marine Conservation (Fixed Monetary Penalties) Order (Northern Ireland) 2015;
- The maximum amount for a fixed penalty is £200 (Level 1 on the standard scale);
- Fixed monetary penalties may be imposed only in relation to offences of contravening byelaws under section 32 of the Marine Act;
- Fixed penalties are intended for low-level breaches, such as failing to comply with a nature conservation byelaw.

Damaging Protected Features of a Marine Conservation Zone.

Under Section 33 of the Marine Act, it is an offence to intentionally or recklessly damage protected features within a Marine Conservation Zone in a way that significantly hinders, or may hinder, the site's conservation objectives.

This includes:

- Killing or injuring animals.
- Picking or collecting vegetation.
- Taking, damaging, or destroying anything that forms part of a protected feature.

To prove an offence, the Department must show that the person knew, or should have known, that the feature was within a Marine Conservation Zone. It does not need to prove that the person knew the feature was protected. For example, if the site is marked on charts or local notice boards, the court may decide the person should reasonably have been aware.

Penalties for this offence:

- Up to £50,000 if convicted in a Magistrates' Court.
- An unlimited fine if convicted in the Crown Court.

The level of the fine may reflect any financial benefit gained from the offence and the fact that damage to the seabed or marine environment can take years or may never recover.

Where there is evidence that a person has damaged a protected feature while carrying out an act that contravenes a byelaw, the Department will pursue prosecution for the offence of damaging the feature rather than the contravention of the byelaw.

Fixed monetary penalties will not be used in cases involving damage to protected features and such cases will instead be considered for criminal prosecution.

Annex 1: Byelaw Creation Process

The Department may make byelaws for the purpose of furthering the conservation objectives stated for a Marine Conservation Zone. When making a byelaw, the Department will act within the powers conferred by the Marine Act and ensure the process is lawful, evidence-based, and proportionate.

Step 1: Identify the Need:

The process begins with the identification of a clear need for regulatory intervention, typically where there is a risk of a protected area failing to achieve its conservation objectives.

Step 2: Gather Evidence:

The Department will gather the available evidence to enable it to carry out a risk-based analysis where the sensitivity of a feature to a particular pressure is considered against the likelihood of the feature being exposed to that pressure.

Step 3: Decide on the Best Approach:

If the risk assessment indicates that action is needed, the Department will consider whether a byelaw is the most suitable tool. Alternatives, such as existing regulatory mechanisms, or voluntary measures will be assessed. Engagement with those affected helps the Department draw on the best available knowledge and understand potential impacts.

Step 4: Policy Assessments:

Before proceeding, the Department will carry out policy assessments to ensure the byelaw is necessary, proportional and will be effective. Policy assessments will include:

- Regulatory Impact Assessment
- Rural Needs Impact Assessment

- Equality Impact Assessment Screening (to determine if a full Equality Impact Assessment is required).

Step 5: Draft the Byelaw:

The Department will prepare a draft byelaw using clear, enforceable language to ensure it complies with the Marine Act.

Step 6: Public Consultation

The Department will publish the consultation document on its webpage. This will include:

- The draft byelaw.
- Details of the protected features and their location.
- Why the features are vulnerable.
- The activities to be managed and the proposed measures.

The consultation will follow the requirements in Part 3, section 27 of the Marine Act.

The Department will inform key stakeholders and where possible, individuals likely to be affected by the proposed byelaw when the public consultation is launched. The Department may also promote awareness of the consultation through appropriate channels, including social media platforms.

Step 7: Review Responses:

After the consultation period closes, the Department will review all responses. The Department will then write to the Secretary of State to notify its intention to make the byelaw and seek confirmation where required.

Step 8: Confirmation and Publication:

As soon as is reasonably practicable following confirmation from the Secretary of State, the Department will:

- Publish a notice on its website.
- Notify key stakeholders and affected parties by email.

The byelaw will come into effect on a date determined by the Secretary of State or, one month after the date on which it was confirmed.

Annex 2: Potential uses of byelaws to control unregulated activities.

Byelaws can be used to manage activities that may harm sensitive habitats or species within a Marine Conservation Zone (MCZ) or European marine site (EMS). The examples below illustrate where byelaws might be applied:

Anchoring & Surface Abrasion

Surface abrasion as a result of anchoring, benthic trawling or dredging can cause impacts by damaging seabed features especially delicate seagrass beds, and other sensitive marine habitats/species or through the removal of prey species on which seabirds depend. Byelaws could be used to control such activities on a seasonal or permanent basis, across all or part of the site.

Access of vessels

Vessel access to a Marine Conservation Zone or European marine site may be restricted permanently or seasonally from all or parts of the site. Smaller vessels, in particular those used for recreational purposes, may have greater potential to disturb sensitive species. They often have relatively small, loud motors and are frequently used within a localised area, increasing the exposure of vulnerable animals to disturbance.

Wildlife tourism is a recreational activity which may also be controlled by such measures. Marine mammal and seabird watching is very popular in some parts of the UK, and whilst for the most part it is carried out with due regard for the well-being of marine wildlife, there are some disturbance implications which result from the act of a vessel operating close to sensitive species. Some restrictions could be introduced using byelaws by limiting or even prohibiting access to all vessels (permanently or seasonally).

Byelaws could also be made to control access (usually by vehicles) across the foreshore, to protect features from physical damage, and from noise and disturbance. Byelaws may also be used to limit the number of people or vehicle journeys across the foreshore. Access may be restricted to a specified route, which may be varied seasonally to relieve or redistribute pressure where appropriate. Sensitive habitats would include seagrass beds – which are

sensitive to trampling by foot, as well as damage from vehicles. Any such controls could operate over the entire foreshore, or parts of it.

In addition to access across the foreshore, the Department may also need to restrict certain activities that have a damaging or disturbance to marine biodiversity, such as seagrass and bird feeding areas. Examples of disturbance activities might include the use of quad bikes, drones, hovercraft, motorbikes, horse-riding, cycling, land-yachting, kitesurfing, climbing and coastering. Often controls would be localised and might be seasonal, especially if the sensitivity were related to a breeding season such as for seals or terns etc. The Department's powers extend to any activity undertaken in or around a site where they impact on the conservation objectives of that site.

Diving

Diving (including use of boats, anchoring and access for vehicles) can impact on the seabed through direct damage from poorly controlled finning and removal of marine organisms. Diving can also create disturbance to birds and marine mammals and create noise in sensitive areas. Byelaws may be required to reduce damage to protected features and habitats within a site, for example by limiting numbers or permitting only specific types of diving, such as for scientific research purposes.

Annex 3: Offences available under Part 3 of the Marine Act (Northern Ireland) 2013

Offences available under Part 3 of the Marine Act (Northern Ireland) 2013

Management Tool	Purpose	Penalties	Amount
Section 32 Offence of contravening byelaws			
Byelaws (s 26)	For the purpose of furthering the conservation objectives stated for a Marine Conservation Zone/European Marine Site.	Fixed monetary penalty, or Fine on summary conviction	May not exceed Level 1 on the standard scale of fines for summary offences i.e. up to £200. May not exceed Level 5 on the standard scale of fines for summary offences.
Emergency byelaws (s 28)	Where the Department thinks that there is an urgent need to protect a Marine Conservation Zone/ European Marine Site.	Fixed monetary penalty, or Fine on summary conviction	May not exceed Level 1 on the standard scale of fines for summary offences i.e. up to £200. May not exceed Level 5 on the standard scale of fines for summary offences.
Interim byelaws (s 29)	Where there is an urgent need to protect feature(s) in an area and where there may be reasons to designate a Marine Conservation Zone.	Fixed monetary penalty, or Fine on summary conviction	May not exceed Level 1 on the standard scale of fines for summary offences i.e. up to £200. May not exceed Level 5 on the standard scale of fines for summary offences.

Offence	Purpose	Penalties	Amount
Section 33 Offence of damaging, etc. Protected features of MCZ			
General offence (s 33)	To prohibit intentional and reckless acts which will, or may, significantly hinder the conservation objectives of a Marine Conservation Zone.	Fine on summary conviction, or Fine on indictment	Not exceeding £50,000. Unlimited.

Annex 4: Glossary

Areas of Special Scientific Interest (ASSI) - are declared under The Environment (Northern Ireland) Order 200235 for their species, habitat and/or geological features.

Biodiversity - is the variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they form part; this includes diversity within species, between species and of ecosystems.

European Marine Sites (EMS) - areas of the marine environment that have been designated for protection under European legislation, they are sometimes referred to as Natura 2000 and are found across Europe. EMSs consist of two types, Special Protection Areas (SPAs) which protect birds and their supporting habitats and Special Areas of Conservation (SACs) which protect other wildlife and important habitats. EMS aim to warrant long-term survival of Europe's most valuable and threatened habitats and species. It should be noted that within the UK, SACs and SPAs fall within the UK National Site Network and not the Natura 2000 network however are still referred to as European sites.

Marine Conservation Zones (MCZ) - refer to MCZs designated under section 13 of the Marine Act (Northern Ireland) 2013 in the Northern Ireland inshore region and in section 116 of the Marine and Coastal Access Act 2009 in the Northern Ireland offshore region. MCZs are designated to safeguard vulnerable or unique marine species and habitats of national importance.

For further information:

Marine Environment Policy
DAERA Marine and Fisheries Division
Clare House
303 Airport Road West
Sydenham Intake
BT3 9ED
Tel: 028 905 69424
Email: MarinePolicyTeam@daera-ni.gov.uk



Department of
**Agriculture, Environment
and Rural Affairs**

An Roinn

**Talmhaíochta, Comhshaoil
agus Gnóthaí Tuaithe**

Department o'

**Fairmin, Environment
an' Kintra Matthers**

www.daera-ni.gov.uk

INVESTORS IN PEOPLE®
We invest in people Standard