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Consultation Response

Regional Marine Planning

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Introduction

The Law Society of Scotland is the professional body for over 11,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

Our Marine Law sub-committee welcomes the opportunity to consider and respond to Environment, Climate Change and Land Reform Committee's inquiry on *Regional Marine Planning*¹. We have the following comments to put forward for consideration.

Consultation questions

1. Are the objectives for the establishment of the Scottish Marine Regions still appropriate?

We consider that there would be merit in greater clarity and publicity around the objectives.

As only two partnerships have been established in the time since the Marine (Scotland) Act 2010 was passed and no marine plans have yet been adopted, it is difficult to say with certainty whether the objectives are appropriate. It would seem appropriate to retain the current objectives until these can be fully tested.

There would be merit in clear guidance as to how delivery of these objectives can be measured, for example, through some form of key performance indicators or similar. While progress reports generally provide a good summary of activities, it is not always clear in the progress reports that the objectives are being delivered.

We note that moving forward, consideration may require to be given to provisions of the Islands (Scotland) Act 2018 in relation to islands communities.

¹ <https://www.parliament.scot/parliamentarybusiness/CurrentCommittees/111991.aspx>

2. How effective has the approach to establishing Marine Planning Partnerships been in practice? Are they working as anticipated? What are the opportunities/constraints/barriers to success?

We note that the marine planning regime in Scotland was established on the basis of a three-tiered system – being part of the UK regime (UK Marine Policy Statement 2011), Scotland’s Marine National Plan 2015 and the regional system. Until the full regional tier is in place, it may be difficult to fully assess the issue and impacts of marine planning in Scotland.

Regional marine plans are expected to deliver on a number of matters - they must set out economic, social, marine ecosystem and climate change objectives for the regional marine plan area, consistent with the Marine Policy Statement². A regional marine plan will set out how marine resources can best be managed with a view to ensuring that different and potentially competing activities are managed in such a way that they contribute to the achievement of sustainable development in the Scottish marine area.

In terms of gathering information and data for marine plans, the 2010 Act requires Scottish Ministers to undertake an assessment of the condition of the Scottish marine area and a summary of significant pressures of human activity³. The publication *Scotland’s Marine Atlas: information for the National Marine Plan*⁴ provides such an assessment and is the evidence base upon which the National Marine Plan has been developed. Assessments at the level of the Scottish marine regions, however, are also required⁵ and this will require to be undertaken appropriate to the regional scale. This is likely to be an extensive exercise requiring specialist skills and appropriate resources and data.

The responsibilities on those engaging with Marine Planning Partnerships (hereafter MPPs) can be onerous and therefore bring significant cost and resource implications to stakeholder organisations and businesses. This may present a particular barrier for SMEs and others working in the maritime sector who may not have the necessary time or resource to engage fully with MPPs. Not all SMEs will be represented on the advisory groups by a relevant organisation but may rely heavily on activities in the marine environment and be an important part of the local economy. In order to widen the scope of engagement with the partnerships, funding and/or other resource support may be required to support organisations and businesses to be members of the advisory groups, either independently or via representative organisations.

We understand that in some areas, there is a lack of clarity around how and by whom work is to be delivered, sometimes with the expectation that the members of the MPP will deliver the work. There would be merit in greater clarity around the roles and responsibilities of those in the partnerships and clarity as to

² Marine (Scotland) Act 2010, section 5(4).

³ Section 5(4).

⁴ <https://scotgov.publishingthefuture.info/publication/marine-atlas>

⁵ 2010 Act, Section 5(4).

what is expected of members, perhaps in the form of clear and concise guidance. This would help organisations to understand their responsibilities and provide appropriate resource.

Finally, it should also be noted that Planning Circular 1/2015: *The relationship between the statutory land use planning system and marine planning and licensing*⁶ anticipates a significant level of coordination and liaison between the terrestrial land use planning system and the marine planning and licensing system. Such coordination and liaison are likely to be of benefit, ensuring a comprehensive planning system and certainty and clarity for individuals and businesses operating in the relevant areas. However, recent changes to the terrestrial planning regime and limited local authority planning resources may mean that this is not effectively resourced and may not be a priority. Until such time as there are adopted marine regional plans in place and processes for working across the intertidal areas have been established, the success of this is unlikely to be able to be fully assessed.

3. What progress has been made in the development and implementation of Regional Marine Plans and what are the objectives and priorities for the next 5-10 years?

We are not in a position to comment in detail on the progress of Regional Marine Plans (RMPs) however we note that progress to date has been fairly slow and therefore it may be too early to comment on these matters in detail. It is important to recognise that regional marine planning can be a complex and difficult process.

The most advanced plan is Shetland, which we understand to be currently on its fourth iteration of a plan, having been a pilot area for regional marine planning prior to the introduction of the 2010 Act. The Clyde area plan is still under development. Orkney is not yet established as a MPP however may be able to develop a plan more quickly due to the area's engagement in a previous plan, albeit based around the sea area of the Pentland Firth and undertaken in collaboration with Highland Region.

We consider it appropriate for the objectives to remain the same until the current plans have been fully bed-in, with resourcing and support to allow the marine planning process at regional level to be established. As plans move into their implementation phase, we consider there would be merit in them being reviewed, evaluated and where appropriate, more detail being provided to guide actions moving forward.

⁶ <https://www.gov.scot/publications/circular-1-2015-relationship-between-statutory-land-use-planning-system/pages/3/>

4. Is the system of marine planning sufficiently integrated with the terrestrial planning system?

On the whole, the integration of the marine plans with the terrestrial planning system appears variable however it is likely too early to undertake a full assessment of this. There is some lack of clarity as to how the two planning systems interact. For example, there is duplication between the Clyde Marine Planning Partnership responsibilities and marine licencing, Harbour Revision orders and environmental impact assessments and there is a lack of clarity and certainty as to how these will work together.

There is guidance and high expectations set out in the 2010 Act, in Scotland's National Marine Plan and in Planning Circular 1/2015: *The relationship between the statutory land use planning system and marine planning and licencing*⁷ in relation to integration of marine planning and the terrestrial planning system. These are new processes and practices which require a different approach and perhaps different skills and will therefore take time to settle.

The concept of Integrated Coastal Zone management and the work which has already been by organisations such as the Scottish Coastal Forum and many local coastal forums could be utilised as a model for integrated planning.

5. What is required to deliver an effective Marine Planning system under Part 3 of the Marine (Scotland) Act 2010? Is the National Marine Plan capable of delivering sustainable development within Scottish Marine Regions in advance of those areas having an RMP in place?

We consider that there are a number of matters which would help to deliver an effective Marine Planning system, including:

- Clarity as to the role of regional marine planning, what is to be achieved by the plans and how these outcomes are to be achieved;
- Clarity as to the roles and responsibilities of all those involved in development and delivery of the Plans;
- Assessment of the impact of the plan on businesses and organisations;
- Clarity as to how the plan fits with the terrestrial planning system and other legislation, including marine licencing and harbour matters;
- Clarity around compensation to businesses and organisations affected by the plan;
- Appropriate and suitably qualified resources in place by the Marine Planning Partnerships;
- Mechanisms for measuring success and evaluating the plan.

⁷ <https://www.gov.scot/publications/circular-1-2015-relationship-between-statutory-land-use-planning-system/pages/3/>

We consider it unlikely that the National Marine Plan is sufficient on its own to deliver sustainable development within Scottish Marine Regions. The policies of the National Marine Plan lack the detail required in relation to each region and does not provide detailed guidance.

6. What funding and support is available for the development of RMPs?

We have no comment on this question.

7. What duties/requirements are there on local authorities to develop and implement RMPs?

There are responsibilities set out in the Marine (Scotland) Act 2010 for key organisations, local authorities and the public however, these would benefit from being set out more clearly and the cost and resource implications for businesses and organisations considered (we refer to our comments above).

8. Is there sufficient marine planning expertise in all Local Authorities for development of RMPs?

In the experience of our members, levels of expertise are variable between Local Authorities. There may be insufficient marine planning expertise in local authorities and generally in Scotland as this is a fairly new discipline. There is much to be considered in terms of the skill set required within local authorities, those who are employed by the marine planning partnership and those who feed into the regional planning process because of expertise in other marine areas.

The opportunity and support for effective integration between local authorities and the marine planning partnerships in terms of planning on land, coast and sea requires well-resourced specialist training and CPD.

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