



# Marine (Scotland) Act 2010

## 2010 asp 5

### PART 3

#### MARINE PLANNING

##### *Marine plans*

#### **5 National marine plan and regional marine plans**

- (1) The Scottish Ministers must prepare and adopt in accordance with schedule 1 a national marine plan for the Scottish marine area.
- (2) The Scottish Ministers may prepare and adopt in accordance with that schedule a regional marine plan for any Scottish marine region (see subsection (5)).
- (3) A national marine plan or (as the case may be) a regional marine plan is a document which—
  - (a) states the Scottish Ministers' policies (however expressed) for and in connection with the sustainable development of the area to which the plan applies,
  - (b) states the Scottish Ministers' policies on the contribution of—
    - (i) Nature Conservation MPAs (namely areas designated as such by order under section 67(1)(a)), and
    - (ii) sites falling within section 79(4),to the protection and enhancement of the area to which the plan applies,
  - (c) states that it is a national marine plan or (as the case may be) a regional marine plan prepared and adopted for the purposes of this section.
- (4) For the purposes of preparing a national marine plan or (as the case may be) a regional marine plan, the Scottish Ministers must—
  - (a) set—
    - (i) economic, social and marine ecosystem objectives,
    - (ii) objectives relating to the mitigation of, and adaptation to, climate change,

- (b) prepare an assessment of the condition of the Scottish marine area or, as the case may be, Scottish marine region at the time of the plan's preparation,
  - (c) prepare a summary of significant pressures and the impact of human activity on the area or region.
- (5) The Scottish Ministers may by order designate any part of the Scottish marine area as a Scottish marine region; and any such order must identify the boundaries of the Scottish marine region.
- (6) A national marine plan or (as the case may be) a regional marine plan may also include statements or information relating to policies contained in the plan.
- (7) If to any extent a policy stated in a national marine plan or a regional marine plan conflicts with any other statement or information in the plan, that conflict must be resolved in favour of the policy.

## **6 Conformity of marine plans with other documents**

- (1) A national marine plan and a regional marine plan must be in conformity with any marine policy statement currently in effect for the Scottish marine area, unless relevant considerations indicate otherwise.
- (2) A regional marine plan must be in conformity with any national marine plan currently in effect, unless relevant considerations indicate otherwise.
- (3) For the purposes of this Part, a marine policy statement is “currently in effect” for the Scottish marine area if—
- (a) the statement has been adopted by the Scottish Ministers in accordance with Schedule 5 to the 2009 Act,
  - (b) the statement has been published in accordance with paragraph 12 of that Schedule,
  - (c) the statement has not been replaced by a later marine policy statement (see section 45(3) of that Act),
  - (d) the Scottish Ministers have not withdrawn from the statement in accordance with section 48 of that Act, and
  - (e) the statement has not been withdrawn (by virtue of the withdrawal of the Secretary of State in accordance with that section).

## **7 Coming into effect of marine plans**

A national marine plan or (as the case may be) a regional marine plan comes into effect when the plan is published by the Scottish Ministers in accordance with schedule 1.

## **8 Amendment of marine plans**

- (1) A national marine plan or (as the case may be) a regional marine plan may be amended from time to time by the Scottish Ministers.
- (2) Any amendment of any such plan must be prepared and adopted in accordance with schedule 1.

## **9 Withdrawal of marine plans**

- (1) The Scottish Ministers may withdraw a national marine plan or (as the case may be) a regional marine plan where they consider it appropriate to do so.
- (2) If they do so, they must publish notice of withdrawal in the Edinburgh Gazette; and the marine plan concerned ceases to have effect on the date of such publication.
- (3) The Scottish Ministers must also take such further steps as they consider appropriate to secure that the withdrawal of the marine plan concerned is brought to the attention of interested persons.
- (4) In this section, “interested persons” means—
  - (a) any persons appearing to the Scottish Ministers to be likely to be interested in, or affected by, the withdrawal of the marine plan concerned,
  - (b) members of the general public.
- (5) Following withdrawal of a national marine plan, the Scottish Ministers must prepare and adopt in accordance with schedule 1 a new national marine plan for the Scottish marine area as soon as is reasonably practicable.

## **10 Effect of withdrawal from or of marine policy statement or of national marine plan**

- (1) Where the Scottish Ministers withdraw from a marine policy statement in accordance with section 48 of the 2009 Act, or a marine policy statement is withdrawn (by virtue of the withdrawal of the Secretary of State under that section), the withdrawal does not affect—
  - (a) the continuing validity or effect of a national marine plan or regional marine plan, or
  - (b) until such time as a new marine policy statement is in effect in relation to the Scottish marine area, the construction of any national or regional marine plan.
- (2) Where the Scottish Ministers withdraw a national marine plan, the withdrawal does not affect—
  - (a) the continuing validity or effect of a regional marine plan, or
  - (b) until such time as a new national marine plan is in effect, the construction of any regional marine plan.

## **11 Duty to keep relevant matters under review**

- (1) The Scottish Ministers must keep under review the matters which may be expected to affect the exercise of their functions relating to—
  - (a) the designation of any area as a Scottish marine region,
  - (b) the preparation, adoption, amendment or withdrawal of a national marine plan or (as the case may be) a regional marine plan,
  - (c) keeping under review under section 16 in relation to any such plan the matters in subsection (2) of that section.
- (2) The matters include—
  - (a) as regards a national marine plan—

- (i) the physical, environmental, social, cultural and economic characteristics of the Scottish marine area and of the living resources which the area supports,
    - (ii) the purposes for which any part of the area is used,
    - (iii) the communications, energy and transport systems for the area,
    - (iv) any other considerations which may be expected to affect those matters,
  - (b) as regards a regional marine plan—
    - (i) the physical, environmental, social, cultural and economic characteristics of the Scottish marine region to which the plan applies and of the living resources which the region supports,
    - (ii) the purposes for which any part of the region is used,
    - (iii) the communications, energy and transport systems of the region,
    - (iv) any other considerations which may be expected to affect those matters.
- (3) The matters also include—
- (a) any changes which could reasonably be expected to occur in relation to any matter referred to in subsection (2),
  - (b) as regards a national marine plan, the effect that any such changes may have in relation to the sustainable development of the Scottish marine area, its natural resources, or the living resources dependent on the area,
  - (c) as regards a regional marine plan, the effect that any such changes may have in relation to the sustainable development of the Scottish marine region to which the plan applies, its natural resources, or the living resources dependent on the region.
- (4) The reference—
- (a) in subsection (2)(a)(i) to the cultural characteristics of the Scottish marine area includes a reference to characteristics of the area which are of a historic or archaeological nature,
  - (b) in subsection (2)(b)(i) to the cultural characteristics of a Scottish marine region includes a reference to characteristics of the region which are of a historic or archaeological nature.

*Delegation of functions relating to regional marine plans*

## **12 Delegation of functions relating to regional marine plans**

- (1) The Scottish Ministers may give directions under this section which—
- (a) designate any of the delegable functions in relation to a regional marine plan which would (apart from directions under this section) be exercisable by the Scottish Ministers,
  - (b) direct that the functions so designated (the “designated functions”), instead of being so exercisable, are to be exercisable by such delegate acting on behalf of the Scottish Ministers as is designated in the direction.
- (2) The delegate so designated must comprise of—
- (a) a person nominated by the Scottish Ministers, and
  - (b) one or more of the following—

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- (i) a public authority,
  - (ii) a person nominated by a public authority with an interest in the Scottish marine region to which the regional marine plan applies as the Scottish Ministers consider appropriate.
- (3) Where the Scottish Ministers designate delegable functions under subsection (1) to a group of persons, they must ensure that the group comprises—
  - (a) so far as reasonably practicable, representatives of persons with an interest in—
    - (i) the protection and enhancement of the Scottish marine region to which the regional marine plan applies,
    - (ii) the use of that region for recreational purposes,
    - (iii) the use of that region for commercial purposes, and
  - (b) any other persons that the Scottish Ministers consider appropriate.
- (4) The Scottish Ministers may give a direction under this section only with the consent of any public authority referred to in subsection (2).
- (5) Where the Scottish Ministers designate delegable functions under subsection (1) to a public authority, the direction must include—
  - (a) a statement of reasons setting out the grounds for designating the authority in preference to a group of persons,
  - (b) a requirement for that authority to consult on the exercise of its functions in relation to the Scottish marine region to which the regional marine plan applies with—
    - (i) representatives of persons with an interest in—
      - (A) the protection and enhancement of that region,
      - (B) the use of that region for recreational purposes,
      - (C) the use of that region for commercial purposes, and
    - (ii) any other persons that the Scottish Ministers consider appropriate,
  - (c) a requirement for that authority to have regard to any representations made under paragraph (b).
- (6) The delegate—
  - (a) must comply with the direction,
  - (b) is to be taken to have all the powers necessary to do so.
- (7) In this section “delegable functions in relation to a regional marine plan” means the following functions in relation to any such plan—
  - (a) those under sections 5, 8 or 11,
  - (b) those under section 16 (monitoring etc. of implementation),but excluding the excepted functions.
- (8) The excepted functions are the following functions in relation to any such plan—
  - (a) deciding under paragraph 4 of schedule 1 whether to prepare and publish a statement of public participation,
  - (b) deciding under paragraph 6 of that schedule whether to revise a statement of public participation,
  - (c) deciding under paragraph 9 of that schedule whether to publish a consultation draft,

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- (d) deciding under paragraph 14 of that schedule whether to publish a regional marine plan or any amendment of such a plan.

### **13 Directions under section 12: supplementary provision**

- (1) Where the Scottish Ministers give a direction under section 12, they must publish it in such manner as they consider most likely to bring it to the attention of persons likely to be interested in or affected by it.
- (2) For so long as any such direction remains in effect, the designated functions are exercisable by the delegate acting on behalf of the Scottish Ministers (and are not exercisable by the Scottish Ministers).
- (3) But subsection (2) is subject to any provision to the contrary which—
  - (a) is made by the direction, or
  - (b) is included in a direction under section 14.
- (4) A direction under section 12 may include—
  - (a) such terms or conditions,
  - (b) such obligations or requirements,
  - (c) such financial provisions,as the Scottish Ministers may determine.
- (5) A direction under section 12 may make different provision for different cases, different areas or different delegates.
- (6) The Scottish Ministers may make grants to a delegate for the exercise of the designated functions.

### **14 Directions to delegates as regards performance of designated functions**

- (1) This section applies where any functions are exercisable by a delegate by virtue of a direction given under section 12.
- (2) The Scottish Ministers may from time to time give directions to the delegate with respect to the performance of the functions.
- (3) Before giving any direction under this section, the Scottish Ministers must consult the delegate.
- (4) A delegate given a direction under this section must comply with the direction.
- (5) Where the Scottish Ministers give a direction under this section, they must publish it in such manner as they consider most likely to bring it to the attention of persons likely to be interested in or affected by it.

*Decisions of public authorities affected by a marine plan*

### **15 Decisions of public authorities affected by marine plans**

- (1) A public authority must take any authorisation or enforcement decision in accordance with the appropriate marine plans, unless relevant considerations indicate otherwise.

- (2) If a public authority makes an authorisation or enforcement decision otherwise than in accordance with the appropriate marine plans, it must state its reasons.
- (3) A public authority must have regard to the appropriate marine plans in making any decision—
- (a) which relates to the exercise by them of any function capable of affecting the whole or any part of the Scottish marine area, but
  - (b) which is not an authorisation or enforcement decision.
- (4) In this section—
- (a) an “authorisation or enforcement decision” is any of the following—
    - (i) the determination of any application (whenever made) for authorisation of the doing of any act which affects or might affect the whole or any part of the Scottish marine area,
    - (ii) any decision relating to any conditions of any such authorisation,
    - (iii) any decision about extension, replacement, variation, revocation or withdrawal of any such authorisation or any such conditions (whenever granted or imposed),
    - (iv) any decision relating to the enforcement of any such authorisation or any such conditions,
    - (v) any decision relating to the enforcement of any prohibition or restriction (whenever imposed) on the doing of any act, or of any act of any description, falling within sub-paragraph (i),
  - (b) “the appropriate marine plans” are—
    - (i) a national marine plan which is in effect,
    - (ii) to the extent that a decision falling within subsection (1) or (3) relates to a Scottish marine region, any regional marine plan which is in effect for the region.
- (5) In this section—
- “act” includes omission,
  - “authorisation” means any approval, confirmation, consent, licence, permission or other authorisation (however described), whether special or general.

### *Monitoring and reporting*

## **16 Monitoring of and periodical reporting on implementation of marine plans**

- (1) For so long as a national marine plan or (as the case may be) a regional marine plan is in effect, the Scottish Ministers must keep under review in relation to each such plan the matters in subsection (2).
- (2) The matters are—
- (a) the effects of the policies in the plan,
  - (b) the effectiveness of the policies in securing that the objectives for which the plan was prepared and adopted are met,
  - (c) the progress being made towards securing the objectives,
  - (d) the progress being made towards securing that the objectives in the regional marine plan secure the objectives in the national marine plan.

- (3) The Scottish Ministers must from time to time prepare and publish a report on the matters kept under review in pursuance of subsection (1).
- (4) After publishing a report under subsection (3), the Scottish Ministers must decide whether or not to amend or replace the national marine plan or (as the case may be) the regional marine plan.
- (5) The first report must be published before the expiry of 5 years beginning with the date on which the marine plan concerned was adopted.
- (6) After the publication of the first report, successive reports must be published at intervals of no more than 5 years following the date of publication of the previous report.
- (7) Any reference in this section to the replacement of a national marine plan or (as the case may be) a regional marine plan is a reference to—
  - (a) preparing and adopting, in accordance with the provisions of this Part, a fresh national marine plan or (as the case may be) a regional marine plan (and as respects a regional marine plan whether or not it is for the identical Scottish marine region),
  - (b) if the Scottish Ministers have not already done so, withdrawing the marine plan that is to be replaced.

#### *Validity of marine plans*

### **17 Validity of national marine plans and regional marine plans**

- (1) A relevant document must not be questioned in any legal proceedings, except in so far as is provided by this section.
- (2) A person aggrieved by a relevant document may make an application to the Court of Session on any of the following grounds—
  - (a) that the document is not within the appropriate powers,
  - (b) that a procedural requirement has not been complied with.
- (3) Any such application must be made not later than 6 weeks after the publication of the relevant document.
- (4) In this section and section 18—
  - (a) “the appropriate powers” means in the case of a national marine plan, a regional marine plan or an amendment of any such plan, the powers conferred on the Scottish Ministers by sections 5 to 12,
  - (b) “procedural requirement” means any requirement—
    - (i) under the appropriate powers, or
    - (ii) in directions under section 12 or 14,
 which relates to the preparation, adoption or publication of a relevant document,
  - (c) “relevant document” means—
    - (i) a national marine plan,
    - (ii) an amendment of a national marine plan,
    - (iii) a regional marine plan,

(iv) an amendment of a regional marine plan.

## **18 Powers of the Court of Session on an application under section 17**

- (1) This section applies in any case where an application is made to the Court of Session (“the Court”) under section 17.
- (2) The Court may make an interim order suspending the operation of the relevant document—
  - (a) wholly or in part,
  - (b) generally or as it affects a particular area,and an interim order has effect until the proceedings are finally determined.
- (3) Subsection (4) applies if the Court is satisfied as to any of the following—
  - (a) that a relevant document is to any extent outside the appropriate powers,
  - (b) that the interests of the applicant have been substantially prejudiced by failure to comply with a procedural requirement.
- (4) The Court may—
  - (a) quash the relevant document,
  - (b) remit the relevant document to the Scottish Ministers.
- (5) If the Court remits the relevant document under subsection (4)(b), it may give directions as to the action to be taken in relation to the relevant document.
- (6) Directions under subsection (5) may in particular—
  - (a) require the relevant document to be treated (generally or for specified purposes) as not having been adopted or published,
  - (b) require specified steps in the process that has resulted in the adoption of the relevant document to be treated (generally or for specified purposes) as having been taken or not having been taken,
  - (c) require action to be taken by the Scottish Ministers.
- (7) The powers of the Court under subsections (4) and (5) are exercisable in relation to the whole or any part of the relevant document.

### *Interpretation of Part 3*

## **19 Interpretation of Part 3**

In this Part—

“adopted”, in the case of a national marine plan or a regional marine plan, is to be construed in accordance with section 5(1) and paragraph 14 of schedule 1; and related expressions are to be construed accordingly,

“marine policy statement” is to be construed in accordance with sections 44 and 47 of the 2009 Act,

“national marine plan” has the meaning given in section 5 (and any reference to a national marine plan includes a reference to it as amended),

“regional marine plan” has the meaning given in section 5 (and any reference to a regional marine plan includes a reference to it as amended).