

2010 No. 2870

CONSTITUTIONAL LAW
DEVOLUTION, SCOTLAND
MARINE MANAGEMENT
NATURE CONSERVATION

**The Marine (Scotland) Act 2010 (Consequential Provisions)
Order 2010**

<i>Made</i> - - - -	<i>1st December 2010</i>
<i>Laid before Parliament</i>	<i>3rd December 2010</i>
<i>Coming into force</i> - -	<i>31st December 2010</i>

The Secretary of State makes the following Order in exercise of the powers conferred by sections 104, 112(1) and 113(2), (3), (5) and (7) of the Scotland Act 1998(a).

Citation and commencement

1. This Order may be cited as the Marine (Scotland) Act 2010 (Consequential Provisions) Order 2010 and comes into force on 31st December 2010.

Interpretation

2. In this Order—

- “the 2009 Act” means the Marine and Coastal Access Act 2009(b);
- “the 2010 Act” means the Marine (Scotland) Act 2010(c);
- “marine enforcement officer” has the meaning given by section 157(1) of the 2010 Act;
- “marine installation” has the meaning given by section 166(1) of the 2010 Act;
- “marine structure” has the meaning given by section 166(1) of the 2010 Act;
- “MPA” means a Nature Conservation MPA, a Demonstration and Research MPA or a Historic MPA, designated as such under section 67(1) of the 2010 Act;
- “public authority” has the meaning given by section 322(1) of the 2009 Act;

(a) 1998 c.46.
(b) 2009 c.23.
(c) 2010 asp 5.

“reserved functions” means functions relating to a matter which is a reserved matter by virtue of Schedule 5 to the Scotland Act 1998;

“UK marine area” has the meaning given by section 42 of the 2009 Act;

“UK offshore area” means so much of the UK marine area as lies outside the territorial sea;

“the United Kingdom” includes the territorial sea;

“vessel” includes—

- (a) any ship or boat or any other description of vessel used in navigation,
- (b) any hovercraft, submersible craft or other floating craft,
- (c) any aircraft,

but does not include anything that permanently rests on, or is permanently attached to, the seabed.

Marine planning

3.—(1) The Secretary of State may give a direction in relation to any national marine plan or regional marine plan adopted by the Scottish Ministers under paragraph 14 of schedule 1 to the 2010 Act provided the Secretary of State is satisfied that—

- (a) a marine policy statement is currently in effect for the Scottish marine area (within the meaning of section 6(3) of that Act);
- (b) the plan complies with section 6(1) of that Act; and
- (c) the plan states that it will apply to reserved functions only if a direction under this paragraph is given.

(2) The Secretary of State must publish a direction under paragraph (1) in a way calculated to bring the direction to the attention of persons likely to be interested in or affected by it.

(3) A direction under paragraph (1)—

- (a) may be withdrawn at any time; and
- (b) ceases to have effect if the plan to which it relates has been amended under section 8 of the 2010 Act.

(4) While any direction under paragraph (1) continues in effect—

- (a) section 15 of the 2010 Act applies to decisions made by public authorities in the exercise of reserved functions; and
- (b) any plan to which such a direction relates is an “appropriate marine plan” for the purposes of that section (as applied by sub-paragraph (a)).

Marine protected areas

4.—(1) The Secretary of State may give a direction in respect of any MPA.

(2) The Secretary of State must publish a direction under paragraph (1) in a way calculated to bring the direction to the attention of persons likely to be interested in or affected by it.

(3) A direction under paragraph (1)—

- (a) may be withdrawn at any time; and
- (b) ceases to have effect if the area in respect of which it is made ceases to be an MPA.

(4) While a direction under paragraph (1) continues in effect in respect of an MPA, sections 82, 83 and (as the case may be) 84 of the 2010 Act apply in relation to any function of a public authority which, but for the fact that it is a reserved function, would otherwise be subject to the section concerned.

(5) Where paragraph (4) applies, advice and guidance may be given to a public authority under sections 80 and 81 of the 2010 Act.

Advice on seal management

5. The Natural Environment Research Council is to provide the Scottish Ministers with scientific advice on matters related to the management of seal populations.

Enforcement of marine licensing

6.—(1) For the purposes of enforcing Part 4 of the 2010 Act, the powers conferred on a marine enforcement officer by section 131 of that Act may be exercised in accordance with paragraph (2) (as well as in accordance with subsection (2) of that section).

(2) These powers may be exercised—

- (a) in relation to any vessel or marine structure outside Scotland which was loaded in Scotland;
- (b) in any part of the United Kingdom other than Scotland, in relation to an offence which the marine enforcement officer reasonably believes has been committed—
 - (i) in Scotland; or
 - (ii) outside the UK marine area and in circumstances where a vessel or marine structure referred to in sub-paragraph (a) or (c) was involved in the commission of the offence;
- (c) in relation to any vessel or marine structure in the UK offshore area which has been pursued there in accordance with article 8.

(3) Nothing in this article affects any right of hot pursuit which a marine enforcement officer may have under international law.

Enforcement of marine protection and nature conservation legislation

7.—(1) For the purposes of enforcing the legislation specified in subsection (2) of section 132 of the 2010 Act, the powers conferred on a marine enforcement officer by that section may be exercised in accordance with paragraph (2) (as well as in accordance with subsection (3) of that section).

(2) Those powers may be exercised—

- (a) in any part of the United Kingdom other than Scotland, in relation to an offence which the marine enforcement officer reasonably believes has been committed in Scotland;
- (b) in relation to any vessel or marine installation in the UK offshore area which has been pursued there in accordance with article 8.

(3) Nothing in this article affects any right of hot pursuit which a marine enforcement officer may have under international law.

Pursuit of vessel, etc.

8.—(1) For the purposes of articles 6 and 7, a vessel, marine structure or marine installation is pursued in accordance with this article if—

- (a) immediately before the pursuit commences, the vessel, structure or installation is in Scotland;
- (b) before the pursuit commences, a signal is given for the vessel, structure or installation to stop; and
- (c) the pursuit of the vessel, structure or installation is not interrupted.

(2) The signal referred to in paragraph (1)(b) must be given in such a way as to be audible or visible from the vessel, structure or installation in question.

(3) For the purposes of paragraph (1)(c), pursuit is not interrupted by reason only of the fact that—

- (a) the method of carrying out the pursuit; or

(b) the identity of the vessel carrying out the pursuit;
changes during the course of the pursuit.

Application of sections 151 to 155 of the 2010 Act

9.—(1) The following sections of the 2010 Act apply in relation to a marine enforcement officer exercising powers in accordance with article 6(2) or 7(2) as those sections apply in relation to such an officer exercising powers conferred by Part 7 of that Act—

- (a) sections 151 to 154;
- (b) subject to paragraphs (2) and (3), section 155.

(2) Proceedings for an offence under subsection (1), (3), (4), (5) or (6) of section 155 (as applied by paragraph (1)) may be taken, and the offence may be treated as having been committed, in any part of the United Kingdom.

(3) The maximum fine that may be imposed under section 155(7)(a), (8) or (9) (as so applied) in relation to an offence is the amount specified as level 5 on the standard scale.

Entry to dwellings

10. Where a marine enforcement officer is exercising powers in accordance with article 6 or 7 and wishes to make application for a warrant to enter a dwelling, Schedule 17 to the 2009 Act (rather than schedule 3 to the 2010 Act) is to have effect in relation to that application.

Dover House, London
1st December 2010

David Mundell
Parliamentary Under Secretary of State,
Scotland Office

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision in consequence of the Marine (Scotland) Act 2010 (“the 2010 Act”).

The 2010 Act empowers the Scottish Ministers to adopt marine plans applicable to Scottish inshore waters and to designate marine protected areas in those waters. This Order allows the Secretary of State to give a direction in relation to a 2010 Act marine plan or marine protected area. If such a direction is given, the relevant 2010 Act provisions will, in relation to the plan or area in question, apply also to public authorities exercising functions which are reserved in terms of the Scotland Act 1998 (articles 3 and 4).

Article 5 requires the Natural Environment Research Council to provide the Scottish Ministers with advice on the management of seal populations.

The 2010 Act gives marine enforcement officers appointed by the Scottish Ministers powers of enforcement in Scotland (including in Scottish inshore waters). The powers relate to enforcement of the marine licensing regime in Part 4 of the 2010 Act and of the marine protection and nature conservation legislation specified in section 132 of that Act. This Order provides for those powers also to be exercisable outside of Scotland in certain circumstances (articles 6 to 10).

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