

# MARINE (SCOTLAND) ACT 2010

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## EXPLANATORY NOTES

### THE ACT

#### **Part 5 – Marine Protection and Enhancement: the Scottish Marine Protection Area**

#### **Marine conservation orders**

##### *Section 85 - Marine conservation orders*

135. **Section 85** enables Scottish Ministers to make marine conservation orders (MCOs) for the purpose of regulating activities so as to further the objectives or stated purposes of MPAs. Where the MPA overlaps with or adjoins a European marine site, the order can have effect on that site as well. Section 85(4)(a) provides that an MCO may disapply the defence found in section 97(1)(b) (which relates to the carrying out of public functions or authorisations from public authorities). Section 85(4)(c) provides for flexibility to apply orders in different ways to different parts of an MPA, and to different methods of carrying out an activity. This will enable orders to be focused on controlling particularly damaging methods, while avoiding capturing activities which pose less of a risk.

##### *Section 86 - Example provisions for marine conservation orders*

136. **Section 86** gives example provisions which MCOs can make in order to further the objectives or stated purposes of MPAs. Subsection (1) sets out examples of activities which can be prohibited, restricted or regulated within the area through the making of a conservation order. Section 86(2) provides an example whereby an MCO can be used to regulate the speed of vessels outside the area of the MPA where that movement may adversely affect the objectives or purposes of the MPA. The activities set out are primarily activities which are not controlled by other means (e.g. the new licensing regime). The activities set out in the example provisions may, if unregulated, threaten biodiversity and in certain circumstances marine historic assets. However, the extent of threat can vary on a site by site basis depending on a variety of factors. The powers in these subsections are therefore drafted relatively widely to allow the Scottish Ministers to control any of the activities they may need to, based on an analysis of the threat posed in each instance.

##### *Section 87 - Procedure for marine conservation orders*

137. **Section 87** sets out the procedure that the Scottish Ministers must follow when making a marine conservation order. This includes sending out a draft copy of the order to any persons Scottish Ministers believe are likely to be affected by or interested in the making of the order, placing the order in a place where they consider it to be most convenient for inspection by most persons affected by the order and providing a copy to any person who requests one (a fee not exceeding incurred expenses may be charged in this case by Ministers). Where the order would apply to an area any part of which is land, Ministers must also provide a copy of the draft to the planning authority in whose district the land

is situated. Here, “planning authority” and “district authority” have the same meaning as in section 1(1) of the Town and Country Planning (Scotland) Act 1997.

138. Scottish Ministers are also required to publish notice of their proposal to make an order. The notice must be published in such a manner as the Scottish Ministers consider most likely to bring the proposal to the attention of any persons who are likely to be affected by the making of it, it must state where the copy or copies of the draft order have been placed by the Scottish Ministers and state the time within which representations about the draft order must be made to the Scottish Ministers. In placing copies of the notice, they must be placed in a place or places where Scottish Ministers consider them most likely or most convenient for the purpose of inspection by persons most likely to be affected by the making of the order.

### ***Section 88 - Urgent orders***

139. Where the Scottish Ministers consider there is an urgent need to protect an area (i.e. where delay in making an order could result in harm to the features, the marine historic asset, or the stated purpose of the area), section 88 allows the Scottish Ministers to follow an expedited process, without the need to publicise in advance that the order is to be made. The order will still be made as a statutory instrument and it will be a requirement on Scottish Ministers to publish notice of an MCO once it has been made. Section 88 provides for urgent marine conservation orders to remain in force for a limited period which may not exceed 12 months except if extended under subsection (6) for an additional 12 months maximum duration. An urgent continuation order under subsection (6) can be made only if Scottish Ministers intend to make a permanent marine conservation order in respect of the site to which the urgent MCO applies and they have published their proposals to make such an order.

### ***Section 89 - Publicity in relation to marine conservation orders and urgent continuation orders***

140. **Section 89** lays out the duties on Scottish Ministers to adequately publicise marine conservation orders, orders amending or revoking MCOs and urgent continuation orders. Ministers should send a copy to any persons they consider likely to be interested in or affected by the order, and make a copy of the order available for inspection at one of their offices at all reasonable hours. Ministers must provide a copy of the order to anyone who requests one but in doing so may charge a fee (not exceeding expenses).

### ***Section 90 - Representations and hearings in relation to proposed marine conservation orders etc.***

141. **Section 90** makes provision for Scottish Ministers to give any person the opportunity to make written or oral representations before an MCO is put in place and to make regulations providing for the procedure to be followed.

### ***Section 91 - Duty to assess impact of prohibition or restriction***

142. **Section 91** applies where an activity is restricted or prohibited under an MCO. Where the MCO is for the purpose of furthering the objectives of a Nature Conservation MPA or a stated purpose of a Demonstration and Research MPA, or for protecting a European marine site, Ministers must assess various things.
143. Ministers must assess the impact or potential impact of the restriction or prohibition within the area protected by the MCO, and where the restriction or prohibition will cause displacement activity to another part of the Scottish marine area, the impact or potential impact of that displacement.
144. The assessment must include an assessment of the extent to which the restriction or prohibition of the activity has had and may have an impact on economic interests, social

*These notes relate to the Marine (Scotland) Act 2010  
(asp 5) which received Royal Assent on 10 March 2010*

interests, the environment within the protected area, and the environment elsewhere in the Scottish marine area as a result of the activity being displaced.

145. Where following an assessment the Scottish Ministers identify an adverse impact, they must take such steps as they consider are reasonable to minimise the impact as far as is practicable.
146. [Section 91](#) does not apply to urgent MCOs made under section 88.