



Marine (Scotland) Act 2010

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PART 5

MARINE PROTECTION AND ENHANCEMENT: THE SCOTTISH MARINE PROTECTION AREA

General duties of public authorities

82 Duties of public authorities in relation to marine protected areas etc.

- (1) Where a public authority has any function the exercise of which is capable of affecting (other than insignificantly)—
 - (a) any protected feature of a Nature Conservation MPA,
 - (b) a stated purpose for a Demonstration and Research MPA,
 - (c) a marine historic asset in a Historic MPA,
 - (d) any ecological or geomorphological process on which the conservation of any protected feature in a Nature Conservation MPA, or on which a stated purpose for a Demonstration and Research MPA, is (wholly or in part) dependent,the authority must comply with the requirements imposed by this section.
- (2) The authority must (so far as is consistent with the proper exercise of its functions)—
 - (a) exercise its functions in the manner which it considers best furthers (as the case may be)—
 - (i) the stated conservation objectives for the Nature Conservation MPA,
 - (ii) the stated purpose for the Demonstration and Research MPA,
 - (iii) the stated preservation objectives for the Historic MPA,
 - (b) where it is not possible to exercise its functions in a manner which furthers the objectives or (as the case may be) the purpose, exercise them in the manner which the authority considers least hinders the achievement of the objectives or (as the case may be) the purpose.
- (3) If the authority considers that any of its functions is such that the exercise of the function would or might significantly hinder the achievement of the relevant objectives or (as the case may be) purpose, it must inform the Scottish Ministers and (if appropriate) Scottish Natural Heritage of that fact.

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- (4) Subject to subsection (6), subsection (5) applies in any case where a public authority intends to do an act which is capable of affecting (other than insignificantly) any feature, purpose, asset or process mentioned in paragraphs (a) to (d) of subsection (1).
- (5) If the authority believes that there is or may be a significant risk of the act hindering the achievement of the objectives or purpose mentioned in subsection (2)(a), the authority must notify the Scottish Ministers and (if appropriate) Scottish Natural Heritage of that fact.
- (6) Subsection (5) does not apply where—
 - (a) in relation to acts of a particular description—
 - (i) Scottish Natural Heritage has given advice or guidance to the authority under section 80,
 - (ii) the Scottish Ministers have given advice or guidance to the authority under section 81,
 - (b) the act which the authority intends to do is an act of that description, and
 - (c) the advice or guidance has not ceased to apply.
- (7) Where the authority has given notification under subsection (5), it must wait until the expiry of 28 days beginning with the date that the Scottish Ministers and (if appropriate) Scottish Natural Heritage are notified (and if such notification is given on different dates, the later of those dates) before deciding whether to do the act.
- (8) Subsection (7) does not apply where—
 - (a) the Scottish Ministers notify the authority that it need not wait until the end of the period referred to in that subsection, or
 - (b) the authority thinks that there is an urgent need to act.
- (9) Where a public authority has any function, the exercise of which is capable of affecting (other than insignificantly) any protected feature of a Nature Conservation MPA, it must (so far as is consistent with the proper exercise of its functions) exercise its functions in the way best calculated by it to further the contribution of the Nature Conservation MPA in question to a network of conservation sites (namely a network referred to in section 79(2)).
- (10) If a public authority considers that there has been any act or omission falling within subsection (11), it must inform the Scottish Ministers and (if appropriate) Scottish Natural Heritage of that fact.
- (11) The act or omission is one—
 - (a) in relation to which the public authority exercises functions,
 - (b) which the authority believes to be an offence, and
 - (c) which the authority considers will or may significantly hinder the achievement of (as the case may be)—
 - (i) the stated conservation objectives for a Nature Conservation MPA,
 - (ii) a stated purpose for a Demonstration and Research MPA,
 - (iii) the stated preservation objectives for a Historic MPA.
- (12) In carrying out its duties under this section, a public authority must have regard to any advice or guidance given by Scottish Natural Heritage under section 80 or by the Scottish Ministers under section 81.

- (13) For the purposes of subsections (3), (5) and (10) it is appropriate to inform Scottish Natural Heritage where the exercise of the public authority's functions or the act or omission in question relates to a Nature Conservation MPA or a Demonstration and Research MPA.

83 Duties of public authorities in relation to certain decisions

- (1) This section applies where—
- (a) a public authority has the function of determining an application (whenever made) for authorisation of the doing of any act, and
 - (b) the act is capable of affecting (other than insignificantly)—
 - (i) a protected feature in a Nature Conservation MPA,
 - (ii) a stated purpose for a Demonstration and Research MPA,
 - (iii) a marine historic asset in a Historic MPA,
 - (iv) any ecological or geomorphological process on which the conservation of any protected feature in a Nature Conservation MPA, or on which the stated purpose for a Demonstration and Research MPA, is (wholly or in part) dependent.
- (2) The public authority must notify the Scottish Ministers and (if appropriate) Scottish Natural Heritage if it believes that there is or may be a significant risk of the act hindering the achievement of (as the case may be)—
- (a) the stated conservation objectives for the Nature Conservation MPA,
 - (b) the stated purpose for the Demonstration and Research MPA,
 - (c) the stated preservation objectives for the Historic MPA.
- (3) Where the authority has given notification under subsection (2), it must wait until the expiry of the period of 28 days beginning with the date of the notification before deciding whether to grant authorisation for the doing of the act, unless either—
- (a) the Scottish Ministers notify the authority that it need not wait until the end of that period, or
 - (b) the authority thinks there is an urgent need to grant authorisation for the doing of the act.
- (4) The authority must not grant authorisation for the doing of the act unless either—
- (a) the person applying for the authorisation satisfies the authority that there is no significant risk of the act hindering the achievement of (as the case may be)—
 - (i) the stated conservation objectives for the Nature Conservation MPA,
 - (ii) the stated purpose for the Demonstration and Research MPA,
 - (iii) the stated preservation objectives for the Historic MPA,
 - (b) that person is not able to satisfy the authority as mentioned in paragraph (a) but—
 - (i) satisfies it that there is no other means of proceeding with the act which would create a substantially lower risk of hindering the achievement of those objectives or (as the case may be) that purpose,
 - (ii) satisfies it that the benefit to the public of proceeding with the act clearly outweighs the risk of damage to the environment (or the marine historic asset) that will be created by proceeding with it, and
 - (iii) in relation to a Nature Conservation MPA or a Demonstration and Research MPA, satisfies it and the Scottish Ministers that the

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person will undertake, or make arrangements for the undertaking of, measures of equivalent environmental benefit to the damage which the act will or is likely to have in or on the marine protected area concerned.

- (5) The reference in subsection (4)(b)(i) to other means of proceeding with an act includes a reference to proceeding with it—
- (a) in another manner, or
 - (b) at another location.
- (6) In a case which relates to a Nature Conservation MPA or a Demonstration and Research MPA and which falls within paragraph (b) of subsection (4) the authority must—
- (a) if it has power to grant the authorisation subject to conditions, exercise that power so as to make it a condition of the authorisation that the measures mentioned in sub-paragraph (iii) of that paragraph are undertaken,
 - (b) notify the Scottish Ministers that it proposes to grant the authorisation and of the conditions subject to which it proposes to grant it,
 - (c) wait until the expiry of the period of 28 days beginning with the date of the notification before so granting the authorisation, unless the Scottish Ministers notify the authority that it need not wait until the end of that period.
- (7) In a case which relates to a Historic MPA and which falls within paragraph (b) of subsection (4) the authority must—
- (a) if it has power to grant the authorisation subject to conditions, exercise that power so as to make it a condition of the authorisation that before the act in question is commenced, a detailed archaeological investigation of the area is carried out,
 - (b) notify the Scottish Ministers that it proposes to grant the authorisation and of the conditions subject to which it proposes to grant it,
 - (c) wait until the expiry of the period of 28 days beginning with the date of the notification before so granting the authorisation, unless the Scottish Ministers notify the authority that it need not wait until the end of that period.
- (8) In carrying out its duties under this section, a public authority must have regard to any advice or guidance given by Scottish Natural Heritage under section 80 or by the Scottish Ministers under section 81.
- (9) For the purpose of subsection (2), it is appropriate to inform Scottish Natural Heritage where the act in question relates to a Nature Conservation MPA or a Demonstration and Research MPA.
- (10) In this section—
- “act” includes omission,
 - “authorisation” means any approval, confirmation, consent, licence, permission or other authorisation (however described), whether special or general,
 - “damage” includes the prevention of an improvement.

84 Failure to comply with duties

- (1) In relation to a Nature Conservation MPA or a Demonstration and Research MPA if, in the opinion of Scottish Natural Heritage, a public authority has failed—

- (a) to act in accordance with advice or guidance given by Scottish Natural Heritage under section 80,
 - (b) to comply with any of its duties under section 82(2) or 83(3) or (4),Scottish Natural Heritage may request from the authority an explanation in writing for the failure.
- (2) Scottish Natural Heritage must send a copy of a request by it under subsection (1) to the Scottish Ministers.
- (3) On receiving a request under this subsection (1), the public authority must—
 - (a) provide Scottish Natural Heritage with the requested explanation for the failure,
 - (b) send a copy of the explanation to the Scottish Ministers.
- (4) If, in the opinion of the Scottish Ministers, a public authority has failed to act in accordance with advice or guidance given by them under section 81, they may request from the authority an explanation in writing of the failure, and the authority must provide them with it.
- (5) In relation to a Historic MPA if, in the opinion of the Scottish Ministers, a public authority has failed to comply with any of its duties under section 82(2) or 83(3) or (4), the Ministers may request from the authority an explanation in writing for the failure, and the authority must provide them with it.