



2013 CHAPTER 10

Part 3

Marine protection

Duties of public authorities

General duties of public authorities in relation to MCZs

22.—(1) This section applies to any public authority having any function the exercise of which is capable of affecting (other than insignificantly)—

- (a) the protected features of an MCZ;
- (b) any ecological or geomorphological process on which the conservation of any protected feature of an MCZ is (wholly or in part) dependent.

(2) Every public authority to which this section applies must (so far as is consistent with their proper exercise)—

- (a) exercise its functions in the manner which the authority considers best furthers the conservation objectives stated for the MCZ;
- (b) where it is not possible to exercise its functions in a manner which furthers those objectives, exercise them in the manner which the authority considers least hinders the achievement of those objectives.

(3) If a public authority (other than the Department) considers that any of its functions is such that the exercise of the function would or might significantly hinder the achievement of the conservation objectives stated for the MCZ, it must inform the Department of that fact.

(4) Subject to subsection (6), subsection (5) applies in any case where a public authority (other than the Department) intends to do an act which is capable of affecting (other than insignificantly)—

- (a) the protected features of an MCZ;
- (b) any ecological or geomorphological process on which the conservation of any protected feature of an MCZ is (wholly or in part) dependent.

(5) If the authority believes that there is or may be a significant risk of the act hindering the achievement of the conservation objectives stated for the MCZ, the authority must notify the Department of that fact.

(6) Subsection (5) does not apply where—

- (a) the Department has given the authority advice or guidance under section 24 in relation to acts of a particular description,
- (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 the period of 28 days beginning with the date of the notification before deciding whether to do the act.

(8) Subsection (7) does not apply where—

- (a) the Department notifies 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 do the act.

(9) If a public authority (other than the Department) considers that a relevant event has occurred, it must inform the Department of that fact.

(10) A “relevant event” is any act—

- (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 the conservation objectives for an MCZ.

(11) In carrying out its duties under this section a public authority must have regard to any advice or guidance given by the Department under section 24.

Duties of public authorities in relation to certain decisions

23.—(1) This section applies where—

- (a) a public authority (other than the Department) has the function of determining an application (whenever made) for authorisation of the doing of an act, and
- (b) the act is capable of affecting (other than insignificantly)—
 - (i) the protected features of an MCZ;

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(ii) any ecological or geomorphological process on which the conservation of any protected feature of an MCZ is (wholly or in part) dependent.

(2) If the authority believes that there is or may be a significant risk of the act hindering the achievement of the conservation objectives stated for the MCZ, the authority must notify the Department of that fact.

(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.

(4) Subsection (3) does not apply where—

- (a) the Department notifies 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 grant authorisation for the doing of the act.

(5) The authority must not grant authorisation for the doing of the act unless the condition in subsection (6) or the condition in subsection (7) is met.

(6) The condition in this subsection is that the person seeking the authorisation satisfies the authority that there is no significant risk of the act hindering the achievement of the conservation objectives stated for the MCZ.

(7) The condition in this subsection is that, although the person seeking the authorisation is not able to satisfy the authority as mentioned in subsection (6), that person satisfies the authority that—

- (a) there is no other means of proceeding with the act which would create a substantially lower risk of hindering the achievement of conservation objectives stated for the MCZ,
- (b) the benefit to the public of proceeding with the act clearly outweighs the risk of damage to the environment that will be created by proceeding with it, and
- (c) the person seeking the authorisation 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 MCZ.

(8) The reference in subsection (7)(a) to other means of proceeding with an act includes a reference to proceeding with it—

- (a) in another manner, or
- (b) at another location.

(9) In a case falling within subsection (7), the authority must, 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 subsection (7) (c) are undertaken.

(10) In carrying out its duties under this section a public authority must have regard to any advice or guidance given by the Department under section 24.

(11) In this section—

“authorisation” means any approval, confirmation, consent, licence, permission or other authorisation (however described), whether special or general;

“damage” includes the prevention of an improvement.

Advice and guidance by the Department

24.—(1) The Department may give advice and guidance as to—

- (a) the matters which are capable of damaging or otherwise affecting any protected feature or features of an MCZ;
- (b) the matters which are capable of affecting any ecological or geomorphological process on which the conservation of any protected feature or features is (wholly or in part) dependent;
- (c) how any conservation objectives stated for an MCZ may be furthered, or how the achievement of any such objectives may be hindered;
- (d) how the effect of any activity or activities on any MCZ, or such zones generally, may be mitigated;
- (e) which activities are, or are not, of equivalent environmental benefit (for the purposes of section 23(7)(c)) to any particular damage to the environment (within the meaning of that provision).

(2) Advice or guidance may be given—

- (a) either in relation to a particular MCZ or such zones generally;
- (b) either to a particular public authority or public authorities generally.

(3) The Department must give advice to any other public authority if the authority requests it.

Failure to comply with duties, etc.

25.—(1) This section applies if, in the opinion of the Department, any other public authority has failed—

- (a) to comply with the duty imposed by section 22(2) or the duty imposed by section 23(5);
- (b) to act in accordance with advice or guidance given by the Department under section 24.

(2) Where this section applies—

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- (a) the Department must request from the public authority an explanation for the failure; and
- (b) the public authority must provide the Department with such an explanation in writing within the period of 28 days from the date of the request under paragraph (a) or such longer period as the Department may allow.