

# MARINE (SCOTLAND) ACT 2010

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## EXPLANATORY NOTES

### THE ACT

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

#### **General duties of public authorities**

#### *Section 83 - Duties of public authorities in relation to certain decisions*

133. **Section 83** applies to public authorities where they have the function of determining applications for any act, where that act is capable of affecting an MPA (other than insignificantly) or natural processes upon which it is dependent. Where the public authority believes that there is a significant risk of the act hindering the objectives or purpose of an MPA, it must notify Scottish Ministers and SNH. The public authority must then wait for 28 days before deciding whether to grant authorisation unless Scottish Ministers notify the authority that it need not wait until the end of the period or the authority thinks there is an urgent need to grant authorisation for the act. The authority must not grant authorisation for the act unless the applicant satisfies the authority that that there is no significant risk of the act hindering the achievement of the objective or stated purpose of the MPA. Alternatively, the applicant can satisfy the authority that there is no other means of proceeding which would substantially lower risk of hindering the MPA objectives or purposes and that the benefit to the public clearly outweighs the risk of damage to the environment that will be created by the act. Where the applicant is not able to satisfy the authority that there is not a significant risk of the act hindering the achievement of the stated objectives for a MPA, if the authorising authority has the power to grant authorisation subject to conditions it must exercise its power so as to require the applicant to satisfy the authority and Scottish Ministers that it will undertake measures of equivalent environmental benefit to the damage which the act will or is likely to have in or on the MPA concerned. The authority must notify the Scottish Ministers that it proposes to grant the authorisation and of the conditions subject to which it proposes to grant it, and must wait 28 days before granting the authorisation, unless Scottish Ministers notify the authority that it need not wait until the expiry of the 28 day period. In the case where the person applying for the authorisation is not able to satisfy the authority that there is no significant risk of the act hindering the achievement of the stated preservation objectives of a Historic MPA, if the authorising authority has the power to grant authorisation subject to conditions it must exercise its 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. In carrying out its duties under this section a public authority must have regard to any advice given by SNH or Scottish Ministers under sections 80 and 81.