

MARINE (SCOTLAND) ACT 2010

EXPLANATORY NOTES

THE ACT

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

General duties of public authorities

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

129. **Section 82** requires public authorities to exercise their functions (so far as is consistent with the proper exercise of these functions) in a manner which best furthers or least hinders the stated objectives or purposes of individual MPAs. The public authority must also exercise those functions in the manner best calculated to further the contribution of a Nature Conservation MPA to a network of conservation sites as specified in section 79.
130. Where a public authority believes 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 purpose of the MPA, it must inform Scottish Ministers and (if appropriate) SNH of that fact.
131. If a public authority intends to do an act and it believes there is or may be a significant risk of the act hindering the achievement of the objectives or purpose in subsection (2) (a) (furthering the stated objectives or purpose of an MPA), it must notify Scottish Ministers and if appropriate SNH. The authority must wait 28 days from notifying Scottish Ministers or SNH before deciding whether to act or not, unless the Scottish Ministers have stated they need not wait or if the authority deems that there is an urgent need to act. Authorities need not notify Scottish Ministers or SNH in such instances if guidance has already been provided by the Scottish Ministers or SNH, and that the guidance has not ceased to apply. This section also requires that if an authority considers there has been an act or omission in relation to the exercise of its duties which is an offence and which it believes will or may significantly hinder the achievement of the objective or purpose of an MPA, it must inform Scottish Ministers and (if appropriate) SNH. 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.
132. Where a public authority has any function, the exercise of which is capable of significantly affecting 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. The network of conservation sites refers to the network referred to in section 79(2).

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.

Section 84 - Failure to comply with duties

134. **Section 84** provides powers for SNH, where it believes that a public authority has failed to follow the advice of SNH or to comply with its duties in relation to MPAs, to require the authority to supply an explanation in writing for the failure. SNH must send a copy of the request to Scottish Ministers. On receiving a request under this section the public authority must provide SNH with an explanation and send a copy to the Scottish Ministers. Where Scottish Ministers believe that a public authority has failed to act in accordance with advice or guidance issued by them under section 81, they may also request an explanation in writing from the authority and the authority must provide it. Where in relation to a Historic MPA Scottish Ministers believe a public authority has failed to comply with any of its duties relating to MPAs in the exercise of its functions, they may seek an explanation from the authority in writing and the authority must provide it.