



# Marine (Scotland) Act 2010

## 2010 asp 5

### PART 5

#### MARINE PROTECTION AND ENHANCEMENT: THE SCOTTISH MARINE PROTECTION AREA

##### *The Scottish marine protection area*

#### **65 The Scottish marine protection area**

- (1) For the purposes of this Act, the “Scottish marine protection area” means the Scottish marine area, excluding any waters upstream of the fresh-water limit of estuarial waters.
- (2) In this Part, “estuarial waters” means any waters within the limits of transitional waters, within the meaning of Directive [2000/60/EC](#) of the European Parliament and of the Council establishing a framework for Community action in the field of water policy (as amended from time to time).

#### **66 “Sea” for the purposes of this Part**

For the purposes of this Part, “sea” has the meaning given in section 2, except that it does not include any waters upstream of the fresh-water limit of estuarial waters.

##### *Designation of marine protected areas*

#### **67 Marine protected areas**

- (1) The Scottish Ministers may by order (a “designation order”) designate any area of the Scottish marine protection area as—
  - (a) a nature conservation marine protected area (a “Nature Conservation MPA”),
  - (b) a demonstration and research marine protected area (a “Demonstration and Research MPA”),
  - (c) a historic marine protected area (a “Historic MPA”).
- (2) The reference in subsection (1) to any area of the Scottish marine protection area includes a reference to any island in that area of sea, whether or not any part of the island lies above mean high water spring tide. (See sections 68 to 73 for additional

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requirements relating to designating, and additional areas that may be included in, these marine protected areas).

**Commencement Information**

**II** S. 67 in force at 1.7.2010 by S.S.I. 2010/230, art. 2(b)

*Nature Conservation MPAs*

**68 Nature Conservation MPAs: additional requirements relating to designation**

- (1) An area may be designated by a designation order as a Nature Conservation MPA if the Scottish Ministers consider it desirable to do so for any of the following purposes—
  - (a) conserving marine flora or fauna,
  - (b) conserving—
    - (i) marine habitats or types of such habitat,
    - (ii) features of geological or geomorphological interest.
- (2) The Scottish Ministers must—
  - (a) prepare and publish guidance setting out scientific criteria to inform consideration of whether an area should be designated a Nature Conservation MPA, and
  - (b) have regard to such guidance in exercising their functions under section 67.
- (3) The designation order must state—
  - (a) the protected feature or features in,
  - (b) the conservation objectives for,
 the Nature Conservation MPA.
- (4) Before designating an area as a Nature Conservation MPA, the Scottish Ministers must have regard to the extent to which the designation of the area would contribute towards the development of a network of conservation sites (namely a network referred to in section 79(2)).
- (5) For the purposes of subsection (1)(a), conserving marine flora or fauna includes (in particular) conserving any species that is rare or threatened because of—
  - (a) the limited number of individuals of that species,
  - (b) the limited number of locations in which that species is present.
- (6) For the purposes of subsection (1)(a) and (b)(i), conserving marine flora or fauna, or (as the case may be) marine habitat or types of such habitat includes conserving the diversity of such flora or fauna or (as the case may be) such habitats or types of such habitats, whether or not any or all of them are rare or threatened.
- (7) In considering whether to designate an area, the Scottish Ministers may have regard to the extent to which doing so will contribute to the mitigation of climate change.
- (8) In considering whether it is desirable to designate an area as a Nature Conservation MPA, the Scottish Ministers may have regard to any social or economic consequences of designation.

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- (9) In considering whether to designate an area, the Scottish Ministers may have regard in particular to the views of any relevant delegate as to the desirability of conserving—
- (a) marine flora or fauna,
  - (b) marine habitats or types of such habitat,
  - (c) features of geological or geomorphological interest,
- in the area.
- (10) In considering whether to designate a Nature Conservation MPA for a purpose referred to in subsection (1)(b), the matters to which the Scottish Ministers may have regard include the degree to which a marine habitat or type of such habitat or (as the case may be) a feature of geological or geomorphological interest is representative of its type.
- (11) For the purposes of—
- (a) this section, conserving a thing includes—
    - (i) assisting in its conservation,
    - (ii) enabling or facilitating its recovery or increase,
  - (b) subsection (9), a “relevant delegate” means any delegate designated in a direction under section 12(1)(b) to exercise functions in relation to a regional marine plan for the Scottish marine region in which any part of the proposed Nature Conservation MPA lies.

#### Commencement Information

**I2** S. 68 in force at 1.7.2010 by S.S.I. 2010/230, art. 2(b)

## 69 Nature Conservation MPAs: further provision

- (1) A designation order designating an area as a Nature Conservation MPA—
- (a) must identify the area's boundaries,
  - (b) may provide for a boundary to be determined by, or by reference to, mean high water spring tide.
- (2) A Nature Conservation MPA may include (in addition to an area of sea referred to in section 67(1)) an area of seashore lying above mean high water spring tide if—
- (a) the area of seashore adjoins the area of sea, and
  - (b) any of the conditions in subsection (3) is satisfied.
- (3) The conditions are that—
- (a) the protected feature or features leading to the designation of the area of sea is or are also present in the area of seashore,
  - (b) the area of sea is designated for the purpose of conserving marine flora or fauna which are dependent (wholly or in part) on anything which takes place in, or is present in, the area of seashore,
  - (c) without the inclusion of the area of seashore, the identification of the boundary of the Nature Conservation MPA (either in the order designating the MPA or on the ground for the purposes of exercising functions in relation to it) would be impossible or impracticable.

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*Changes to legislation: There are currently no known outstanding effects for the Marine (Scotland) Act 2010, Part 5. (See end of Document for details)*

**Commencement Information**

**I3** S. 69 in force at 1.7.2010 by S.S.I. 2010/230, art. 2(b)

**70 Nature Conservation MPAs: assessment of achievement of stated objectives**

The Scottish Ministers must assess from time to time the extent to which in their opinion the stated conservation objectives of any Nature Conservation MPA have been achieved (see also section 103, in particular subsections (1) and (3)(d)).

**Commencement Information**

**I4** S. 70 in force at 1.7.2010 by S.S.I. 2010/230, art. 2(b)

*Demonstration and Research MPAs*

**71 Demonstration and Research MPAs: additional requirements relating to designation**

- (1) An area may be designated by a designation order as a Demonstration and Research MPA if the Scottish Ministers consider it desirable to do so for any of the following purposes—
  - (a) demonstration of sustainable methods of marine management or exploitation,
  - (b) research into such matters.
- (2) The order must state—
  - (a) whether it is for the purpose of demonstration or research, or both,
  - (b) the method or methods of marine management or exploitation to be demonstrated or researched.
- (3) In considering whether to designate an area, the Scottish Ministers may—
  - (a) have regard in particular to the views of any relevant delegate as to the desirability of demonstrating or researching sustainable methods of marine management or exploitation in the area,
  - (b) have regard to any social or economic consequences of designation.
- (4) For the purposes of subsection (3)(a), a “relevant delegate” means any delegate designated in a direction under section 12(1)(b) to exercise functions in relation to a regional marine plan for the Scottish marine region in which any part of the proposed Demonstration and Research MPA lies.

**Commencement Information**

**I5** S. 71 in force at 1.7.2010 by S.S.I. 2010/230, art. 2(b)

**72 Demonstration and Research MPAs: further provision**

- (1) A designation order designating an area as a Demonstration and Research MPA—
  - (a) must identify the area's boundaries,

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- (b) may provide for a boundary to be determined by, or by reference to, mean high water spring tide.
- (2) A Demonstration and Research MPA may include (in addition to an area of sea referred to in section 67(1)) an area of seashore lying above mean high water spring tide if—
- (a) the area of seashore adjoins the area of sea, and
  - (b) the inclusion of the area of seashore is necessary to further or support the purpose for which the area of sea is designated.

#### Commencement Information

**I6** S. 72 in force at 1.7.2010 by S.S.I. 2010/230, art. 2(b)

### *Historic MPAs*

#### **73 Historic MPAs: additional requirements etc.**

- (1) An area may be designated by a designation order as a Historic MPA if the Scottish Ministers consider it desirable to do so for the purpose of preserving a marine historic asset of national importance which is, or which they are satisfied may be, located in the area.
- (2) The order must—
- (a) specify any marine historic asset located, or which the Scottish Ministers are satisfied may be located, within the area,
  - (b) state the preservation objectives for the asset and the area,
  - (c) identify the area's boundaries.
- (3) For the purpose of subsection (2)(c), an order may provide for the boundary to be determined by, or by reference to, mean high water spring tide.
- (4) A Historic MPA may include (in addition to an area of sea referred to in section 67(1)) an area of seashore lying above mean high water spring tide if the area of seashore adjoins the area of sea.
- (5) For the purposes of this Part, a marine historic asset is any of the following—
- (a) a vessel, vehicle or aircraft (or a part of a vessel, vehicle or aircraft),
  - (b) the remains of a vessel, vehicle or aircraft (or a part of such remains),
  - (c) an object contained in, or formerly contained in, a vessel, vehicle or aircraft,
  - (d) a building or other structure (or a part of a building or structure),
  - (e) a cave or excavation,
  - (f) a deposit or artefact (whether or not formerly part of a cargo of a ship) or any other thing which evidences, or groups of things which evidence, previous human activity.

#### Commencement Information

**I7** S. 73 in force at 1.7.2010 by S.S.I. 2010/230, art. 2(b)

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### *Amendment or revocation of designation orders*

#### **74 Amendment or revocation of designation orders**

A designation order may be amended or revoked by a further such order.

##### **Commencement Information**

**18** [S. 74](#) in force at 1.7.2010 by [S.S.I. 2010/230](#), [art. 2\(b\)](#)

*Consultation, urgent designation, representations etc.*

#### **75 Publicity and consultation etc. before designation**

- (1) Before making a designation order (or an order amending or revoking any such order), the Scottish Ministers must (except where section 77 provides otherwise)—
  - (a) publish notice of their proposal to make the order,
  - (b) consult such persons as they consider are likely to be interested in or affected by the making of the order—
    - (i) including, in particular, any local authority whose area is adjacent to the likely boundaries of the area proposed to be designated,
    - (ii) including those specified by virtue of section 27(4)(a).
- (2) Notice under subsection (1)(a) must—
  - (a) be published in such manner as the Scottish Ministers consider is most likely to bring the proposal to the attention of any persons likely to be affected by the making of the order,
  - (b) contain a statement of the terms of the proposed order,
  - (c) indicate where a plan or chart identifying the area's boundaries can be obtained or inspected.

##### **Commencement Information**

**19** [S. 75](#) in force at 1.7.2010 by [S.S.I. 2010/230](#), [art. 2\(b\)](#)

#### **76 Publicity in relation to designation orders**

- (1) This section applies where the Scottish Ministers have made a designation order (or an order amending or revoking any such order).
- (2) The Scottish Ministers must publish notice of the making of the order.
- (3) The notice under subsection (2) must—
  - (a) be published in such a manner as the Scottish Ministers consider is most likely to bring the order to the attention of any persons likely to be affected by the making of it,
  - (b) give an address at which a copy of the order may be inspected.
- (4) The Scottish Ministers must—

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- (a) make a copy of the order available for inspection at the address specified under subsection (3)(b) at all reasonable hours,
  - (b) provide a copy of the order to any person who requests one.
- (5) The Scottish Ministers may charge a fee, not exceeding their expenses, for providing a copy under subsection (4)(b).

**Commencement Information**

**I10** S. 76 in force at 1.7.2010 by S.S.I. 2010/230, art. 2(b)

**77 Urgent designation**

- (1) In any case where the Scottish Ministers consider there is an urgent need to protect the area proposed to be designated or (as the case may be) to protect a marine historic asset within the area (and so an urgent need to make a designation order)—
- (a) they need not publish notice of their proposals under section 75(1)(a) or consult under section 75(1)(b),
  - (b) the order remains in force for such period, not exceeding 2 years, as is specified in it (but any order that specifies a period in excess of 6 months must be reviewed by the Scottish Ministers after 6 months has elapsed to assess whether it is still required).
- (2) Upon expiration of the order, the Scottish Ministers may not re-designate the area (or any part of it) without—
- (a) publishing notice of their proposals under section 75(1)(a),
  - (b) consulting under section 75(1)(b).

**Commencement Information**

**I11** S. 77 in force at 1.7.2010 by S.S.I. 2010/230, art. 2(b)

**78 Representations and hearing in relation to proposed designation order**

- (1) The Scottish Ministers may, before deciding whether to make a designation order (or an order amending or revoking any such order), give any person the opportunity of making oral or written representations to them or to any person appointed by them for that purpose at a hearing.
- (2) The Scottish Ministers may make regulations providing for the procedure to be followed (including decisions as to expenses) at any hearing held under subsection (1).

**Commencement Information**

**I12** S. 78 in force at 1.7.2010 by S.S.I. 2010/230, art. 2(b)

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*Changes to legislation: There are currently no known outstanding effects for the Marine (Scotland) Act 2010, Part 5. (See end of Document for details)*

### *Duties relating to network*

#### **79 Creation of network of conservation sites**

- (1) In order to contribute to the achievement of the objective in subsection (2), the Scottish Ministers must designate areas as Nature Conservation MPAs under section 67.
- (2) The objective is that the areas designated as Nature Conservation MPAs by the Scottish Ministers, taken together with any areas designated as marine conservation zones under section 116 of the 2009 Act and any relevant conservation sites in the UK marine area, form a network which satisfies the conditions in subsection (3).
- (3) The conditions are—
  - (a) that the network contributes to the conservation or improvement of the marine environment in the UK marine area,
  - (b) that the features which are protected by the sites comprised in the network represent the range of features present in the UK marine area,
  - (c) that the designation of sites comprised in the network reflects the fact that the conservation of a feature may require the designation of more than one site.
- (4) For the purposes of subsection (2), the following are “relevant conservation sites”—
  - (a) any European marine site,
  - (b) any European offshore marine site,
  - (c) the whole or part of any site of special scientific interest,
  - (d) the whole or part of any Ramsar site.
- (5) When complying with the duty imposed by subsection (1), the Scottish Ministers must have regard to any obligations under EU or international law that relate to the conservation or improvement of the marine environment.
- (6) Before the end of the period of 2 months beginning with the date on which this section comes into force, the Scottish Ministers must—
  - (a) prepare a statement setting out such principles relating to the achievement of the objective in subsection (2) as the Scottish Ministers intend to follow when complying with the duty imposed by subsection (1), and
  - (b) lay of copy of the statement before the Parliament.
- (7) A statement prepared by the Scottish Ministers under this section may also set out other matters relating to the achievement of that objective which they intend to take into account when complying with the duty imposed by subsection (1).
- (8) The Scottish Ministers must—
  - (a) keep under review any statement they have prepared under this section, and,
  - (b) if they consider it appropriate in consequence of a review, prepare a revised statement of the principles referred to in subsection (6)(a) and lay a copy of it before the Parliament.
- (9) In this section—
 

“European offshore marine site” means any site within the meaning of the Offshore Marine Conservation (Natural Habitats, &c) Regulations 2007 (S.I. 2007/1842),

“feature” means—

  - (a) marine flora or fauna,



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- (b) marine habitats or types of such habitat,
  - (c) features of geological or geomorphological interest,
- “Ramsar site” has the same meaning as in section 37A of the Wildlife and Countryside Act 1981 (c.69),
- “site of special scientific interest” includes a site within the meaning of Part 2 of the Wildlife and Countryside Act 1981.

**Modifications etc. (not altering text)**

- C1** S. 79(3)(a) modified by S.I. 1994/2716, reg. 3A(5) (as substituted (16.8.2012) by The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2012 (S.S.I. 2012/228), regs. 1(1), 4)

**Commencement Information**

- I13** S. 79 in force at 1.7.2010 by S.S.I. 2010/230, art. 2(b)

*Advice etc. as regards protection of certain marine areas*

**80 Advice etc. by Scottish Natural Heritage as regards Nature Conservation MPAs and Demonstration and Research MPAs**

- (1) Scottish Natural Heritage may give advice and guidance as to—
- (a) the matters which are capable of damaging or otherwise affecting any protected feature (or the protected features) of a Nature Conservation MPA or (as the case may be) a stated purpose for a Demonstration and Research MPA,
  - (b) the matters which are capable of affecting any ecological or geomorphological process on which the conservation of any such protected feature or features or (as the case may be) any such stated purpose is (wholly or in part) dependent,
  - (c) how any stated conservation objectives for a Nature Conservation MPA or any stated purpose for a Demonstration and Research MPA may be furthered, or how the achievement of any such objectives or purpose may be hindered,
  - (d) how the effect of any activity or activities on any Nature Conservation MPA, Demonstration and Research MPA or such marine protected areas generally may be mitigated,
  - (e) which activities are, or are not, of equivalent environmental benefit (for the purposes of section 83(4)(b)(iii) (public authorities authorising certain acts)) to any particular damage to the environment (within the meaning of that provision).
- (2) Advice or guidance as to any of the matters in paragraphs (a) to (e) of subsection (1) may be given—
- (a) in relation to—
    - (i) a particular Nature Conservation MPA or Demonstration and Research MPA,
    - (ii) each such category of marine protected area, or all such marine protected areas, generally,
  - (b) in relation to a particular public authority or public authorities generally.
- (3) Scottish Natural Heritage must give such advice to a public authority if the authority requests it.

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*Changes to legislation: There are currently no known outstanding effects for the Marine (Scotland) Act 2010, Part 5. (See end of Document for details)*

#### Commencement Information

**I14** S. 80 in force at 1.7.2010 by [S.S.I. 2010/230](#), [art. 2\(b\)](#)

### [<sup>F1</sup>80A Advice etc. by Historic Environment Scotland as regards Historic MPAs

- (1) Historic Environment Scotland may give advice and guidance as to—
  - (a) the matters which are capable of damaging or otherwise affecting any marine historic asset in a Historic MPA,
  - (b) how any stated preservation objectives for a Historic MPA may be furthered, or how the achievement of any such objectives may be hindered, and
  - (c) the assessment by a public authority of the matters in section 83(4)(b)(i) and (ii) including what factors the authority should take into account.
- (2) Advice or guidance as to any of the matters in paragraph (a) to (c) of subsection (1) may be given—
  - (a) in relation to—
    - (i) a particular Historic MPA,
    - (ii) all Historic MPAs generally,
  - (b) in relation to a particular public authority or public authorities generally.]

#### Textual Amendments

**F1** [S. 80A](#) inserted (1.10.2015) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [Sch. 4 para. 2](#) (with ss. 29, 30); [S.S.I. 2015/196](#), [art. 2](#), [Sch.](#)

### 81 Advice and guidance by the Scottish Ministers as regards MPAs

- (1) The Scottish Ministers may give advice and guidance as to—
  - (a) the matters in section 80(1)(a) to (e),
  - (b) the matters which are capable of damaging or otherwise affecting any marine historic asset in a Historic MPA,
  - (c) how any stated preservation objectives for a Historic MPA may be furthered, or how the achievement of any such objectives may be hindered,
  - (d) the assessment by a public authority of the matters in section 83(4)(b)(i) and (ii) including what factors the authority should take into account.
- (2) Advice or guidance as to any of the matters in paragraph (a) or (d) of subsection (1) may be given—
  - (a) in relation to—
    - (i) a particular Nature Conservation MPA, Demonstration and Research MPA or Historic MPA,
    - (ii) each such category of marine protected area, or all such marine protected areas, generally,
  - (b) in relation to a particular public authority or public authorities generally.

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### Commencement Information

**I15** S. 81 in force at 1.7.2010 by [S.S.I. 2010/230](#), [art. 2\(b\)](#)

## *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 [<sup>F2</sup>or Historic Environment Scotland] of that fact.
- (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 [<sup>F3</sup>or Historic Environment Scotland] 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,
    - [<sup>F4</sup>(ia) Historic Environment Scotland has given advice or guidance to the authority under section 80A,]

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- (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 [<sup>F5</sup>or Historic Environment Scotland] 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 [<sup>F6</sup>or Historic Environment Scotland] 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<sup>F7</sup>, by Historic Environment Scotland under section 80A] or by the Scottish Ministers under section 81.
- (13) For the purposes of subsections (3), (5) and (10)—
- [<sup>F8</sup>(a)] 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.
  - [<sup>F9</sup>(b)] it is appropriate to inform Historic Environment Scotland where the exercise of the public authority's functions or the act or omission in question relates to a Historic MPA.]

#### Textual Amendments

- F2** Words in s. 82(3) inserted (1.10.2015) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [Sch. 4 para. 3\(a\)](#) (with ss. 29, 30); S.S.I. 2015/196, art. 2, Sch.

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- F3** Words in s. 82(5) inserted (1.10.2015) by Historic Environment Scotland Act 2014 (asp 19), s. 31(2), **Sch. 4 para. 3(b)** (with ss. 29, 30); S.S.I. 2015/196, art. 2, Sch.
- F4** S. 82(6)(ia) inserted (1.10.2015) by Historic Environment Scotland Act 2014 (asp 19), s. 31(2), **Sch. 4 para. 3(c)** (with ss. 29, 30); S.S.I. 2015/196, art. 2, Sch.
- F5** Words in s. 82(7) inserted (1.10.2015) by Historic Environment Scotland Act 2014 (asp 19), s. 31(2), **Sch. 4 para. 3(d)** (with ss. 29, 30); S.S.I. 2015/196, art. 2, Sch.
- F6** Words in s. 82(10) inserted (1.10.2015) by Historic Environment Scotland Act 2014 (asp 19), s. 31(2), **Sch. 4 para. 3(e)** (with ss. 29, 30); S.S.I. 2015/196, art. 2, Sch.
- F7** Words in s. 82(12) inserted (1.10.2015) by Historic Environment Scotland Act 2014 (asp 19), s. 31(2), **Sch. 4 para. 3(f)** (with ss. 29, 30); S.S.I. 2015/196, art. 2, Sch.
- F8** Words in s. 82(13)(a) renumbered as s. 82(13)(a) (1.10.2015) by Historic Environment Scotland Act 2014 (asp 19), s. 31(2), **Sch. 4 para. 3(g)(i)** (with ss. 29, 30); S.S.I. 2015/196, art. 2, Sch.
- F9** S. 82(13)(b) inserted (1.10.2015) by Historic Environment Scotland Act 2014 (asp 19), s. 31(2), **Sch. 4 para. 3(g)(ii)** (with ss. 29, 30); S.S.I. 2015/196, art. 2, Sch.

**Modifications etc. (not altering text)**

- C2** S. 82 applied (31.12.2010) by The Marine (Scotland) Act 2010 (Consequential Provisions) Order 2010 (S.I. 2010/2870), arts. 1, **4(4)**

**Commencement Information**

- I16** S. 82 in force at 1.7.2010 by S.S.I. 2010/230, **art. 2(b)**

**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 [<sup>F10</sup>or Historic Environment Scotland] 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.

*Status: Point in time view as at 08/02/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Marine (Scotland) Act 2010, Part 5. (See end of Document for details)*

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- (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 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.

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*Changes to legislation: There are currently no known outstanding effects for the Marine (Scotland) Act 2010, Part 5. (See end of Document for details)*

- (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<sup>[F11]</sup>, by Historic Environment Scotland under section 80A] or by the Scottish Ministers under section 81.
- (9) For the purpose of subsection (2)—
- [<sup>F12</sup>(a)] 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,
- [<sup>F13</sup>(b)] it is appropriate to inform Historic Environment Scotland where the act relates to a Historic 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.

#### Textual Amendments

- F10** Words in s. 83(2) inserted (1.10.2015) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [Sch. 4 para. 4\(a\)](#) (with ss. 29, 30); S.S.I. 2015/196, art. 2, Sch.
- F11** Words in s. 83(8) inserted (1.10.2015) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [Sch. 4 para. 4\(b\)](#) (with ss. 29, 30); S.S.I. 2015/196, art. 2, Sch.
- F12** Words in s. 83(9)(a) renumbered as s. 83(9)(a) (1.10.2015) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [Sch. 4 para. 4\(c\)\(i\)](#) (with ss. 29, 30); S.S.I. 2015/196, art. 2, Sch.
- F13** S. 83(9)(b) inserted (1.10.2015) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [Sch. 4 para. 4\(c\)\(ii\)](#) (with ss. 29, 30); S.S.I. 2015/196, art. 2, Sch.

#### Modifications etc. (not altering text)

- C3** S. 83 applied (31.12.2010) by [The Marine \(Scotland\) Act 2010 \(Consequential Provisions\) Order 2010 \(S.I. 2010/2870\)](#), arts. 1, [4\(4\)](#)

#### Commencement Information

- I17** S. 83 in force at 1.7.2010 by [S.S.I. 2010/230](#), [art. 2\(b\)](#)

## 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,

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*Changes to legislation: There are currently no known outstanding effects for the Marine (Scotland) Act 2010, Part 5. (See end of Document for details)*

- (b) send a copy of the explanation to the Scottish Ministers.
- [<sup>F14</sup>(3A) In relation to a Historic MPA if, in the opinion of Historic Environment Scotland, a public authority has failed—
- (a) to act in accordance with advice or guidance given by Historic Environment Scotland under section 80A,
- (b) to comply with any of its duties under section 82(2) or 83(3) or (4),
- Historic Environment Scotland may request from the authority an explanation in writing for the failure.
- (3B) Historic Environment Scotland must send a copy of a request by it under subsection (3A) to the Scottish Ministers.
- (3C) On receiving a request under subsection (3A), the public authority must—
- (a) provide Historic Environment Scotland 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.

#### **Textual Amendments**

**F14** S. 84(3A)-(3C) inserted (1.10.2015) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [Sch. 4 para. 5](#) (with ss. 29, 30); S.S.I. 2015/196, art. 2, Sch.

#### **Modifications etc. (not altering text)**

**C4** S. 84 applied (31.12.2010) by [The Marine \(Scotland\) Act 2010 \(Consequential Provisions\) Order 2010 \(S.I. 2010/2870\)](#), arts. 1, [4\(4\)](#)

#### **Commencement Information**

**I18** S. 84 in force at 1.7.2010 by [S.S.I. 2010/230](#), [art. 2\(b\)](#)

### *Marine conservation orders*

## **85 Marine conservation orders**

- (1) The Scottish Ministers may make one or more orders (“marine conservation orders”) for any or all of the following purposes—
- (a) that of furthering the stated conservation objectives for a Nature Conservation MPA,
- (b) that of furthering a stated purpose for a Demonstration and Research MPA,
- (c) that of furthering the stated preservation objectives for a Historic MPA,
- (d) where any such marine protected area—



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- (i) includes all or part of (or is included in whole or part in) a European marine site, or
  - (ii) adjoins a European marine site,that of protecting the European marine site.
- (2) An order under this section may be made so as to apply to any area in Scotland.
- (3) Section 86 provides some examples of the provision that may be made by a marine conservation order.
- (4) An order under this section—
  - (a) may provide that paragraph (b) of section 97(1) does not apply in relation to—
    - (i) an offence under section 94 of contravening the order,
    - (ii) an offence under section 95 (where the order is made for the purpose of furthering the stated conservation objectives for a Nature Conservation MPA),
    - (iii) an offence under section 96 (where the order is made for the purpose of furthering the stated preservation objectives for a Historic MPA),
  - (b) may be made subject to specified exceptions,
  - (c) may make different provision for different cases, including (in particular)—
    - (i) different parts of the protected area,
    - (ii) different times of the year,
    - (iii) different means or methods of carrying out any activity.
- (5) In this section and section 86—
  - (a) the conservation objectives for a European marine site mean the protection of the natural feature by reason of which the site is considered to be of significance in relation to the Habitats Directive or the Wild Birds Directive,
  - (b) “natural feature” in relation to a European marine site, means—
    - (i) any of its flora or fauna,
    - (ii) any natural habitat existing in it,
  - (c) “specified” means specified in the order.

#### **Commencement Information**

**I19** S. 85 in force at 1.7.2010 by S.S.I. 2010/230, art. 2(b)

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

- (1) The provision that may be made by a marine conservation order includes provision prohibiting, restricting or regulating—
  - (a) entry into or movement, activity or works in the area protected by the order (“the protected area”) by a—
    - (i) person,
    - (ii) animal,
    - (iii) vessel (or a specified type of vessel), or
    - (iv) vehicle or thing (or a specified type of vehicle or thing),
  - (b) the anchoring of any vessel (or types of vessel) within the protected area (including the fixing of moorings or anchors to the seabed),

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- (c) the killing, taking, destruction, molestation or disturbance of animals or plants of any description in the protected area,
  - (d) the removal of all or part of any thing (or category of things) from the protected area, including in particular all or part of a marine historic asset,
  - (e) the depositing (by any means) of anything in a protected area,
  - (f) the doing of anything in the protected area which, in the opinion of the Scottish Ministers, may—
    - (i) interfere with or damage the seabed,
    - (ii) damage or disturb any object in the protected area (including a marine historic asset),
    - (iii) otherwise cause harm to the protected area.
- (2) The provision that may be made may also—
- (a) restrict the speed at which any vessel or vehicle may move in the protected area or in any specified area outside the protected area where that movement might hinder—
    - (i) where the protected area is a Nature Conservation MPA, the stated conservation objectives for it,
    - (ii) where the protected area is a Demonstration and Research MPA, a stated purpose for it,
    - (iii) where the protected area is a Historic MPA, the stated preservation objectives for it,
    - (iv) where the protected area is a European marine site, the conservation objectives for it,
  - (b) include provision prohibiting or restricting entry into, or any movement or other activity on, any part of the seashore that adjoins the protected area by persons, animals or vehicles.
- (3) For the purposes of subsection (1)(a), the reference to works or activities includes reference to—
- (a) the use of equipment (or types of equipment),
  - (b) surveying or exploring a site (whether or not by intrusive methods),
  - (c) fixing or attaching anything to the seabed or (if appropriate) the seashore.

**Commencement Information**

**I20** S. 86 in force at 1.7.2010 by S.S.I. 2010/230, art. 2(b)

**87 Procedure for marine conservation orders**

- (1) Before making a marine conservation order (or an order amending or revoking any such order), the Scottish Ministers must comply with subsections (2) to (7) (except where section 88 provides otherwise).
- (2) The Scottish Ministers must send a copy of a draft of the order to any persons the Ministers consider are likely to be interested in or affected by the making of the order.
- (3) The Scottish Ministers must place a copy of the draft of a marine conservation order or (as the case may be) the draft of an order amending or revoking any such order in such

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place or places as they consider is or are likely to be most convenient for the purpose of enabling it to be inspected by persons likely to be affected by the making of the order.

- (4) The Scottish Ministers—
  - (a) must provide a copy of a draft of an order to any person who requests one,
  - (b) may charge a fee, not exceeding their expenses in doing so, for providing a copy under this subsection,
- (5) Where the proposed order would apply to an area any part of which is land, the Scottish Ministers must provide a copy of a draft to the planning authority in whose district the land is situated.
- (6) The Scottish Ministers must publish notice of their proposal to make an order.
- (7) The notice must—
  - (a) be published in such manner as the Scottish Ministers consider is most likely to bring the proposal to the attention of any persons who are likely to be affected by the making of it,
  - (b) state where the copy or copies of the draft order have been placed by the Scottish Ministers in accordance with subsection (3),
  - (c) state the time within which representations about the draft order must be made to the Scottish Ministers.
- (8) In subsection (5), “planning authority” and “the district” of a planning authority have the same meaning as in section 1(1) of the Town and Country Planning (Scotland) Act 1997 (c.8).

#### **Commencement Information**

**I21** S. 87 in force at 1.7.2010 by S.S.I. 2010/230, art. 2(b)

## **88 Urgent orders**

- (1) In any case where the Scottish Ministers consider there is an urgent need to protect an area as respects which a marine conservation order may be made (and so an urgent need to make a marine conservation order), section 87 does not apply in relation to the making of the order.
- (2) In such a case, the order (an “urgent marine conservation order”)—
  - (a) comes into force on such date as is specified in it,
  - (b) remains in force (unless revoked) for such period, not exceeding 12 months, as is specified in it.
- (3) The Scottish Ministers must publish notice of the making of an urgent marine conservation order.
- (4) The notice must—
  - (a) be published in such manner as the Scottish Ministers consider is most likely to bring the urgent marine conservation order to the attention of any persons who are likely to be affected by the making of it,
  - (b) state that a copy of the order may be inspected at such office of the Scottish Ministers as is specified in the notice,

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- (c) state that the Scottish Ministers have power to revoke the order and that any person affected by the making of the order may make representations to them.
- (5) The Scottish Ministers must keep under review the need for an urgent marine conservation order to remain in force.
- (6) The Scottish Ministers may, by an order under this subsection (an “urgent continuation order”), provide that an urgent marine conservation order is to remain in force for such period, not exceeding 12 months, beyond that specified under subsection (2)(b) as is specified in the urgent continuation order.
- (7) The Scottish Ministers may not make an urgent continuation order unless—
  - (a) they intend to make a marine conservation order (a “permanent order”) in respect of the marine protected area concerned (in accordance with the requirements of section 87), and
  - (b) they have published notice of their proposal to make the permanent order.

**Commencement Information**

**I22** S. 88 in force at 1.7.2010 by S.S.I. 2010/230, art. 2(b)

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

- (1) The Scottish Ministers must send a copy of any order mentioned in subsection (2) to any persons they consider are likely to be interested in or affected by the order.
- (2) The orders are—
  - (a) a marine conservation order (whether made in accordance with section 87 or an urgent marine conservation order made in accordance with section 88),
  - (b) an order amending or revoking a marine conservation order,
  - (c) an urgent continuation order.
- (3) The Scottish Ministers must—
  - (a) make a copy of any order referred to in subsection (2) available for inspection at one of their offices at all reasonable hours,
  - (b) provide a copy of any such order to any person who requests one.
- (4) The Scottish Ministers may charge a fee, not exceeding their expenses, for providing a copy under subsection (3)(b).

**Commencement Information**

**I23** S. 89 in force at 1.7.2010 by S.S.I. 2010/230, art. 2(b)

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

- (1) The Scottish Ministers may, before deciding to do any of the following—
  - (a) make a marine conservation order (whether in accordance with section 87 or an urgent marine conservation order in accordance with section 88),

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- (b) amend a marine conservation order,
  - (c) revoke a marine conservation order,
- give any person the opportunity of making oral or written representations to them or to any person appointed by them for that purpose at a hearing.
- (2) The Scottish Ministers may make regulations providing for the procedure to be followed (including decisions as to expenses) at any hearing held under subsection (1).

#### Commencement Information

I24 S. 90 in force at 1.7.2010 by S.S.I. 2010/230, art. 2(b)

### 91 Duty to assess impact of prohibition or restriction of activities

- (1) Where an activity is restricted or prohibited under a marine conservation order made for a purpose mentioned in section 85(1)(a),(b) or (d), the Scottish Ministers must assess—
- (a) the impact or potential impact of the restriction or prohibition within the area protected by the order (“the protected area”), and
  - (b) where the restriction or prohibition will cause displacement of the activity to another part of the Scottish marine area, the impact or potential impact of that displacement.
- (2) 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—
- (a) economic interests,
  - (b) social interests,
  - (c) the environment within the protected area,
  - (d) the environment elsewhere in the Scottish marine area as a result of the activity being displaced.
- (3) Where, following an assessment, the Scottish Ministers identify an adverse impact under subsection (2), they must take such steps as they consider are reasonable to minimise the impact as far as is practicable.
- (4) This section does not apply where the order mentioned in subsection (1) is an urgent marine conservation order made in accordance with section 88.

#### Commencement Information

I25 S. 91 in force at 1.7.2010 by S.S.I. 2010/230, art. 2(b)

*Authorisation of things prohibited, regulated etc. by marine conservation orders*

### 92 Authorisation of things prohibited, regulated etc. by a marine conservation order

- (1) A marine conservation order may provide for the Scottish Ministers to issue permits authorising anything which would, apart from any such permit, be unlawful under the order.

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*Changes to legislation: There are currently no known outstanding effects for the Marine (Scotland) Act 2010, Part 5. (See end of Document for details)*

- (2) The Scottish Ministers may attach to any such permit any condition which they consider appropriate.
- (3) A marine conservation order may, in so far as it applies to a Historic MPA, also provide for the Scottish Ministers—
  - (a) by direction issued to any persons (or categories of persons) specified in the order to authorise the doing by the persons of anything (or any category of thing) specified in the direction which would, apart from the direction, be unlawful under the order,
  - (b) by direction issued generally to authorise the doing by any person of any thing or category of thing specified in the order which would, apart from the direction, be unlawful under the order.
- (4) A direction under subsection (3) may attach to any authorisation given by it any condition which the Scottish Ministers consider appropriate.
- (5) Any provision in a marine conservation order of the kind referred to in this section may include provision for the procedure to apply in relation to the making of applications, and the determination of applications, for such permits or authorisations.

**Commencement Information**

**I26** S. 92 in force at 1.7.2010 by S.S.I. 2010/230, art. 2(b)

**93 Delegation of issuing permits or authorisations**

- (1) A marine conservation order may provide for the Scottish Ministers by direction to delegate to any person (or group of persons) specified in the direction the issuing of permits of the kind described in section 92(1), or such permits in relation to such things (or such things in such circumstances) as are specified in the order.
- (2) A marine conservation order may, in so far as it applies to a Historic MPA, provide for the Scottish Ministers by direction to delegate to any person (or group of persons) specified in the direction the issuing of authorisations of the kind described in section 92(3), or such authorisations in relation to such things (or things in such circumstances) as are specified in the order.

**Commencement Information**

**I27** S. 93 in force at 1.7.2010 by S.S.I. 2010/230, art. 2(b)

*Offences*

**94 Offences: contravening a marine conservation order**

- (1) A person who contravenes a marine conservation order commits an offence.
- (2) A person who is guilty of an offence under this section is liable—
  - (a) on summary conviction, to a fine not exceeding £50,000,
  - (b) on conviction on indictment, to a fine.

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*Changes to legislation: There are currently no known outstanding effects for the Marine (Scotland) Act 2010, Part 5. (See end of Document for details)*

- (3) In determining the amount of any fine to be imposed on a person convicted of an offence under this section, the court must in particular have regard to any financial benefit which has accrued or appears likely to accrue to the person in consequence of the offence.
- (4) In this section “contravene” includes fail to comply.

#### **Commencement Information**

**I28** S. 94 in force at 1.7.2010 by S.S.I. 2010/230, art. 2(b)

### **95 Offences relating to protected features of a Nature Conservation MPA**

- (1) A person commits an offence under this section if the person—
  - (a) intentionally or recklessly does a prohibited act in a Nature Conservation MPA (the “protected area”), and
  - (b) the act has significantly hindered, or may significantly hinder, the achievement of the stated conservation objectives for the protected area.
- (2) For the purposes of subsection (1), a person does a prohibited act if the person—
  - (a) kills or injures any animal in the protected area which is a protected feature of the area,
  - (b) picks, collects, cuts, uproots or destroys any plant in the protected area which is a protected feature of the area,
  - (c) takes anything from the protected area which is, or forms part of, a protected feature of that area,
  - (d) damages or destroys any habitat or feature which is a protected feature of the protected area.
- (3) A person who does anything which would, but for this subsection, amount to an offence under this section does not commit the offence if it is shown that—
  - (a) the act was the incidental result of a lawful operation,
  - (b) the person who carried out the lawful operation—
    - (i) took reasonable precautions for the purpose of carrying out the act, or
    - (ii) did not foresee, and could not reasonably have foreseen, that the act would be an incidental result of the carrying out of the lawful operation, and
  - (c) the person took such steps as were reasonably practicable in all the circumstances to minimise the hindrance (or potential hindrance) to the conservation objectives.
- (4) A person who is guilty of an offence under this section is liable—
  - (a) on summary conviction, to a fine not exceeding £50,000,
  - (b) on conviction on indictment, to a fine.
- (5) In determining the amount of any fine to be imposed on a person convicted of an offence under this section, the court must in particular have regard to any financial benefit which has accrued or appears likely to accrue to the person in consequence of the offence.

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*Changes to legislation: There are currently no known outstanding effects for the Marine (Scotland) Act 2010, Part 5. (See end of Document for details)*

**Commencement Information**

**I29** S. 95 in force at 1.7.2010 by S.S.I. 2010/230, art. 2(b)

**96 Offences relating to marine historic assets**

- (1) A person commits an offence under this section if the person—
  - (a) intentionally or recklessly does a prohibited act in a Historic MPA (the “protected area”), and
  - (b) the act has significantly hindered, or may significantly hinder, the achievement of the stated preservation objectives for the protected area.
- (2) For the purposes of subsection (1), a person does a prohibited act if the person—
  - (a) carries out works or activities in the area which (or which are likely to)—
    - (i) damage or interfere with a marine historic asset,
    - (ii) have a significant impact on the protected area,
  - (b) removes, alters or disturbs a marine historic asset.
- (3) A person who does anything which would, but for this subsection, amount to an offence under this section does not commit the offence if it is shown that—
  - (a) the act was the incidental result of a lawful operation,
  - (b) the person who carried out the lawful operation—
    - (i) took reasonable precautions for the purpose of carrying out the act, or
    - (ii) did not foresee, and could not reasonably have foreseen, that the act would be an incidental result of the carrying out of the lawful operation, and
  - (c) the person took such steps as were reasonably practicable in all the circumstances to minimise the hindrance (or potential hindrance) to the preservation objectives.
- (4) A person who is guilty of an offence under this section is liable—
  - (a) on summary conviction, to a fine not exceeding £50,000,
  - (b) on conviction on indictment, to a fine.
- (5) In determining the amount of any fine to be imposed on a person convicted of an offence under this section, the court must in particular have regard to any financial benefit which has accrued or appears likely to accrue to the person in consequence of the offence.

**Commencement Information**

**I30** S. 96 in force at 1.7.2010 by S.S.I. 2010/230, art. 2(b)

**97 Exceptions to offences under section 94, 95 or 96**

- (1) A person is not guilty of an offence under section 94, 95, or 96 if the act which is alleged to constitute the offence—
  - (a) was an exercise of functions carried out in accordance with section 82(2) by a public authority,



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- (b) was expressly authorised by an authorisation granted by a public authority or was necessarily incidental to an act so authorised (and this paragraph is not disappplied in relation to the offence by virtue of section 85(4)(a)),
  - (c) was done in accordance with—
    - (i) a permit of the kind described in section 92(1), or
    - (ii) an authorisation of the kind described in section 92(3),
  - (d) was necessary—
    - (i) in the interests of national security,
    - (ii) in the interests of the prevention or detection of crime,
    - (iii) for securing public health.
- (2) It is a defence for a person who is charged with an offence under section 95 or 96 to show that—
- (a) the act which is alleged to constitute the offence was—
    - (i) an act done for the purpose of, and in the course of, sea fishing, or
    - (ii) an act done in connection with such an act, and
  - (b) the effect of the act on the protected feature or (as the case may be) the marine historic asset in question could not have reasonably been avoided.
- (3) The Scottish Ministers may by order amend this section so as to remove, or restrict the application of, the defence provided by subsection (2).
- (4) For the purposes of this section, “act” includes omission.

**Modifications etc. (not altering text)**

- C5** S. 97(1)(b) excluded (temp. until 30.9.2015) (1.10.2014) by [The South Arran Marine Conservation Order 2014 \(S.S.I. 2014/260\)](#), arts. 1, **6**
- C6** S. 97(1)(b) excluded (temp. until 18.8.2016) (18.8.2015) by [The Wester Ross Marine Conservation Order 2015 \(S.S.I. 2015/302\)](#), arts. 1(1)(2), **5**
- C7** S. 97(1)(b) excluded (8.2.2016) by [The South Arran Marine Conservation Order 2015 \(S.S.I. 2015/437\)](#), arts. 1, **6(1)**

**Commencement Information**

- I31** S. 97 in force at 1.7.2010 by [S.S.I. 2010/230](#), **art. 2(b)**

**98 Prohibited act taken in an emergency**

- (1) It is a defence for a person charged with an offence under section 94, 95 or 96 to prove that—
- (a) the act alleged to constitute the offence was carried out for the purpose of any of the following—
    - (i) saving life,
    - (ii) securing the safety of a vessel, aircraft or marine installation, and
  - (b) the person took steps within a reasonable time to inform the Scottish Ministers of the matters set out in subsection (2).
- (2) The matters are—
- (a) the fact that the act was carried out,
  - (b) the locality and circumstances in which it was carried out, and

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- (c) any substances or objects concerned.
- (3) The defence provided by subsection (1) is not available to a person where—
  - (a) the court is not satisfied that the act either—
    - (i) was necessary for any of the purposes mentioned in subsection (1) (a), or
    - (ii) was a reasonable step to take in the circumstances, or
  - (b) the necessity for the act was due to the fault of the accused or a person acting under the accused's direction or control.

**Commencement Information**

**I32** S. 98 in force at 1.7.2010 by S.S.I. 2010/230, art. 2(b)

*Marine management schemes*

**99 Marine management schemes**

- (1) A relevant authority (or 2 or more relevant authorities acting together) may establish one or more marine management schemes for any or all of the following areas—
  - (a) any Nature Conservation MPA,
  - (b) any Demonstration and Research MPA,
  - (c) any European marine site situated within the Scottish marine protection area and which—
    - (i) is included in whole or in part in,
    - (ii) includes all or part of, or
    - (iii) adjoins,
 a Nature Conservation MPA or a Demonstration and Research MPA.
- (2) A marine management scheme is a scheme under which the relevant authority's (or authorities') functions must be exercised for the purpose of furthering any or all of the following—
  - (a) the stated conservation objectives for any Nature Conservation MPA to which the scheme applies,
  - (b) the stated purposes for any Demonstration and Research MPA to which the scheme applies,
  - (c) the protection of any European marine site to which the scheme applies.
- (3) A marine management scheme may also impose the same requirement in relation to the exercise of any functions of the relevant authority (or authorities) which are not exercisable within the area (or areas) to which the scheme applies but the exercise of which may have an impact on the protection of that area (or those areas).
- (4) A marine management scheme may be made for a period of time specified in it.
- (5) The relevant authority (or authorities) making a marine management scheme may amend it from time to time.
- (6) In this section and sections 100 to 102, a “relevant authority” means—
  - (a) any public authority exercising functions in the Scottish marine protection area, or

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- (b) the Scottish Ministers.

**Commencement Information**

**I33** S. 99 in force at 1.7.2010 by S.S.I. 2010/230, art. 2(b)

**100 Review of schemes**

- (1) A marine management scheme which is in effect at the end of a period mentioned in subsection (2) must be reviewed and updated by the relevant authority or authorities concerned by the end of that period.
- (2) The periods are—
- (a) the period of 5 years beginning with the date on which it was made,
  - (b) each subsequent period of 5 years.

**Commencement Information**

**I34** S. 100 in force at 1.7.2010 by S.S.I. 2010/230, art. 2(b)

**101 Marine management schemes: consultation etc.**

- (1) Before making or amending a marine management scheme, the relevant authority (or authorities acting together) must consult Scottish Natural Heritage.
- (2) Where a relevant authority (or authorities) has (or have) made or amended a marine management scheme, they must forthwith send a copy of the scheme as made or amended to the Scottish Ministers and Scottish Natural Heritage.

**Commencement Information**

**I35** S. 101 in force at 1.7.2010 by S.S.I. 2010/230, art. 2(b)

**102 Directions as to making, amending or revocation of schemes**

- (1) The Scottish Ministers may give directions to a relevant authority (or any 2 or more such authorities) as to the making of marine management schemes.
- (2) A direction under subsection (1) may in particular—
- (a) require one or more schemes to be made,
  - (b) require conservation or other measures specified in the direction to be included in a scheme,
  - (c) where a scheme is to be made by more than one relevant authority acting together, appoint one such authority to co-ordinate the making of it,
  - (d) set time limits within which any steps in relation to the making of a scheme are to be taken,
  - (e) require the approval of the Scottish Ministers before a scheme is made,

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- (f) require any relevant authority to give to the Scottish Ministers such information relating to the making of a scheme as may be specified in the direction.
- (3) The Scottish Ministers may give directions (whether general or specific) to a relevant authority (or any 2 or more such authorities) as to the amendment of a marine management scheme.
- (4) The Scottish Ministers may revoke a marine management scheme by a direction given by them to the relevant authority (or authorities) which made the scheme.
- (5) A direction under this section must be in writing.
- (6) A relevant authority given a direction under subsection (1) or (3) must comply with it.

#### **Commencement Information**

**I36** S. 102 in force at 1.7.2010 by S.S.I. 2010/230, art. 2(b)

### *Reports to Parliament*

#### **103 Reports to Parliament**

- (1) Before the end of each relevant period, the Scottish Ministers must lay before the Parliament a report setting out the information mentioned in subsection (3).
- (2) A report under subsection (1) may be in the form of a report combined with a report under section 124 of the 2009 Act.
- (3) The information referred to in subsection (1) is—
  - (a) the number of—
    - (i) Nature Conservation MPAs,
    - (ii) Demonstration and Research MPAs,
    - (iii) Historic MPAs,
 in designation orders made during the relevant period,
  - (b) in relation to each Nature Conservation MPA—
    - (i) its size,
    - (ii) the stated conservation objectives,
  - (c) in relation to each Demonstration and Research MPA—
    - (i) its size,
    - (ii) the stated purpose,
  - (d) in relation to each Nature Conservation MPA (whether in a designation order made before or during the relevant period)—
    - (i) the extent to which in the opinion of the Scottish Ministers the stated conservation objectives have been achieved,
    - (ii) any further steps which in their opinion are required to be taken in order to contribute to the achievement of those objectives,
  - (e) in relation to each Demonstration and Research MPA (whether in a designation order made before or during the relevant period)—

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- (i) the extent to which in the opinion of the Scottish Ministers the stated purpose has been achieved,
  - (ii) any further steps which in their opinion are required to be taken in order to contribute to the achievement of that purpose,
  - (f) information about any amendments made during the relevant period to any designation order by order under section 74,
  - (g) in relation to each Historic MPA (whether in a designation order made before or during the relevant period), a summary of the things for which authorisation by—
    - (i) permits of the kind described in section 92(1),
    - (ii) authorisations of the kind described in section 92(3),has been sought during the relevant period,
  - (h) information about any marine conservation order or urgent continuation order made, or any amendment of any such order, during the relevant period,
  - (i) information about any marine management scheme made, or any amendment of any such scheme, during the relevant period,
  - (j) the extent to which in the opinion of the Scottish Ministers the exercise by them of the power in section 67(1)(a) to designate Nature Conservation MPAs contributes to the objective in section 79(2).
- (4) In this section “the relevant period” means—
- (a) the period beginning on the date on which this section comes into force and ending on 31 December 2012,
  - (b) each subsequent period of 6 years.

#### Commencement Information

I37 S. 103 in force at 1.7.2010 by S.S.I. 2010/230, art. 2(b)

#### *Licences granted under Wildlife and Countryside Act 1981*

### <sup>F15</sup>104 Grant of certain licences under Wildlife and Countryside Act 1981

#### Textual Amendments

F15 S. 104 repealed (29.6.2011) by Wildlife and Natural Environment (Scotland) Act 2011 (asp 6), s. 43(1), Sch. Pt. 2 (with s. 41(1)); S.S.I. 2011/279, art. 2(1)(i)(ii) (as amended by S.S.I. 2011/287, art. 2)

#### *Penalties in regulations implementing Habitats Directive*

### 105 Penalties in regulations implementing the Habitats Directive for the Scottish marine area

Regulations under section 2(2) of the European Communities Act 1972 (c.68) for the purpose of implementing the Habitats Directive in relation to the Scottish marine area

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may, despite paragraph 1(1)(d) of Schedule 2 to that Act (which limits the penalties which may be imposed for criminal offences), create offences punishable—

- (a) on summary conviction, with a fine not exceeding £50,000,
- (b) on conviction on indictment, with an unlimited fine.

**Commencement Information**

**I38** S. 105 in force at 1.7.2010 by S.S.I. 2010/230, art. 2(b)

*Interpretation of Part 5*

**106 Interpretation of Part 5**

In this Part—

“animal” includes any egg, larva, pupa or other immature stage of an animal,  
“protected feature”, in relation to a Nature Conservation MPA or proposed Nature Conservation MPA, means any flora, fauna, habitat or feature which is sought to be conserved by the making of the order designating the area,

“seashore” means—

- (a) the foreshore, that is to say, land which is covered and uncovered by the ordinary movement of the tide, and
- (b) any land, whether or not covered intermittently by water, which is in apparent continuity (determined by reference to the physical characteristics of the land) with the foreshore, as far landward as any natural or artificial break in that continuity,

“stated conservation objectives” for a Nature Conservation MPA means the conservation objectives stated (in the designation order designating the area) as the conservation objectives for the area,

“stated preservation objectives” for a Historic MPA means the preservation objectives stated (in the designation order designating the area) as the preservation objectives for the area,

“stated purpose” for a Demonstration and Research MPA means a purpose stated (in the designation order designating the area) as a purpose for which the order is made,

“urgent marine conservation order” is to be construed in accordance with section 88 (being a marine conservation order made in accordance with that section, instead of section 87),

“vehicle” includes—

- (a) a bicycle and other non-motorised form of transport,
- (b) hovercraft,

“vessel” includes—

- (a) hovercraft,
- (b) aircraft capable of landing on water,
- (c) any other craft capable of travelling on, in or under water, whether or not capable of carrying any person.

**Status:**

Point in time view as at 08/02/2016.

**Changes to legislation:**

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