



# Marine (Scotland) Act 2010

## 2010 asp 5

### PART 9

#### GENERAL PROVISIONS

#### **162 Crown application**

- (1) This Act binds the Crown and applies in relation to Crown land as it applies in relation to any other land.
- (2) Nothing in Part 4 is to be taken as in any way affecting Her Majesty in her private capacity.
- (3) The modifications made by schedule 4 bind the Crown to the extent that the enactments modified bind the Crown.
- (4) No contravention by the Crown of any provision made by or under this Act makes the Crown criminally liable.
- (5) But the Court of Session may, on the application of the Scottish Ministers or any public body or office-holder having responsibility for enforcing the provision, declare unlawful any act or omission of the Crown which constitutes such a contravention.
- (6) Despite subsection (4), any provision made by or under the provisions of this Act applies to persons in the public service of the Crown as it applies to other persons.
- (7) For the purposes of subsection (1), “Crown land” means land an interest in which—
  - (a) belongs to Her Majesty in right of the Crown or in right of Her private estates,
  - (b) belongs to an office-holder in the Scottish Administration or a government department or is held in trust for Her Majesty for the purposes of the Scottish Administration or a government department.
- (8) In subsection (7)(a), the reference to Her Majesty’s private estates is to be construed in accordance with section 1 of the Crown Private Estates Act 1862 (c.37).

#### **163 Offences by bodies corporate**

- (1) Where—

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*Status: This is the original version (as it was originally enacted).*

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- (a) an offence under this Act has been committed by a body corporate or a Scottish partnership or other unincorporated association,
  - (b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of—
    - (i) a relevant individual, or
    - (ii) an individual purporting to act in the capacity of a relevant individual,
 the individual as well as the offender is guilty of the offence and is liable to be proceeded against and punished accordingly.
- (2) In subsection (1), “relevant individual” means—
- (a) in relation to a body corporate—
    - (i) a director, manager, secretary or other similar officer of the body,
    - (ii) where the affairs of the body are managed by its members, the members,
  - (b) in relation to a Scottish partnership, a partner,
  - (c) in relation to an unincorporated association other than a Scottish partnership, a person who is concerned in the management or control of the association.

#### **164 Ancillary provision**

- (1) The Scottish Ministers may by order make such incidental, supplemental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes, or in consequence, of, or for giving full effect to, this Act or any provision of it.
- (2) An order under this section may modify any enactment, instrument or document.

#### **165 Orders and regulations**

- (1) Any power of the Scottish Ministers to make orders or regulations under this Act—
  - (a) may be exercised so as to make different provision for different purposes,
  - (b) includes power to make such incidental, consequential, supplemental, transitional, transitory or saving provision as the Scottish Ministers consider appropriate.
- (2) Any power of the Scottish Ministers to make orders or regulations under this Act must be exercised by statutory instrument.
- (3) But subsection (2) does not apply to an order made under section 67(1) (order designating a Nature Conservation MPA, a Demonstration and Research MPA or a Historic MPA).
- (4) A statutory instrument containing an order or regulations made under this Act (except an order made under section 168(1)) is (except where subsection (5) provides otherwise) subject to annulment in pursuance of a resolution of the Parliament.
- (5) A statutory instrument containing—
  - (a) an order under section 5(5), 21(3) or 32(1),
  - (b) regulations under section 33(1) or 38(1),
  - (c) an order under section 46(1), 48(1) or 51(1),
  - (d) regulations under section 61(1),
  - (e) an order under section 97(3),

(f) an order under section 164(1) containing provisions which add to, replace or omit any part of the text of an Act,  
is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Parliament.

## **166 Interpretation: general**

(1) In this Act—

“the 2009 Act” means the Marine and Coastal Access Act 2009 (c.23),

“the Conservation (Natural Habitats, &c.) Regulations” means the Conservation (Natural Habitats, &c.) Regulations 1994 (S.I. 1994/2716),

“European marine site” has the same meaning as in regulation 2(1) of the Conservation (Natural Habitats, &c.) Regulations,

“fish farm” means a place where fish or shellfish (including any kind of crustacean or mollusc) are bred, reared or kept,

“the Habitats Directive” means Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna or flora (as amended from time to time),

“marine installation” means any artificial island, installation or structure (other than a vessel),

“marine structure” means a platform or other artificial structure at sea, other than a pipeline,

“UK marine area” has the meaning given in section 42 of the 2009 Act,

“the Wild Birds Directive” means Council Directive 79/409/EEC on the conservation of wild birds (as amended from time to time).

(2) The expressions listed in schedule 5 are defined or otherwise explained for the purposes of this Act by the provisions indicated in the schedule.

## **167 Consequential modifications**

Schedule 4 makes modifications consequential on the provisions of this Act.

## **168 Commencement and short title**

(1) The provisions of this Act, except this section and sections 1, 2, 19, 64, 65, 66, 106, 133, 157, 165 and 166, come into force on such day as the Scottish Ministers may by order appoint.

(2) This Act may be cited as the Marine (Scotland) Act 2010.