



Marine (Scotland) Act 2010

2010 asp 5

PART 5

MARINE PROTECTION AND ENHANCEMENT: THE SCOTTISH MARINE PROTECTION AREA

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^[F1] or Historic Environment Scotland] of that fact.

Changes to legislation: There are currently no known outstanding effects for the Marine (Scotland) Act 2010, Section 82. (See end of Document for details)

- (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^[F2] or Historic Environment Scotland^[F2] 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,
 - ^[F3](ia) Historic Environment Scotland has given advice or guidance to the authority under section 80A,^[F3]
 - (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^[F4] or Historic Environment Scotland^[F4] 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^[F5] or Historic Environment Scotland^[F5] 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.

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- (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^{F6}, 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)—
- ^{F7}(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.
 - ^{F8}(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

- F1** 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.
- F2** 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.
- F3** 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.
- F4** 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.
- F5** 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.
- F6** 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.
- F7** 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.
- F8** 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)

- C1** 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

- I1** S. 82 in force at 1.7.2010 by [S.S.I. 2010/230](#), [art. 2\(b\)](#)

Changes to legislation:

There are currently no known outstanding effects for the Marine (Scotland) Act 2010, Section 82.