



Marine (Scotland) Act 2010

2010 asp 5

PART 5

MARINE PROTECTION AND ENHANCEMENT: THE SCOTTISH MARINE PROTECTION AREA

General duties of public authorities

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Status: This is the original version (as it was originally enacted).

- (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.

- (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 or by the Scottish Ministers under section 81.
- (9) For the purpose of subsection (2), 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.
- (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.