



# Marine (Scotland) Act 2010

## 2010 asp 5

### PART 5

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

##### *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—
    - (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,

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- (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.

## **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),
  - (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,

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- (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.

## **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 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).

## **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,
  - (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.

## **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).

**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),
  - (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).

**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.