



Marine (Scotland) Act 2010

2010 asp 5

PART 5

MARINE PROTECTION AND ENHANCEMENT: THE SCOTTISH MARINE PROTECTION AREA

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.
- (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.

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,

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- (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.

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.

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,
 - (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 disapplied 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.

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).

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- (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
 - (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.