

# MARINE AND COASTAL ACCESS ACT 2009

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## EXPLANATORY NOTES

### SUMMARY AND BACKGROUND

#### **Part 5: Nature Conservation**

#### *Chapter 1: Marine Conservation Zones*

#### **Offences**

#### *Section 139: Offence of contravening byelaws or orders*

- 400. This section provides that breaching any byelaw or conservation order is an offence.
- 401. *Subsection (2)* sets out the level of fine for a person guilty of an offence. A level 5 fine is a fine up to £5,000.

#### *Section 140: Offence of damaging etc protected features of MCZs*

- 402. This section creates a general offence to catch deliberate or reckless acts of damage to protected features of an MCZ.
- 403. *Subsections (1) and (2)* set out the circumstances in which a person is guilty of the offence. The offence is committed where a person intentionally or recklessly causes damage or harm to the protected features of an MCZ. This includes killing or injuring plants and animals and removing anything that is a protected feature from an MCZ. In order to be guilty of the offence, it is necessary that the person knows, or ought to have known, that the feature was in, or formed part of, an MCZ. In addition, an offence is committed only where the person's actions have significantly hindered, or may significantly hinder, the achievement of the conservation objectives of the MCZ.
- 404. *Subsection (5)* provides that a court determining the fine should have regard to any financial benefit the person obtained by committing the offence: the greater the gain, the higher the penalty is likely to be.
- 405. *Subsection (6)* states that an offence may be tried in any part of the UK.

#### *Section 141: Exceptions to offences under section 139 or 140*

- 406. This section sets out the circumstances in which a person will not be guilty of an offence under section 139 or 140.
- 407. *Subsection (1)* sets out a number of exceptions, including: things done in the interests of national security or for the prevention or detection of crime; acts for which a permit has been issued, for example in the case of scientific investigation; and actions taken to save a life.
- 408. *Subsection (3)* provides that a person is not also guilty of contravening byelaws or orders if he is found guilty of the general offence.

*These notes refer to the Marine and Coastal Access Act 2009  
(c.23) which received Royal Assent on 12th November 2009*

409. *Subsection (4)* provides a defence to the general offence under section 140 where the accused person may prove that he was sea-fishing and the damage could not reasonably have been avoided. If damage were caused for example by the use of illegal fishing gear where it would not have been so caused had legal fishing gear been used, then this defence would not be available. Such damage could reasonably have been avoided by using legal fishing gear, and therefore the person would not have met the condition in *subsection (4)(b)*.
410. *Subsection (5)* provides a power for the Secretary of State to restrict or remove the defence set out in *subsection (4)*. The power would have to be exercised within any relevant constraints of the Common Fisheries Policy. Once the defence had been removed or restricted, it could not be reinstated. The power is exercisable by order subject to the affirmative procedure, as set out in section 316.
411. Under the UN Convention on the Law of the Sea, the UK may restrict the activities of certain vessels in order to protect the environment. If the UK has not declared an exclusive economic zone (EEZ) under the Convention, restrictions may be applied only to UK and other EU vessels. Once an EEZ has been declared, restrictions may apply to all countries' vessels. *Subsection (6)* recognises this, by ensuring that the application to third country vessels will only take place once an EEZ has been declared under section 41 of the Act.