



# Marine and Coastal Access Act 2009

## 2009 CHAPTER 23

### PART 1

#### THE MARINE MANAGEMENT ORGANISATION

### CHAPTER 3

#### AGREEMENTS INVOLVING THE MMO FOR THE EXERCISE OF FUNCTIONS

##### *Powers to enter into agreements*

#### **14 Agreements between the Secretary of State and the MMO**

- (1) The Secretary of State may enter into an agreement with the MMO authorising the MMO to perform any marine function of the Secretary of State—
  - (a) either in relation to the UK marine area or in relation to specified parts of that area;
  - (b) subject to paragraph (a), either generally or in specified cases.“Specified” means specified in the agreement.
- (2) For the purposes of this Chapter, a “marine function” is any function which relates to, or whose exercise is capable of affecting, the whole or any part of the UK marine area.
- (3) For the purposes of this Chapter, any reference to a marine function of the Secretary of State includes a reference to a marine function exercisable by a person—
  - (a) authorised or appointed by the Secretary of State, or
  - (b) employed in the civil service of the State (but see subsection (4)).
- (4) For the purposes of subsection (3)(b), a person is not to be regarded as employed in the civil service of the State to the extent that the person is any of the following—
  - (a) the holder of an office in the Scottish Administration which is not a ministerial office (within the meaning of section 51 of the Scotland Act 1998 (c. 46));

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- (b) a member of the staff of the Scottish Administration (within the meaning of that section);
  - (c) a member of the staff of the Welsh Assembly Government (within the meaning of section 52 of the Government of Wales Act 2006 (c. 32)).
- (5) An agreement under this section—
- (a) may be cancelled by the Secretary of State at any time, and
  - (b) does not prevent the Secretary of State from performing a function to which the agreement relates.
- (6) This section is subject to sections 17 and 18 (non-delegable functions and maximum duration of agreement).

#### **Commencement Information**

**II** S. 14 in force at 12.1.2010 by S.I. 2009/3345, art. 2, Sch. para. 2

## **15 Agreements between the MMO and eligible bodies**

- (1) The MMO may, with the approval of the Secretary of State, enter into an agreement with an eligible body authorising the eligible body to perform any function of the MMO—
- (a) either in relation to the UK marine area or in relation to specified parts of that area;
  - (b) subject to paragraph (a), either generally or in specified cases.
- “Specified” means specified in the agreement.
- (2) For the purposes of this Chapter, any reference to a function of the MMO includes a reference to a function exercisable by a person authorised, appointed or employed by the MMO.
- (3) The Secretary of State's approval may be given—
- (a) in relation to a particular agreement or in relation to a description of agreements;
  - (b) unconditionally or subject to conditions specified in the approval.
- (4) Subject to subsection (6), the Secretary of State—
- (a) must review an agreement under this section no later than the end of the period of 5 years beginning with the date on which the agreement was entered into or was last reviewed by the Secretary of State, and
  - (b) if it appears appropriate to do so in the light of the review, may cancel the agreement.
- (5) Subject to subsection (6), an agreement under this section may not be varied except—
- (a) by agreement between the MMO and the eligible body, and
  - (b) with the approval of the Secretary of State.
- (6) An approval given under subsection (1) may provide that subsection (4) or (5) does not apply (or that both of them do not apply).
- (7) This section is subject to sections 17 and 18 (non-delegable functions and maximum duration of agreement).

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#### Commencement Information

**I2** S. 15 in force at 12.1.2010 by S.I. 2009/3345, art. 2, Sch. para. 2

## 16 Eligible bodies

- (1) In this Chapter “eligible body” means any body in the following list—
  - (a) the Environment Agency;
  - (b) Natural England;
  - (c) any inshore fisheries and conservation authority;
  - (d) any local fisheries committee constituted by an order made, or having effect as if made, under section 1 of the Sea Fisheries Regulation Act 1966 (c. 38);
  - (e) any harbour authority.
- (2) The Secretary of State may by order amend subsection (1) so as to—
  - (a) add any body or description of body to the list, or
  - (b) remove any body or description of body from it.
- (3) The Secretary of State may not exercise the power conferred by subsection (2)(a) unless satisfied that at least one of the purposes or functions of the body, or bodies of the description, to be added to the list is, or is related to or connected with, a marine function.
- (4) A body to be added to the list need not be a public body.

#### Commencement Information

**I3** S. 16 partly in force; s. 16 in force for specified purposes at Royal Assent see s. 324(1)(c)

**I4** S. 16 in force at 12.1.2010 in so far as not already in force by S.I. 2009/3345, art. 2, Sch. para. 2

## 17 Non-delegable functions

- (1) An agreement may not authorise a body to which this section applies to perform a non-delegable function.
- (2) The bodies are—
  - (a) the MMO;
  - (b) an eligible body.
- (3) The non-delegable functions are—
  - (a) any function whose performance by the body would be incompatible with the purposes for which the body was established;
  - (b) any power of a Minister of the Crown to make or terminate appointments, other than appointments of persons for the purpose of enforcing any legislation other than this Act or subordinate legislation made under it;
  - (c) any power of a Minister of the Crown to lay reports or accounts;
  - (d) any power to make subordinate legislation, give directions or guidance or issue codes of practice (or to vary or revoke any of those things);
  - (e) any power to fix fees or charges, other than a power prescribed for the purposes of this section by an order made by the Secretary of State;

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- (f) any function of an accounting officer acting in that capacity;
- (g) except in relation to an agreement authorising a public body to perform functions—
  - (i) any power to enter, inspect, take samples or seize anything, and
  - (ii) any other power exercisable in connection with suspected offences;
- (h) any function of the Secretary of State under the Water Industry Act 1991 (c. 56) or under any subordinate legislation made under that Act.

**Commencement Information**

**I5** S. 17 in force at 12.1.2010 by S.I. 2009/3345, art. 2, Sch. para. 2

**18 Maximum duration of agreement**

The maximum period for which an agreement may authorise the MMO or an eligible body to perform a function is 20 years.

**Commencement Information**

**I6** S. 18 in force at 12.1.2010 by S.I. 2009/3345, art. 2, Sch. para. 2

*Supplementary provisions*

**19 Particular powers**

- (1) The fact that a function is conferred by or under this Act or an Act passed after the passing of this Act does not prevent it from being the subject of an agreement.
- (2) In subsection (3)—
  - “A” means the Secretary of State or the MMO;
  - “B” means—
    - (a) the MMO, if A is the Secretary of State;
    - (b) an eligible body, if A is the MMO.
- (3) A may, under an agreement, authorise B to perform a function even though, under the enactment or subordinate legislation conferring that function on A,—
  - (a) the function is conferred on A by reference to specified circumstances or cases and the same type of function is conferred on B in different specified circumstances or cases,
  - (b) the function is exercisable by A and B jointly,
  - (c) B is required to be, or may be, consulted about the function (whether generally or in specified circumstances), or
  - (d) B is required to consent to the exercise of the function (whether generally or in specified circumstances).
- (4) An agreement may provide—
  - (a) for the performance of a function to be subject to the fulfilment of conditions;
  - (b) for payments to be made in respect of the performance of the function.

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- (5) In the following provisions of this section “relevant body” means—
- (a) the MMO;
  - (b) any eligible body.
- (6) A relevant body which is authorised under an agreement to perform a function—
- (a) is to be treated as having power to do so;
  - (b) may, unless (or except to the extent that) the agreement provides for this paragraph not to apply,—
    - (i) authorise a committee, sub-committee, member, officer or employee of the body to perform the function on its behalf;
    - (ii) form a body corporate and authorise that body to perform the function on its behalf.
- (7) Where the eligible body is a harbour authority which is a local authority—
- (a) subsection (6)(a) is subject to section 20(5), and
  - (b) section 20 applies in place of subsection (6)(b).
- (8) Subject to subsection (6)(b) and section 20, a relevant body which is authorised under an agreement to perform a function may not authorise any other body or person to perform that function.

#### Commencement Information

17 S. 19 in force at 12.1.2010 by S.I. 2009/3345, art. 2, Sch. para. 2

## 20 Agreements with certain harbour authorities

- (1) This section applies where a harbour authority which is a local authority is authorised under an agreement to perform a function.
- (2) Subject to subsections (5) to (7), the function that the local authority is authorised to perform is to be treated as a function of the local authority for the purposes of—
- (a) any power of a local authority to arrange for the discharge of the function jointly with another local authority (but only to the extent that each of the authorities is a harbour authority),
  - (b) any power of a local authority to arrange for the discharge of the function by any person mentioned in subsection (3), and
  - (c) any power of a person mentioned in subsection (3) to arrange for the discharge of a function by any other person mentioned there.
- (3) The persons are any committee, sub-committee, member, officer or employee of the local authority.
- (4) In subsection (3)—
- (a) “committee” includes a joint committee of two or more local authorities which are harbour authorities and which include the local authority mentioned in subsection (1);
  - (b) “sub-committee” includes a sub-committee of any such joint committee;
  - (c) the reference to a member, officer or employee of the local authority includes a reference to a member, officer or employee of any local authority, or any of the local authorities, with which the local authority may have entered

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into arrangements for the joint discharge of functions which consist of or include functions which the local authority is authorised under an agreement to perform.

- (5) If the local authority is operating executive arrangements, the function is to be treated as a function of the local authority for the purposes of section 13 of the Local Government Act 2000 (c. 22) (provision for determining which functions of the authority are to be the responsibility of the executive and which are not).
- (6) If, in a case where the local authority is operating executive arrangements, the function is to any extent the responsibility of the executive of the local authority, then to that extent—
  - (a) subsection (2) does not apply, but
  - (b) the provisions mentioned in subsection (7) have effect.
- (7) The provisions are—
  - (a) sections 14 to 16 of the Local Government Act 2000 (discharge of functions in the case of different types of executive arrangements);
  - (b) any regulations under section 17 or 18 of that Act (discharge of functions by executive of a type prescribed under section 11(5) of that Act, and discharge of functions by area committees);
  - (c) so far as relating to arrangements (including the appointment of joint committees) under section 101(5) of the Local Government Act 1972 (c. 70) which involve another local authority which is a harbour authority, any regulations under section 20 of the Local Government Act 2000 (joint exercise of functions).
- (8) “Executive arrangements” and “executive” have the same meaning as in Part 2 of the Local Government Act 2000.
- (9) An agreement may provide that the provisions of subsection (2) or those mentioned in subsection (7) do not apply (or do not apply to a specified extent).

#### **Commencement Information**

**I8** S. 20 in force at 12.1.2010 by S.I. 2009/3345, art. 2, Sch. para. 2

## **21 Supplementary provisions with respect to agreements**

- (1) An agreement, and any approval given by the Secretary of State under section 15, must be in writing.
- (2) The Secretary of State must arrange for a copy of an agreement to be published in a way that the Secretary of State thinks is suitable for bringing it to the attention of persons likely to be affected by it.
- (3) No power of a Minister of the Crown under any enactment to give directions to a statutory body extends to giving a direction—
  - (a) requiring it to enter into an agreement;
  - (b) prohibiting it from entering into an agreement;
  - (c) requiring it to include, or prohibiting it from including, particular terms in an agreement;

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- (d) requiring it to negotiate, or prohibiting it from negotiating, a variation or termination of an agreement.
- (4) Schedule 15 to the Deregulation and Contracting Out Act 1994 (c. 40) (restrictions on disclosure of information) applies in relation to an authorisation by the MMO or an eligible body under this Chapter as it applies in relation to an authorisation under section 69 of that Act by an office-holder.

#### Commencement Information

**I9** S. 21 in force at 12.1.2010 by S.I. 2009/3345, art. 2, Sch. para. 2

## 22 Interpretation of this Chapter

- (1) In sections 17 to 21 “agreement” means an agreement under section 14 or 15.
- (2) In this Chapter—
- “eligible body” has the meaning given by section 16;
  - “local authority” means a local authority as defined in section 1(a) of the Local Government Act 2000 (c. 22);
  - “marine function” has the meaning given by section 14.

#### Commencement Information

**I10** S. 22 in force at 12.1.2010 by S.I. 2009/3345, art. 2, Sch. para. 2

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