

SCHEDULES

SCHEDULE 13

Section 148

MARINE BOUNDARIES OF SSSIS AND NATIONAL NATURE RESERVES

PART 1

INTRODUCTORY

- 1 In this Schedule “the 1981 Act” means the [Wildlife and Countryside Act 1981 \(c. 69\)](#).

PART 2

SITES OF SPECIAL SCIENTIFIC INTEREST

Marine boundaries of sites of special scientific interest

- 2 (1) Section 28 of the 1981 Act (sites of special scientific interest) is amended as follows.
- (2) In subsection (1)(a) after “the local planning authority” insert “(if any)”.
- (3) After subsection (1) insert—
- “(1A) The reference in subsection (1) to land includes—
- (a) any land lying above mean low water mark;
 - (b) any land covered by estuarial waters.
- (1B) Where the area of land to which a notification under subsection (1) relates includes land falling within subsection (1A)(a) or (b) (“area A”), it may also include land not falling within subsection (1A)(a) or (b) (“area B”) if—
- (a) area B adjoins area A, and
 - (b) any of the conditions in subsection (1C) is satisfied.
- (1C) The conditions are—
- (a) that the flora, fauna or features leading to the notification of area A is or are also present in area B;
 - (b) that the notification of area A is by reason of any flora or fauna which are dependent (wholly or in part) on anything which takes place in, or is present in, area B;
 - (c) that, without the inclusion of area B, the identification of the boundary of the land notified (either in the notification or on the ground for the purposes of exercising functions in relation to it) would be impossible or impracticable.”
- (4) In subsection (2) for “that fact” substitute “the fact mentioned in subsection (1)”.

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- (5) In subsection (5) (confirmation of notification of SSSIs) after paragraph (b) insert—
- “In the case of a notification given in relation to land lying below mean low water mark by virtue of subsection (1B), this subsection is subject to section 28CB(4) and (6).”
- (6) After subsection (6) (when notification ceases to have effect) insert—
- “(6A) Subsection (6)(b) does not apply in a case where notice has been given to Natural England under section 28CB(3).”
- (7) After subsection (9) insert—
- “(9A) For the purposes of this Part “estuarial waters” means any waters within the limits of transitional waters, within the meaning of the Water Framework Directive (that is to say, Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy).”
- (8) No notification under subsection (1) of that section made before the coming into force of this paragraph may be questioned in legal proceedings on the ground that the area of land to which the notification relates includes land lying below mean low water mark.
- 3 In section 28A of the 1981 Act (variation of notification under section 28), in subsection (3)(a) after “the local planning authority” insert “(if any)”.
- 4 In section 52(1) of the 1981 Act (interpretation of Part 2), after the definition of “agricultural land” insert—
- ““estuarial waters” has the meaning given by section 28(9A);”.

Notification of additional land that is subtidal

- 5 (1) Section 28B of the 1981 Act (notification of additional land) is amended as follows.
- (2) In subsection (2)(a) after “the local planning authority” insert “(if any)”.
- (3) After subsection (2) insert—
- “(2A) The reference in subsection (1) to land includes—
- (a) any land lying above mean low water mark;
- (b) any land covered by estuarial waters.
- (2B) If any of the conditions in subsection (2C) is satisfied, the extra land may consist of or include an area of land not falling within subsection (2A)(a) or (b).
- (2C) The conditions are—
- (a) that the flora, fauna or features that led to the notification of the SSSI is or are also present in the area of the extra land not falling within subsection (2A)(a) or (b);
- (b) that the notification of the SSSI is by reason of any flora or fauna which are dependent (wholly or in part) on anything which takes place in, or is present in, that area;
- (c) that, without the inclusion of that area, the identification of the boundary of the SSSI (either in the notification or on the ground

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for the purposes of exercising functions in relation to it) would be impossible or impracticable.”

- (4) In subsection (3) for “such notification” substitute “notification under subsection (2)”.
- (5) In subsection (7) (application of section 28(5) to (7) in relation to notifications under section 28B)—
 - (a) after ““subsection (1)”” insert “and “subsection (1B)””;
 - (b) for “of this section” (in the second place where it occurs) substitute “and subsection (2B) of this section respectively”.
- (6) No notification under subsection (2) of that section made before the coming into force of this paragraph may be questioned in legal proceedings on the ground that the area of land to which the notification relates consists of or includes land lying below mean low water mark.

Enlargement of SSSI to include subtidal land

- 6 (1) Section 28C of the 1981 Act (enlargement of SSSI) is amended as follows.
 - (2) In subsection (2)(a) after “the local planning authority” insert “(if any)”.
 - (3) After subsection (2) insert—
 - “(2A) The reference in subsection (1) to land includes—
 - (a) any land lying above mean low water mark;
 - (b) any land covered by estuarial waters.
 - (2B) If any of the conditions in subsection (2C) is satisfied, the area of land to which a notification under subsection (2) relates may include an area of land not falling within subsection (2A)(a) or (b).
 - (2C) The conditions are—
 - (a) that the flora, fauna or features that led to the notification of the SSSI is or are also present in the area of land not falling within subsection (2A)(a) or (b);
 - (b) that the notification of the SSSI is by reason of any flora or fauna which are dependent (wholly or in part) on anything which takes place in, or is present in, that area;
 - (c) that, without the inclusion of that area, the identification of the boundary of the SSSI (either in the notification or on the ground for the purposes of exercising functions in relation to it) would be impossible or impracticable.”
 - (4) In subsection (3) (application of section 28(2) to (8) in relation to notifications under section 28C)—
 - (a) for “and “subsection (1)(b)”” substitute “, “subsection (1)(b)” and “subsection (1B)””;
 - (b) for “and subsection (2)(b)” substitute “, subsection (2)(b) and subsection (2B)”.
 - (5) No notification under subsection (2) of that section made before the coming into force of this paragraph may be questioned in legal proceedings on the ground that

the area of land to which the notification relates includes land lying below mean low water mark.

Guidance in relation to subtidal notifications of SSSIs

7 After section 28C of the 1981 Act insert—

“28CA Guidance in relation to subtidal notifications of SSSIs

- (1) The ministerial authority may issue guidance to Natural England about the exercise of the power conferred by section 28(1B), 28B(2B) or 28C(2B) to give a notification under section 28(1), 28B(2) or 28C(2) (as the case may be) in relation to land lying below mean low water mark.
- (2) In this section and section 28CB “the ministerial authority” means—
 - (a) in relation to England, the Secretary of State;
 - (b) in relation to Wales, the Welsh Ministers.”

Power to call in subtidal notifications of SSSIs

8 After section 28CA of the 1981 Act (inserted by paragraph 7) insert—

“28CB Power to call in subtidal notifications

- (1) This section applies where a notification under section 28(1), 28B(2) or 28C(2) has been given in relation to land lying below mean low water mark (“the subtidal land”) by virtue of section 28(1B), 28B(2B) or 28C(2B) (as the case may be).
- (2) Natural England may not give notice under section 28(5)(b) confirming the notification unless, at least 21 days before doing so, they have given notice of their intention to the ministerial authority.

(For the meaning of “the ministerial authority”, see section 28CA.)
- (3) At any time before the notification is confirmed the ministerial authority may give notice to Natural England that the ministerial authority is considering whether to give a direction under subsection (5) regarding the subtidal land.
- (4) If the ministerial authority gives notice under subsection (3), Natural England may not give notice under section 28(5) until the ministerial authority has given a direction under subsection (5).
- (5) The ministerial authority may direct—
 - (a) that the notification (if confirmed) must include all of the subtidal land;
 - (b) that the notification (if confirmed) must not include any of the subtidal land;
 - (c) that the notification (if confirmed) must, or must not, include such part of that land as is specified in the direction;
 - (d) that the decision whether the notification (if confirmed) should include the subtidal land is to be taken by Natural England.

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- (6) If the ministerial authority gives a direction under subsection (5), Natural England must give notice under section 28(5)(a) or (b), in accordance with that direction, within the period of three months beginning with the date on which the direction is received by them.
- (7) The ministerial authority may, before deciding whether to give a direction under subsection (5), give to any person the opportunity of—
 - (a) appearing before and being heard by a person appointed by the ministerial authority for that purpose;
 - (b) providing written representations to such a person.
- (8) A person appointed under subsection (7) must make a report to the ministerial authority of any oral or written representations made under that subsection.
- (9) The ministerial authority may make regulations providing for the procedure to be followed (including decisions as to costs) at hearings held under subsection (7).
- (10) The power to make regulations under subsection (9) is exercisable by statutory instrument.
- (11) A statutory instrument containing regulations made under subsection (9) by the Secretary of State shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (12) A statutory instrument containing regulations made under subsection (9) by the Welsh Ministers shall be subject to annulment in pursuance of a resolution of the National Assembly for Wales.”

Denotification of SSSI on designation of area as MCZ

- 9 (1) Section 28D of the 1981 Act (denotification) is amended as follows.
- (2) In subsection (1) before “is not of special interest” insert “(a)” and after “mentioned in section 28(1),” insert “or
 - “(b) should no longer be the subject of a notification under section 28(1) because that land has been designated as (or as part of) a marine conservation zone under section 116 of the Marine and Coastal Access Act 2009,”.
 - (3) In subsection (2)(a)—
 - (a) after “the local planning authority” insert “(if any)”;
 - (b) for “the land which Natural England no longer consider to be of special interest” substitute “the land mentioned in subsection (1)”.
 - (4) In subsection (3) for “that fact” substitute “the fact mentioned in subsection (1)(a) or (b)”.

PART 3

NATIONAL NATURE RESERVES

Marine boundaries of national nature reserves

10 (1) In section 35 of the 1981 Act (national nature reserves) after subsection (1) insert—

“(1A) The land which may be declared to be a national nature reserve in England or Wales includes—

- (a) any land lying above mean low water mark;
- (b) any land covered by estuarial waters.

(1B) Where the area of land to which a declaration under subsection (1) relates includes land falling within subsection (1A)(a) or (b) (“area A”), it may also include land not falling within subsection (1A)(a) or (b) (“area B”) if—

- (a) area B adjoins area A, and
- (b) any of the conditions in subsection (1C) is satisfied.

(1C) The conditions are—

- (a) that the flora, fauna or features leading to the management of area A as a nature reserve is or are also present in area B;
- (b) that the management of area A as a nature reserve is by reason of any flora or fauna which are dependent (wholly or in part) on anything which takes place in, or is present in, area B;
- (c) that, without the inclusion of area B, the identification of the boundary of the land declared to be a national nature reserve (either in the declaration or on the ground for the purposes of exercising functions in relation to it) would be impossible or impracticable.

(1D) The ministerial authority may issue guidance to the appropriate conservation body about the exercise of the power conferred by subsection (1B) to make a declaration in relation to land lying below mean low water mark.

“The ministerial authority” has the meaning given by section 35A(12).”

(2) No declaration under subsection (1) of that section made before the coming into force of this paragraph may be questioned in legal proceedings on the ground that the area of land to which the declaration relates includes land lying below mean low water mark.

Power to call in subtidal declarations of national nature reserves

11 After section 35 of the 1981 Act insert—

“35A Power to call in subtidal declarations

(1) This section applies where—

- (a) the appropriate conservation body propose to declare land to be a national nature reserve under section 35(1), and
- (b) the land to which the proposed declaration relates includes, by virtue of section 35(1B), land lying below mean low water mark (“the subtidal land”).

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- (2) The appropriate conservation body may not declare the reserve unless, at least 21 days before doing so, they have given notice of their intention to the ministerial authority.
- (3) At any time before the reserve is declared the ministerial authority may give notice to the appropriate conservation body that the ministerial authority is considering whether to give a direction under subsection (5) regarding the subtidal land.
- (4) If the ministerial authority gives notice under subsection (3), the appropriate conservation body may not declare the reserve until the ministerial authority has given a direction under subsection (5).
- (5) The ministerial authority may direct—
 - (a) that the reserve (if declared) must include all of the subtidal land;
 - (b) that the reserve (if declared) must not include any of the subtidal land;
 - (c) that the reserve (if declared) must, or must not, include such part of that land as is specified in the direction;
 - (d) that the decision whether the reserve (if declared) should include the subtidal land is to be taken by the appropriate conservation body.
- (6) The ministerial authority may, before deciding whether to give a direction under subsection (5), give to any person the opportunity of—
 - (a) appearing before and being heard by a person appointed by the ministerial authority for that purpose;
 - (b) providing written representations to such a person.
- (7) A person appointed under subsection (6) must make a report to the ministerial authority of any oral or written representations made under that subsection.
- (8) The ministerial authority may make regulations providing for the procedure to be followed (including decisions as to costs) at hearings held under subsection (6).
- (9) The power to make regulations under subsection (8) is exercisable by statutory instrument.
- (10) A statutory instrument containing regulations made under subsection (8) by the Secretary of State shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (11) A statutory instrument containing regulations made under subsection (8) by the Welsh Ministers shall be subject to annulment in pursuance of a resolution of the National Assembly for Wales.
- (12) In this section “the ministerial authority” means—
 - (a) in relation to England, the Secretary of State;
 - (b) in relation to Wales, the Welsh Ministers.”