



Marine and Coastal Access Act 2009

2009 CHAPTER 23

PART 5

NATURE CONSERVATION

CHAPTER 1

MARINE CONSERVATION ZONES

Duties of public authorities

125 General duties of public authorities in relation to MCZs

- (1) This section applies to any public authority having any function the exercise of which is capable of affecting (other than insignificantly)—
 - (a) the protected features of an MCZ;
 - (b) any ecological or geomorphological process on which the conservation of any protected feature of an MCZ is (wholly or in part) dependent.
- (2) Every public authority to which this section applies must (so far as is consistent with their proper exercise)—
 - (a) exercise its functions in the manner which the authority considers best furthers the conservation objectives stated for the MCZ;
 - (b) where it is not possible to exercise its functions in a manner which furthers those objectives, exercise them in the manner which the authority considers least hinders the achievement of those objectives.
- (3) If a public authority considers that any of its functions is such that the exercise of the function would or might significantly hinder the achievement of the conservation objectives for an MCZ, it must inform the appropriate statutory conservation body of that fact.

Status: This is the original version (as it was originally enacted).

- (4) Subject to subsection (6), subsection (5) applies in any case where a public authority intends to do an act which is capable of affecting (other than insignificantly)—
- (a) the protected features of an MCZ;
 - (b) any ecological or geomorphological process on which the conservation of any protected feature of an MCZ is (wholly or in part) dependent.
- (5) If the authority believes that there is or may be a significant risk of the act hindering the achievement of the conservation objectives stated for the MCZ, the authority must notify the appropriate statutory conservation body of that fact.
- (6) Subsection (5) does not apply where—
- (a) the appropriate statutory conservation body has given the authority advice or guidance under section 127 in relation to acts of a particular description,
 - (b) the act which the authority intends to do is an act of that description, and
 - (c) the advice or guidance has not ceased to apply.
- (7) Where the authority has given notification under subsection (5), it must wait until the expiry of the period of 28 days beginning with the date of the notification before deciding whether to do the act.
- (8) Subsection (7) does not apply where—
- (a) the appropriate statutory conservation body notifies the authority that it need not wait until the end of the period referred to in that subsection, or
 - (b) the authority thinks that there is an urgent need to do the act.
- (9) If a public authority considers that a relevant event has occurred, it must inform—
- (a) the relevant authority, and
 - (b) the appropriate statutory conservation body,
- of that fact.
- (10) A “relevant event” is any act—
- (a) in relation to which the public authority exercises functions,
 - (b) which the authority believes to be an offence, and
 - (c) which the authority considers will or may significantly hinder the achievement of the conservation objectives for an MCZ.
- (11) For the purposes of subsection (9) “relevant authority” means—
- (a) in relation to an MCZ in Wales, the Welsh Ministers;
 - (b) in relation to an MCZ in the Scottish offshore region, the Scottish Ministers;
 - (c) in relation to any other MCZ, the MMO.
- (12) In carrying out its duties under this section a public authority must have regard to any advice or guidance given by the appropriate statutory conservation body under section 127.
- (13) In this section—
- “act” includes omission;
 - “public authority” does not include a Northern Ireland Minister or Northern Ireland department.

126 Duties of public authorities in relation to certain decisions

- (1) This section applies where—
 - (a) a public authority has the function of determining an application (whenever made) for authorisation of the doing of an act, and
 - (b) the act is capable of affecting (other than insignificantly)—
 - (i) the protected features of an MCZ;
 - (ii) any ecological or geomorphological process on which the conservation of any protected feature of an MCZ is (wholly or in part) dependent.
- (2) If the authority believes that there is or may be a significant risk of the act hindering the achievement of the conservation objectives stated for the MCZ, the authority must notify the appropriate statutory conservation body of that fact.
- (3) Where the authority has given notification under subsection (2), it must wait until the expiry of the period of 28 days beginning with the date of the notification before deciding whether to grant authorisation for the doing of the act.
- (4) Subsection (3) does not apply where—
 - (a) the appropriate statutory conservation body notifies the authority that it need not wait until the end of the period referred to in that subsection, or
 - (b) the authority thinks that there is an urgent need to grant authorisation for the doing of the act.
- (5) The authority must not grant authorisation for the doing of the act unless the condition in subsection (6) or the condition in subsection (7) is met.
- (6) The condition in this subsection is that the person seeking the authorisation satisfies the authority that there is no significant risk of the act hindering the achievement of the conservation objectives stated for the MCZ.
- (7) The condition in this subsection is that, although the person seeking the authorisation is not able to satisfy the authority that there is no significant risk of the act hindering the achievement of the conservation objectives stated for the MCZ, that person satisfies the authority that—
 - (a) there is no other means of proceeding with the act which would create a substantially lower risk of hindering the achievement of those objectives,
 - (b) the benefit to the public of proceeding with the act clearly outweighs the risk of damage to the environment that will be created by proceeding with it, and
 - (c) the person seeking the authorisation will undertake, or make arrangements for the undertaking of, measures of equivalent environmental benefit to the damage which the act will or is likely to have in or on the MCZ.
- (8) The reference in subsection (7)(a) to other means of proceeding with an act includes a reference to proceeding with it—
 - (a) in another manner, or
 - (b) at another location.
- (9) In a case falling within subsection (7), the authority must, if it has power to grant the authorisation subject to conditions, exercise that power so as to make it a condition of the authorisation that the measures mentioned in subsection (7)(c) are undertaken.

Status: This is the original version (as it was originally enacted).

- (10) In carrying out its duties under this section a public authority must have regard to any advice or guidance given by the appropriate statutory conservation body under section 127.
- (11) In this section—
- “act” includes omission;
 - “authorisation” means any approval, confirmation, consent, licence, permission or other authorisation (however described), whether special or general;
 - “damage” includes the prevention of an improvement;
 - “public authority” does not include a Northern Ireland Minister or Northern Ireland department.

127 Advice and guidance by conservation bodies

- (1) The appropriate statutory conservation body may give advice and guidance as to—
- (a) the matters which are capable of damaging or otherwise affecting any protected feature or features;
 - (b) the matters which are capable of affecting any ecological or geomorphological process on which the conservation of any protected feature or features is (wholly or in part) dependent;
 - (c) how any conservation objectives stated for an MCZ may be furthered, or how the achievement of any such objectives may be hindered;
 - (d) how the effect of any activity or activities on an MCZ or MCZs may be mitigated;
 - (e) which activities are, or are not, of equivalent environmental benefit (for the purposes of section 126(7)(c)) to any particular damage to the environment (within the meaning of that provision).
- (2) Advice or guidance may be given—
- (a) either in relation to a particular MCZ or MCZs or generally;
 - (b) either to a particular public authority or authorities or generally.
- (3) The appropriate statutory conservation body must give advice to a public authority if the authority requests it.
- (4) If the appropriate statutory conservation body for an area proposes to exercise its functions under this section in a manner which may affect an MCZ or MCZs in an area for which another body is the appropriate statutory conservation body, it must consult that other body before doing so.

128 Failure to comply with duties etc

- (1) This section applies if, in the opinion of the appropriate statutory conservation body, a public authority has failed—
- (a) to comply with the duty imposed by section 125(2) or the duty imposed by section 126(5);
 - (b) to act in accordance with advice or guidance given by the appropriate statutory conservation body under section 127.
- (2) Where this section applies—

- (a) the body may request from the authority an explanation for the failure, and
 - (b) on such a request, the authority must provide such an explanation in writing.
- (3) In this section “public authority” does not include a Northern Ireland Minister or Northern Ireland department.