



2013 CHAPTER 10

Part 3

Marine protection

Duties of public authorities

Duties of public authorities in relation to certain decisions

23.—(1) This section applies where—

- (a) a public authority (other than the Department) 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 Department 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 Department 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 as mentioned in subsection (6), 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 conservation objectives stated for the MCZ,
 - (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.
- (10) In carrying out its duties under this section a public authority must have regard to any advice or guidance given by the Department under section 24.
- (11) In this section—
- “authorisation” means any approval, confirmation, consent, licence, permission or other authorisation (however described), whether special or general;
 - “damage” includes the prevention of an improvement.