



# Marine and Coastal Access Act 2009

## 2009 CHAPTER 23

### PART 1

#### THE MARINE MANAGEMENT ORGANISATION

### CHAPTER 4

#### MISCELLANEOUS, GENERAL AND SUPPLEMENTAL PROVISIONS

##### *Applications for development consent*

#### **23 MMO's role in relation to applications for development consent**

- (1) The Planning Act 2008 (c. 29) is amended as set out in subsections (2) to (6).
- (2) In section 42 (duty to consult about proposed applications for orders granting development consent)—
  - (a) the existing provision is renumbered as subsection (1);
  - (b) in that subsection, after paragraph (a) insert—
    - “(aa) the Marine Management Organisation, in any case where the proposed development would affect, or would be likely to affect, any of the areas specified in subsection (2),”;
  - (c) after subsection (1) insert—
    - “(2) The areas are—
      - (a) waters in or adjacent to England up to the seaward limits of the territorial sea;
      - (b) an exclusive economic zone, except any part of an exclusive economic zone in relation to which the Scottish Ministers have functions;

*Status: Point in time view as at 22/04/2011.*

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- (c) a Renewable Energy Zone, except any part of a Renewable Energy Zone in relation to which the Scottish Ministers have functions;
  - (d) an area designated under section 1(7) of the Continental Shelf Act 1964, except any part of that area which is within a part of an exclusive economic zone or Renewable Energy Zone in relation to which the Scottish Ministers have functions.”
- (3) In consequence of the amendments made by subsection (2) of this section—
- (a) the heading to section 43 becomes “Local authorities for purposes of section 42(1)(b)”, and
  - (b) the heading to section 44 becomes “Categories for purposes of section 42(1)(d)”.
- (4) In section 55 (acceptance of applications), in subsection (5), in the definition of “local authority consultee”—
- (a) for “section 42(b)” substitute “ section 42(1)(b) ”;
  - (b) for “section 42(c)” substitute “ section 42(1)(c) ”.
- (5) In section 56 (duty to notify persons of accepted applications)—
- (a) in subsection (2), after paragraph (a) insert—
    - “(aa) the Marine Management Organisation, in any case where the development for which the application seeks development consent would involve the carrying on of any activity in one or more of the areas specified in subsection (2A),”;
  - (b) after subsection (2) insert—
    - “(2A) The areas are—
      - (a) waters in or adjacent to England up to the seaward limits of the territorial sea;
      - (b) an exclusive economic zone, except any part of an exclusive economic zone in relation to which the Scottish Ministers have functions;
      - (c) a Renewable Energy Zone, except any part of a Renewable Energy Zone in relation to which the Scottish Ministers have functions;
      - (d) an area designated under section 1(7) of the Continental Shelf Act 1964, except any part of that area which is within a part of an exclusive economic zone or Renewable Energy Zone in relation to which the Scottish Ministers have functions.”
- (6) In section 102 (definition of “interested party” etc)—
- (a) in subsection (1), after paragraph (b) insert—
    - “(ba) the person is the Marine Management Organisation and the development for which the application seeks development consent would involve the carrying on of any activity in one or more of the areas specified in subsection (1A),”;
  - (b) after subsection (1) insert—
    - “(1A) The areas are—
      - (a) waters in or adjacent to England up to the seaward limits of the territorial sea;

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- (b) an exclusive economic zone, except any part of an exclusive economic zone in relation to which the Scottish Ministers have functions;
  - (c) a Renewable Energy Zone, except any part of a Renewable Energy Zone in relation to which the Scottish Ministers have functions;
  - (d) an area designated under section 1(7) of the Continental Shelf Act 1964, except any part of that area which is within a part of an exclusive economic zone or Renewable Energy Zone in relation to which the Scottish Ministers have functions.”
- (7) The Secretary of State must give guidance to the MMO as to the kind of representations which may be made by the MMO under—
- (a) Chapter 2 of Part 5 of the Planning Act 2008 (c. 29) (pre-application procedure), or
  - (b) Part 6 of that Act (deciding applications for orders granting development consent).

#### Commencement Information

**II** S. 23 in force at 1.4.2010 by S.I. 2010/298, art. 2, Sch. para. 6

### *General powers and duties*

## **24 Research**

- (1) The MMO may (whether alone or with other bodies or persons)—
- (a) undertake research into any matter relating to its functions or its general objective, or
  - (b) commission or support (by financial means or otherwise) research into any such matter.
- (2) The MMO is to make the results of any such research available to any person on request.
- (3) Subsection (2) does not require the MMO to make available—
- (a) any information that it could refuse to disclose in response to a request under—
    - (i) the Freedom of Information Act 2000 (c. 36), or
    - (ii) the Environmental Information Regulations 2004 (S.I. 2004/ 3391) or any regulations replacing those Regulations;
  - (b) any information whose disclosure is prohibited by any enactment.

#### Commencement Information

**I2** S. 24 in force at 12.1.2010 by S.I. 2009/3345, art. 2, Sch. para. 3

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## 25 Advice, assistance and training facilities

- (1) The MMO must provide the Secretary of State with such advice and assistance as the Secretary of State may request.
- (2) The MMO must, at the request of any public body, provide advice to that body on any matter which—
  - (a) is within the knowledge or experience of the MMO,
  - (b) relates to any of the functions of the MMO or to its general objective, and
  - (c) affects the performance by the public body of its functions.
- (3) The MMO may provide advice to any person on any matter relating to any of its functions or its general objective—
  - (a) at the request of that person, or
  - (b) if the MMO considers it appropriate to do so, on its own initiative.
- (4) The MMO may provide any person with—
  - (a) assistance, or
  - (b) the use of training facilities,
 as respects any matter of which the MMO has knowledge or experience.

### Commencement Information

**I3** [S. 25](#) in force at 1.4.2010 by [S.I. 2010/298](#), art. 2, [Sch. para. 7](#)

## 26 Provision of information etc

- (1) The MMO may—
  - (a) publish documents or provide information about any matter relating to any of its functions or its general objective, or
  - (b) assist in the publication of such documents or the provision of such information.
- (2) Nothing in any other enactment imposing a duty or conferring a power on the MMO—
  - (a) to publish, or assist in the publication of, documents of a particular kind, or
  - (b) to provide, or assist in the provision of, information of a particular kind,
 is to be read as limiting the power conferred by subsection (1).

### Commencement Information

**I4** [S. 26](#) in force at 12.1.2010 by [S.I. 2009/3345](#), art. 2, [Sch. para. 4](#)

## 27 Power to charge for services

- (1) The MMO may charge such fees in respect of the cost of providing its services as appear to it to be reasonable.
- (2) The fees that may be charged under this section include fees in respect of the cost of services provided by the MMO under any arrangements made between the MMO and the Welsh Ministers or a Northern Ireland department under—

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- (a) section 83 of the Government of Wales Act 2006 (c. 32), or
  - (b) section 28 of the Northern Ireland Act 1998 (c. 47).
- (3) For the purposes of this section, “services” includes, in particular, anything done under—
- (a) section 2(11) (provision of copy of guidance);
  - (b) section 24(2) (making available the results of research);
  - (c) section 25(2), (3)(a) or (4) (advice, assistance and training facilities);
  - (d) section 26 (information).

#### Commencement Information

**I5** S. 27 in force at 12.1.2010 by S.I. 2009/3345, art. 2, Sch. para. 4

## 28 Provision of information by the MMO to the Secretary of State

- (1) The MMO must provide the Secretary of State with all such information as the Secretary of State may reasonably require with respect to any of the following matters—
- (a) the carrying out, or proposed carrying out, of the MMO's functions;
  - (b) the MMO's responsibilities generally.
- (2) Information required under this section is to be provided in such form and manner, and be accompanied or supplemented by such explanations, as the Secretary of State may require.
- (3) The information which the MMO may be required to provide under this section includes information which, although it is not in the possession of the MMO or would not otherwise come into the possession of the MMO, is information which it is reasonable to require the MMO to obtain.
- (4) A requirement for the purposes of this section—
- (a) must be made in writing;
  - (b) may describe the information to be provided in such manner as the Secretary of State considers appropriate;
  - (c) may require the information to be provided on a particular occasion, in particular circumstances or from time to time.

#### Commencement Information

**I6** S. 28 in force at 12.1.2010 by S.I. 2009/3345, art. 2, Sch. para. 4

## 29 Power to bring proceedings

- (1) The MMO may institute criminal proceedings in England, Wales or Northern Ireland.
- (2) The MMO may institute proceedings for the recovery of any monetary penalty imposed under this Act.
- (3) Subsection (2) is without prejudice to any other powers the MMO may have to institute proceedings.

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- (4) The MMO may designate under this subsection any of its employees who would not (apart from subsection (6)) be entitled to carry on, in relation to magistrates' court proceedings, an activity which constitutes—
- (a) the conduct of litigation, or
  - (b) the exercise of a right of audience falling within subsection (5).
- (5) The rights of audience are—
- (a) a right of audience in trials of summary offences;
  - (b) a right of audience in relation to any application for, or relating to, bail in criminal proceedings relating to a summary offence or an offence triable either way, unless (as matters stand at the time when the application is made) the offence is to be tried on indictment;
  - (c) a right of audience in relation to interlocutory applications and sentencing in proceedings relating to a summary offence or an offence triable either way;
  - (d) a right of audience in proceedings for the recovery of any sum of money.
- (6) Subject to any exceptions specified in the designation, a person designated under subsection (4) is entitled to carry on, in relation to magistrates' court proceedings, any activity specified in the designation which constitutes—
- (a) the conduct of litigation, or
  - (b) the exercise of a right of audience falling within subsection (5).
- (7) For the purposes of subsection (5), a trial—
- (a) begins with the opening of the prosecution case after the entry of a plea of not guilty, and
  - (b) ends with the conviction or acquittal of the accused.
- (8) In this section—
- “bail in criminal proceedings”—
- (a) in relation to England and Wales, has the same meaning as in section 1 of the Bail Act 1976 (c. 63) (see subsection (1) of that section);
  - (b) in relation to Northern Ireland, means bail within the meaning of Part 2 of the Criminal Justice (Northern Ireland) Order 2003 (S.I. 2003/1247 (N.I. 13));
- “conduct of litigation” has the meaning given by paragraph 4 of Schedule 2 to the Legal Services Act 2007 (c. 29);
- “magistrates' court proceedings” means proceedings before a magistrates' court in England, Wales or Northern Ireland;
- “right of audience” has the meaning given by paragraph 3 of Schedule 2 to the Legal Services Act 2007.

**Commencement Information**

**17** S. 29 in force at 1.4.2010 by S.I. 2010/298, art. 2, Sch. para. 8

**30 Continuation of certain existing prosecutions**

- (1) Any prosecution commenced by the Secretary of State before the appropriate commencement date—

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- (a) for an offence in relation to any of the functions transferred to the MMO by or under Chapter 2 of this Part, or
  - (b) for an offence under the fisheries legislation (see subsections (2) and (3)),  
may be continued on or after that day by the MMO.
- (2) In this section “the fisheries legislation” means—
- (a) any enactments relating to sea fishing, including any enactment relating to fishing for shellfish, salmon or migratory trout (but see subsection (3));
  - (b) any enforceable EU restrictions and enforceable EU obligations relating to sea fishing.
- (3) “The fisheries legislation” does not include—
- (a) the Salmon and Freshwater Fisheries Act 1975 (c. 51);
  - (b) the Salmon Act 1986 (c. 62);
  - (c) byelaws made by the Environment Agency under Schedule 25 to the Water Resources Act 1991 (c. 57);
  - (d) the Scotland Act 1998 (Border Rivers) Order 1999 (S.I. 1999/1746);
  - (e) byelaws made by an inshore fisheries and conservation authority under section 155.
- (4) In this section—
- “the appropriate commencement date” means—
    - (a) in relation to an offence falling within paragraph (a) of subsection (1), the date on which the function to which the offence relates is transferred to the MMO;
    - (b) in relation to an offence falling within paragraph (b) of that subsection, the date on which section 1 comes into force;
  - “enforceable EU obligation” means an obligation to which section 2(1) of the European Communities Act 1972 (c. 68) applies;
  - “enforceable EU restriction” means a restriction to which section 2(1) of that Act applies.

#### Commencement Information

**18** S. 30 in force at 1.4.2010 by S.I. 2010/298, art. 2, Sch. para. 9

### 31 Incidental powers

- (1) The MMO may do anything which appears to it to be incidental or conducive to the carrying out of its functions or the achievement of its general objective.
- (2) In particular, the MMO may—
  - (a) enter into agreements;
  - (b) acquire or dispose of land or other property;
  - (c) subject to the restrictions imposed by sections 33 and 34, borrow money;
  - (d) subject to the approval of the Secretary of State, form bodies corporate or acquire or dispose of interests in bodies corporate;
  - (e) accept gifts;
  - (f) invest money.

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**Commencement Information**

**I9** S. 31 in force at 12.1.2010 by S.I. 2009/3345, art. 2, Sch. para. 4

*Financial provisions*

**32 Grants**

- (1) The Secretary of State may make payments by way of grant to the MMO.
- (2) Any payments under subsection (1) are to be—
  - (a) of such amounts,
  - (b) at such times, and
  - (c) subject to such conditions (if any),
 as the Secretary of State may determine.

**Commencement Information**

**I10** S. 32 in force at 12.1.2010 by S.I. 2009/3345, art. 2, Sch. para. 5

**33 Borrowing powers**

- (1) The MMO may borrow money, but only—
  - (a) in accordance with the following provisions of this section, and
  - (b) subject to section 34 (limit on borrowing).
- (2) The MMO may borrow such sums as it may require for meeting its obligations and carrying out its functions.
- (3) The MMO may borrow any such sums—
  - (a) from the Secretary of State, by way of loan, or
  - (b) from persons other than the Secretary of State, by way of overdraft or otherwise.
- (4) The MMO may borrow by virtue of subsection (3)(b) only if the Secretary of State consents.
- (5) Any consent under subsection (4) may be given subject to conditions.

**Commencement Information**

**I11** S. 33 in force at 12.1.2010 by S.I. 2009/3345, art. 2, Sch. para. 5

**34 Limit on borrowing**

- (1) The aggregate amount outstanding in respect of the principal of sums borrowed by the MMO must not at any time exceed £20 million.
- (2) The Secretary of State may by order amend subsection (1) so as to substitute for the sum for the time being there specified such sum as may be specified in the order.



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- (3) The sum specified in an order under subsection (2) must be a sum—
  - (a) greater than £20 million, but
  - (b) not greater than £80 million.
- (4) A statutory instrument containing an order under subsection (2) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the House of Commons.

#### Commencement Information

**I12** S. 34 partly in force; s. 34 in force for specified purposes at Royal Assent see s. 324(1)(c)

**I13** S. 34 in force at 12.1.2010 in so far as not already in force by S.I. 2009/3345, art. 2, Sch. para. 5

### 35 Government loans

- (1) The Secretary of State may lend money to the MMO.
- (2) A loan under this section may be made subject to such conditions as may be determined by, or in accordance with arrangements made by, the Secretary of State.
- (3) The conditions must include provision with respect to—
  - (a) repayment of the loan at such times, and by such methods, as the Secretary of State may from time to time determine, and
  - (b) payment of interest on the loan at such rates, and at such times, as the Secretary of State may from time to time determine.
- (4) The Treasury may issue to the Secretary of State out of money provided by Parliament such sums as are necessary to enable the Secretary of State to make loans under this section.
- (5) The Secretary of State must, in respect of each financial year,—
  - (a) prepare an account of any sums lent or received in pursuance of this section during the year, and
  - (b) send that account to the Comptroller and Auditor General before the end of September in the following financial year.
- (6) The Comptroller and Auditor General must—
  - (a) examine, certify and report on each account sent under subsection (5), and
  - (b) send a copy of the certified account and of the report to the Secretary of State as soon as possible;and the Secretary of State must lay before each House of Parliament a copy of the certified account and of the report.

#### Commencement Information

**I14** S. 35 in force at 12.1.2010 by S.I. 2009/3345, art. 2, Sch. para. 5

### 36 Government guarantees

- (1) The Secretary of State may guarantee—

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- (a) the repayment of the principal of any sum borrowed by the MMO from a person other than the Secretary of State;
  - (b) the payment of interest on any such sum;
  - (c) the discharge of any other financial obligation in connection with any such sum.
- (2) A guarantee under subsection (1) may be given in such manner, and on such conditions, as the Secretary of State may think fit.
- (3) If a guarantee is given under subsection (1), the Secretary of State must lay a statement of the guarantee before each House of Parliament.
- (4) Where any sum is paid out for fulfilling a guarantee under this section, the Secretary of State must, as soon as reasonably practicable after the end of each financial year in the relevant period, lay before each House of Parliament a statement relating to that sum.
- (5) For the purposes of subsection (4), the relevant period is the period which—
- (a) begins with the financial year in which the sum is paid out, and
  - (b) ends with the financial year in which all liability in respect of the principal of the sum and in respect of interest on it is finally discharged.
- (6) If any sums are paid out in fulfilment of a guarantee under this section, the MMO must make to the Secretary of State—
- (a) payments of such amounts as the Secretary of State may from time to time direct in or towards repayment of the sums so paid out, and
  - (b) payments of interest, at such rate as the Secretary of State may so direct, on what is outstanding for the time being in respect of sums so paid out.
- (7) Payments under subsection (6) are to be made—
- (a) at such times, and
  - (b) in such manner,
- as the Secretary of State may from time to time direct.

#### **Commencement Information**

**I15** S. 36 in force at 12.1.2010 by S.I. 2009/3345, art. 2, Sch. para. 5

#### *Directions and guidance*

### **37 Directions by the Secretary of State**

- (1) The Secretary of State may give the MMO general or specific directions with respect to the exercise of any of the MMO's functions.
- (2) The Secretary of State may also give the MMO such general or specific directions as the Secretary of State considers appropriate for the implementation of any obligations of the United Kingdom under—
- (a) the EU Treaties, or
  - (b) any international agreement to which the United Kingdom or the European Union is for the time being a party.

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- (3) Before giving directions under this section, the Secretary of State must consult the MMO.
- (4) Consultation under subsection (3) is not required if the Secretary of State considers that there is an emergency.
- (5) The MMO must comply with any directions given to it under this section.
- (6) The Secretary of State must publish in the London Gazette notice of any directions given under this section.
- (7) The giving of any directions under this section must be publicised in such manner as the Secretary of State considers appropriate for the purpose of bringing the matters to which the directions relate to the attention of persons likely to be affected by them.
- (8) Copies of any directions given under this section are to be made available by the MMO to members of the public on payment of such reasonable fee as the MMO may determine.
- (9) Until the coming into force of Part 2 of the Schedule to the European Union (Amendment) Act 2008 (c. 7) the reference in subsection (2)(a) to the EU Treaties is to be read as a reference to the Community Treaties.

**Commencement Information**

**I16** [S. 37](#) in force at 12.1.2010 by [S.I. 2009/3345](#), art. 2, [Sch. para. 5](#)

**38 Guidance by the Secretary of State**

- (1) The Secretary of State may give the MMO guidance with respect to the exercise of any of the MMO's functions.
- (2) The MMO must have regard to any guidance given to it under this Act by the Secretary of State.
- (3) Before giving any such guidance, the Secretary of State must consult—
  - (a) the MMO, and
  - (b) such other bodies or persons as the Secretary of State considers appropriate.

**Commencement Information**

**I17** [S. 38](#) in force at 12.1.2010 by [S.I. 2009/3345](#), art. 2, [Sch. para. 5](#)

*Transfer schemes etc*

**39 Transfer schemes**

- (1) The Secretary of State may, in connection with the establishment of, or the transfer of any functions to, the MMO, make one or more schemes for the transfer to the MMO of designated property, rights or liabilities of any of the following—
  - (a) a Minister of the Crown,
  - (b) a government department,

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- (c) a statutory body.
- (2) The Secretary of State may make one or more schemes for the transfer of designated property, rights or liabilities of the MMO to any of the following—
- (a) a Minister of the Crown,
  - (b) a government department,
  - (c) a statutory body.
- (3) In connection with the efficient management for public purposes of any property, rights or liabilities, the Secretary of State may at any time make one or more schemes for the transfer of—
- (a) designated property, rights or liabilities of the Secretary of State to the MMO, or
  - (b) designated property, rights or liabilities of the MMO to the Secretary of State.
- (4) On the transfer date for any designated property, rights or liabilities, that property and those rights and liabilities are transferred and vest in accordance with the scheme.
- (5) In this section and Schedule 3—
- “designated”, in relation to a scheme, means specified or described in, or determined in accordance with, the scheme;
- “statutory body” means any body or person established by or under any enactment;
- “transfer date”, in relation to any property, rights or liabilities, means a date specified by a scheme as the date on which the scheme is to have effect in relation to that property or those rights or liabilities.
- (6) Schedule 3 makes further provision relating to schemes under this section.

**Commencement Information**

**I18** S. 39 in force at 12.1.2010 by S.I. 2009/3345, art. 2, Sch. para. 5

**40 Interim arrangements**

- (1) The Secretary of State may by notice require any of the following—
- (a) a Minister of the Crown,
  - (b) a government department,
  - (c) a statutory body,
- to provide to the MMO on a temporary basis such staff, premises or other facilities as may be specified in the notice.
- (2) In this section “statutory body” means any body or person established by or under any enactment.

**Commencement Information**

**I19** S. 40 in force at 12.1.2010 by S.I. 2009/3345, art. 2, Sch. para. 5

**Status:**

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**Changes to legislation:**

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