

Guidance on the duties on public authorities in relation to Marine Conservation Zones (Note 2)

**Guidance on the duties which
will be placed on public authorities
in relation to Marine Conservation
Zones under Part 5 of the Marine
and Coastal Access Act 2009**

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Contents	Page
1. Who the guidance applies to	3
2. Background	5
3. Public authorities	7
4. General duties of public authorities in relation to MCZs (section 125 of the Act)	7
5. Duties of public authorities in relation to certain decisions (section 126 of the Act)	12
6. Taking account of socio-economic factors	18
7. Managing risk and uncertainty	19
8. Considering significance of effects	19
9. Advice and guidance from the statutory nature conservation body	20
10. Ongoing management of sites and condition monitoring	21
Annex A Main differences between the duties on public bodies in relation to MCZs and Habitats Regulations/ Offshore Marine Conservation Regulations	23

1 Who the guidance applies to

Defra has prepared a series of guidance notes to accompany Part 5 of the Marine and Coastal Access Act (as set out in diagram 1). These explain how the powers and duties to designate and protect Marine Conservation Zones (MCZs) will be used.

This guidance is aimed at informing the following of how new duties contained in sections 125, 126 and 127 of the Marine and Coastal Access Act 2009 operates:

- the Marine Management Organisation (MMO) as one of the regulatory bodies for MCZs;
- public authorities whose functions are capable of affecting MCZs (in the marine area this will include the Inshore Fisheries and Conservation Authorities, Harbour Authorities and Local Authorities);
- operators and developers applying for authorisation for an activity that is capable of affecting the protected features of an MCZ (or an ecological or geomorphological process that the features are dependent on); and
- statutory nature conservation bodies who provide advice to public authorities

Using this guidance will help people to comply with the legislation, prevent and minimise damage to MCZs, and provide benefits to the wider environment. This guidance should be read in conjunction with the legislation.

Draft guidance was originally issued in May 2008 by Defra and the Welsh Assembly Government with assistance from the statutory nature conservation bodies. It has now been revised to take account of changes made following the passage of the Marine and Coastal Access Act 2009 and of comments received from stakeholders. The Welsh Assembly Government will issue separate guidance at a later date in relation to its region. In the meantime further information can be obtained from:

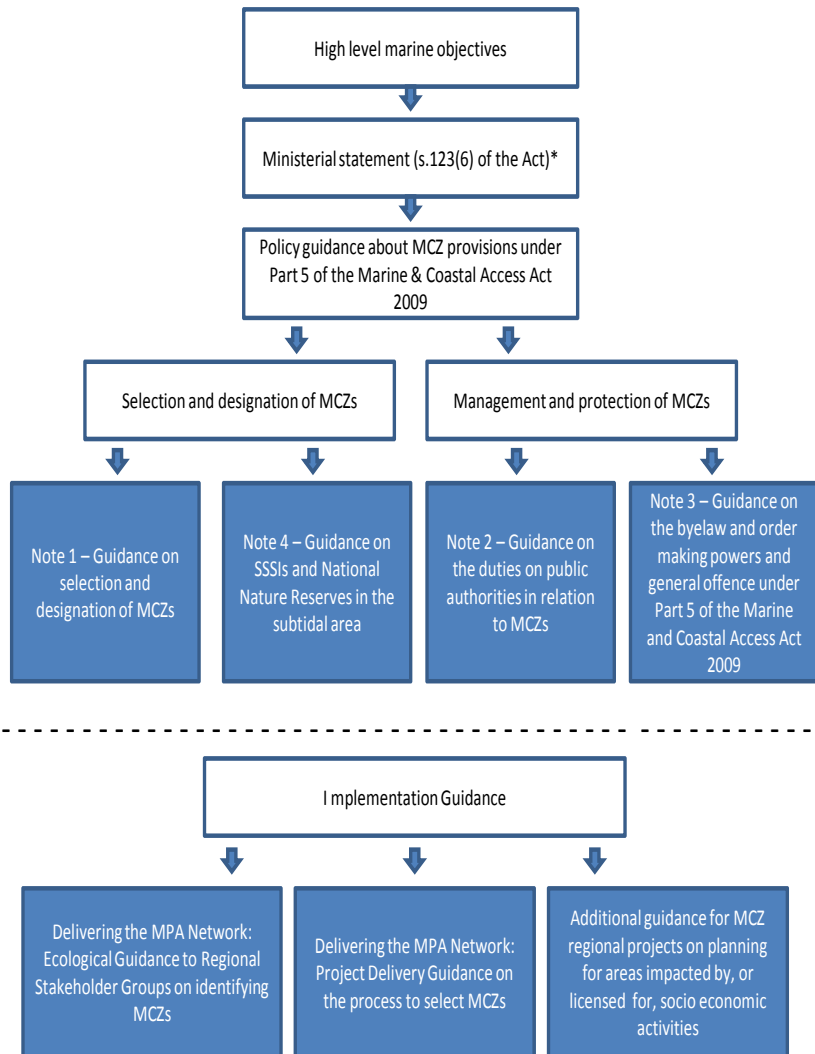
Marine Branch
Welsh Assembly Government
Cathays Park
Cardiff
CF10 3NQ

This guidance has been prepared by Defra. Separate guidance in relation to the Scottish offshore region will be issued by Scottish Ministers. In the meantime further information can be obtained from:

Marine Scotland
The Scottish Government
Area 1-A
Victoria Quay
Edinburgh
EH6 6QQ

Diagram 1

Framework of policy guidance for Marine Conservation Zones



2 Background

The Marine and Coastal Access Act 2009 (referred to in the rest of this document as ‘the Act’) is a piece of legislation that will improve the way the UK uses its marine resources and maximises the benefits it gets from them. One of the reasons it has been developed is to provide enhanced protection of the marine environment and biodiversity. In particular, Part 5 of the Act provides powers for Ministers to designate **Marine Conservation Zones** (MCZs) alongside a duty to exercise this power to contribute to the creation of a network of **Marine Protected Areas**.

MCZs together with **Special Areas of Conservation** (under the Habitats Directive), **Special Protection Areas** (under the Wild Birds Directive), relevant parts of Ramsar sites and Sites of Special Scientific Interest, will form an ecologically coherent network of Marine Protected Areas.

References to a ‘Minister’ means the Secretary of State or Scottish Ministers as appropriate. References to a statutory nature conservation body (SNCB) mean Natural England (in England) and the Joint Nature Conservation Committee (in offshore waters).

The Act seeks to protect and conserve MCZs through placing a series of new duties on public authorities. These duties are linked to the conservation objectives which will be contained in the designating order for each MCZ (made by Ministers).

The duties contained in sections 125, 126 and 127 can be summarised as follows:

- Section 125 – requires public authorities to exercise their functions in a manner to best further (or, if not possible, least hinder) the conservation objectives for MCZs.
- Section 126 - requires public authorities to consider the effect of proposed activities on MCZs before authorising them and imposes restrictions on the authorisation of activities that may have a significant risk of hindering the conservation objectives of an MCZ.
- Section 127 – states that the SNCBs may give conservation advice in relation to MCZs to public authorities, and are required to give that advice should an authority ask for it.

The duties are designed to provide MCZs with clear, flexible, proportionate and effective protection. The aim is to best achieve the conservation objectives for sites whilst not disproportionately impacting on the functions and efficiency of public authorities, or preventing necessary development which is in the public interest from taking place as long as there is compensation of equivalent environmental benefit.

The duties operate through the exercise of existing functions and consent regimes. They are intended to require public authorities and applicants to think more broadly and actively about how they carry out their existing functions and activities and, where feasible, to take positive measures to secure additional conservation gains. The new duties should lead to robust, transparent and integrated decision-making by all public authorities whose functions, actions or decisions could affect MCZ conservation objectives or MCZ ecological or geomorphological processes.

Further details about the duties are summarised in the table below. This should be read in conjunction with the text of sections 125 and 126.

Section:	Applies to:	Requirements (in summary) are to:
<p>General duties of public authorities in relation to MCZs (section 125)</p>	<p>Public authorities having any function capable of affecting the protected features of an MCZ, or any ecological or geomorphological processes on which a feature depends - other than insignificantly</p>	<ul style="list-style-type: none"> • Exercise functions (so far as is consistent with the proper exercise of the functions) in a manner which best furthers - or where that is not possible, least hinders - the conservation objectives for MCZs • Inform the SNCB where conservation objectives will or might be significantly hindered by carrying out functions • Inform the SNCB and relevant authority where it is believed that an offence (in relation to which the authority has functions) has been committed which will or might significantly hinder an MCZ's conservation objectives. • Have regard to advice from the SNCB
<p>Duties of public authorities in relation to certain decisions (section 126)</p>	<p>Public authorities which determine applications for authorisation of any acts capable of affecting the protected features of an MCZ, or any ecological or geomorphological processes on which a feature depends - - other than insignificantly</p>	<ul style="list-style-type: none"> • Inform the SNCB if there is a significant risk of an act hindering an MCZ's conservation objective and wait 28 days until considering the authorisation, except where the SNCB notifies the public authority that there is no need to wait or if the situation is urgent. • Not grant authorisation unless satisfied that either (a) there is no significant risk of hindering the conservation objectives, or (b) that (i) no other means of proceeding with the act would create a substantially lower risk of hindering the MCZ's conservation objectives, <u>and</u> (ii) the benefit to the public clearly outweighs the risk of damage <u>and</u> (iii) measures of equivalent environmental benefit to the damage will be undertaken • Have regard to advice from the SNCB

3 Public authorities

The duties in sections 125 and 126 apply to all public authorities having any function 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.

The term 'public authority' is defined in section 322 of the Act, and includes:

- (a) Ministers of the Crown;
- (b) public bodies (including government departments, local authorities, local planning authorities and statutory undertakers (including those authorised by legislation to carry out transport, dock or harbour works) ;
- (c) persons holding a public office.

For the purposes of sections 125 and 126, "public authority" does not include a Northern Ireland Minister or Northern Ireland department.

4 General duties of public authorities in relation to MCZs (section 125 of the Act)

The duty in section 125 requires public authorities, so far as is consistent with the proper exercise of their functions, to exercise their functions:

- in the manner which the authority considers best furthers the conservation objectives for the MCZ; or, where this is not possible:
- in a manner which the authority considers least hinders the achievement of the conservation objectives.

To fulfil the duty (see **Annex A**) public authorities will have to consider and implement changes in the way they carry out their functions or activities. The procedure to be followed is set out in a simplified decision making flow-chart in **Diagram 2**. This will ensure that they deliver conservation benefits for and minimise adverse effects on, MCZs. The duty applies to a wide range of functions which include:

- the development of new infrastructure;
- developing and implementing strategies, plans and policies,
- ownership and management of coastal land (for example coastal defence);
- management of shipping channels;
- provision of public information; and
- administration of consent, regulatory and enforcement regimes.

The scope of this duty will depend on the functions of the authority and the conservation objectives set for a particular MCZ.

The duties apply to Inshore Fisheries and Conservation Authorities (IFCAs) who are also subject to section 154 in Part 6 of the Act. Section 154 imposes a duty on IFCAs to seek to ensure that MCZ conservation objectives are furthered.

To fulfil these duties, IFCAs will have to seek to ensure that they deliver conservation benefits for MCZs. The duty applies to all IFCA functions to manage the exploitation of sea fisheries resources in an IFCA district including:

- The management of shellfisheries (through Regulating Orders) in nature conservation sites.
- Introduction of byelaws and permits to regulate the exploitation of sea fisheries resources , including byelaws to enable protection of MCZs;
- Measures to develop any fishery or sea fisheries resources in its district, including stocking or re-stocking a public fishery;
- Provision of public information; and
- Regulatory and enforcement regimes.

The scope of IFCAs' duties will depend on the conservation objectives set for a particular MCZ.

The Environment Agency will need to ensure that their flood risk management byelaws do not conflict with byelaws or orders made for the conservation of MCZs as required by paragraph 5(4)(b) and (c) of Schedule 25 to Water Resources Act 1991. While delivering its work to regulate activities such as environmental permitting for water discharge activities and waste operations, migratory fish management and flood and coastal risk management development activities, the Environment Agency must, like all public authorities, exercise them in such a manner that best furthers further, and where this is not possible, least hinders, the achievement of the MCZ's conservation objectives. They may need advice from the statutory nature conservation bodies to do so.

Requirement to inform the SNCB in respect of an authority's own functions (section 125)

The Act recognises that occasionally it might be necessary for a public authority, in properly exercising its functions, to do things which may hinder achievement of the conservation objectives for an MCZ. If a public authority considers that the exercise of any of its functions would or might significantly hinder the achievement of the conservation objectives, it must inform the relevant SNCB (section 125(3)). Best practice would be for early liaison with the SCNB to determine the significance of an activity.

For example, an authority might have a function for repairing underwater infrastructure. In undertaking this activity, it might be able to secure conservation benefits through making minor adjustments to the project specification (e.g. by taking advantage of the opportunity to replace the old item of infrastructure with a replacement which has less adverse impact on the features of the MCZ, or to change the purpose of the infrastructure to enable habitat creation). However, if no conservation gains are identified the authority should at least seek ways to minimise the impact so the effects

are insignificant (e.g. carrying out the project at a time of year which avoids disturbance to a species which is a feature of the site).

Under section 125(5), if a public authority intends to do an act that it believes may cause a significant risk of hindering the achievement of the conservation objectives for the MCZ, it must also notify the SNCB. This duty applies where the act is capable of affecting (other than insignificantly) the protected features of an MCZ or any ecological or geomorphological process on which the conservation of any protected feature of an MCZ is wholly or in part dependent.

The duty to inform the SNCB under section 125(5) will not apply if the SNCB has given the public authority advice or guidance in relation to the intended act and this advice is still current. If guidance is provided for routine activities (such as harbour works), public authorities will not then have to notify SNCBs every time they plan to carry out such routine activities – if they comply with the standing advice. Authorities should review their procedures with the SNCB (they may wish to establish a protocol to set out the approach regarding notification arrangements).

Authorities should also consider the cumulative, combined and synergistic effects that different activities may have on MCZ conservation objectives. SNCBs may issue guidance on this.

Where a public authority has notified the appropriate SNCB that the exercise of any intended act would or might significantly hinder achievement of the conservation objectives, the SNCB has 28 days to provide any advice, after which public authorities may decide to go ahead as planned. However, this 28-day rule does not apply if the SNCB notifies the authority that it need not wait or if the situation is urgent (see paragraph 5.4 below).

Section 125 requires public authorities to have regard to any advice issued by SNCBs under section 127.

Relationship of the duty under sections 125 to existing ‘biodiversity duties’

Public authorities already have certain biodiversity duties. For example, section 40 of the Natural Environment and Rural Communities Act 2006 stipulates that “every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity”. The new duties in the Act build on these duties. In particular it:

- relates to the specific conservation objectives for individual MCZs;
- places a more active duty on authorities (‘to further’ or ‘least hinder’ MCZ objectives); and
- requires authorities to inform the SNCB where achievement of MCZ conservation objectives may be significantly hindered and provides a greater advisory role for SNCBs in consenting regimes.

Requirement to inform the SNCBs and MMO

Public authorities are required (section 125(9) to (11)) to inform the relevant SNCB and the MMO of “relevant events”. These are defined as acts in relation to which the authority exercises functions and which it believes are offences which will, or may, significantly hinder the achievement of the MCZ conservation objectives.

This duty will apply, for example, where a public authority carries out regulatory or enforcement functions (either on its own account or on behalf of another authority) in the course of which it becomes aware that an offence has been committed. For example, a byelaw/conservation order may have been breached, activities may have been carried out without a necessary licence or permit or in breach of licence or permit conditions.

This information will be used by the MMO/SNCB to consider enforcement action and will help the SNCBs to formulate advice and guidance, for example on the condition and how the conservation objectives of the MCZ can be achieved.

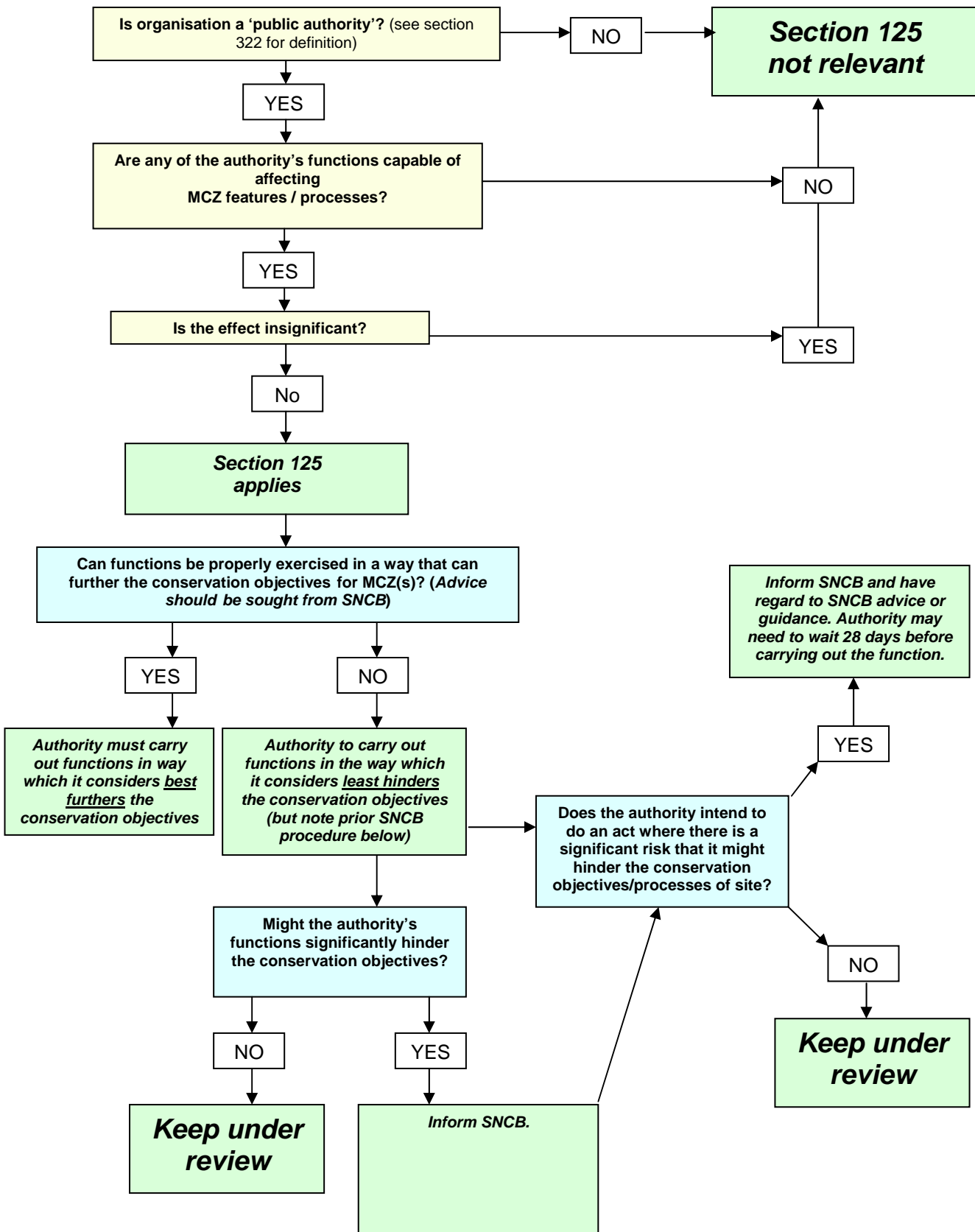
Matters for which the UK does not have competence

Where furtherance of the conservation objectives for an MCZ requires measures to be taken in respect of which the UK does not have competence to act, the Government will use its best endeavours to seek measures through the relevant EU or international channels. For example this may be in relation to matters covered by the Common Fisheries Policy (CFP) or matters governed by the United Nations Convention on the Law of the Sea.

As set out in Guidance Note 3, where a requirement for fisheries controls for MCZs beyond 6 nautical miles is identified, the matter would be raised with the MMO/Regulator in the first instance (who may need to discuss the matter with Defra and SNCBs). In the 6-12nm zone, non-discriminatory conservation measures (that do not impinge on other Member States’ historic fishing rights) may be taken unilaterally. In those parts of the 6-12nm zone where other Member States’ vessels would be affected by the proposed measures it will be necessary first to seek the agreement of the Commission and affected Member States to their introduction. Beyond 12 nautical miles, the UK Government will seek necessary controls through the Common Fisheries Policy. This approach is in line with the requirements of the Marine Strategy Framework Directive, which outlines a process by which activities under EU competence can be controlled to ensure they do not cause environmental damage.

Diagram 2

Simplified decision-making flow-chart in relation to the duty imposed on public authorities by section 125 of the Act



5 Duties of public authorities in relation to certain decisions (section 126 of the Act)

Section 126 applies to all public authorities with responsibility for authorising applications for activities (such as proposed infrastructure development, dredging or shellfish extraction) capable of affecting:

- a protected feature of an MCZ or
- any geological or geomorphological processes on which the conservation of an MCZ feature is partially or wholly dependent.

It does not apply where the effect is insignificant, in order to avoid capturing very minor matters. The duty applies to all types of consent (however described), including licences granted by the MMO (under Part 1 of the Act) and planning permissions granted by local planning authorities.

Where an authorising authority believes that there is or may be a significant risk of an act hindering the achievement of the conservation objectives of an MCZ it must:

- notify the SNCB;
- wait 28 days before granting the authorisation (unless the SNCB advises that authorisation can be given earlier);
- have regard to any advice of the SNCB.

Early liaison with the SNCB to determine the significance of an activity is strongly advised.

The 28 day notification requirement is waived where the authority considers there is an urgent need for authorisation to be given, although in these circumstances it must still notify the SNCB as soon as practicable after the commencement of the authorisation. The following provides examples of where urgent situations could include emergencies which pose a risk to human health or to the wider environment:

- In a maritime emergency, the priority of the rescue services is to ensure the safety of those on board a stricken vessel. If this was in close proximity to the boundary of a MCZ, then authorisation by SNCBs would not be expected before carrying out the rescue operation, despite potential effects on the MCZ features e.g. if the ship drifted and sunk into or next to the MCZ.
- If a trawler was to snag an oil and gas pipeline within the seabed and bring it to the surface, on or near an MCZ, there would be an increased risk of causing a wide scale pollution event. In this type of situation it is likely that the oil and gas company would want to stabilise the pipeline by putting rock on it. After the incident occurred, if the mitigation action was required in a very fast timescale (for example over a weekend), it may not be possible for the SNCBs to respond to the public authorities within this timeframe. Given the urgent situation it may be appropriate for the public authority to authorise the consent for the rock dump, despite potential effects on the MCZ feature.

Under section 126, a public authority must not grant an authorisation unless, either:

(a) it believes there is no significant risk that the activity will hinder the achievement of the conservation objectives for the MCZ;

or

(b) certain conditions are met by the applicant which are:

(i) the activity cannot be carried out in any other way (which includes in another manner or at another location) to substantially lower the risk of hindering the achievement of the conservation objectives, **and**

(ii) the benefit to the public clearly outweighs the likely environmental damage (and not just to the MCZ), **and**

(iii) it is demonstrated that measures of equivalent environmental benefit to the damage, that will be or is likely to be caused, to the MCZ are secured.

The procedure is set out in a flow diagram in **Diagram 3**. The public authorities likely to be affected by this duty include (but are not limited to) Government departments and their executive agencies, non departmental public bodies (e.g. the MMO), the Crown Estate Commissioners and local authorities.

Mitigation Measures

The applicant may propose, or the authorising authority may seek, mitigation measures to reduce or remove the potential adverse impact that a proposed act may have on an MCZ. There are a range of mitigation measures that could be employed including spatial and temporal restrictions to activities, modification of instruments and infrastructure and monitoring strategies that are built into the project to detect potential impacts upon MCZ features (to provide feedback into the planning and design of a development).

The mitigation required will be dependent upon the type of impacts that are reasonably foreseeable on the MCZ. For example, if an MCZ contained sea-pen and burrowing mega fauna communities and a development was proposed within this area, then any mitigation measures should be designed to avoid causing physical loss, disturbance or damage to the feature. Where such measures are identified and are secured (so as to remove any significant risk of the proposed act hindering the achievement of the conservation objectives for the MCZ) then consent may be granted.

Considerations when a public authority believes that there is, or may be, a significant risk of an act hindering the achievement of MCZ conservation objectives

(i) Alternative means of proceeding with the act (section 126(7)(a))

In considering whether there are any alternative means of proceeding with the act, the applicant and authorising authority should consider whether there are, or are likely to be, other suitable and available sites. They should also consider whether different approaches, timings, equipment and infrastructure, activities or methods would create a significantly lower the risk so achievement of the conservation objectives for the site

is not hindered. If there are no other solutions for proceeding with the act, then consideration can turn to:

ii) 'Benefit to the public' and 'damage to the environment' (section 126(7)(b))

It is for the applicant to demonstrate (to the satisfaction of the authorising authority) that the benefit to the public of the proposed activity clearly outweighs the damage it may cause to the environment (after taking account of any possible mitigation measures). This will involve an assessment of the purpose, location, size, timing, significance and importance of the development/activity. The benefit to the public must clearly (and hence demonstrably) outweigh damage to the environment and must result in wider public benefit rather than a private benefit to a small number of individuals.

An activity or development might be considered to provide a 'benefit to the public' if it is indispensable or desirable:

- within the framework of national policies;
- within a framework of actions or policies to protect public health and safety; or
- in carrying out activities of an economic, environmental or social nature, to fulfil specific public service or statutory obligations.

An activity or development might also be considered to provide a 'benefit to the public' if it is indispensable in providing a service or benefits to a population or community at a regional or local level. These benefits may be of a social, economic or environmental nature.

Considering whether the benefit to the public outweighs the damage to 'the environment' will in particular require consideration of:

- the impact on the conservation objectives for the MCZ(s) affected;
- any impact on the objectives, coherence and vision for the MPA network at the regional and national level;
- the impact of any activity on the delivery of sustainable development of the marine environment;
- the impact of any activity on the delivery of measures aimed at achieving Good Environmental Status as set out in the Water Framework Directive;
- the impact of an activity on the delivery of measures aimed at achieving Good Environmental Status as set out in the Marine Strategy Framework Directive; and
- the cumulative, combined and synergistic impacts of the proposed activity, taken with other activities in the relevant area.

Provided there is no means of proceeding with the activity which would create a substantially lower risk of hindering the achievement of the MCZ conservation objectives, and the benefit to the public clearly outweighs the risk of damage to the environment, consideration can be given to:

iii) Measures of equivalent environmental benefit (section 126(7)(c)) and the risk based approach

If a development is to proceed which carries a significant risk of hindering the achievement of the MCZ conservation objectives (despite mitigation), the applicant will need to satisfy the authorising authority by demonstrating that 'measures of equivalent environmental benefit' to the damage or likely damage will be secured.

Where the level of impact is difficult to predetermine, an approach based on variable risks might help evaluate possible damage to the environment and the equivalent environmental benefit required. If the public authority and applicant agree that a risk exists (even if they disagree about the likelihood and scale of the risk), they may choose to negotiate and sign up to a graduated range of equivalent beneficial measures reflecting the scale of possible impacts. This would be linked to a monitoring scheme (at the developer's expense) which would determine the actual level of impact, and hence the actual equivalent beneficial measures likely to be required (at the developer's expense). This approach could help avoid an open-ended liability.

Developers would benefit if the impacts turn out not to be as significant as initially feared. The environment would also benefit because this approach creates a strong incentive for developers to minimise damage during the implementation and operation stages of a project.

This approach may not be appropriate in all cases. Where the likely damage is easily identified or the level of equivalent beneficial measures is unlikely to be very great, the authority, applicant and SNCB should agree the mitigation package in advance of the damage occurring.

The meaning of 'equivalent environmental benefit' will depend on the scale and nature of the impact. It will be for the public authority to decide on what measures are appropriate and of equivalent environmental benefit having regard to any advice provided by the SNCB (under section 127). This is a matter on which the SNCB has a power to provide general or specific advice and guidance. The public authority will be required to have regard to any such advice or guidance.

Equivalent beneficial measures might involve restoration of habitat (a presumption of the same feature unless this is not possible) to enable the conservation objectives of the feature to be met and may require conservation actions within the MCZ or elsewhere. The measures might also involve broader measures, such as monitoring and survey work (perhaps to help identify areas for future designation) or contributing to the financial cost of ending, or buying-out, other harmful activities. The presumption should generally be in favour of like for like measures, but where this is not possible or practicable then measures should be secured which benefit the same features (habitats, species, etc) before broader measures of equal value are considered (perhaps including a monitoring element).

Where authorising authorities have the power to attach conditions to authorisations, they are required (section 126(7)) to exercise that power so as to secure delivery of any measures of equivalent environmental benefit considered necessary.

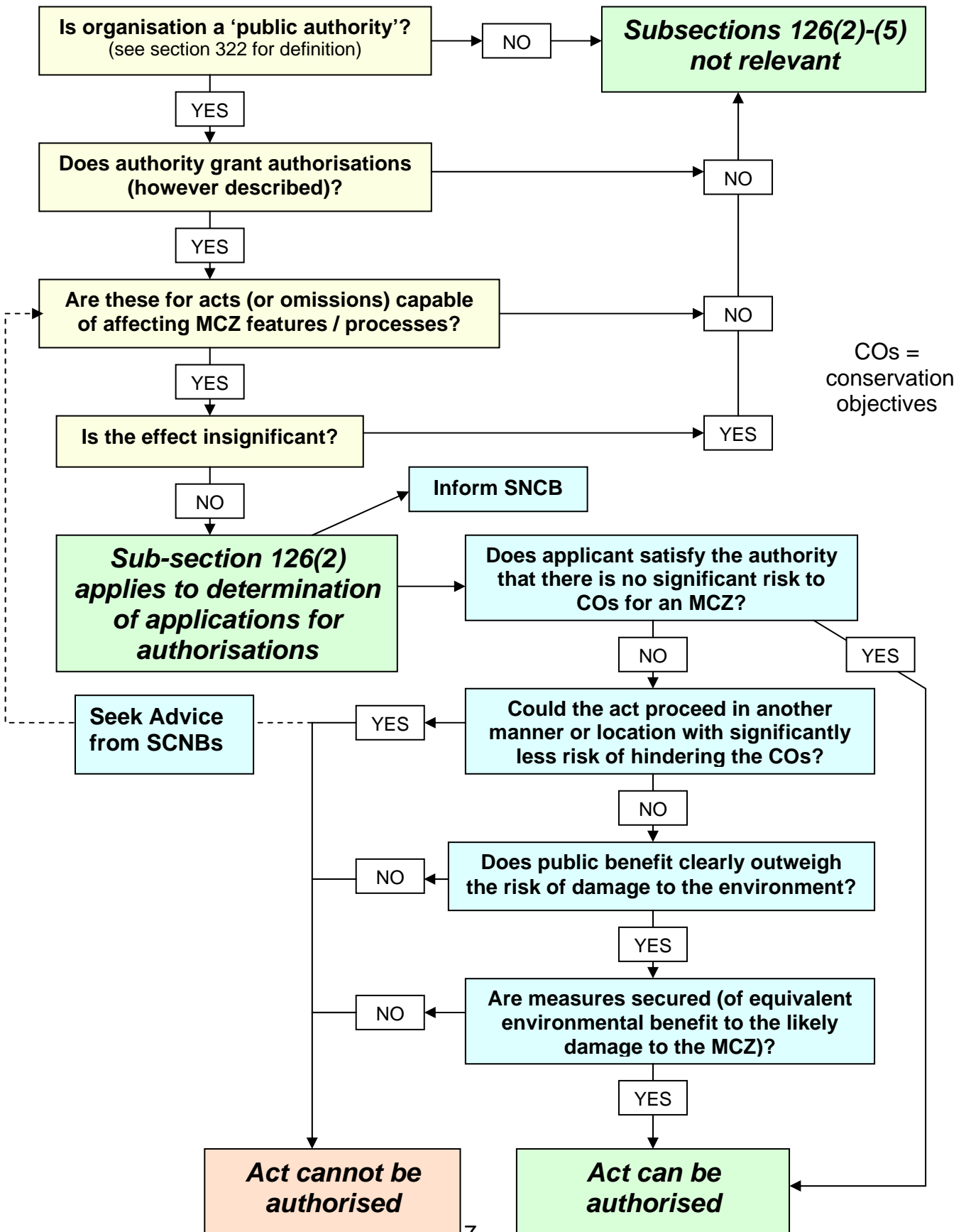
Cumulative effects of authorisations or consents on MCZs

In exercising their functions as authorising authorities, public authorities will be subject to the duties contained in both sections 125 and 126. Authorities should take a view of the overall combined, cumulative and synergistic effects which their activities and authorisations or consents which they grant are likely to have¹. They should liaise with the SNCBs on likely impacts.

¹ For Local Planning Authorities this should be done as part of the established process of reviewing relevant land development plans and marine spatial plans.

Diagram 3

Simplified decision-making flow-chart in relation to the duty imposed on authorising-authorities by section 126 of the Act



Relationship to existing duties under Article 6 of the EU Habitats Directive

Public authorities have existing duties in relation to European marine sites² (within 12 nautical miles) and European offshore marine sites (12-c.200 nautical miles) under the EU Habitats and Wild Birds Directives and transposing legislation (primarily the Conservation of Habitats and Species Regulations 2010 – the Habitat Regulations - and the Offshore Marine Conservation (Natural Habitats, &c.) Regulations.

There is a general duty on public authorities having functions relevant to marine conservation to exercise those functions so as to secure compliance with the requirements of the Habitats and Birds Directive. The effect of this obligation is that, where a particular activity needs to be restricted in order to meet our obligations under article 6(2) of the Habitats Directive, and a public body such as the MMO, an SFC or an IFCA has the power to take the necessary step to restrict that activity, such as through a byelaw, it would be legally obliged to do so.

In exercising their powers to designate MCZs, the Act specifically requires Ministers to have regard to any obligations under EU and international law that relate to the conservation or improvement of the marine environment (section 123(5)).

6. Taking account of social and economic factors

The duty in section 126 allows public authorities to take account of relevant socio-economic factors in various ways. This allows material considerations to be properly taken into account and ensures that the best overall decision is reached in the public interest. It ensures that conservation objectives are given appropriate weight and that socio-economic activities are allowed to take place where this is necessary in the public interest, subject to safeguards that will ensure the integrity of the network.

The general duty to ‘further’ or if not possible ‘least hinder’ the conservation objectives of an MCZ is not intended to place disproportionate or unreasonable burdens on public authorities and only applies “so far as is consistent with the proper exercise of the authority’s functions”.

In deciding whether to approve potentially harmful developments (which cannot be carried out elsewhere or by alternative means) authorising authorities will be able to take account of the ‘benefit to the public’. Such benefits can be social, economic or environmental in character, and can occur in a direct or indirect (e.g. changes in behaviour that can have additional positive effects) way.

² European Marine Sites is a term that encompasses Special Areas of Conservation (SACs) sites of Community importance, candidate SACs, a site hosting a priority natural habitat type or priority species protected in accordance with article 5(4) of the Habitats Directive, and Special Protection Areas (SPAs), in the marine area.

7 Managing risk and uncertainty

In carrying out their duties under Part 5 of the Act, it is inevitable that public authorities will be required to take decisions on the basis of incomplete or uncertain information. For example, it will sometimes be impossible or impractical to establish with certainty:

- whether an activity or proposed development is capable of affecting an MCZ, and whether the impact is insignificant;
- whether or not a proposed development may ‘hinder the achievement’ of an MCZ’s conservation objective;
- the extent of any ‘damage³ to the environment’; or
- whether equivalent environmental benefit measures will secure the desired outcome.

Decision-making, and requirements for information from applicants, should be reasonable and proportionate to the level of risk and potential impact. Bearing in mind that we need to achieve an ecologically coherent network and there will be times when we do not have a full set of evidence, decisions should be based on the balance of best available evidence and have regard to any advice from SNCBs. In cases where the risk to the conservation objectives of the site could be high, it may be appropriate to follow a precautionary approach when taking decisions.

8 Considering “significance risk” and “insignificant impacts”

Both the general duties (section 125) and the duty on authorising-authorities (section 126) apply only when an activity, or function is likely to affect the protected features of an MCZ or the ecological or geomorphological process on which the conservation of any protected feature of an MCZ is dependent, “other than insignificantly”. It will be for the authority concerned (after having had regard to any advice or guidance from the SNCB) to determine whether the impact is insignificant and therefore not subject to these duties.

Whether an impact is insignificant in conservation terms, will involve an assessment of whether the protected features might potentially be affected by the location, size, timing or other characteristics/consequences of the activity or development concerned. It should be noted that:

- an effect can be either negative or positive (considering positive effects ensures that the general duty (section 125) to further or if not possible least hinder the conservation objectives, applies where there are potential conservation gains or benefits to be achieved);
- effects can be direct or indirect, although any indirect effects should have an obvious link to the development/activity (rather than being unlikely or hypothetical); and
- an act does not have to be located within an MCZ

³Damage’ is defined in section 126(11) of the Act and includes the prevention of an improvement

The duty on authorising-authorities in section 126 is worded so as to require the authorising authority to consider whether there may be a significant risk of the proposal hindering the achievement of the MCZ conservation objectives. What constitutes a significant risk will depend on the specific circumstances and will need to be considered on a case by case basis, having regard to:

- the likelihood,
- and any advice or guidance from the SNCB.

Depending on the circumstances, it may be that there will be no significant risk if the likelihood is small of a serious impact with quick recoverability occurring, or a moderate likelihood of a very minor or localised impact. Lack of certainty should not necessarily prevent authorisations being granted – and they may be granted subject to conditions

9 Advice and guidance from the statutory nature conservation body

The conservation objectives for MCZs will be drafted so that public authorities are able to understand clearly the implications that arise in the exercise of their functions. In addition, the conservation objectives should be accompanied by advice on the pressures that may affect achievement of the conservation objective. SNCBs will provide advice or guidance to assist public authorities in interpreting and understanding the conservation objectives, the matters that could damage features and how to further the conservation objectives. Public Authorities will need to then decide on any necessary management measures (for example on existing authorised activities as well as potential new ones) occurring on or near the MCZ. Section 127 enables the SNCB to give advice or guidance on:

- the matters which are capable of damaging or otherwise affecting any protected feature or features;
- 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;
- how any MCZ conservation objectives may be furthered, or how they may be least hindered;
- how the effect of any activity or activities on an MCZ or MCZs may be mitigated;
- 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;

The above list does not limit or restrict the range of matters on which the SNCBs can give advice and guidance (under their existing functions). However, advice and guidance issued under this section is subject to specific provisions within the Act to ensure transparent and robust decision-making. In particular:

- when complying with the duties in sections 125 and 126, public authorities are required to have regard to any advice and guidance given by the SNCB under section 127; and

- section 128 applies where the SNCB considers that a public authority has failed or is failing to comply with its duties under sections 125 or 126, or fails to act in accordance with advice or guidance given under section 127. In these circumstances the SNCB has the power to require the public authority to provide a written explanation as to the reasons why.

Advice or guidance can be specific (e.g. a letter to a particular authority in connection with a specific site or proposed development) or general (e.g. published guidance to public authorities in relation to one or more MCZs). SNCBs and local planning authorities are encouraged to agree how the process of engagement can be made most effective and efficient.

10 Ongoing management of sites and condition monitoring

Section 125 places a duty on public authorities, where relevant, to act to further the conservation objectives for MCZs in so far as these are consistent with the proper exercise of their functions. Public authorities will be free to establish management or liaison groups, and to develop management schemes for MCZs with other stakeholders and regulators where they see advantage of co-operation on the management of current or future impacts on a site. The extent to which authorities need to co-operate in order to further the conservation objectives of MCZs will depend on the particular circumstances in each MCZ, and the pressures it is under. The SNCB may give advice on these matters. Where a management group or management scheme is established it is recommended that one of the public authorities is identified as the lead authority for the purpose of progressing and co-ordinating the work involved.

Experience with coastal European marine sites suggests that management groups of relevant authorities are generally effective in coordinating management and giving authorities a better shared understanding and holistic view of the site. In addition, many coastal European marine sites have advisory groups of stakeholders that feed information and advice into the management group. In many cases the need for and likely membership of these groups is likely to become apparent through the site selection process. For example, through the course of discussions about site selection as part of the regional MCZ project stakeholder group, stakeholder members may identify the need to retain a small group to consider management issues once the MCZ is designated, although this will not be appropriate for every case.

On sites with many features, or sites regulated by lots of public authorities, developing management schemes has been particularly useful in coordinating management, monitoring, agreeing priorities and actions, and delivering wider benefits such as public awareness of the site. Project officers are employed on many inshore European marine sites to coordinate the management group and deliver the management scheme. Public authorities may wish to consider funding such posts for MCZs where this will assist them in performing their duties.

SNCBs will monitor and report on the ecological condition of sites to ensure that MCZ conservation objectives are being furthered/met. This will include monitoring and reporting on the biological condition proxy indicators of condition. Information on threats and activities will be a key component in assessing site condition and it is anticipated that the MMO, regulators and other public authorities will play an important role in

providing activity monitoring information to the SNCBs to aid their assessment of site conditions. Arrangements in relation to providing information about individual MCZs and groups of MCZ sites will need to be agreed between the authorities concerned and SNCBs. Monitoring schemes are being developed by the SNCBs, and will feed in to the reports which Ministers are required to lay before the appropriate legislature (section 124) in 2012 and at least every 6 years thereafter.

The results of ecological and activity monitoring will be used to assess the success of the MCZ designation for the site and its contribution to the MPA network as a whole, as well as whether the conservation objectives are being achieved and whether any management measures put in place are proving to be effective or require modification.

Main differences between the duties on public bodies in relation to MCZs and European Marine Sites

	Marine and Coastal Access Act 2009 provisions	Conservation of Habitats and Species Regulations 2010 and the Offshore Marine Conservation Regulations 2007, as amended
General duties on public authorities	<p>Section 125 – the general duties are intended to make conservation of MCZs an important consideration for all relevant public authorities and require them to exercise their functions in a way to further (or least hinder) the conservation objectives for MCZs.</p> <p>Section 126 - the duty on authorising authorities contains specific provisions relevant to the granting of authorisations, licences, consents and permissions.</p>	<p>In the marine area any competent authority having functions relevant to marine conservation must exercise those functions to secure compliance with the Habitats Directive.</p> <p>Before authorising any plan or project that may (either alone or in combination with other plans or projects), have a significant effect on the protected site, a competent authority must undertake an appropriate assessment of the implications for that site in view of that site's conservation objectives.</p>
Description of activities to which site protection provisions apply:	Section 126 - Refers to authorisations for the doing of any acts (including omissions)	Refers to any plan or project
Screening out of activities connected with site management:	<p>Section 126 - Two stage:</p> <ol style="list-style-type: none"> 1. If public authority has a function of determining an application for the authorisation of an act and the act is capable of affecting (other than insignificantly) the protected features of an MCZ or any ecological or geomorphological process on which the conservation of any protected feature of an MCZ is dependent. 2. The authority believes that there may be a significant risk of the act hindering the achievement of the conservation objectives stated for the MCZ. 	Competent (authorising) Authority to carry out an initial screening to establish whether the plan or project may (either alone or in combination with other projects and plans) have a significant effect on the protected site.
Lower thresholds:	Section 125 and 126 - Threshold: 'other than insignificantly'	Unless it can be established conclusively that the project or plan will not have a significant effect on the site, an appropriate assessment of the plan or project must be undertaken by the Competent Authority.
Assessing impacts:	Sections 125 and 126 - Duties are linked to acts/functions impact on the achievement of the conservation objectives for	The assessment focuses on the impact on the integrity of the protected site. The assessment process involves impact prediction, consideration of conservation objectives and

	the MCZs	identification of mitigation measures.
Allowing activities in the public interest:	Acts may be authorised, where 'there is no other means of proceeding which would create a substantially lower risk' of hindering MCZ's conservation objectives, where 'benefit to the public clearly outweighs the risk of damage to the environment' (this can include benefits to the public at a regional or local level) and the applicant has arranged for, or undertaken, measures of equivalent environmental benefit (Section 126(7)(c))	Where the assessment process reveals an adverse impact on the protected site which cannot be mitigated, and where no feasible alternative solution can be found, the project or plan may go ahead for 'imperative reasons or overriding public interest' provided that necessary compensatory measures are undertaken to protect the coherence of the protected site network.
Compensatory measures:	Measures of 'equivalent environmental benefit'	Necessary compensation measures to 'ensure overall coherence' of the network is protected
Notifying Ministers of activities which are to proceed in public interest:	No requirement	Competent authority to notify SofS if it proposes to agree a plan or project that would have an adverse effect on a site, and shall not agree to the plan or project before the end of a period of 21 days, unless the SofS notifies the authority that they may do so. SofS may give directions to the authority prohibiting them from agreeing to the plan or project.
Notifying SNCBs:	Public authority to inform SNCB where it believes that there is or may be a significant risk of hindering MCZ's conservation objectives. It is always best practice to consult SNCBS early on for advice on determining the likely significant effect of an act,	Competent authorities to consult SNCBs when they decide to undertake an appropriate assessment (if a plan or project is likely to have a significant effect) and shall have regard to any representations made by that body.
Management schemes:	No specific provisions for MCZs	Statutory provision and duties in relation to management schemes for European Marine Sites