

TEMPORARY EXCLUSION ZONES AND TEMPORARY DANGER AREAS

Introduction

1. This appendix contains information on the establishment and effect of temporary exclusion zones and temporary danger areas.

Temporary exclusion zones

Legal basis

2. Section 100A of the 1995 Act provides powers to establish TEZs¹.

Purpose

3. Section 100A enables the Secretary of State to declare a Temporary Exclusion Zone (TEZ) to promote maritime safety or protecting the marine environment.

When can we designate a TEZ?

A relevant casualty must be wrecked, damaged or in distress

4. Section 100A(1) provides power for the Secretary of State to designate a TEZ around a “ship, structure or other thing”. It refers to this as the “relevant casualty”. (However, the use of the term “casualty” does not add to the meaning or connotation of the powers). The phrase “ship, structure or other thing” is very wide and could include, for example, offshore oil and gas installations.
5. The powers to designate a TEZ can only be exercised if the relevant casualty is “wrecked, damaged or in distress”. The 1995 Act contains no definition of the term “distress”. Legal advice suggests that we could consider a casualty to be “in distress” if there were an imminent risk of it being wrecked or damaged. However, the casualty must actually be in distress. There is no power to anticipate.
6. Whether or not a casualty is in danger is an objective matter. It is for the master of the casualty to declare that the casualty is in danger.

The TEZ must prevent or reduce a threat of significant harm

¹ Section 1 of the 1997 Act inserted sections 100A and 100B.

7. Section 100A(2) provides that the Secretary of State must also be satisfied that the incident meets two further criteria.
8. First, it must appear that “significant harm” will or may occur as a (direct or indirect) result of the relevant casualty being wrecked, damaged or in distress. Significant² harm means either:
 - significant pollution in the UK, the UK’s territorial sea or in the UK pollution control zone; or
 - significant damage to persons or property.
9. Second, it must appear that restricting access to the area around the casualty by way of a TEZ would prevent or reduce significant harm or the risk of such harm.

Size, location and duration of TEZ

10. The Act does not specify the size, location or duration of the TEZ. However: we can only exercise the powers to designate a TEZ if the relevant casualty is within the UK’s Territorial Waters, Pollution Control Zone or the UK Continental Shelf.
 - a TEZ cannot include waters beyond the pollution control zone;
 - a TEZ must not be larger than is necessary to prevent or reduce significant harm or the risk of such harm. The Secretary of State must vary the zone accordingly if it appears that this is the case; and
 - the Secretary of State must revoke a TEZ should it appear that there is no longer a need for it to prevent significant harm or the risk of significant harm.

Establishment of a TEZ

11. In practice The Secretary of State’s Representative (SOSREP) or designate establishes a TEZ by giving a direction. As soon as practicable, the SOSREP should promulgate the direction via the NMOC

² Sections 100A and 100B do not define the term “significant”. The question whether the harm is significant should be a subjective decision based on the circumstances of the incident.

in such a manner as to bring it to the attention of persons it is likely to affect. Within 24 hours of giving the direction, the SOSREP must send a copy to the International Maritime Organization.

Which ships may we exclude from a TEZ?

12. Section 100B(4) provides that a ship may enter or remain within a TEZ if:
 - the direction establishing the zone permits it to do so;
 - the Secretary of State gives his consent; or
 - this is in accordance with regulations made by the Secretary of State.
13. Apart from these ships, section 100B(1) provides that no ship may enter or remain in a TEZ if the direction establishing the zone contains a particular statement. This is a statement to the effect that the purpose of the direction is to prevent or reduce significant pollution or the risk of such pollution within the UK's territorial sea or pollution control zone.
14. Section 100B(3) provides that, if the direction does not contain such a statement, no ship may enter or remain in any parts of a TEZ that are within the UK's territorial sea. UK ships may not enter or remain in any part of the zone³.
15. However, foreign ships may enter part of a TEZ within the UK's territorial sea if they are exercising the right of transit passage through straits used for international navigation⁴.

Temporary danger area (TDA)

16. A marine incident may generate considerable aircraft movement in a limited area. The NMOC as an Emergency Controlling Authority (ECA) may seek to inhibit flight in the vicinity of an emergency incident if it is considered essential for the safety of life or property and particularly for the protection of those engaged in the response action. The NMOC contacts the MOD Aeronautical Co-ordination Centre (ARCC) and

³ Section 100B(3) takes account of the fact that, in accordance with the law of the sea, if a TEZ is not established to prevent or reduce pollution, foreign ships may not be excluded from any part of the zone that lies outside territorial waters.

⁴ Again, this a requirement of the international law of the sea (as reflected in Article 38(1) of UNCLOS).

requests an Emergency Restriction of Flying Regulations. The ARCC refers the request to the National Air Traffic Services, who have the authority to establish the restriction.

- 17 Depending on the nature of the incident the initial action is normally the establishment of a Temporary Danger Area (TDA) notified by Notice to Airmen (NOTAM). However, if a TDA fails to meet the objective or is deemed to be inappropriate for a particular incident, Emergency Restrictions of Flying Regulations may be introduced. The Regulations make it an offence to fly within the designated Temporary Restricted Area without permission of the appropriate ECA. Notification of the coming into force of the Emergency restriction of Flying Regulations and details of the Temporary Restricted Area are made by NOTAM and at the same time any previously established TDA is withdrawn.
- 18 The ECA is the only authority which may grant permission for aircraft to be flown within the notified airspace. Subject to overriding considerations of safety, flights by aircraft directly associated with the emergency are invariably given priority over those seeking to overfly for any other reason.