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STATUTORY INSTRUMENTS

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**2010 No. 490**

**The Conservation of Habitats and Species Regulations 2010**

**PART 1**

**INTRODUCTORY AND GENERAL PROVISIONS**

**Exercise of functions in accordance with the Habitats Directive**

**9.—(1)** The appropriate authority and the nature conservation bodies must exercise their functions under the enactments relating to nature conservation so as to secure compliance with the requirements of the Habitats Directive.

(2) Paragraph (1) applies, in particular, to functions under the following enactments—

- (a) Part 3 of the 1949 Act (nature conservation);
- (b) section 15 of the Countryside Act 1968(1) (areas of special scientific interest);
- (c) Part 1 (wildlife) and sections 28 to 28S(2) and 31 to 35(3) of the WCA 1981 (which relate to sites of special scientific interest);
- (d) sections 131, 132 and 134(4) of the Environmental Protection Act 1990 (which relate to nature conservation functions of the Countryside Council for Wales);
- (e) the Natural Environment and Rural Communities Act 2006(5); and
- (f) these Regulations.

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- (1) 1968 c. 41; section 15 was amended by the WCA 1981, section 72(8) and Part 1 of Schedule 17; the Environmental Protection Act 1990 (c. 43), paragraph 4(2) of Schedule 9 and Part 6 of Schedule 16; the Countryside and Rights of Way Act 2000 (c. 37), section 75(3); the Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5), paragraph 29(1) and (2) of Schedule 12; and the Natural Environment and Rural Communities Act 2006 (c. 16), paragraph 48 of Schedule 11 and Schedule 12.
  - (2) Section 28 was substituted, and sections 28A to 28R were inserted, by the Countryside and Rights of Way Act 2000 (c. 37), paragraph 1 of Schedule 9; sections 28 to 28R were amended by the Natural Environment and Rural Communities Act 2006 (c. 16) (“the 2006 Act”), paragraph 79 of Schedule 11; section 28D was amended by the 2006 Act, section 56; section 28E was amended by the 2006 Act, paragraph 80 of Schedule 11; section 28G was amended by the 2006 Act, paragraph 81 of Schedule 11 and Schedule 12; section 28P was amended by the 2006 Act, section 55; and section 28S was inserted by the 2006 Act, section 58(1).
  - (3) Sections 31 to 34 were repealed as regards Scotland by the Nature Conservation (Scotland) Act 2004 (asp 6), paragraph 4 of Schedule 7; section 31 was amended by the Criminal Justice Act 1982 (c. 48), sections 37 and 46, by the Countryside and Rights of Way Act 2000 (c. 37) (“the 2000 Act”), paragraph 3 of Schedule 9, by the Constitutional Reform Act 2005 (c. 4), paragraph 37 of Schedule 9, and by the Natural Environment and Rural Communities Act 2006 (c. 16) (“the 2006 Act”), section 55(5) and paragraph 79 of Schedule 11; section 32 was amended by the Agriculture Act 1986 (c. 49), section 20(1), (2) and (3), by the 2000 Act, paragraph 4 of Schedule 9 and Part 3 of Schedule 16, and by the 2006 Act, paragraph 79 of Schedule 11; section 33 was amended by the 2006 Act, paragraph 82 of Schedule 11; section 34 was amended by the Local Government Act 1985 (c. 51), paragraph 7 of Schedule 3, by the Planning (Consequential Provisions) Act 1990 (c. 11), paragraph 54(1) of Schedule 2, by the Local Government (Wales) Act 1994 (c. 19), paragraph 65(3) of Schedule 16, by the 2000 Act, section 78, and by the 2006 Act, paragraph 83 of Schedule 11 and Schedule 12; section 34A was inserted by the 2006 Act, paragraph 84 of Schedule 11; and section 35 was amended by the 2006 Act, paragraph 85 of Schedule 11.
  - (4) 1990 c. 43; section 131 was amended by the Natural Environment and Rural Communities Act 2006 (c. 16) (“the 2006 Act”), paragraph 120 of Schedule 11; section 132 was amended by the 2006 Act, paragraph 121 of Schedule 11 and Schedule 12; and section 134 was amended by the 2006 Act, paragraph 123 of Schedule 11.
  - (5) 2006 c. 16.

(3) A competent authority must, in relation to a marine area, exercise any of their functions which are relevant to marine conservation so as to secure compliance with the requirements of the Habitats Directive.

(4) Paragraph (3) applies, in particular, to functions under the following enactments—

- (a) the Sea Fisheries Acts within the meaning of section 1 of the Sea Fisheries (Wildlife Conservation) Act 1992<sup>(6)</sup> (conservation in the exercise of sea fisheries functions);
- (b) the Dockyard Ports Regulation Act 1865<sup>(7)</sup>;
- (c) subsection (2) of section 2 of the Military Lands Act 1900<sup>(8)</sup> (provision as to byelaws relating to the sea, tidal water or shore);
- (d) the Harbours Act 1964<sup>(9)</sup>;
- (e) Part 2 of the Control of Pollution Act 1974<sup>(10)</sup> (pollution of water);
- (f) the Water Resources Act 1991<sup>(11)</sup>;
- (g) the Land Drainage Act 1991<sup>(12)</sup>;
- (h) the Planning Act 2008<sup>(13)</sup>;
- (i) the Marine Act; and
- (j) these Regulations.

(5) Without prejudice to the preceding provisions, a competent authority, in exercising any of their functions, must have regard to the requirements of the Habitats Directive so far as they may be affected by the exercise of those functions.

(6) This regulation applies, in relation to Scotland, only in relation to functions which relate to reserved matters (within the meaning of Schedule 5 to the Scotland Act 1998<sup>(14)</sup> (reserved matters)).

(7) To the extent that paragraph (1) relates to functions exercised in relation to Scotland, the reference in that paragraph to the appropriate authority includes the Secretary of State exercising functions in relation to Scotland.

(8) In paragraph (3), “marine area” includes the Scottish inshore region.

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<sup>(6)</sup> 1992 c. 36; a relevant amendment was made by S.I. 1999/1820.

<sup>(7)</sup> 1865 c. 125.

<sup>(8)</sup> 1900 c. 56; section 2(2) was amended by SR & O 1924/1370, the Crown Estate Act 1961 (c. 55), section 1, and S.I. 1964/488.

<sup>(9)</sup> 1964 c. 40.

<sup>(10)</sup> 1974 c. 40.

<sup>(11)</sup> 1991 c. 57.

<sup>(12)</sup> 1991 c. 59.

<sup>(13)</sup> 2008 c. 29.

<sup>(14)</sup> 1998 c. 46.