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STATUTORY INSTRUMENTS

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**2010 No. 491**

**WILDLIFE**

**The Offshore Marine Conservation (Natural  
Habitats, &c.) (Amendment) Regulations 2010**

<i>Made</i>	- - - -	<i>1st March 2010</i>
<i>Laid before Parliament</i>		<i>8th March 2010</i>
<i>Coming into force</i>	- -	<i>1st April 2010</i>

The Secretary of State is designated<sup>(1)</sup> for the purposes of making Regulations under section 2(2) of the European Communities Act 1972<sup>(2)</sup> (“the Act”) in relation to the environment.

These Regulations and the Regulations they amend, the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007<sup>(3)</sup> (“the principal Regulations”), make provision for a purpose mentioned in section 2(2) of the Act. The Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007 contain references to Directive [92/43/EEC](#) on the conservation of natural habitats and of wild flora and fauna<sup>(4)</sup> (“the Habitats Directive”) and Directive [79/409/EEC](#) on the conservation of wild birds<sup>(5)</sup>, which has been repealed and replaced by Directive [2009/147/EC](#) of the European Parliament and of the Council on the conservation of wild birds<sup>(6)</sup> (“the Wild Birds Directive”). It appears to the Secretary of State that it is expedient for any reference in the principal Regulations to an Annex to the Habitats Directive or to the Wild Birds Directive to be construed as a reference to that Annex as amended from time to time<sup>(7)</sup>.

The Secretary of State makes these Regulations in exercise of the powers conferred by section 2(2) of, and paragraph 1A<sup>(8)</sup> of Schedule 2 to, the Act.

**Title and commencement**

**1.** These Regulations may be cited as the Offshore Marine Conservation (Natural Habitats, &c.) (Amendment) Regulations 2010 and come into force on 1st April 2010.

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- (1) [S.I. 2008/301](#).  
(2) [1972 c. 68](#).  
(3) [S.I. 2007/1842](#); relevant amending instruments are [SSI 2007/485](#) and [S.I. 2009/7](#).  
(4) OJ No. L206, 22.07.92, p.7, as last amended by Council Directive [2006/105/EC](#) of 20 November 2006 adapting Directives [79/409/EEC](#), [92/43/EEC](#), [97/68/EC](#), [2001/80/EC](#) and [2001/81/EC](#) in the field of environment, by reason of the accession of Bulgaria and Romania (OJ No. L363, 20.12.06, p. 368).  
(5) OJ No. L103, 25.4.79, p.1, as last amended by Directive [2008/102/EC](#) of the European Parliament and of the Council of 19 November 2008 amending Council Directive [79/409/EEC](#) on the conservation of wild birds, as regards the implementing powers conferred on the Commission (OJ. No. L 323, 03.12.08, p. 31).  
(6) OJ No L 20, 26.1.10, p. 7.  
(7) Regulation 2(1)(b) of the principal Regulations provides that references to any Annex to the Habitats Directive or any Annex to the Wild Birds Directive are references to that Annex as amended from time to time.  
(8) Paragraph 1A was inserted by section 28 of the Legislative and Regulatory Reform Act [2006 \(c.51\)](#).

## Amendments to the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007

2. The Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007 are amended as follows.

### Amendments to regulation 2

3. In regulation 2 (interpretation)—

(a) for paragraph (1)(a)(ii), substitute—

“(ii) “the Wild Birds Directive” means Directive [2009/147/EC](#) of the European Parliament and of the Council on the conservation of wild birds<sup>(9)</sup>; and”;

(b) in paragraph (2)—

(i) after the definition of “competent authority”, insert—

““competent authority in Scotland” means a competent authority whose functions are exercisable solely in or as regards Scotland or the Scottish offshore region;”;

(ii) after the definition of “functions”, insert—

““installation abandonment measures” means any measures taken in connection with the abandonment of—

(a) an offshore installation within the meaning of Part 4 of the Petroleum Act 1998<sup>(10)</sup>, or submarine pipeline within the meaning of that Part, or

(b) a carbon storage installation, within the meaning of section 30 of the Energy Act 2008<sup>(11)</sup>,

whether or not the measures are taken in pursuance of an abandonment programme, and for this purpose “an abandonment programme” means—

(a) an abandonment programme under Part 4 of the Petroleum Act 1998;

(b) an abandonment programme under that Part, as it applies by virtue of section 30 of the Energy Act 2008;”;

(iii) after the definition of “Scotland”, insert—

““Scottish inshore region” means the area of sea within the seaward limits of the territorial sea adjacent to Scotland;

“Scottish offshore region” means so much of the offshore marine area as lies outside the Scottish inshore region and consists of—

(a) areas of sea which lie within the Scottish zone,

(b) areas of sea which lie outside the Scottish zone but which are nearer to any point on the baselines from which the breadth of the territorial sea adjacent to Scotland is measured than to any point on the baselines in any other part of the United Kingdom, and

(c) any part of the seabed and subsoil subjacent to those areas of sea;

“Scottish zone” has the same meaning as in the Scotland Act 1998<sup>(12)</sup>;”;

(iv) after the definition of “ship”, insert—

““territorial sea” means the territorial sea of the United Kingdom;”;

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<sup>(9)</sup> OJ No L 20, 26.1.10, p. 7.

<sup>(10)</sup> 1998 c. 17.

<sup>(11)</sup> 2008 c. 32.

<sup>(12)</sup> 1998 c. 46. See sections 126(1) and (2) of that Act.

- (v) for the definition of “wildlife officer”, substitute—
- ““wildlife officer” means a person authorised by—
- (a) the Secretary of State or the Scottish Ministers under regulation 52(1);
  - (b) a competent authority under regulation 52(2); or
  - (c) a competent authority in Scotland under regulation 52(2A);”.

#### **Amendment to regulation 6**

4. In regulation 6(2) (duty of competent authorities), for sub-paragraphs (m) and (n) substitute—
- “(m) the Offshore Installations (Emergency Pollution Control) Regulations 2002(13);
  - (n) the Planning Act 2008(14);
  - (o) the Marine and Coastal Access Act 2009(15); and
  - (p) these Regulations.”.

#### **Amendments to regulation 7**

5. In regulation 7 (list of sites eligible for identification as of Community importance)—
- (a) after paragraph (1) insert—

“(1A) The Scottish Ministers must transmit to the Secretary of State a list of those sites in the Scottish offshore region which they regard as eligible for selection as sites of Community importance.”;
  - (b) after paragraph (2) insert—

“(2A) The Scottish Ministers must select the sites to be included in the list under paragraph (1A) only on the basis of the criteria set out in Annex III (Stage 1) to the Habitats Directive and relevant scientific information.”;
  - (c) in paragraph (3), after “paragraph (1)” insert “or (1A)”;
  - (d) after paragraph (4), insert—

“(4A) In respect of an aquatic species which ranges over wide areas, a site is only eligible to be selected under paragraph (2A) if it appears to the Scottish Ministers to constitute a clearly identifiable area which is distinct in providing the physical and biological features essential to that species for life and reproduction.”; and
  - (e) in paragraph (5), for “list transmitted to the Commission under paragraph (1)” substitute “list transmitted to the Secretary of State under paragraph (1A) and the list transmitted to the Commission under paragraph (1)”.

#### **Amendments to regulation 8**

6. In regulation 8 (notification of a proposal for a site of Community importance)—
- (a) after paragraph (1), insert—

“(1A) Paragraph (1) does not apply in relation to any site which the Scottish Ministers have included in the list transmitted by them under regulation 7(1A).

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(13) S.I. 2002/1861.

(14) 2008 c. 29.

(15) 2009 c. 23.

(1B) If the Scottish Ministers propose to include a site in the list to be transmitted by them under regulation 7(1A), the Scottish Ministers must give to the Joint Nature Conservation Committee—

- (a) notice of that proposal; and
- (b) an accompanying statement of their reasons for that proposal.

(1C) But the Scottish Ministers may not give notice of a proposal to the Committee as described in paragraph (1B) unless the Secretary of State has agreed to that proposal.”;

(b) for paragraph (2) substitute—

“(2) Where, under paragraph (1) or (1B), the Joint Nature Conservation Committee is given notice of a proposal, the Committee must give notice of that proposal and provide a copy of the accompanying statement of reasons for that proposal to the following—

- (a) each of the devolved administrations;
- (b) any of the following who in its opinion ought to be notified—
  - (i) competent authorities which exercise functions in relation to the site;
  - (ii) competent authorities which exercise functions in relation to a marine area adjacent to the site; and
  - (iii) persons whose activities are likely to be affected by the inclusion of the site in the list;
- (c) such other persons as in its opinion ought to be notified;
- (d) such other persons as the Secretary of State directs;
- (e) where the Scottish Ministers have given notice under paragraph (1B)—
  - (i) the Secretary of State; and
  - (ii) such other persons as the Scottish Ministers direct.”;

(c) in paragraphs (4) and (5), for “Secretary of State” substitute “the relevant administration”;

(d) after paragraph (6), insert—

“(6A) The Scottish Ministers may issue guidance to the Joint Nature Conservation Committee for the purposes of its functions under this regulation in relation to a proposal under paragraph (1B), and the Committee must have regard to that guidance in discharging any of those functions.”;

(e) in paragraph (7), at the end insert “, and the Scottish Ministers may vary or revoke a direction under paragraph (2)(e)(ii)”;

(f) after paragraph (7), add—

“(8) In this regulation—

“the relevant administration” means—

- (a) in relation to a report concerning a proposal under paragraph (1), the Secretary of State; and
- (b) in relation to a report concerning a proposal under paragraph (1B), the Scottish Ministers.”.

## **Amendments to regulation 9**

7. In regulation 9 (modification of list of sites)—

- (a) after paragraph (1), insert—
- “(1A) Where the Scottish Ministers consider it appropriate, in the light of the results of the surveillance referred to in Article 11 of the Habitats Directive or otherwise, they must propose to the Secretary of State modifications of the list of sites in the Scottish offshore region which has been transmitted to the Commission under regulation 7(1).”;
- (b) after paragraph (2), insert—
- “(2A) Paragraph (2) does not apply in relation to any modification which has been proposed by the Scottish Ministers under paragraph (1A).
- (2B) Before the Scottish Ministers propose a modification under paragraph (1A), the Scottish Ministers must, if they consider it appropriate, give to the Joint Nature Conservation Committee—
- (a) notice of their intention to propose that modification; and
- (b) an accompanying statement of their reasons for intending to propose it.
- (2C) But the Scottish Ministers may not give notice of their intention to propose a modification to the Committee as described in paragraph (2B) unless the Secretary of State has agreed to that proposal.”;
- (c) for paragraph 3, substitute—
- “(3) Where the Joint Nature Conservation Committee is given notice under paragraph (2) or (2B), the Committee must give notice of the proposed modification and provide a copy of the accompanying statement of reasons for it to the following—
- (a) each of the devolved administrations;
- (b) any of the following who in its opinion ought to be notified—
- (i) competent authorities which exercise functions in relation to the site which is the subject of the modification;
- (ii) competent authorities which exercise functions in relation to a marine area adjacent to the site; and
- (iii) persons whose activities are likely to be affected by the inclusion of the site in the list;
- (c) such other persons as in its opinion ought to be notified;
- (d) such other persons as the Secretary of State directs;
- (e) where the Scottish Ministers have given notice under paragraph (2B)—
- (i) the Secretary of State; and
- (ii) such other persons as the Scottish Ministers direct.”;
- (d) in paragraphs (5) and (6), for “Secretary of State” substitute “the relevant administration”;
- (e) in paragraph (8), at the end insert “, and the Scottish Ministers may vary or revoke a direction under paragraph (3)(e)(ii)”;
- (f) after paragraph (8), add—
- “(9) In this regulation—
- “the relevant administration” means—
- (a) in relation to a report concerning a proposal under paragraph (2), the Secretary of State; and
- (b) in relation to a report concerning a proposal under paragraph (2B), the Scottish Ministers.”.

### Amendments to regulation 11

8. In regulation 11 (designation of special areas of conservation)—
- (a) in paragraph (1), for “the Secretary of State” substitute “the relevant administration”;
  - (b) in paragraph (2), for “The Secretary of State must establish priorities for any site which he designates under paragraph (1)” substitute “The relevant administration must establish priorities for any site which it designates under paragraph (1)”; and
  - (c) after paragraph (2), add—
    - “(3) In this regulation—
      - “the relevant administration” means—
      - (a) in relation to a site within the Scottish offshore region, the Scottish Ministers; and
      - (b) in any other case, the Secretary of State.”.

### Amendments to regulation 12

9. In regulation 12 (classification of sites as special protection areas)—
- (a) in paragraph (4), after “paragraph (1)”, insert “or under regulation 12A”;
  - (b) after paragraph (6), add—
    - “(7) Nothing in this regulation requires the Secretary of State to classify as, or as part of, a special protection area any site which is or forms part of a site classified as a special protection area by the Scottish Ministers under regulation 12A.”.

### Classification of sites in the Scottish offshore region as special protection areas

10. After regulation 12 (classification of sites as special protection areas), insert—

#### “Classification of sites in the Scottish offshore region as special protection areas

**12A.**—(1) The Scottish Ministers must classify as special protection areas such sites in the Scottish offshore region as they consider necessary to ensure that the objective specified in paragraph (2) is attained.

(2) The objective referred to in paragraph (1) is that those sites across the United Kingdom’s territory which are most suitable in number and size for—

- (a) the conservation of the species listed in Annex I to the Wild Birds Directive which naturally occur in that territory, and
- (b) the conservation of regularly occurring migratory species of birds not listed in Annex I which naturally occur in that territory,

are classified as special protection areas, in so far as they consist of sites in the Scottish offshore region.

(3) The Scottish Ministers must make their decision as to the sites to be classified under paragraph (1) only on the basis of relevant scientific information and—

- (a) in the case of a site to be classified for the purpose mentioned in paragraph (2)(a), on the basis of the criteria set out in Article 4(1) of the Wild Birds Directive; and
- (b) in the case of a site to be classified for the purpose mentioned in paragraph (2)(b), on the basis of the criteria set out in Article 4(2) of the Wild Birds Directive.

(4) But the Scottish Ministers may only classify a site as a special protected area under paragraph (1) if the Secretary of State has agreed that they so classify the site.

(5) Where a site is classified under paragraph (1), the Scottish Ministers must provide information on that site to the Secretary of State including—

- (a) a chart of the site;
- (b) its name, location and extent; and
- (c) the data resulting from application of the criteria set out in Article 4(1) or Article 4(2) of the Wild Birds Directive.

(6) The information specified in paragraph (5) must be provided in the format applicable for the purposes of regulation 12(5).

(7) In this regulation “the United Kingdom’s territory” means the United Kingdom (including its internal waters), the territorial sea adjacent to the United Kingdom, and the offshore marine area.”.

### **Amendments to regulation 13**

**11.** In regulation 13 (notification of a proposal to classify a special protection area)—

(a) after paragraph (1), insert—

“(1A) Paragraph (1) does not apply in relation to any site in respect of which the Scottish Ministers have given notice to the Joint Nature Conservation Committee under paragraph (1B).

(1B) If the Scottish Ministers propose to classify a site as a special protection area under regulation 12A, the Scottish Ministers must give to the Joint Nature Conservation Committee—

- (a) notice of that proposal; and
- (b) an accompanying statement of their reasons for that proposal.

(1C) But the Scottish Ministers may not give notice of a proposal to the Committee as described in paragraph (1B) unless the Secretary has agreed to that proposal.”;

(b) in paragraph (2)—

- (i) after “paragraph (1)” insert “or (1B)”;
- (ii) for “the Secretary of State’s statement of his reasons” substitute “the accompanying statement of reasons”;
- (iii) in sub-paragraph (c), omit “and”;
- (iv) for sub-paragraph (d), substitute—
  - “(d) such other persons as the Secretary of State directs; and
  - (e) where the Scottish Ministers have given notice under paragraph (1B)—
    - (i) the Secretary of State; and
    - (ii) such other persons as the Scottish Ministers direct.”;

(c) in paragraphs (4) and (5), for “Secretary of State” substitute “the relevant administration”;

(d) after paragraph (6), insert—

“(6A) The Scottish Ministers may issue guidance to the Joint Nature Conservation Committee for the purposes of its functions under this regulation in relation to site proposals under paragraph (1B), and the Committee must have regard to that guidance in discharging any of those functions.”;

(e) in paragraph (7), at the end insert “, and the Scottish Ministers may vary or revoke a direction under paragraph (2)(e)(ii)”;

(f) after paragraph (7), add—

“(8) In this regulation—

“the relevant administration” means—

- (a) in relation to a report concerning a site proposal under paragraph (1), the Secretary of State; and
- (b) in relation to a report concerning a site proposal under paragraph (1B), the Scottish Ministers.”.

#### **Amendment to regulation 14**

**12.** In regulation 14 (hearings)—

- (a) in paragraph (1)(a), for “regulation (7)” substitute “regulation (7)(1)”; and
- (b) after paragraph (3) add—

“(4) Where the Secretary of State proposes to exercise any function under this regulation in relation to any matter in relation to which functions are exercisable by the Scottish Ministers under regulation 14A, the Secretary of State must consult the Scottish Ministers.”.

#### **Hearings conducted by persons appointed by the Scottish Ministers**

**13.** After regulation 14 insert—

##### **“Hearings conducted by the Scottish Ministers**

**14A.**—(1) The Scottish Ministers may give any person the opportunity of appearing before and being heard by, or of providing written representations to, a person appointed by the Scottish Ministers—

- (a) for the purpose of deciding whether to include a site in the list to be transmitted under regulation 7(1A);
- (b) for the purpose of deciding whether to propose to the Secretary of State a modification under regulation 9(1A) to the list of sites in the Scottish offshore region transmitted under regulation 7(1); or
- (c) for the purpose of deciding whether to classify a site as a special protection area under regulation 12A.

(2) Any person given the opportunity under paragraph (1) of appearing before and being heard by a person appointed by the Scottish Ministers may—

- (a) be represented by another person;
- (b) call persons to give evidence; and
- (c) put questions to any person who gives evidence at the hearing, including any person who gives expert evidence.

(3) The Scottish Ministers must consider any report of a person appointed by them under paragraph (1).”.

#### **Amendments to regulation 19**

**14.** In regulation 19 (management schemes for European offshore marine sites)—

- (a) in paragraph (10)—
  - (i) in sub-paragraph (c), delete “and”;

- (ii) in sub-paragraph (d), at the end, add “; and”; and
- (iii) after sub-paragraph (d), add—
  - “(e) in the case of a management scheme entered into by a competent authority in Scotland in relation to a site in the Scottish offshore region, such other persons as the Scottish Ministers may direct.”; and
- (b) in paragraph (11), at the end add “, and the Scottish Ministers may amend or revoke a direction under paragraph (10)(e)”.

### **Co-ordinated management of sites**

15. For regulation 21 (co-ordinated management of sites), substitute—

#### **“Co-ordinated management of sites**

21.—(1) Where a European offshore marine site, other than any such site in the Scottish offshore region, adjoins a special area of conservation or a special protection area which has been (respectively) designated or classified by another member State, the Secretary of State must consult that State in relation to the co-ordinated management of the site and the area in question.

(2) Where a European offshore marine site in the Scottish offshore region adjoins a special area of conservation or a special protection area which has been (respectively) designated or classified by another member State, the Scottish Ministers must, and the Secretary of State may, consult that State in relation to the co-ordinated management of the site and the area in question.

(3) Before the Secretary of State consults under paragraph (2) in relation to a site, or a part of a site, in relation to which the Scottish Ministers must consult under that paragraph, the Secretary of State must consult the Scottish Ministers.”.

### **Amendments to regulations 22 and 23**

16. In regulation 22(7), and in regulation 23(12), delete the definition of “competent authority in Scotland”.

### **Amendments to regulation 26**

17. In regulation 26 (considerations of overriding public interest)—
- (a) after paragraph (4), insert—
    - “(4A) Where a competent authority in Scotland other than the Scottish Ministers submits a request to the Secretary of State under paragraph (4), it must notify the Scottish Ministers of that request.”;
  - (b) in paragraphs (7) and (8), after “a European site in Scotland”, insert “or for a European offshore marine site in the Scottish offshore region”;
  - (c) in paragraphs (9) and (10), after “European offshore marine site”, insert “outside the Scottish offshore region”; and
  - (d) in paragraph (15), delete the definition of “competent authority in Scotland”.

### **Amendments to regulation 27**

18. In regulation 27 (review of existing decisions and consents)—

- (a) in paragraph (5), at the end add “or, in relation to the Scottish offshore region, by the Scottish Ministers”; and
- (b) after paragraph (7), insert—
  - “(7A) The Scottish Ministers may only issue guidance under paragraph (5)—
    - (a) to a competent authority in Scotland; or
    - (b) where guidance is issued to a competent authority other than a competent authority in Scotland, subject to and in accordance with the agreement of the Secretary of State.”.

#### **Amendments to regulation 28**

**19.** In regulation 28 (consideration on review)—

- (a) after paragraph (5), insert—
  - “(5A) The Scottish Ministers may issue guidance to competent authorities in Scotland for the purposes of paragraphs (3) and (4) as to the manner of determining which of different ways should be adopted for securing that a plan or project does not adversely affect the integrity of a site, and in particular as to—
    - (a) the order of application of different controls; and
    - (b) the extent to which account should be taken of the possible exercise of other powers.”;
- (b) after paragraph (6), insert—
  - “(6A) A competent authority in Scotland must have regard to any guidance issued by the Scottish Ministers under paragraph (5A) in discharging its functions under paragraph (3) or (4).”; and
- (c) in paragraph (7), at the end add “, or, in relation to a competent authority in Scotland, the Scottish Ministers”.

#### **Amendment to regulation 29**

**20.** In regulation 29 (co-ordination where more than one competent authority is involved)—

- (a) after paragraph (3), insert—
  - “(3A) The Scottish Ministers may issue guidance to competent authorities in Scotland for the purposes of regulations 25 to 28 as to the circumstances in which a competent authority in Scotland may or should adopt the reasoning or conclusions of another competent authority as to whether a plan or project—
    - (a) is likely to have a significant effect on a European offshore marine site or European site; or
    - (b) may adversely affect the integrity of a European offshore marine site or European site.”; and
- (b) after paragraph 4, insert—
  - “(4A) A competent authority in Scotland must have regard to any guidance issued by the Scottish Ministers under paragraph (3A) in discharging any of its functions under regulations 25 to 28.”.

#### **Amendment to regulation 44**

**21.** In regulation 44 (surveillance of conservation status of habitats and species)—

- (a) after paragraph (1), insert—
- “(1A) In relation to the Scottish offshore region, the Scottish Ministers must make arrangements in accordance with paragraphs (3) to (5) for the surveillance of the conservation status of natural habitats of Community interest and species of wild flora and fauna of Community interest, and in particular priority natural habitat types and priority species.
- (1B) Before the Secretary of State makes any arrangements for surveillance in relation to the Scottish offshore region under paragraph (1), the Secretary of State must consult the Scottish Ministers.”;
- (b) after paragraph (2), insert—
- “(2A) The Scottish Ministers must from time to time—
- (a) consult the other devolved administrations and the Secretary of State about the arrangements which the Scottish Ministers have made under paragraph (1A);
- (b) provide the other devolved administrations and the Secretary of State with such information as the Scottish Ministers consider appropriate that has been derived from the surveillance arranged by them under paragraph (1A); and
- (c) review the arrangements they have made under paragraph (1A) and, if they think it appropriate, revise those arrangements.”;
- (c) in paragraphs (3)(b), (4) and (5)(b), for “the Secretary of State” substitute “the relevant administration”; and
- (d) in paragraph (6)—
- (i) after “paragraphs (3)”, insert “, (4)”;
- (ii) at the end of sub-paragraph (a), omit the word “and”;
- (iii) in sub-paragraph (b), after “paragraph (1)” insert “or (1A);”; and
- (iv) after sub-paragraph (b), insert—
- “(c) “the relevant administration” means—
- (i) in relation to surveillance under paragraph (1), the Secretary of State;
- (ii) in relation to surveillance under paragraph (1A), the Scottish Ministers.”.

#### **Amendment to regulation 46**

- 22.** In regulation 46 (monitoring incidental capture and killing)—
- (a) in paragraphs (1), (2), (3)(d), (4) and (5)(c)(i), for “the Secretary of State” substitute “the relevant administration”;
- (b) in paragraph (2)—
- (i) in sub-paragraphs (a), (b), and (c), for “he” substitute “it”;
- (ii) in sub-paragraphs (a) and (b), for “the devolved administrations” substitute “the other administrations”; and
- (iii) in sub-paragraph (b), for “him” substitute “it”;
- (c) after paragraph (5), insert—

“(5A) Before the Secretary of State exercises any functions in relation to a matter in relation to which functions are also exercisable by the Scottish Ministers under this regulation, the Secretary of State must consult the Scottish Ministers.

(5B) The obligations of the Secretary of State under this regulation in relation to the Scottish offshore region are to be treated as satisfied in so far as corresponding obligations of the Scottish Ministers have been met by them.”;

(d) for paragraph (6), substitute—

“(6) In this regulation—

- (a) in paragraphs (3) and (5), “the joint committee” means the Joint Nature Conservation Committee;
- (b) “the other administrations” means the administrations other than the relevant administration, and for this purpose “the administrations” means the Secretary of State and the devolved administrations; and
- (c) “the relevant administration” means—
  - (i) in relation to the monitoring of activity taking place in the offshore marine area, the Secretary of State; and
  - (ii) in relation to the monitoring of activity taking place in the Scottish offshore region, the Scottish Ministers;”.

#### **Amendment to regulation 48**

**23.** In regulation 48—

- (a) in paragraph (4), after “the Secretary of State”, insert “or, in relation to the Scottish offshore region, by the Scottish Ministers” and
- (b) after paragraph (4), insert—
 

“(4A) The Scottish Ministers may only issue guidance under paragraph (4) with the agreement of the Secretary of State.”.

#### **Amendments to regulation 49**

**24.** In regulation 49 (power to grant licences)—

- (a) in paragraphs (1) to (14), for “the Secretary of State”, substitute “the relevant administration”;
- (b) in paragraphs (2), (4), (7), (9), and (12) omit the words “he is”;
- (c) in paragraph (13), for “unless he has been advised by the Joint Nature Conservation Committee as to the circumstances in which, in its opinion” substitute “unless it has been advised by the Joint Nature Conservation Committee as to the circumstances in which, in the Committee’s opinion”;
- (d) in paragraph (14), for “he”, substitute “it”; and
- (e) after paragraph (14), add—
 

“(15) In this regulation—

“the relevant administration” means—

  - (a) in relation to the licensing of anything done—
    - (i) in any part of the waters comprised in the offshore marine area outside the Scottish offshore region, or

- (ii) in the course of carrying on any activity specified in paragraph (16) in any part of the offshore marine area,  
the Secretary of State; and
  - (b) in relation to the licensing of anything done in the course of carrying out any activity in the Scottish offshore region, other than one specified in paragraph (16), the Scottish Ministers.
- (16) The activities referred to in paragraph (15)(a)(ii) are—
- (a) carrying on any activity for which a licence under section 3 of the Petroleum Act 1998 or section 2 of the Petroleum (Production) Act 1934<sup>(16)</sup> (licences to search for and get petroleum) is required;
  - (b) constructing or maintaining a pipeline in respect of any part of which an authorisation (within the meaning of Part 3 of the Petroleum Act 1998<sup>(17)</sup>) is in force;
  - (c) establishing or maintaining an offshore installation (within the meaning of Part 4 of the Petroleum Act 1998);
  - (d) taking any installation abandonment measures;
  - (e) carrying on any activity for which a licence under section 4 or 18 of the Energy Act 2008<sup>(18)</sup> is required (gas unloading, storage and recovery, and carbon dioxide storage);
  - (f) any activity other than those specified in paragraphs (a) to (e), relating to a matter which is a reserved matter by virtue of section D2 (oil and gas) in Part 2 of Schedule 5 to the Scotland Act 1998<sup>(19)</sup>;
  - (g) any activity relating to a matter which is a reserved matter by virtue of paragraph 9 of Part 1 of that Schedule (defence); and
  - (h) any activity relating to a matter which is a reserved matter by virtue of section E3 (marine transport) in Part 2 of that Schedule.
- (17) For the purposes of paragraph (15)(a)(i), a thing is to be treated as done in a part of the waters referred to in paragraph (i) if it is done on any ship in any such part, any British aircraft over any such part, or any aircraft over an offshore marine installation in any such part, or on or under any such offshore marine installation.”.

### **Amendments to regulation 50**

- 25.** In regulation 50 (licences: supplementary provisions)—
- (a) in paragraph (7), for “Secretary of State”, substitute “the relevant administration”; and
  - (b) after paragraph (7), insert—  
“<sup>(8)</sup> In paragraph (7), “the relevant administration” is to be construed in accordance with regulation 49(15) and (16).”.

### **Amendments to regulation 52**

- 26.** In regulation 52 (wildlife officers)—
- (a) in paragraph (1), after “Secretary of State”, insert “or the Scottish Ministers”;

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<sup>(16)</sup> 1934 c. 36.  
<sup>(17)</sup> 1998 c. 17.  
<sup>(18)</sup> 2008 c. 32.  
<sup>(19)</sup> 1998 c.46.

- (b) in paragraph (2), after “competent authority”, insert “other than a competent authority in Scotland”;
- (c) after paragraph (2), insert—
  - “(2A) A competent authority in Scotland may authorise any person to be a wildlife officer, subject to and in accordance with the agreement of the Scottish Ministers.”;
- (d) in paragraph (3), for “paragraph (1) or (2)”, substitute “paragraph (1), (2) or (2A)”;
- (e) in paragraph (4)—
  - (i) after sub-paragraph (a), insert—
    - “(aa) by the Scottish Ministers to any person authorised by them under paragraph (1).”;
  - (ii) in sub-paragraph (b), at the end, for the full stop substitute “; and”; and
  - (iii) after sub-paragraph (b), insert—
    - “(c) by a competent authority in Scotland to any person authorised by it under paragraph (2A).”;
- (f) in paragraph (5)—
  - (i) after “paragraph (2)”, insert “or paragraph (2A)”;
  - (ii) for “the Secretary of State” substitute “the relevant administration”; and
- (g) after paragraph (5) add—
  - “(6) In this regulation, “the relevant administration” means—
    - (a) in relation to an agreement under paragraph (2), the Secretary of State; and
    - (b) in relation to an agreement under paragraph (2A), the Scottish Ministers.”.

### **Enforcement functions of wildlife officers appointed by the Scottish Ministers and competent authorities in Scotland**

27. After regulation 52, insert—

#### **“Enforcement functions of wildlife officers appointed by the Scottish Ministers and competent authorities in Scotland**

**52A.**—(1) A wildlife officer appointed by the Scottish Ministers under regulation 52(1) or by a competent authority in Scotland under regulation 52(2A)—

- (a) may only exercise any function under regulations 53 to 60 for the purposes of ascertaining whether an offence under these Regulations is being or has been committed in the Scottish offshore region; and
  - (b) in relation to anything done in the course of carrying on an activity falling within paragraph (2), may only exercise any such function subject to and in accordance with the agreement of the Secretary of State.
- (2) The activities referred to in paragraph (1) are—
- (a) carrying on any activity for which a licence under section 3 of the Petroleum Act 1998 or section 2 of the Petroleum (Production) Act 1934 (licences to search for and get petroleum) is required;
  - (b) constructing or maintaining a pipeline in respect of any part of which an authorisation (within the meaning of Part 3 of the Petroleum Act 1998) is in force;
  - (c) establishing or maintaining an offshore installation (within the meaning of Part 4 of the Petroleum Act 1998);

- (d) taking any installation abandonment measures;
- (e) carrying on any activity for which a licence under section 4 or 18 of the Energy Act 2008 is required (gas unloading, storage and recovery, and carbon dioxide storage);
- (f) any activity other than those specified in paragraphs (a) to (e), relating to a matter which is a reserved matter by virtue of section D2 (oil and gas) in Part 2 of Schedule 5 to the Scotland Act 1998;
- (g) any activity relating to a matter which is a reserved matter by virtue of paragraph 9 of Part 1 of that Schedule (defence); and
- (h) any activity relating to a matter which is a reserved matter by virtue of section E3 (marine transport) in Part 2 of that Schedule.”.

#### **Amendments to regulation 67**

**28.** In regulation 67 (research), after paragraph (3), add—

“(4) This regulation applies to the Scottish Ministers as it applies to the Secretary of State, but as if, in paragraphs (1) and (2), the reference to the offshore marine area were to the Scottish offshore region.

(5) Before the Secretary of State takes any steps in relation to the Scottish offshore region under this regulation, the Secretary of State must consult the Scottish Ministers.”.

#### **Amendments to regulation 69**

**29.** In regulation 69 (re-introduction of species)—

(a) in paragraphs (1), (3) and (4), for “the Secretary of State”, substitute “the relevant administration”;

(b) in paragraph (1) (in both places where it occurs) and paragraph (3)(b), for “he”, substitute “the relevant administration”;

(c) after paragraph (6), add—

“(7) Before the Secretary of State exercises any functions in relation to the waters comprised in the Scottish offshore region under this regulation, the Secretary of State must consult the Scottish Ministers.

(8) In this regulation, “the relevant administration” means—

(a) in relation to the re-introduction of species in any part of the waters comprised in the offshore marine area, the Secretary of State;

(b) in relation to the re-introduction of species in any part of the waters comprised in the Scottish offshore region, the Scottish Ministers.”.

1st March 2010

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Department for Environment, Food and Rural  
Affairs

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007 (“the 2007 Regulations”) which make provision for implementing Council Directive [79/409/EEC](#) on the conservation of wild birds (“the Wild Birds Directive”) (OJNo. L103, 25.4.79, p.1.) and Council Directive [92/43/EEC](#) on the conservation of natural habitats and of wild flora and fauna (“the Habitats Directive”) (OJ No. L206, 22.07.92, p.7) in relation to marine areas where the United Kingdom has jurisdiction beyond its territorial sea.

These Regulations make amendments to the 2007 Regulations pursuant to the enactment of the Planning Act 2008(**20**) and the Marine and Coastal Access Act 2009(**21**), and provide for the devolution to the Scottish Ministers of certain of the Secretary of State’s marine nature conservation functions in the Scottish offshore region. They do not provide for the devolution of any legislative competence.

Regulation 3 makes provision for the interpretation of terms used in the regulations. The definition of “the Wild Birds Directive” is substituted, so that this means Directive [2009/147/EC](#) of the European Parliament and of the Council on the conservation of wild birds (OJ No L 20, 26.1.10, p. 7) (which repeals and replaces Council Directive [79/409/EEC](#) on the conservation of wild birds). The definition of a “competent authority in Scotland” is amended so as to refer to a competent authority whose functions are exercisable solely in or as regards the Scottish offshore region. Consequential amendments are made to regulations 22(7), 23(12) and 26(15) of the 2007 Regulations (in regulations 16 and 17).

Regulation 4 adds the Planning Act 2008 and the Marine and Coastal Access Act 2009 to the illustrative list of enactments in regulation 6(2) of the 2007 Regulations (functions relevant to marine conservation must be exercised so as to secure compliance with the requirements of the Wild Birds Directive and the Habitats Directive).

Regulations 5 to 11 provide for the Scottish Ministers to select sites in the Scottish offshore region to be protected under the Habitats and Wild Birds Directives, and to transmit those sites to the Secretary of State in advance of their formal designation or classification.

Regulations 12 and 13 make provision for representations to the Scottish Ministers on site selection.

Regulation 14 makes provision for the Scottish Ministers to give directions to a competent authority in Scotland.

Regulation 15 makes provision for the Scottish Ministers to consult other Member States to co-ordinate the management of adjoining sites which have been designated or (respectively) classified as special areas of conservation or special protection areas.

Regulation 17 makes provision for a competent authority in Scotland (as defined) to consult the Scottish Ministers where it proposes to agree a plan or project notwithstanding a negative assessment of the implications for a European offshore marine site in the Scottish offshore region. It also provides for the Secretary of State to notify the Scottish Ministers where a competent authority in Scotland submits a request to the Secretary of State to seek the European Commission’s opinion under regulation 26(4) of the 2007 Regulations.

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(20) 2008 c. 29.

(21) 2009 c. 23.

Regulations 18 to 20 make provision for the Scottish Ministers to issue guidance to a competent authority in the Scottish offshore region. This is subject to the Secretary of State's agreement where guidance is issued to a competent authority other than a competent authority in Scotland.

Regulations 21 and 22 make provision for the Scottish Ministers to make arrangements for the surveillance of habitats and species, and the monitoring of incidental capture and killing in relation to the Scottish offshore region.

Regulation 23 makes provision for the Scottish Ministers to issue guidance (with the agreement of the Secretary of State) about steps which can be taken to avoid committing an offence under regulation 48 of the 2007 Regulations (which relates to the introduction of new species).

Regulations 24 and 25 make provision for the Scottish Ministers to license activities in the Scottish offshore region which would otherwise be offences under Part 3 and regulation 48 (in Part 4) of the 2007 Regulations, except for the licensing functions retained by the Secretary of State which are specified in new regulation 49(15) and (16).

Regulation 26 makes provision for the Scottish Ministers and a competent authority in Scotland to authorise a person to be a wildlife officer. Regulation 27 makes provision for such wildlife officers to carry out enforcement functions in the Scottish offshore region. In relation to certain activities (set out in new regulation 52A(2)) such wildlife officers may only carry out enforcement functions subject to and in accordance with the agreement of the Secretary of State.

Regulation 28 makes provision for the Scottish Ministers to encourage research and scientific work relating to the Scottish offshore region and to supply appropriate information to member States and to the European Commission.

Regulation 29 makes provision for Scottish Ministers to consider whether to re-introduce species in the waters comprised in the Scottish offshore region.

An impact assessment has not been prepared in relation to these Regulations as it has no impact on business, charities or the public sector.

A transposition note setting out how the amendments transpose the provisions of the Wild Birds and Habitats Directives is available from the Marine and Fisheries Directorate, Department for Environment, Food and Rural Affairs, Temple Quay House, Bristol BS1 6EB, and is annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website.