

**EXPLANATORY MEMORANDUM TO**  
**THE OFFSHORE MARINE CONSERVATION (NATURAL HABITATS, &c)**  
**(AMENDMENT) REGULATIONS 2010**

**2010 No. 491**

**1.** This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty. It contains information for the Joint Committee on Statutory Instruments.

**2. Purpose of the instrument**

2.1 The Offshore Marine Conservation (Natural Habitats, &c) (Amendment) Regulations 2010 (S.I. 491) (the “2010 Regulations”) amend the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007 (S.I. 2007/1842) (“the “Offshore Marine Regulations”) as amended, which transpose Council Directive 79/409/EEC on the conservation of wild birds (O.J. No. L103, 25.4.79, p.1) (“the Wild Birds Directive”) and Council Directive 92/43/EEC on the conservation of natural habitats and of wild flora and fauna (“the Habitats Directive”) (O.J. No. L206, 22.07.92, p.7) in relation to the United Kingdom’s jurisdiction over (a) the UK sector of the continental shelf, and (b) any part of the waters within British fishery limits, excluding the internal waters of and territorial sea adjacent to the UK, the Channel Islands and the Isle of Man (“the UK offshore marine area”).

2.2 Annex I contains a Transposition Note setting out the changes contained in the 2010 Regulations and the provisions of the Wild Birds Directive and the Habitats Directive which they transpose.

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None.

**4. Legislative Context**

4.1 The Offshore Marine Regulations are the principal means by which the Wild Birds Directive and Habitats Directives are transposed in the UK offshore marine area. The 2010 Regulations amend these by inserting references to two recent enactments into regulation 6, and by executively devolving certain powers and duties to the Scottish Ministers. The 2010 Regulations also make provision for the Offshore Marine Regulations to refer to the consolidated Wild Birds Directive: Directive 2009/147/EC of the European Parliament and of the Council on the conservation of wild birds (OJ No L20, 26.1.10, p.7), which entered into force on 15 February 2010.

4.2 Agreement to make the 2010 Regulations was given by the National Economic Council (Sub Committee on Better Regulation) and the Ministerial Committee on Economic Development (Sub-Committee on Environment and Energy), on 22 February 2010.

4.3 Regulation 4 amends regulation 6 of the Offshore Marine Regulations. It inserts references to the Planning Act 2008 and the Marine and Coastal Access Act 2009 into the list of enactments to which the duty on competent authorities under regulation 6, in particular, applies.

4.4 The remaining amendments are concerned with making provision for Scottish Ministers to carry out certain functions (which were previously functions of the Secretary of State) in the Scottish offshore region (as defined) . These are:

- (a) the selection, notification and designation of special areas of conservation as required by the Habitats Directive. In particular regulation 5 places a duty on the Scottish Ministers to transmit a list of sites which they regard as eligible for selection as sites of Community importance, and regulation 6 requires the Scottish Ministers to give notice to the Joint Nature Conservation Committee (JNCC) if they propose, and the Secretary of State agrees, to include a site on the list.
- (b) the selection, notification and classification, with the agreement of the Secretary of State, of special protection areas as required by the Wild Birds Directive.
- (c) the management and conservation of European offshore marine sites (special areas of conservation and special protection areas), including the power to issue guidance to which competent authorities in Scotland (as defined) must have regard;
- (d) The granting of licences for certain activities that would otherwise constitute an offence in the Scottish offshore region in relation to European protected species;
- (e) Appointment of wildlife officers to enforce offences under the Offshore Marine Regulations; and
- (f) Associated miscellaneous functions including surveillance of the conservation status of habitats and species; monitoring of incidental capture and killing; the introduction of new species; the re-introduction of species and research.

4.5 Although the above functions are being given to the Scottish Ministers, the Secretary of State will retain certain powers in the Scottish offshore region (see paragraph 7.6 below).

4.6 A Ministerial concordat is being developed between the Government and the Scottish Executive, setting out a shared understanding and commitment to co-operate in making the arrangements under the 2010 Amendment Regulations, and the Marine and Coastal Access Act 2009, work.

## **5. Territorial Extent and Application**

5.1 This instrument applies to all of the UK offshore marine area, although its principle effect is in relation to the Scottish offshore region.

## **6. European Convention on Human Rights**

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

7.1 The objectives of the Wild Birds and Habitats Directives are, respectively, to conserve wild bird populations and protect biodiversity through conservation of natural habitats and species of wild fauna and flora. Both lay down rules for the protection,

management and exploitation of such species. The Offshore Marine Regulations help to fulfil these objectives in the United Kingdom's offshore marine area by ensuring that activities beyond territorial waters are carried out in a manner that is consistent with each Directive.

7.2 Apart from the United Kingdom's legal obligations to protect European marine species and habitats, the Government is committed to a vision of 'clean, healthy, safe and productive and biologically diverse oceans and seas', and introduced the Marine and Coastal Access Bill in Parliament in December 2008. This received Royal Assent on 12 December 2009, and gives the Scottish Ministers certain new nature conservation functions in the Scottish offshore region.

7.3 The Scotland Act 1998 gives Scottish Ministers devolved competence for nature conservation on land and in territorial waters (i.e. out to 12 nautical miles), whilst the Marine and Coastal Access Act (the "Marine Act") gives the Scottish Ministers certain new nature conservation functions in the adjacent offshore waters. However, the Marine Act does not devolve any existing nature conservation functions, and Ministers therefore agreed to review the arrangements in relation to existing functions, with a view to executively devolving them to the Scottish Ministers. The 2010 Regulations reflect the outcome of that review.

7.4 The 2010 Regulations require the Scottish Ministers to exercise certain nature conservation functions in the Scottish offshore waters, thereby facilitating a more integrated approach to marine nature conservation and enforcement across both inshore and offshore waters. It will also allow better co-ordination with related activities taking place in Scottish waters - such as fisheries management (as the Scottish Ministers already lead on fishing out to 200 nautical miles), marine licensing (as certain licensing decisions are already executively devolved to the Scottish Ministers in the offshore region) and marine planning (as the Scottish Ministers will become the marine planning authority in the offshore region under the Marine Act).

7.5 In practice, some of the functions being executively devolved (such as the granting of certain licences and the enforcement of offences) are already undertaken by Marine Scotland (a directorate of the Scottish Executive) on behalf of the Secretary of State. The 2010 Regulations therefore largely accord with what is already happening in practice and will result in greater transparency.

7.6 The Secretary of State will retain certain powers and functions in the Scottish offshore region. This includes a role in the procedures involving the designation and classification of offshore European marine sites; responsibility for granting licences for anything done in the course of carrying out activities which fall within the scope of regulation 49(16)(a) to (h); the power to appoint wildlife officers, and responsibility for authorising wildlife officers appointed by the Scottish Ministers to exercise enforcement functions in relation to anything done in the course of carrying out activities which fall within the scope of regulation 52A(2).

## **8. Consultation outcome**

8.1 In preparing the 2010 Regulations, Defra has consulted other Government departments, the devolved administrations in Wales, Scotland and Northern Ireland, and the statutory nature conservation body (the Joint Nature Conservation Committee). In November 2009 Defra also wrote to stakeholders representing business and environmental sector to inform them of the proposals. Details were also published on the Defra website site. Six responses were received, which were either neutral or supportive in principle.

## **9. Guidance**

9.1 No requirement for guidance has been identified.

## **10. Impact**

10.1 No impact on business, charities or voluntary bodies is foreseen.

10.2 The instrument will not increase costs for the public sector, although some costs that currently fall to Defra will in future fall to the Scottish Executive. Defra will make an appropriate transfer of funding to the Scottish Executive for the next financial year, and thereafter the functions being executively devolved will be funded from within the Scottish Executive's core-funding.

10.3 An Impact Assessment has not been prepared for this instrument.

## **11. Regulating small business**

11.1 The legislation does not apply to small business.

## **12. Monitoring & review**

12.1 The Offshore Marine Regulations are subject to regular review, which will include the new arrangements introduced by the 2010 Amendment Regulations.

## **13. Contact**

13.1 Geoffrey Audcent at the Department for Environment, food and Rural Affairs (Tel: 0117 372 8339 or email: [Geoff.audcent@defra.gsi.gov.uk](mailto:Geoff.audcent@defra.gsi.gov.uk)) can answer any queries regarding the instrument.

**TRANSPOSITION NOTE RELATING TO COUNCIL DIRECTIVE  
(92/43/EEC) ON THE CONSERVATION OF NATURAL HABITATS AND  
WILD FAUNA AND FLORA (“THE HABITATS DIRECTIVE”)  
AND  
COUNCIL DIRECTIVE (79/409/EEC) ON THE CONSERVATION OF  
WILD BIRDS (“THE WILD BIRDS DIRECTIVE”)**

**THE OFFSHORE MARINE CONSERVATION (NATURAL HABITATS, &c)  
(AMENDMENT) REGULATIONS 2010**

**2010 No. 491**

The Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007 (SI 2007/1842) (the “Offshore Marine Regulations”), as amended, transpose the Wild Birds Directive (Council Directive 79/409/EEC on the conservation of wild birds) and the Habitats Directive (Council Directive 92/43/EEC on the conservation of natural habitats and of wild flora and fauna) in relation to the United Kingdom’s jurisdiction over its continental shelf and the sea out to 200 nautical miles (excluding the territorial sea). The Offshore Marine Conservation (Natural Habitats, &c) (Amendment) Regulations 2010 amend this enactment by inserting a reference to the Planning Act 2008 and Marine and Coastal Access Act 2009, and by executively devolving certain duties and powers (previously exercised by the Secretary of State) to Scottish Ministers in the Scottish offshore region (as defined).

The 2010 Regulations also make provision for the Offshore Marine Regulations to refer to the consolidated Wild Birds Directive: Directive 2009/147/EC of the European Parliament and of the Council on the conservation of wild birds (OJ No L20, 26.1.10, p.7), which entered into force on 15 February 2010.

These regulations do what is necessary to implement the Directives, including making consequential changes to domestic legislation to ensure its coherence in the area to which they apply.

The effects of these regulations on the transposition of the Directives is set out in the tables below.

<b>Council Directive (92/43/EEC) on the conservation of natural habitats and of wild fauna and flora</b>			
<b>Articles</b>	<b>Objectives</b>	<b>Implementation</b>	<b>Responsibility</b>
3(2)	Member States are required to contribute to the creation of the Natura 2000 network and, to that end, to designate special	Regulation 11 of the Offshore Marine Regulations, as amended, provides for the designation of special areas of conservation in the offshore marine area. See also	Secretary of State in the offshore marine area, and the

	areas of conservation, in accordance with Article 4.	implementation of Article 4.	Scottish Ministers in the Scottish offshore region
4(1)	<p>Each member State is required to propose a list of those sites it considers are eligible for selection as sites of Community importance. The list should indicate which Annex I natural habitat types and which Annex II species the sites host and be accompanied by certain information relating to each site.</p> <p>An additional obligation requires member states to propose adaptations to the list in the light of surveillance carried out pursuant to Article 11.</p>	<p>Regulation 7 of the Offshore Marine Regulations, as amended, requires the Secretary of State to transmit a list of such sites in the offshore marine area to the Commission. Regulation 7(1A) requires the Scottish Ministers to transmit to the Secretary of State a list of sites in the Scottish offshore region. Regulations 7(2), to 7(4A) prescribe the criteria for site selection, whilst regulations 7(5) and 7(6) set out the information which the lists must contain and the format that must be used in supplying such information.</p> <p>Regulation 9 of the Offshore Marine Regulations, as amended, makes provision for the Secretary of State and the Scottish Ministers to propose modifications to the list of sites which has been transmitted to the Commission in the light of such surveillance.</p>	<p>Secretary of State in the offshore marine area, and the Scottish Ministers in the Scottish offshore region</p> <p>Secretary of State in the offshore marine area, and the Scottish Ministers in the Scottish offshore region</p>
4(4)	Once a site has been adopted by the Commission as a site of Community importance, the member State in question is required to designate it as a special area of conservation as soon as possible and within six years at the most. Member States must, in addition, establish priorities for designated sites relating to their importance to the favourable conservation status of certain habitats and species, the coherence of Natura 2000, and exposure to threats of degradation or destruction.	Regulation 11(1) of the Offshore Marine Regulations, as amended, requires the relevant administration (as defined) to designate sites as special areas of conservation in accordance with the timeframe in the Directive. In addition, an obligation is imposed on the relevant administration by regulation 11(2), as amended, to establish priorities for special areas of conservation.	Secretary of State in the offshore marine area, and the Scottish Ministers in the Scottish offshore region
6(1)	Member States are	Regulations 18, 19 and 20 of the	Joint Nature

	<p>required to establish, for special areas of conservation, the necessary conservation measures involving, if need be, appropriate management plans and appropriate statutory, administrative or contractual measures which correspond to the ecological requirements of the natural habitat types in Annex I and the Annex II species present on the sites.</p>	<p>Offshore Marine Regulations, as amended, impose a duty on the Joint Nature Conservation Committee to establish conservation measures, and provide competent authorities (as defined in regulation 5) with powers to establish a management scheme for a site with a corresponding duty on those competent authorities to take reasonable steps to exercise their functions in accordance with such scheme.</p> <p>Regulation 21 of the Offshore Marine Regulations, as amended, provides for consultation on the co-ordinated management of European offshore marine sites and other member states' special areas of conservation and special protection areas, where such sites and areas adjoin one another.</p> <p>Regulation 22 of the Offshore Marine Regulations, as amended, requires competent authorities (in so far as their functions may be so exercised) to exercise such of their functions as they consider appropriate for the purpose of giving effect to Article 6(1) by taking conservation measures.</p>	<p>Conservation Committee, and competent authorities</p> <p>Secretary of State in the offshore marine area, and the Scottish Ministers in the Scottish offshore region</p> <p>Competent authorities (as defined in regulation 5)</p>
6(2)	<p>Member States are required to take appropriate steps to avoid, in special areas of conservation, the deterioration of natural habitats and the habitats of species as well as the disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of the Directive.</p> <p>Also see the entries relating to Articles 4(5), 5 and 7.</p>	<p>Regulation 23 of the Offshore Marine Regulations, as amended, provides that in so far as a competent authority's functions may be so exercised, that they are exercised so to secure that appropriate steps are taken to avoid the disturbance of species specified in regulation 23(3) or the deterioration of habitat or habitat types specified in regulation 23(4).</p> <p>This requirement applies to (a) special areas of conservation in the offshore marine area (as required by Article 6(2) itself), (b) sites in the offshore marine area that have been placed on the list referred to in the third paragraph of Article 4(2) (as required by Article 4(5)), (c) sites in</p>	<p>Competent authorities</p> <p>Competent authorities</p>

		<p>the offshore marine area in respect of which consultation has been initiated under Article 5(1), during the consultation period or until such time as the Council makes a decision under Article 5(3) in relation to the site (as required by Article 5(4)), and (d) special protection areas in the offshore marine area (as required by Article 7).</p> <p>In respect of certain categories of offshore marine site, regulation 32 makes it an offence (subject to certain exceptions) to intentionally or recklessly damage or destroy the habitat found in such sites or to intentionally disturb animals of certain species (at a level of disturbance set out in the Regulations) whilst such animals are in such sites. (<i>Nb. Regulation 32 is not being amended</i>).</p>	Competent authorities. Secretary of State in the offshore marine area, and the Scottish Ministers in the Scottish offshore region
6(3)	Member States are required to ensure that certain plans or projects likely to have a significant effect on a special area of conservation are subject to an appropriate assessment. This assessment considers the implications of a plan or project in view of a site's conservation objectives. Subject to Article 6(4), competent authorities may not agree to a plan or project unless it is ascertained that the plan or project will not have an adverse effect on the integrity of the site concerned.	<p>Regulation 25 ensures that appropriate assessments are carried out for new plans or projects in the offshore marine area where they are likely to have a significant effect on a European site (i.e. a protected site in a terrestrial area or in inshore waters) or a European offshore marine site. (<i>Nb. Regulation 25 is not being amended</i>).</p> <p>Regulation 27 of the Offshore Marine Regulations, as amended, provides for competent authorities to review, and thereafter affirm, modify or revoke, existing decisions or consents in respect of plans or projects that could affect a European offshore marine site. For the purposes of the review the competent authority must make an appropriate assessment of the implications for the site in view of its conservation objectives.</p>	Competent authorities  Competent authorities
6(4)	Article 6(4) allows a plan or project to be carried out despite a negative assessment under Article 6(3). However, this is only	Regulation 26 of the Offshore Marine Regulations, as amended, allows for plans or projects to be agreed to by a competent authority for imperative reasons of overriding	Competent authorities



	where there is no alternative solution, where the plan or project must be carried out for imperative reasons of overriding public interest, and where compensatory measures are taken to ensure that the overall coherence of Natura 2000 is protected.	public interest and where there is no satisfactory alternative. It contains detailed provisions to deal with the devolution arrangements in Scotland.  Regulation 30 requires the appropriate authority to secure compensatory measures when a plan or project has been permitted to proceed in such circumstances. <i>(Nb. Regulations 30 and 31 are not being amended)</i>	Secretary of State, Scottish Ministers and Northern Ireland Ministers or Departments
7	Obligations under Articles 6(2), 6(3) and 6(4) of the Directive shall replace obligations under Article 4(4) of the Wild Birds Directive in respect of special protection areas classified under the Wild Birds Directive (see below table for details of the transposition of the Wild Birds Directive).	Regulations 23 and 27 of the Offshore Marine Regulations, as amended, apply in respect of Article 6(2) to special protection areas classified under the Wild Birds Directive. Further protection is provided under regulation 32(6), which provides for an offence relating to special protection areas for birds. This meets the obligations under Article 7 of the Habitats Directive to apply Article 6(2) of the Habitats Directive to special protection areas for birds.  The definition of “European offshore marine site” in regulation 15(c) covers sites classified as special protection areas. Consequently, protection is provided to these sites under regulation 25, as described above in respect of Article 6(3). This meets the obligations under Article 7 of the Habitats Directive to apply Article 6(3) of the Habitats Directive to special protection areas for birds.  Regulations 26 and 30 of the Offshore Marine Regulations, as amended, apply in respect of Article 6(4) to sites classified as special protection areas. This meets the obligations under Article 7 of the Habitats Directive to apply Article 6(4) of the Habitats Directive to special protection areas for birds. <i>(Nb. Regulation 30 is not being amended).</i>	Competent authorities  Competent authorities  Competent authorities
11	Member States are	Regulation 44 of the Offshore	Secretary of

	required to undertake surveillance of the conservation status of habitats and species of wild fauna and flora of Community interest with particular regard to priority habitat types and priority species.	Marine Regulations, as amended, requires the Secretary of State and the Scottish Ministers in the Scottish offshore marine region, to make arrangements for the surveillance required by Article 11. It also ensures that information relating to such surveillance is shared with devolved administrations. This ensures that a co-ordinated approach is taken to surveillance measures across the UK.	State in the offshore marine area, and the Scottish Ministers in the Scottish offshore region
12(4)	<p>Member States are required to establish a system to monitor the incidental capture and killing of animals of the species listed in Annex IV(a).</p> <p>Member States are also required to take further research or conservation measures as required to ensure that incidental capture and killing does not have a significant negative impact on the species concerned.</p>	<p>Regulation 46 of the Offshore Marine Regulations, as amended, requires the relevant administration (as defined) to make arrangements to establish a system for monitoring the capture or killing of Annex IV(a) animal species in the offshore marine area. From time to time the relevant administration must (a) consult the other administrations about monitoring arrangements, (b) provide the other administrations with information considered appropriate from the monitoring and (c) review the monitoring arrangements, and revise them as appropriate.</p> <p>Regulation 47 requires the Secretary of State and the Scottish Ministers in the Scottish offshore marine region, to make arrangements for further research or to ensure that conservation measures are taken with respect to the incidental capture or killing of Annex IV(a) animal species in circumstances where they consider it necessary in the light of monitoring under regulation 46 or otherwise for the purposes of Article 12(4). (<i>Nb. Regulation 47 is not being amended</i>).</p>	<p>Secretary of State in the offshore marine area, and the Scottish Ministers in the Scottish offshore region</p> <p>Secretary of State in the offshore marine area, and the Scottish Ministers in the Scottish offshore region</p>
14	In light of surveillance carried out under Article 11, Member States are required to take measures they deem necessary to ensure that the taking in the wild, and exploitation, of plants and animals of species listed in Annex V to the Directive is	Regulation 45 of the Offshore Marine Regulations, as amended, imposes a duty on the Secretary of State and the Scottish Ministers in the Scottish offshore marine region, to take measures, where considered necessary, in the light of surveillance carried out pursuant to regulation 44 or otherwise carried out for the purposes of Article 11, to ensure that	Secretary of State in the offshore marine area, and the Scottish Ministers in the Scottish offshore region

	compatible with them being maintained at a favourable conservation status.	<p>the taking and exploitation in the wild of specimens of Annex V species is compatible with them being maintained at favourable conservation status. (<i>Nb. Regulation 45 is not being amended</i>).</p> <p>Where the Secretary of State or the Scottish Ministers in the Scottish offshore marine region, consider that measures are necessary, they must make arrangements for surveillance to establish whether the taking in the wild or exploitation of specimens of the species concerned are compatible with its maintenance at favourable conservation status.</p>	Secretary of State in the offshore marine area, and the Scottish Ministers in the Scottish offshore region
16(1)	This Article allows for derogations to be made against the protection provided for under Articles 12, 13, 14 and 15. This is on the basis that there is no satisfactory alternative, the derogation is made for one of the purposes specified in Article 16, and provided that the derogation is not detrimental to the maintenance of favourable conservation status of the species concerned.	Paragraphs (6), (8) and (10) of regulation 49 of the Offshore Marine Regulations, as amended, allow for the granting of licences for what would otherwise be offences under regulations 39, 41 and 43. No licence can be granted unless this is consistent with the conditions set out for making a derogation under Article 16 – regulations 49(6), (7) and (9).	Secretary of State in the offshore marine area, and the Scottish Ministers in the Scottish offshore region
18	Member States and the Commission are required to encourage necessary research and scientific work having regard to the Directive's objectives set out in Article 2 and the surveillance obligations in Article 11. There is a requirement for such research and work to be exchanged for the purpose of ensuring co-ordination of research at the member State and Community level.	<p>Regulation 67 of the Offshore Marine Regulations, as amended, requires the Secretary of State and the Scottish Ministers in the Scottish offshore marine region, to take such steps to encourage research and scientific work as he considers necessary, having regard to the objectives in Article 2 and the obligation in Article 11 of the Directive.</p> <p>There is an obligation in regulation 67(2) for this research and scientific work to be exchanged, as appropriate, as required by Article 18. (<i>Nb. This paragraph is not being amended</i>).</p>	<p>Secretary of State in the offshore marine area, and the Scottish Ministers in the Scottish offshore region</p> <p>Secretary of State</p>
22(a)	Member States are required to study the desirability of re-	Regulation 69 of the Offshore Marine Regulations, as amended, requires the Secretary of State and	Secretary of State in the offshore

	introducing native Annex IV species where this may contribute to their conservation. Such a species can only be re-introduced if an investigation has been carried out establishing that such re-introduction would contribute effectively to re-establishing the species at a favourable conservation status. The investigation must include a public consultation and take account of other member States' experience.	the Scottish Ministers in the Scottish offshore marine region, to make arrangements for a study into the desirability of re-introducing native Annex IV species where they consider that such re-introduction might contribute to that species' conservation. It also contains provisions setting out the pre-conditions for re-introduction, as required by Article 22(a).	marine area, and the Scottish Ministers in the Scottish offshore region
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<b>Council Directive (2009/147/EC) on the conservation of wild birds</b>			
<b>Articles</b>	<b>Objectives</b>	<b>Implementation</b>	<b>Responsibility</b>
4(1)	Member States are required to take special conservation measures for the habitats of certain bird species (listed in Annex I to the Directive), including the classification of special protection areas.	Regulations 12(1), (2)(a) and (3)(a) and 12A(1), (2)(a) and (3)(a) of the Offshore Marine Regulations, as amended, require the Secretary of State and the Scottish Ministers to classify as special protection areas those sites which are most suitable in number and size for the conservation of the species listed in Annex I to the Wild Birds Directive.	Secretary of State in the offshore marine area, and the Scottish Ministers in the Scottish offshore region
4(2)	Member States are also required to take special conservation measures and classify special protection areas for regularly occurring migratory species not listed in Annex I to the Directive.	Regulations 12(1), (2)(b) and (3)(b) and 12A(1), (2)(b) and (3)(b) of the Offshore Marine Regulations, as amended, require the Secretary of State and the Scottish Ministers to classify as special protection areas those sites which are most suitable in number and size for the conservation of regularly occurring migratory species of birds not listed in Annex I which naturally occur in that territory.	Secretary of State in the offshore marine area, and the Scottish Ministers in the Scottish offshore region
4(3)	Member States are required to send the Commission relevant information about special protection areas so that it can take appropriate initiatives to co-ordinate	Regulation 12(4) sets out the information that the Secretary of State must provide to the Commission, and regulation 12(5) prescribes the format that must be used in supplying such information to the Commission.	Secretary of State in the offshore marine area, and the Scottish Ministers in

	and make sure that the areas form a coherent whole which meet the protection requirements of the Directive.		the Scottish offshore region
9	This Article allows for derogations to be made from the protection provided for under Articles 5, 6, 7 and 8. This is on the basis that there is no satisfactory solution and the derogation is made for one of the purposes specified in Article 9.	Regulation 49(1) to (5) of the Offshore Marine Regulations, as amended, allow for the granting of licences for what would otherwise be offences under regulations 34, 36 and 37. No licence can be granted unless this is consistent with the conditions set out for making a derogation under Article 9 – regulations 49(1) to (4).	Secretary of State in the offshore marine area, and the Scottish Ministers in the Scottish offshore region