

**EXPLANATORY MEMORANDUM TO**  
**THE OFFSHORE MARINE CONSERVATION (NATURAL HABITATS, &C.)**  
**(AMENDMENT) REGULATIONS 2012**

**2012 No. 1928**

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.

**2. Purpose of the instrument**

2.1 These Regulations amend the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007 (S.I. 2007/1842) (“the 2007 Regulations”). They place duties on Competent Authorities, in relation to the offshore marine area, to (a) take steps in the exercise of their functions that they consider appropriate, to meet the objective of preserving, maintaining and re-establishing habitat for wild birds, and (b) use all reasonable endeavours to avoid any pollution or deterioration of habitats for wild birds.

2.2 These Regulations also provide for a duty on the Secretary of State and the Scottish Ministers to take such steps to encourage research and scientific work relating to the offshore marine area as they consider necessary for the purpose of the protection, management and use of wild bird populations.

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

3.1 None

**4. Legislative Context**

4.1 The 2007 Regulations transpose, in relation to the offshore marine area (broadly, beyond 12 nautical miles from the coastal baseline and out to 200 nautical miles), Directive 92/43/EEC (“the Habitats Directive”) and Directive 2009/147/EC (“the Wild Birds Directive”). The objective of the Habitats Directive is to protect biodiversity through conservation of natural habitats and species of wild fauna and flora. The objective of the Wild Birds Directive is to conserve wild bird populations. Both lay down rules for the protection, management and exploitation of such species.

4.2 The 2007 Regulations 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.

4.3 This instrument makes amendments to the 2007 Regulations to more fully transpose certain provisions of the Wild Birds Directive, notably Articles 2, 3(1) and (2), 4(4) and 10. A Transposition Note is attached at the Annex A. The instrument also makes

amendments in relation to the classification of special protection areas by the Scottish Ministers.

4.4 The Habitats Directive and certain elements of the Wild Birds Directive are transposed in relation to the UK's land and territorial seas (out to 12 nautical miles) by the Conservation of Habitats and Species Regulations 2010 (S.I. 2010/490), the Conservation (Natural Habitats, & c.) Regulations 1994 (S.I. 1994/2716) and the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (S.R. 1995/380). Those instruments are also being amended to more fully transpose provisions of the Wild Birds Directive, in line with amendments made by this instrument to the 2007 Regulations.

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

5.1 This instrument extends to the United Kingdom; it applies in relation to the offshore marine area.

## **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 Wild Birds Directive provides a mechanism for protecting all wild bird species naturally occurring in the European Union. It was adopted as a response to increasing concern about the declines in Europe's wild bird populations resulting from pollution, loss of habitats as well as their unsustainable exploitation. The Directive recognises that habitat loss and degradation are serious threats to the conservation of wild birds. It sets broad objectives designed to protect wild birds.

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'. Development and exploitative human activity in the marine environment has been found to degrade the environment and negatively impact on marine biodiversity, as set out in the Government report "Charting Progress – An Integrated Assessment of the State of UK Seas".

### Articles 2, 3(1), 3(2), 4(4) and 10 of the Wild Birds Directive

7.3 Articles 2, 3(1), 3(2), 4(4) and 10 of the Wild Birds Directive are designed to ensure Member States preserve, maintain or re-establish a sufficient diversity and area of habitats for wild birds and to ensure that outside those areas which are specifically designated as important bird habitats, efforts are taken to avoid pollution or deterioration of habitats. The purpose of these obligations is to help to ensure that populations of wild bird species are maintained at a level which corresponds in particular to ecological scientific and cultural requirements, while taking account of economic and recreational

requirements. This is supported by obligations to encourage research and any work required as a basis for the protection, management and exploitation of wild birds.

7.4 Following correspondence with the European Commission, Defra has concluded that more needs to be done to transpose these provisions. These Regulations are intended to ensure clearer transposition of these provisions by giving additional and specific duties to relevant bodies.

7.5 The amending Regulations :

- Place a duty on all competent authorities with functions relevant to marine nature conservation to take such steps in the exercise of their functions as they consider appropriate to secure the objective of preserving, maintaining and re-establishing wild bird habitat including by means of the upkeep, management and creation of such habitat (as appropriate), having regard to the requirements under Article 2 of the Wild Birds Directive. Such competent authorities include the Scottish Ministers and the Secretary of State in exercising functions such as designating Marine Conservation Zones/Marine Protected Areas under the Marine and Coastal Access Act 2009.
- Provide that the condition which the network of UK conservation sites (including Marine Conservation Zones/Marine Protected Areas) has to satisfy under section 123(3)(a) of the Marine and Coastal Access Act 2009 includes the objective of preserving, maintaining or re-establishing a sufficient diversity and area of habitats for wild birds.
- Place a duty on competent authorities to use all reasonable endeavours to avoid pollution or deterioration of bird habitat.
- Place a duty on the Secretary of State and the Scottish Ministers to take steps to encourage research and scientific work which they consider necessary for the purpose of the protection, management and in relation to the use of any population of wild bird, and to supply information relating to the offshore marine area to member States and the Commission.
- Ensure that certain provisions cover special protection areas classified by the Scottish Ministers and that a person may make representation on a matter to the Scottish Ministers.
- Clarify how provisions relating to the incidental capture and killing of certain species apply in relation to the Scottish Ministers and Northern Ireland departments.
- Place a duty on the Secretary of State to review the operation and effect of the 2007 Regulations and publish a report within five years after these Regulations come into force and within every five years after that.

- Clarify that representations made to any person under the Regulations must be in writing.

7.6 The amending Regulations further amend the 2007 Regulations. As the proposals are part of an urgent response to formal correspondence instigated by the European Commission it has not been possible to consolidate the relevant legislation.

## **8. Consultation outcome**

8.1 These proposals have not been subject to public consultation as the measures to ensure clearer transposition of the Wild Birds Directive are an urgent response to formal correspondence instigated by the European Commission. The measures will not have any significant impact on any person or body and will impose no significant additional burdens on business or stakeholders.

8.2 However, in preparing these Regulations, Defra has consulted other Government Departments, the devolved administrations in Wales, Scotland and Northern Ireland, and delivery bodies such as the Joint Nature Conservation Committee and Natural England.

## **9. Guidance**

9.1 No requirement for guidance has been identified.

## **10. Impact**

10.1 The impact on business, charities or voluntary bodies is nil.

10.2 The impact on the public sector is nil.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on [www.legislation.gov.uk](http://www.legislation.gov.uk).

## **11. Regulating small business**

11.1 The 2007 Regulations do not apply to small business directly, as duties are placed on competent authorities (public bodies). However, the carrying out of those duties may affect the approval of activities which any organisation, including a small business, proposes to carry out.

## **12. Monitoring & review**

12.1 The Secretary of State must carry out a review of the 2007 Regulations and publish a report setting out the conclusions of the review within five years and within every five years after that.

### **13. Contact**

Laura Weiss at the Department for Environment, Food and Rural Affairs, Tel: 0207 238 1689 or email: [laura.weiss@defra.gsi.gov.uk](mailto:laura.weiss@defra.gsi.gov.uk) can answer any queries regarding the instrument.

**Transposition Note relating to Directive 2009/147/EC on the Conservation of Wild Birds (“the Wild Birds Directive”)**

**The Offshore Marine Conservation (Natural Habitats, &c.) (Amendment) Regulations 2012, amending the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007 (S.I. 2007/1842) (“the principal Regulations”)**

This instrument applies to the United Kingdom’s offshore marine area.

The Regulations do not go beyond what is necessary to implement the Wild Birds Directive.

<b>Directive 2009/147/EC on the conservation of wild birds</b>			
Articles	Objectives	Implementation	Responsibility
2	Member States shall take the requisite measures to maintain the population of the species referred to in Article 1 at a level which corresponds in particular to ecological, scientific and cultural requirements, while taking account of economic and recreational requirements, or to adapt the population of these species to that level.	Regulation 3 amends regulation 6 of the principal Regulations:  Regulation 6(3) requires a competent authority to exercise its functions to secure the objective in regulation 6(4). That objective is the preservation, maintenance and re-establishment of a sufficient diversity and area of habitat for wild birds, including by means of the upkeep, management and creation of such habitat, as appropriate, having regard to the requirements of Article 2 of the Directive.	Competent authorities <sup>2</sup>
3(1)	Member States shall take measures to preserve, maintain or re-establish a sufficient diversity and area of habitats for all species of birds referred to in Article 1.	Regulation 6(6) provides that in s123(3)(a) of the Marine and Coastal Access Act 2009 (“the 2009 Act”), the reference to “the conservation or improvement of the marine environment” includes the objective described above (regulation 6(4)) <sup>1</sup> . Further, this clarifies that the duty in s124 of the 2009 Act (to report on the extent to which the s123 network objective has been achieved) applies in relation to the objective in	Appropriate authorities
3(2)	The preservation, maintenance and re-		

<sup>1</sup> Section 123 of the 2009 Act requires the appropriate authority (defined in s116(5)) to designate Marine Conservation Zones (MCZs) to contribute to the objective of forming a network of conservation sites which satisfies the conditions in s123(3). One of these conditions (in s123(3)(a)) is that the network contributes to the conservation or improvement of the marine environment in the UK marine area.

<sup>2</sup> The term “competent authority” is defined in regulation 5 of the principal Regulations.

	<p>establishment of biotopes and habitat shall include measures to: create protected areas; upkeep and manage in accordance with the ecological needs of habitats inside and outside the protected zones; re-establish destroyed biotopes; create biotopes.</p>	<p>regulation 6(4).</p> <p>Regulation 6(7) provides that account must be taken of economic and recreational requirements in considering which measures may be appropriate to secure or contribute to the regulation 6(4) objective.</p> <p>Regulation 8 of the amending Regulations amends regulation 19(2)(a) of the principal Regulations, to require a management scheme for a relevant site to set out how competent authorities propose to exercise their functions so as to secure compliance with the Wild Birds Directive.</p>	
4(4) second sentence	<p>Outside Article 4(1) and (2) protection areas, Member States shall strive to avoid pollution or deterioration of habitats.</p>	<p>Regulation 9 amends regulation 23 of the principal Regulations: regulation 23 (10A) requires the competent authority to use all reasonable endeavours to avoid any pollution or deterioration of habitats for wild birds in the offshore marine area or resulting from any activity in the offshore marine area.</p>	Competent authorities
10(1)	<p>Member States shall encourage research and any work required as a basis for the protection, management and use of the population of all species of bird referred to in Article 1. Particular attention shall be paid to research and work on the subjects listed in Annex V.</p>	<p>Regulation 13 amends regulation 67 of the principal Regulations; regulation 67(1), as amended, requires the Secretary of State and (by virtue of regulation 67(4)), the Scottish Ministers to take steps to encourage research and scientific work which they consider necessary for the purposes of the protection or management, and in relation to the use, of any population of wild birds.</p> <p>Regulation 67(3) as amended requires the Secretary of State and (by virtue of regulation 67(4)), the Scottish Ministers to pay particular regard to the need for research and scientific work on the subjects listed in Annex V of the Wild Birds Directive.</p>	Secretary of State and the Scottish Ministers
10(2)	<p>Member States shall send the Commission any information required to enable it to take</p>	<p>Under regulation 67(2), as amended, the Secretary of State and (by virtue of regulation 67(4)), the Scottish</p>	

	appropriate measures for the coordination of the research and work referred to in paragraph 1.	Ministers must supply such information as they consider appropriate to member States and to the Commission to further the proper co-ordination of research carried out for the purposes of the Wild Birds Directive	
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