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STATUTORY INSTRUMENTS

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**2012 No. 1928**

**WILDLIFE**

**The Offshore Marine Conservation (Natural Habitats, &c.) (Amendment) Regulations 2012**

<i>Made</i>	- - - -	<i>20th July 2012</i>
<i>Laid before Parliament</i>		<i>25th July 2012</i>
<i>Coming into force</i>	- -	<i>16th August 2012</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> in relation to the environment. The Secretary of State makes these Regulations in exercise of the powers conferred by that section.

**Title and commencement**

1. These Regulations may be cited as the Offshore Marine Conservation (Natural Habitats, &c.) (Amendment) Regulations 2012 and come into force on 16th August 2012.

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

2. The Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007<sup>(3)</sup> are amended as follows.

**Amendments to regulation 6**

3. In regulation 6<sup>(4)</sup> (duty of competent authorities)—

(a) for paragraph (2)(o) substitute—

“(o) the Marine Act, in particular any functions under Parts 3, 4, 5 and 6 of that Act (marine planning, marine licensing, nature conservation and management of inshore fisheries, respectively); and”;

(b) after paragraph (2), insert—

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(1) S.I. 2008/301.

(2) 1972 c.68. Section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c.51), section 27(1)(a), and the European Union (Amendment) Act 2008 (c.7), Part 1 of the Schedule.

(3) S.I. 2007/1842, amended by S.S.I. 2007/485, S.I. 2009/7, S.I. 2010/490, S.I. 2010/491 and S.I. 2010/1513.

(4) Regulation 6 was amended by S.I. 2010/491.

“(3) Without prejudice to the generality of paragraph (1), in relation to the offshore marine area a competent authority must take such steps in the exercise of its functions as it considers appropriate to secure the objective in paragraph (4), so far as lies within its powers.

(4) The objective is the preservation, maintenance and re-establishment of a sufficient diversity and area of habitat for wild birds in the United Kingdom, including by means of the upkeep, management and creation of such habitat, as appropriate, having regard to the requirements of Article 2 of the Wild Birds Directive.

(5) In paragraph (4), “the United Kingdom” includes the offshore marine area.

(6) In subsection (3)(a) of section 123 of the Marine Act (creation of network of conservation sites), as it applies in relation to the offshore marine area<sup>(5)</sup>, the reference to “the conservation or improvement of the marine environment” includes the objective in paragraph (4), and accordingly the duty in section 124 of the Marine Act (report) applies in relation to that objective.

(7) In considering which measures may be appropriate for the purpose of securing or contributing to the objective in paragraph (4), appropriate account must be taken of economic and recreational requirements.

(8) In this regulation “the Marine Act” means the Marine and Coastal Access Act 2009<sup>(6)</sup>.”.

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

4. In regulation 14<sup>(7)</sup> (hearings), in paragraph (1), omit “written”.

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

5. In regulation 14A<sup>(8)</sup> (hearings conducted by the Scottish Ministers), in paragraph (1), omit “written”.

#### **Amendment to regulation 15**

6. In regulation 15(d) (meaning of “European offshore marine site” in these Regulations), after “under regulation 12” insert “or regulation 12A”.

#### **Amendment to regulation 16**

7. In regulation 16(2)(a) and (d) (duty to compile and maintain a register of European offshore marine sites) omit “by him”.

#### **Amendment to regulation 19**

8. In regulation 19(2)(a)<sup>(9)</sup> (management schemes for European offshore marine sites) after “Habitats Directive” insert “or the Wild Birds Directive”.

(5) Section 123(3)(a) applies in relation to the “UK marine area”, defined in section 42 of the Marine Act in terms which include the area comprised in the offshore marine area.

(6) 2009 c.23.

(7) Regulation 14 was amended by S.I. 2010/491.

(8) Regulation 14A was inserted by S.I. 2010/491.

(9) Regulation 19 was amended by S.I. 2010/490 and 491.

### **Amendments to regulation 23**

- 9.** In regulation 23(**10**) (prevention of deterioration of habitats and disturbance of species)—
- (a) in paragraphs (3)(d) and (4)(d), after “under regulation 12” insert “or regulation 12A”; and
  - (b) after paragraph (10) insert—

“(10A) So far as lies within its powers, a competent authority in exercising any function in or in relation to the offshore marine area must use all reasonable endeavours to avoid any pollution or deterioration of habitats of wild birds (except habitats beyond the outer limits of the area to which the Wild Birds Directive applies).”.

### **Amendment to regulation 32**

- 10.** In regulation 32(**11**) (offences relating to European offshore marine sites), in paragraphs (6) (a) and (8)(c), after “under regulation 12” insert “or regulation 12A”.

### **Amendments to regulation 45**

- 11.** In regulation 45(**12**) (protection of certain animals and plants from exploitation)—
- (a) for paragraph (4) substitute—

“(4) In so far as arrangements for measures mentioned in paragraph (1) may be made by the Scottish Ministers in the exercise of any of their functions for the purpose mentioned in paragraph (2), paragraph (1) applies to the Scottish Ministers as it applies to the Secretary of State.”; and
  - (b) for paragraph (6) substitute—

“(6) In so far as arrangements for measures mentioned in paragraph (1) may be made by any Northern Ireland department in the exercise of any of its functions for the purpose mentioned in paragraph (2), paragraph (1) applies to that department as it applies to the Secretary of State.”.

### **Amendments to regulation 47**

- 12.** In regulation 47(**13**) (protection from incidental capture and killing)—
- (a) for paragraph (3) substitute—

“(3) In so far as arrangements for further research or conservation measures mentioned in paragraph (1) may be made by the Scottish Ministers in the exercise of any of their functions for the purpose mentioned in paragraph (2), paragraph (1) applies to the Scottish Ministers as it applies to the Secretary of State.”; and
  - (b) for paragraph (5) substitute—

“(5) In so far as arrangements for further research or conservation measures mentioned in paragraph (1) may be made by any Northern Ireland department in the exercise of any of its functions for the purpose mentioned in paragraph (2), paragraph (1) applies to that department as it applies to the Secretary of State.”.

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(10) Regulation 23 was amended by [S.I. 2010/491](#).

(11) Regulation 32 was amended by [S.I. 2009/7](#).

(12) Regulation 45 was amended by [S.I. 2009/7](#).

(13) Regulation 47 was amended by [S.I. 2009/7](#).

**Amendment to regulation 67**

13. In regulation 67(14) (research), for paragraphs (1) to (3) substitute—

“(1) The Secretary of State must take such steps to encourage research and scientific work relating to the offshore marine area as the Secretary of State considers necessary—

- (a) having regard to the objectives in Article 2, and the obligation in Article 11, of the Habitats Directive; and
- (b) for the purpose of the protection or management, and in relation to the use, of any population of wild birds.

(2) The Secretary of State must supply such information relating to the offshore marine area as the Secretary of State considers appropriate to the Commission and, in the case of information supplied for the purposes of the Habitats Directive, to member States, to further the proper co-ordination of research carried out by member States or by the Commission for the purposes of the Habitats Directive or the Wild Birds Directive.

(3) In deciding what steps to take under paragraph (1), the Secretary of State must have particular regard to the need for research and scientific work—

- (a) on the subjects listed in Annex V to the Wild Birds Directive; or
- (b) which may be required to implement Article 4 of the Habitats Directive.”.

**Amendment to regulation 73**

14. In regulation 73 (form of communications), in paragraph (1)(b), for “the Secretary of State” substitute “any person”.

**Addition of regulation 76**

15. After regulation 75 add—

**“Review**

76.—(1) The Secretary of State must from time to time—

- (a) carry out a review of these Regulations;
- (b) set out the conclusions of the review in a report; and
- (c) publish the report.

(2) In carrying out the review the Secretary of State must, so far as is reasonable, have regard to how the Habitats Directive and the Wild Birds Directive are implemented in other member States.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by the regulatory system established by these Regulations;
- (b) assess the extent to which those objectives are achieved; and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) The first report under this regulation must be published before the end of the period of five years beginning with 16th August 2012.

(5) Reports under this regulation are afterwards to be published at intervals not exceeding five years.”.

20th July 2012

*Richard Benyon*  
Parliamentary Under Secretary of State  
Department for Environment, Food and Rural  
Affairs

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## EXPLANATORY NOTE

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

These Regulations amend the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007 (“the 2007 Regulations”)(**15**), which make provision implementing Council Directive [92/43/EEC](#) on the conservation of natural habitats and of wild fauna and flora (“the Habitats Directive”)(**16**) and Directive [2009/147/EC](#) on the conservation of wild birds (“the Wild Birds Directive”)(**17**). These Regulations make further provision transposing certain aspects of the Wild Birds Directive.

Regulation 3 inserts new provisions into regulation 6 of the 2007 Regulations, which require competent authorities to take steps to preserve and re-establish a sufficient diversity and area of habitat for wild birds.

Regulation 8 amends regulation 19 of the 2007 Regulations to provide that management schemes must set out how competent authorities propose to exercise their functions to secure compliance with the Wild Birds Directive.

Regulations 6, 7, 9(a) and 10 amend the 2007 Regulations to make consequential changes in relation to the classification of special protection areas by the Scottish Ministers(**18**).

New regulation 23(10A) of the 2007 Regulations (inserted by regulation 9(b)) imposes a duty on competent authorities to use all reasonable endeavours to avoid pollution or deterioration of wild bird habitat.

Regulations 11 and 12 clarify how regulations 45(1) and 47(1) of the 2007 Regulations apply in relation to the Scottish Ministers and Northern Ireland departments (ensuring that measures are taken in relation to the protection of certain animals and plants from exploitation and the incidental capture and killing of certain species).

Regulation 13 amends regulation 67 of the 2007 Regulations to make provision for research and scientific work for the purposes of the Wild Birds Directive.

New regulation 76 of the 2007 Regulations (added by regulation 15) requires 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.

A transposition note and full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector are available from the International Biodiversity Team, Department for Environment, Food and Rural Affairs, Temple Quay House, 2 The Square, Bristol BS1 6EB, and are published with the Explanatory Memorandum alongside the instrument on [www.legislation.gov.uk](http://www.legislation.gov.uk).

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(15) [S.I. 2007/1842](#), amended by [S.S.I. 2007/485](#), [S.I. 2009/7](#), [S.I. 2010/490](#), [S.I. 2010/491](#) and [S.I. 2010/1513](#).

(16) OJ No L 206, 22.7.1992, p.7, last amended by Council Directive [2006/105/EC](#) (OJ No L 363, 20.12.2006, p.368).

(17) OJ No L 20, 26.1.2010, p.7.

(18) The Offshore Marine Conservation (Natural Habitats, &c.) (Amendment) Regulations 2010 ([S.I. 2010/491](#)) amended the 2007 Regulations, making provision for the Scottish Ministers to classify special protection areas in the Scottish offshore region.