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DRAFT STATUTORY INSTRUMENTS

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**2019 No.**

**The Conservation of Habitats and Species  
(Amendment) (EU Exit) Regulations 2019**

**PART 3**

Amendments to the Conservation of Habitats and Species Regulations 2017

**Amendment of the Conservation of Habitats and Species Regulations 2017**

3. The Conservation of Habitats and Species Regulations 2017<sup>(1)</sup> are amended as follows.

**Amendment of regulation 3 (interpretation)**

4.—(1) Regulation 3 is amended as follows.

(2) In paragraph (1)—

(a) after the definition of “marine area”, insert—

““the national site network” means the network of sites in the United Kingdom’s territory consisting of such sites as—

(a) immediately before exit day formed part of Natura 2000; or

(b) at any time on or after exit day are European sites, European marine sites and European offshore marine sites for the purposes of any of the retained transposing regulations;”;

(b) in the definition of “Natura 2000”, at the end insert “(but see paragraphs (10) and (11))”;

(c) after the definition of “officer”, insert—

““offshore marine area” has the meaning given by regulation 4(2) (Plans or projects relating to offshore marine area or offshore marine installations)”

(d) after the definition of “relevant licensing body”, insert—

““the requirements of the Directives” is to be interpreted in accordance with paragraphs (3) and (4) of regulation 3A;”;

(e) after the definition of “research”, insert—

““the retained transposing regulations”, means—

(i) the Offshore Marine Conservation Regulations 2017 <sup>(2)</sup>;

(ii) the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995<sup>(3)</sup>;

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(1) S.I. 2017/1012.

(2) S.I. 2017/1013.

(3) S.R.(N.I.) 1995 No.380. Amendments have been made by the Marine Act (Northern Ireland) 2013 (c.10)(N.I.), section 40, by S.R. 2004 No.435, 2007 No.345, 2009 No.8, 2011 No. 216, 2012 No.1928, 2012 No.368 and 2015 No.182.

- (iii) the Conservation (Natural Habitats, &c.) Regulations 1994(4); and
  - (iv) these Regulations;
- and “the other retained transposing regulations” means the retained transposing regulations other than these Regulations;”;
- (f) in the definition of “special area of conservation”, at the end, insert “, and includes any such site designated after exit day under the retained transposing regulations;”.
  - (g) After the definition of “the TCPA 1990”—
    - ““the United Kingdom’s territory” means the United Kingdom and the offshore marine area;”;
- (3) In paragraph (4), for “as amended from time to time”, substitute “as it had effect immediately before exit day, or as subsequently amended under regulation 144”.
- (4) After paragraph (9), insert—
- “(10) For the purposes of these Regulations, and any guidance issued before exit day by the appropriate authority or the appropriate nature conservation body, relating to the application of these Regulations, on or after exit day, references to “Natura 2000” (other than in this regulation) are to be construed as references to the national site network.
  - (11) Paragraph (10) does not affect the interpretation of these Regulations as they had effect, or any guidance as it applied, before exit day.”.

### Insertion of new regulation 3A

5. After regulation 3, insert—

#### “Interpretation: the Directives

**3A.**—(1) The Habitats Directive is to be construed for the purposes of these Regulations as if—

- (a) any reference to “the European territory of the Member States to which the Treaty applies” included a reference to the United Kingdom;
- (b) any reference to “Member State” or “Member States” included a reference to the United Kingdom;
- (c) any reference to “of Community interest” included, in relation to the United Kingdom, a reference to “of national interest”;
- (d) in Article 1(d) and (h), references to “the Community” were references to “the European Union or the United Kingdom”; and
- (e) in Article 1(l), the reference to “a site of Community importance designated by the Member State” included, in relation to the United Kingdom, a reference to a site of national importance designated under any of the retained transposing regulations.

(2) The new Wild Birds Directive is to be construed for the purposes of these Regulations as if—

- (a) any reference to “the European territory of the Member States to which the Treaty applies” included a reference to the United Kingdom; and

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(4) [S.I. 1994/2716](#). Relevant amendments are made by paragraph 15 of Schedule 2 to the Land Reform (Scotland) Act 2003 ([asp 2](#)), by [S.I. 1997/3055](#), [2007/1843](#) and [2010/490](#), and by [S.S.I. 2004/475](#), [2007/80](#), [2011/155](#) and [2012/228](#).

(b) any reference to “Member State” or “Member States” included a reference to the United Kingdom.

(3) Any reference in these Regulations to “the requirements of the Directives” is to be construed as if the objectives of the Directives included the objectives referred to in regulation 16A(2).

(4) The appropriate authority may, after consultation with the appropriate nature conservation body and such other bodies or persons as it considers appropriate, issue guidance as to the interpretation of the requirements of the Directives.

(5) Any guidance issued under paragraph (4) must be published by the appropriate authority in such manner as it considers appropriate.”.

#### **Amendments of regulation 8 (European sites and European marine sites)**

6. In regulation 8(1)—

- (a) in sub-paragraph (b), at the end insert “before exit day”;
- (b) omit sub-paragraph (c);
- (c) in sub-paragraph (d), after “classified”, insert “before exit day”, and after the closing parenthesis, insert “or classified after exit day under the retained transposing regulations”;
- (d) in sub-paragraph (e)—
  - (i) after “which”, insert “before exit day”, and for “under regulation 12” substitute “ in accordance with Article 4(1) of the Habitats Directive”; and
  - (ii) for sub-paragraphs (i) and (ii) substitute—
    - “(i) the site is designated as a special area of conservation under regulation 12 or under a corresponding provision in the other retained transposing regulations; or
    - (ii) the appropriate authority gives the appropriate nature conservation body notice of its intention not to designate the site, setting out the reasons for its decision, in accordance with regulation 141A(3).”.

#### **Amendment to regulation 9 (duties relating to compliance with the Directives)**

7. In regulation 9, after paragraph (4) insert—

“(4A) In complying with their duties under paragraphs (1) and (3), the nature conservation body and a competent authority must have regard to any guidance issued under regulation 3A(4)—

- (a) by the Secretary of State, in relation to England; or
- (b) by the Welsh Ministers, in relation to Wales.”.

#### **New regulation 9A**

8. After regulation 9, insert—

##### **“Reports**

**9A.—**(1) Within six years from exit day, and at least every six years thereafter, the appropriate authority must publish, in such form as it sees fit, a report on the implementation of the measures taken for the purpose of giving effect to the provisions of the Directives, and the achievement of the objectives set out in Article 2 of the Habitats Directive and Articles 2 and 3 of the new Wild Birds Directive.

- (2) The report under paragraph (1) must include in particular—
- (a) information concerning conservation measures taken under Article 6(1) of the Habitats Directive;
  - (b) information on provisions mentioned in Article 12 of the new Wild Birds Directive;
  - (c) an evaluation of the impact of those conservation measures on the conservation status of the natural habitat types listed in Annex I of the Habitats Directive, and of the species listed in Annex II of that Directive; and
  - (d) the main results of the surveillance undertaken under Part 4 of these Regulations.
- (3) Within, two years from the later of the date of publication of the last of the reports to be published—
- (a) under paragraph (1); or
  - (b) within the relevant six-year period under any corresponding requirement of the other retained transposing regulations.
- the Secretary of State must, publish a composite report.
- (4) A composite report published under paragraph (3) must—
- (a) be in such form as the Secretary of State sees fit;
  - (b) include an appropriate evaluation of the progress achieved and, in particular, of the contribution of the national site network to the achievement of the objective of enabling the natural habitat types listed in Annex I to the Habitats Directive, and the species listed in Annex II to that Directive, to be maintained at or, where appropriate, restored to, a favourable conservation status in their natural range; and
  - (c) be submitted in draft to the devolved administrations for verification.”.

#### **Amendment of regulation 10 (duties in relation to wild bird habitat)**

9. In regulation 10(8), for “area to which the new Wild Birds Directive applies” substitute “seaward limits of the offshore marine area (as defined in regulation 4(2))”.

#### **Amendments of regulations 12 to 13**

10. For regulations 12 to 13 substitute—

##### **“Duty to designate special areas of conservation**

12.—(1) The appropriate authority must, having regard to the priorities established under regulation 13, designate as special areas of conservation such sites in England and Wales as the authority considers to be sites of national importance.

(2) Sites of national importance are sites which contribute significantly to the objective in paragraph (3)(a) or the objective in paragraph (3)(b).

(3) The objectives referred to in paragraph (2) are—

- (a) the maintenance, or restoration, at favourable conservation status in their natural range of the natural habitat types listed in Annex I to the Habitats Directive or the species listed in Annex II to that Directive; and
- (b) the maintenance of biological diversity within the Atlantic biogeographic region.

(4) For animal species ranging over wide areas, those sites determined to be of national importance must correspond to places within the natural range of such species, which present the physical or biological factors essential to their life and reproduction.

(5) For aquatic species which range over wide areas, such sites are to be determined to be of national importance only where there is a clearly identifiable area which is distinct in providing the physical and biological factors essential to their life and reproduction.

(6) In determining which sites are of national importance for the purposes of paragraph (1), the appropriate authority must—

- (a) apply the Annex III criteria;
- (b) make its determination only on the basis of relevant scientific information; and
- (c) have regard to the importance of the population of a species or area of a habitat found in the United Kingdom for the purpose of meeting the objectives in paragraph (3).

(7) For the purposes of paragraph (6)(a), the Annex III criteria are to be construed as if—

- (a) for “Community importance” there were substituted “national importance”;
- (b) a reference to a “Member State” is to be taken to be a reference to the appropriate authority;
- (b) for “continuous ecosystem situated on both sides of one or more internal Community frontiers” there were substituted “continuous ecosystem extending beyond the borders of the United Kingdom”; and
- (c) for “the biogeographical regions concerned and/or for the whole of the territory referred to in Article 2” there were substituted “the Atlantic biogeographical region”.

(8) In applying the Annex III criteria, the appropriate authority must—

- (a) in relation to the application of stage 1 of the Annex III criteria, have regard to the advice of the appropriate nature conservation body; and
- (b) in relation to the application of stage 2 of the Annex III criteria, have regard to the advice of the Joint Nature Conservation Committee.

(9) In this regulation, “the Annex III criteria” means the criteria set out in Annex III to the Habitats Directive.

### **Priorities for designating special areas of conservation**

**13.**—(1) The appropriate authority must, in accordance with paragraph (2), establish priorities for designating as special areas of conservation such sites as it has determined to be sites of national importance.

(2) Priorities for the purpose of paragraph (1) must be established in the light of—

- (a) the importance of the sites for the maintenance at or restoration to a favourable conservation status of—
  - (i) a natural habitat type specified in Annex I to the Habitats Directive; or
  - (ii) a species specified in Annex II to the Habitats Directive;
- (b) the importance of such sites for the coherence of the national site network; and
- (c) the threats of degradation or destruction to which the sites are exposed.”

### **Omission of Regulation 14 (consultation as to inclusion of site omitted from the list)**

11. Omit regulation 14.

### **Amendment of regulation 15 (classification of sites as special protection areas)**

- 12.—(1) Regulation 15 is amended as follows.

- (2) For paragraph (4) substitute—

“(4) In applying the criteria referred to in sub-paragraphs (3)(a) and (b) in relation to any species, references in Articles 4(1) and (2) of the new Wild Birds Directive to classifying the most suitable territories “in the geographical sea and land area where this Directive applies” are to be construed as referring to the most suitable territories in the United Kingdom’s territory, having regard to the importance of such territories for ensuring the survival and reproduction of that species in their area of distribution”.

- (3) Omit paragraphs (5) and (6).

### **Insertion of new regulation 16A**

13. After regulation 16, insert—

#### **“Management objectives of the national site network**

**16A.—**(1) The appropriate authority must, in co-operation with any other authority having a corresponding responsibility, manage, and where necessary adapt, the national site network, so far as it consists of European sites, with a view to contributing to the achievement of the management objectives of the national site network.

- (2) The management objectives of the national site network are—

- (a) to maintain at, or where appropriate restore to, a favourable conservation status in their natural range (so far as it lies in the United Kingdom’s territory, and so far as is proportionate)—

- (i) the natural habitat types listed in Annex I to the Habitats Directive;
- (ii) the species listed in Annex II to that Directive whose natural range includes any part of the United Kingdom’s territory;

- (b) to contribute, in their area of distribution, to ensuring the survival and reproduction of—

- (i) the species of birds listed in Annex I to the new Wild Birds Directive which naturally occur in the United Kingdom’s territory;
- (ii) regularly occurring migratory species of birds not listed in that Annex which naturally occur in the United Kingdom’s territory;

- (c) to contribute, to securing compliance with the requirements of Article 2 of the new Wild Birds Directive for the purposes of the duty in regulation 9(1) in relation to the species of birds in paragraph (b) within their area of distribution.

- (3) In complying with the obligation in paragraph (1), the appropriate authority must have regard—

- (a) in relation to any European sites which are not of a kind mentioned in regulation 8(1)(d), to the considerations mentioned in paragraph (4);

- (b) in relation to European sites of a kind mentioned in regulation 8(1)(d), to the considerations mentioned in paragraph (5).

- (4) The considerations mentioned in paragraph (3)(a) are—

- (a) the importance of the sites for meeting the objective in paragraph (2)(a);
  - (b) the importance of the sites for the coherence of national site network;
  - (c) the threats of degradation or destruction (including deterioration and disturbance of protected features) to which the sites are exposed.
- (5) The considerations mentioned in paragraph (3)(b) are—
- (a) the importance of the sites for meeting the objectives in paragraph 2(b) and (c);
  - (b) in the case of migratory species, the importance of their breeding, moulting and wintering areas and staging points along their migration routes;
  - (c) the importance of the sites for the coherence of national site network;
  - (d) the threats of degradation or destruction (including deterioration and disturbance of protected features) to which the sites are exposed.
- (6) In paragraph (2)(a), “proportionate” means proportionate to the relative importance of—
- (a) the part of the natural range lying in the United Kingdom’s territory, and
  - (b) the part of the natural range lying outside the United Kingdom’s territory,
- for achieving a favourable conservation status.”.

**Amendment of regulation 17 (register of European sites)**

14. Regulation 17(2) is amended as follows—

- (a) in sub-paragraph (b), for “as soon as they are” substitute “which before exit day were”;
- (b) omit sub-paragraph (c); and
- (c) in sub-paragraph (e), for “under regulation 12” substitute “before exit day”.

**Amendment of regulation 24 (assessment of implications for European sites)**

15. Omit regulation 24(3).

**Amendment of regulation 29 (assessment of implications for European sites after service of stop notice)**

16.—(1) Regulation 29 is amended as follows.

- (2) In paragraph (6)(b), omit “, having due regard to the opinion of the European Commission,”;
- (3) Omit paragraph (8).

**Amendment of regulation 44 (protection of certain wild animals: defences)**

17. In regulation 44(7), before sub-paragraph (a), insert—

“(aa) it was taken from the wild in the United Kingdom without contravention of the law and before 10<sup>th</sup> June 1994;”.

**Amendment of regulation 45 (prohibition of certain methods of capturing or killing wild animals)**

18.—(1) Regulation 45 is amended as follows.

- (2) In paragraph (2), for sub-paragraphs (a) and (b), substitute—
  - “(a) any means listed in paragraph 1 or 2 of Schedule 4A;

- (b) any form of capturing or killing from a mode of transport listed in paragraph 3 of Schedule 4A.”.
- (3) Omit paragraphs (3) to (5).

**Amendment of regulation 48 (protection of certain wild plants: defences)**

19. In regulation 48(5), before sub-paragraph (a), insert—
- “(aa) it was taken from the wild in the United Kingdom without contravention of the law and before 10th June 1994;”.

**Amendment of regulation 50 (surveillance of conservation status of habitats and species)**

- 20.—(1) Regulation 50 is amended as follows.
- (2) In paragraph (1), for “Community”, in both places where it occurs, substitute “national”.
  - (3) In paragraph (7)—
    - (a) for the definition of “natural habitat types of Community interest” substitute—  
““natural habitats of national interest” means natural habitat types listed in Annex I to the Habitats Directive;”
    - (b) in the definition of “relevant habitat type or species”, for “Community” substitute “national”; and
    - (c) for the definition of “species of Community interest”, substitute—  
““species of national interest” means species of wild fauna and flora listed in Annex II, IV or V to the Habitats Directive.”.

**Amendment to regulation 51 (protection of certain animals and plants from exploitation)**

21. In regulation 51(1), omit “or otherwise arranged for the purpose of Article 11 of the Habitats Directive (surveillance)”.

**Amendment of regulation 53 (protection from incidental capture and killing)**

22. In regulation 53(1), omit “or otherwise arranged for the purpose of Article 12(4) of the Habitats Directive (system to monitor incidental capture and killing)”.

**Amendment of regulation 55 (licences for certain activities relating to animals or plants)**

23. In regulation 55, after paragraph 14, insert—
- “(15) Within two years from exit day, and thereafter within two years of the publication of the last such report, each relevant licensing body must publish, in such form as it sees fit, a report on licences granted under paragraph (1) in the preceding two years.
  - (16) A report made under paragraph (15) must specify—
    - (a) the species to which the licence relates and the reason for granting the licence, including the nature of the risk, with, if appropriate, a reference to alternatives rejected and scientific data used;
    - (b) in relation to any animal species, any means authorised for the capture or killing of the species and the reasons for the use of that means;
    - (c) when and where the licence was granted; and



- (d) the supervisory measures taken to check that the required conditions of the licence have been complied with, any monitoring that has been carried out of compliance with the conditions of the licence, and the results of that monitoring.”.

**Amendment of regulation 63 (assessment of implications for European sites and European offshore marine sites)**

- 24. In regulation 63(7), omit sub-paragraphs (a) and (b).

**Amendment of regulation 64 (considerations of overriding public interest)**

- 25.—(1) Regulation 64 is amended as follows.

- (2) In paragraphs (2)(b) and (3), for “European Commission” substitute “appropriate authority”.

- (3) For paragraph (4) substitute—

“(4) In giving its opinion as to whether the reasons are imperative reasons of overriding public interest, the appropriate authority must have regard to the national interest, and provide its opinion to the competent authority.”.

- (4) After paragraph (4), insert—

“(4A) Before giving its opinion as to whether the reasons are imperative reasons of overriding public interest, the appropriate authority must consult the following, and have regard to their opinion—

- (a) the Joint Nature Conservation Committee;
- (b) where the appropriate authority is the Secretary of State, the devolved administrations;
- (c) where the appropriate authority is the Welsh Ministers, the Secretary of State, and the other devolved administrations; and
- (d) any other person the appropriate authority considers appropriate.”.

**Amendment of regulation 107 (considerations of overriding public interest)**

- 26.—(1) Regulation 107 is amended as follows.

- (2) In paragraphs (2)(b) and (3), for “European Commission” substitute “appropriate authority”.

- (3) For paragraph (4) substitute—

“(4) In giving its opinion as to whether the reasons are imperative reasons of overriding public interest, the appropriate authority must have regard to the national interest, and provide its opinion to the competent authority.”.

- (4) After paragraph (4) insert—

“(4A) Before giving its opinion as to whether the reasons are imperative reasons of overriding public interest, the appropriate authority must consult the following, and have regard to their opinion—

- (a) the Joint Nature Conservation Committee;
- (b) where the appropriate authority is the Secretary of State, the devolved administrations;
- (c) where the appropriate authority is the Welsh Ministers, the Secretary of State and the other devolved administrations; and
- (d) any other person the appropriate authority considers appropriate.”.

**Amendment of regulation 116 (powers of entry: wildlife inspectors)**

27. In regulation 116(9), in the definition of “third country ship”—
- (a) in sub-paragraph (a), for “(other than Gibraltar) which is not a member State” substitute “other than the United Kingdom”;
  - (b) in sub-paragraph (b), for “a member State”, substitute “the United Kingdom”.

**Amendment to regulation 136 (research)**

28. Omit regulation 136(2).

**Insertion of new regulation 141A**

29. After regulation 141, insert—

**“Transitional provisions: EU exit**

**141A.**—(1) Where before exit day a site in England or Wales has been adopted in accordance with the procedure set out in Article 4(2) of the Habitats Directive (list of sites of Community importance), the appropriate authority must designate that site as a special area of conservation as soon as possible and no later than six years from the date of adoption of that site.

(2) Paragraph (3) applies where a site in England or Wales—

- (a) has before exit day been proposed, in a list of sites transmitted to the European Commission, as eligible for identification as of Community importance in accordance with the procedure laid out in Article 4(2) of the Habitats Directive (list of sites of Community importance); and
- (b) has not yet been so identified as being of Community importance.

(3) Where this paragraph applies, the appropriate authority must within six years of exit day designate the site as a special area of conservation or give notice to the appropriate nature conservation body of its intention not to designate the site, and publish, in such form as it sees fit, its reasons for not designating it.”.

**Insertion of new regulations 143 to 145**

30. After regulation 142, insert—

**“Amendment of Schedules**

**143.**—(1) The appropriate authority may by regulations amend Schedule 2 or 5 for the purpose of adding any species listed in Annex IV(a) or (b) to the Habitats Directive where it is satisfied that the natural range of that species includes any area in Great Britain.

(2) The appropriate authority may by regulations make such other amendments as it considers necessary for adapting Schedules 2 to 5 to technical and scientific progress.

(3) Regulation 145 applies in relation to any amendment made under paragraph (1) or (2).

**Amendment of the Annexes to the Directives**

**144.**—(1) Paragraph (2) applies for the purposes of the application of the Annexes so far as they are relevant to any reference in these Regulations to—

- (a) the Directives;
- (b) the Annexes; or
- (c) any provisions of the Directives to which the Annexes relate.

(2) The appropriate authorities may by regulations make such amendments to the Annexes as they consider necessary for the purpose of adapting them to technical and scientific progress.

(3) Regulation 145 applies in relation to any amendment made under paragraph (2).

(4) In this regulation, “the Annexes” means—

- (a) Annexes I to IV to the Habitats Directive; and
- (b) Annexes I to V to the new Wild Birds Directive.”.

### **Statutory instruments**

**145.**—(1) The power to make an amendment under regulation 143 (amendment of Schedules) or 144 (amendment of the Annexes to the Directives) is exercisable by statutory instrument.

(2) A statutory instrument made by the Secretary of State under regulation 143(2) amending Schedule 2, or under regulation 144 amending Annex IV to the Habitats Directive, may not be made unless a draft of the instrument has been laid before, and approved by resolution of each House of Parliament.

(3) A statutory instrument made by the Secretary of State in any other case is subject to annulment in pursuance of a resolution of either House of Parliament.

(4) A statutory instrument made by the Welsh Ministers under regulation 143(2) amending Schedule 2, or under regulation 144 amending Annex IV to the Habitats Directive, may not be made unless a draft of the instrument has been laid before, and approved by resolution of, the National Assembly for Wales.

(5) A statutory instrument made by the Welsh Ministers in any other case is subject to annulment in pursuance of a resolution of the National Assembly for Wales.”.

### **Insertion of new Schedule 4A**

**31.** After Schedule 4, insert Schedule 4A, as set out in Schedule 1.