
DRAFT STATUTORY INSTRUMENTS

2019 No.

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

PART 4

Amendments to the Conservation of Offshore
Marine Habitats and Species Regulations 2017

Amendment of the Conservation of Offshore Marine Habitats and Species Regulations 2017

32. The Conservation of Offshore Marine Habitats and Species Regulations 2017⁽¹⁾ are amended as follows.

Amendment of regulation 2 (interpretation)

33.—(1) Regulation 2 is amended as follows.

(2) In paragraph (1)—

(a) after the definition of “the 2017 Regulations” insert—

““the United Kingdom territory” means “the United Kingdom (including its internal waters), the territorial sea adjacent and the offshore marine area;”;

(b) in the definition of “the Habitats Directive”, at the end, insert “under regulation 144 of the 2017 Regulations”;

(c) after the definition of “management scheme”, 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 or European marine sites for the purposes of any of the retained transposing regulations;”;

(d) in the definition of “Natura 2000”, at the end, insert “(but see paragraphs (3) and (4))”;

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

““the relevant administration”, except where otherwise specified, means—

(a) in relation to a site within the Scottish offshore region, the Scottish Ministers;

(b) in relation to a site within the Welsh offshore region, the Welsh Ministers; and

(c) in relation to any other site, the Secretary of State;

“the retained transposing regulations”, means—

(a) the Conservation (Natural Habitats, &c.) Regulations 1994;

- (b) the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995;
 - (c) the 2017 Regulations; and
 - (d) these Regulations;”;
- (f) in the definition of “third country ship”—
- (i) in sub-paragraph (a), for “(other than Gibraltar) which is not a member State” substitute “other than the United Kingdom”; and
 - (ii) in sub-paragraph (b), for “a member state”, substitute “the United Kingdom”; and
- (g) in the definition of “the Wild Birds Directive”, at the end insert “under regulation 144 of the 2017 Regulations for the purposes specified in paragraph (1) of that regulation.”.
- (3) After paragraph (2), insert—
- “(3) For the purposes of these Regulations, and any guidance issued by the Secretary of State, the devolved administrations or the Joint Committee 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.
- (4) Paragraph (3) does not affect the interpretation of these Regulations as they had effect, or any guidance as it applied, before exit day.
- (5) The Habitats Directive is to be construed for the purposes of these Regulations as if—
- (a) any reference to “the European territory of 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), the reference to “the Community” were a reference to “the European Union or the United Kingdom”; and
 - (e) in Article 1(1), the reference to “a site of Community importance designated by the Member States” included, in relation to the United Kingdom, a reference to a site of national importance designated under any of the retained transposing regulations.
- (6) The Wild Birds Directive is to be construed for the purposes of these Regulations as if any reference to “the European territory of the Member States to which the Treaty applies” included a reference to the United Kingdom.”.

Amendment of regulation 6 (duty of competent authorities)

- 34.** After regulation 6, insert—

“**6A.**—(1) The Secretary of State must publish, at least every six years from exit day, a report on the implementation of the measures for the conservation of the natural habitat types listed in Annex I to the Habitats Directive and species listed in Annex II to that Directive.

- (2) The report 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 to the Habitats Directive and of the species listed in Annex II to that Directive;
 - (d) the main results of the surveillance undertaken under Part 4 of these Regulations.
- (3) The report must be published in such form as the Secretary of State sees fit.
- (4) The report, must be submitted in draft to the devolved administrations for verification.”

Amendment of regulation 7 (list of sites eligible for identification as of Community importance)

35. For regulation 7 substitute—

“Duty to designate special areas of conservation

7.—(1) The relevant administration must designate as special areas of conservation such sites in the offshore marine area it 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 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.

(5) in determining which sites are of national importance for the purposes of paragraph (1), the relevant administration 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’s territory, in ensuring that the objectives in paragraph (3) are met .

(6) For the purposes of paragraph (5)(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 relevant administration;

(c) 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

(d) 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””.

(7) The relevant authority must have regard to the advice of the Joint Committee in relation to the application of Annex III to the Habitats Directive.

(8) In relation to a site in the Welsh offshore region which before these Regulations come into force has been the subject of a proposal under regulation 8(1) of the Offshore Marine (Natural Habitats, &c.) Regulations 2007(2), the relevant administration for the purposes of paragraph (1) is the Secretary of State.

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

New regulation 7A

36. After regulation 7, insert—

“Priorities for designating special areas of conservation

7A. The relevant administration must establish priorities for the designation of sites in the light of—

- (a) the importance of the sites for the maintenance or restoration at 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 the sites for the coherence of national site network; and
- (c) the threats of degradation or destruction to which the sites are exposed.”.

Amendment of regulation 8 (notification of a proposal)

37.—(1) Regulation 8 is amended as follows.

(2) In paragraph (1), for “If the Secretary of State proposes to include a site in the list to be transmitted under regulation 7(1), the Secretary of State” substitute “If the relevant administration proposes to designate a site as a special area of conservation, it”.

(3) Omit paragraphs (2) and (3).

(4) In paragraph (4), for “(3)” substitute “(1)”.

(5) In paragraph (5)—

- (a) omit “or (3)”; and
- (b) in sub-paragraph (e), for “(3)” substitute “(1)”.

(6) In paragraph (9), for “Secretary of State” substitute “relevant administration”.

(7) Omit paragraphs (10) and (12).

Amendment of regulations 9 to 11

38. Omit regulations 9 to 11.

Amendment of regulation 12 (classification of sites as special protection areas)

39.—(1) Regulation 12 is amended as follows.

(2) For paragraph (4) substitute—

“(4) In applying the criteria referred to in sub-paragraphs (3)(a) and (b), references in Articles 4(1) and (4)(2) of the Wild Birds Directive to classifying the most suitable territories

(2) S.I. 2007/1842, as amended by S.I. 2009/7, S.I. 2010/490, S.I. 2010/491, S.I. 2010/1513, S.I. 2011/2043, S.I. 2012/1809, S.I. 2012/1928, S.I. 2013/755, S.I. 2015/191, S.I. 2016/912, S.S.I. 2007/485 and SSI 2015/320.

“in the geographical sea and land area where this Directive applies” are to be construed as referring to the most suitable sites in the offshore marine area, 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).

Amendment of regulation 13 (classification of sites in the Scottish offshore region and the Welsh offshore region as special protection areas)

40. In regulation 13 omit paragraphs (9) and (10).

Amendment to regulations 15 to 17 (hearings)

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

(2) In paragraphs (1) to (3), for “Secretary of State”, in each place where it occurs, substitute “relevant administration”;

- (3) In paragraph (1), omit sub-paragraph (b);

- (4) In paragraph (4)—

(a) for “the Secretary of State”, in both places where it occurs, substitute “a relevant administration”;

(b) for “the Scottish Ministers”,—

(i) for the first reference, substitute “another relevant administration”;

(ii) for the second reference, substitute “that other administration”; and

(c) For “regulation 16”, substitute “this regulation”.

- (5) Omit paragraph (5).

- (6) Omit regulations 16 and 17.

Amendment of regulation 18 (meaning of “European offshore marine site”)

42. In regulation 18—

(a) in paragraph (b), at the end insert “before exit day”;

(b) omit paragraph (c); and

(c) for sub-paragraph (e) substitute—

“(e) a site which, before exit day, was proposed to the European Commission under Article 4(1) of the Habitats Directive, until such time as—

(i) the site is designated as a special area of conservation under regulation 7; or

(ii) the relevant administration gives notice to the appropriate nature conservation body of its intention not to designate the site, setting out the reasons for its decision, in accordance with regulation 86A(3)(b).”.

Insertion of new regulation 18A

43. After regulation 18, insert—

“Management objectives of the national site network

18A.—(1) The Secretary of State and the devolved administrations must, in co-operation with each other, manage, and where necessary adapt, the national site network, so far as it

consists of European offshore marine 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 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 1 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 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 6(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 Secretary of State and the devolved administrations must have regard—
- (a) in relation to sites designated under regulation 7(1) to—
 - (i) the importance of the sites for meeting the objective in paragraph 2(a);
 - (ii) the importance of the sites for the coherence of national site network;
 - (iii) the threats of degradation or destruction (including deterioration and disturbance of protected features) to which the sites are exposed;
 - (b) in relation to sites classified under regulation 12(1)—
 - (i) the importance of the sites for meeting the objectives in paragraph 2(b) and (c);
 - (ii) in the case of migratory species, the importance of their breeding, moulting and wintering areas and staging points along their migration routes;
 - (iii) the importance of the sites for the coherence of the national site network;
 - (iii) the threats of degradation or destruction (including deterioration and disturbance of protected features) to which the sites are exposed.
- (4) 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 19 (register of European offshore marine sites)

44.—(1) Regulation 19 is amended as follows.

- (2) In paragraph (2)—
- (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), after “which” insert “, before exit day,”.
- (3) In paragraph (3), omit sub-paragraph (d).
- (4) For paragraph (5), substitute—
 - “(5) Where a site ceases to fall within any of the categories in paragraph (2) for which it is listed in the register the relevant administration must amend the relevant entry in the register in respect of that site.”.

Amendment of regulation 20 (notification of changes to the register)

- 45. In regulation 20(2), for “another” substitute “a”.

Amendment of regulation 24 (co-ordinated management of sites)

- 46. In regulation 24, in paragraphs (1) to (3), for “another”, in each place where it occurs, substitute “a”.

Amendment of regulation 26 (prevention of deterioration of habitats and disturbance of species)

- 47.—(1) Regulation 26 is amended as follows.
- (2) In paragraph (3)—
 - (a) after paragraph 3(b), insert “and”; and
 - (b) omit paragraphs 3(c) and the “and” that follows it.
- (3) In paragraph (4)—
 - (a) in paragraph 4(b), after sub-paragraph (ii), insert “and”;
 - (b) omit sub-paragraphs (4)(c).
- (4) Omit paragraph (5).

Amendment of regulation 27 (meaning of “European site”)

- 48.—(1) Regulation 27 is amended as follows.
- (2) In paragraph (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 at the end insert “or classified after exit day under the retained transposing legislation”;
 - (d) for sub-paragraph (e) substitute—
 - “(e) a site which before exit day was proposed to the European Commission under Article 4(1) of the Habitats Directive, until such time as—
 - (i) the site is designated as a special area of conservation under regulation 7; or
 - (ii) the relevant administration gives notice to the appropriate nature conservation body of its intention not to designate the site, setting out the reasons for its decision, in accordance with regulation 86A(3)(b).”.
- (3) Omit paragraphs (2) and (3).

Amendment of regulation 28 (protection of European offshore marine sites and European sites)

49. In regulation 28, omit paragraph (7)(a) and (b).

Amendment of regulation 29 (considerations of overriding public interest)

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

(2) In paragraph (3)—

(a) after “a competent authority”, insert “other than the relevant administration”; and

(b) for “Commission” substitute “relevant administration”.

(3) In paragraph (4), for “Secretary of State”, in both places where it occurs, and, for “Commission”, substitute “relevant administration”.

(4) For paragraphs (5) to (7), substitute—

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

(6) Before giving its opinion as to whether the reasons are imperative reasons of overriding public interest, the relevant administration must consult the following, and have regard to their opinion—

(a) the Joint Nature Conservation Committee;

(b) where the relevant administration is the Secretary of State, the devolved administrations;

(c) where the relevant administration is a devolved administration, the Secretary of State and the other devolved administrations; and

(d) any other person the relevant administration considers appropriate.

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

(a) in relation to a plan or project relating to an activity other than one specified in regulation 55(16)—

(i) where the plan or project is to be carried out in the Scottish offshore region, the Scottish Ministers; and

(ii) where the plan or project is to be carried out in the Welsh offshore region, the Welsh Ministers; and

(b) in relation to a plan or project relating to an activity specified in regulation 55(16), or in any case not falling within sub-paragraph (a)(i) or (ii), the Secretary of State.”.

Amendment of regulation 33 (review of existing decisions and consents)

51. In regulation 33, omit paragraphs (6)(a) and (b).

Amendment of regulation 37 (notification of compensatory measures)

52. In regulation 37 for paragraph (1), substitute—

“(1) The appropriate authority must ensure that the compensatory measures taken pursuant to regulation 36(2) are notified to each of the following (other than the appropriate authority itself)—

(a) the Secretary of State;

(b) the devolved administrations.”.

Amendment of regulation 38 (offences relating to European offshore marine sites)

53.—(1) Regulation 38 is amended as follows.

(2) In paragraph (3), at the end, insert “unless the United Kingdom is entitled under international law to exercise those powers without the consent of the flag state”.

(3) In paragraphs (13) and (14), for “relevant EU instrument”, substitute “relevant retained EU law”.

Amendment of regulation 39 (application of offences in Part 3)

54. In regulation 39(2), at the end, insert “unless the United Kingdom is entitled under international law to exercise those powers without the consent of the flag state”.

Amendment of regulation 40 (protection of wild birds, their eggs and nests)

55. In regulation 40—

(a) in paragraphs (5)(c) and (6), for “relevant EU instrument”, substitute “relevant retained EU law”; and

(b) in paragraph 6(b), for “is adopted” substitute “transposes an instrument adopted”.

Amendment of regulation 41 (defences to the offences in regulation 40)

56. In regulation 41(7)(b), omit “(other than the United Kingdom)”.

Amendment of regulation 42 (prohibition of certain methods of capturing or killing wild birds)

57. In regulation 42, for paragraph (2), substitute—

“(2) The prohibited means of capturing or killing wild birds are those listed in Schedule 2A.”.

Amendment of regulation 43 (sale etc. of live or dead wild birds, eggs etc.)

58. In regulation 43(4)(b), omit “(other than the United Kingdom)”.

Amendment of regulation 45 (protection of wild animals listed in Annex IV(a) to the Habitats Directive)

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

(2) In paragraphs (11)(c) and (12), for “relevant EU instrument”, substitute “relevant retained EU law”; and

(3) In sub-paragraph 12(b), at the beginning add “transposes an instrument”.

Amendment of regulation 46 (defences to the offences in regulation 45)

60. In regulation 46(10), 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 47 (prohibition of certain methods of capturing and killing wild animals)

- 61.—(1) Regulation 47 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 3A;
 - (b) any form of capturing or killing from any mode of transport listed in paragraph 3 of Schedule 3A.”.
- (3) Omit paragraphs (3) and (4).

Amendment of regulation 49 (offences relating to wild plants listed in Annex IV(b) to the Habitats Directive)

62. In regulation 49(6), 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)

63. In regulation 50, in paragraphs (1) to (3), in each place where it occurs, for “natural habitats of Community interest and species of wild flora and fauna of Community interest”, substitute “natural habitat types listed in Annex I of the Habitats Directive and species of wild fauna and flora listed in Annex II, IV or V of that Directive”.

Amendment of regulation 54 (introduction of new species)

64. In regulation 54(8), at the end, insert “unless the United Kingdom is entitled under international law to exercise those powers without the consent of the flag state”.

Insertion of new regulation 55A

65. After regulation 55, insert—

“Report on licences

55A.—(1) Within two years from exit day, and thereafter within two years of the publication of the last such report, the relevant administration must publish, in such form as it sees fit, a report on licences granted under regulation 55 for the preceding two years .

- (2) A report published under paragraph (1) 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) the circumstances of 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 74 (research)

66. Omit regulation 74(2).

Amendment of regulation 76 (re-introduction of species)

67. In regulation 76(5)(a), for “other” substitute “any”.

Omission of regulation 79 (reports to the Commission)

68. Omit regulation 79.

Insertion of new regulations 84A and 84B

69. After regulation 84, insert—

“Amendment of Schedules

84A.—(1) The Secretary of State may, where satisfied that the natural range of a species of animal listed in Annex IV(a) to the Habitats Directive includes any part of the offshore marine area, by regulations amend Schedule 1 as appropriate in the light of that conclusion.

(2) The Secretary of State may make such other amendment as he considers necessary for adapting Schedules 1 to 3A to technical and scientific progress.

(3) Before exercising the power under paragraph (1) or (2), the Secretary of State must obtain the consent of the devolved administrations.

Statutory instruments

84B.—(1) The power to make an amendment under paragraph (1) or (2) of regulation 84(A) is exercisable by statutory instrument.

(2) A statutory instrument made by the Secretary of State under regulation 84A(1) may not be made unless a draft of the statutory instrument has been laid before, and approved by a resolution of, each House of Parliament;

(3) A statutory instrument made by the Secretary of State under regulation 84A(2) is subject to annulment in pursuance of a resolution of either House of Parliament.”.

New regulation 86A

70. After regulation 86, insert—

“Transitional provisions: EU exit

86A.—(1) Where before exit day a site in the offshore marine area has been adopted in accordance with the procedure laid out in Article 4(2) of the Habitats Directive (list of sites of Community importance), the relevant administration 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 before exit day a site in the offshore marine area—

- (a) has been proposed 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) as part of a list of sites transmitted to the European Commission; and

- (b) has not yet been so identified as being of Community importance.
- (3) Where this paragraph applies, the relevant administration must within six years of exit day—
 - (a) designate the site as a special area of conservation; or
 - (b) give notice to the Joint Committee of its intention not to designate the site, and publish, in such form as it sees fit, its reasons for not designating the site, having regard the objective in regulation 7(3).”.

Insertion of new Schedule 2A

- 71.** After Schedule 2, insert Schedule 2A, set out in Schedule 2 to these Regulations.

Insertion of new Schedule 3A

- 72.** After Schedule 3, insert Schedule 3A, set out in Schedule 3 to these Regulations.