
STATUTORY INSTRUMENTS

2007 No. 1842

**The Offshore Marine Conservation
(Natural Habitats, &c.) Regulations 2007**

PART 2

CONSERVATION OF NATURAL HABITATS AND HABITATS OF SPECIES

European offshore marine sites

List of sites eligible for identification as of Community importance

7.—(1) The Secretary of State must transmit to the Commission a list of those sites in the offshore marine area which he regards as eligible for selection as sites of Community importance.

(2) The Secretary of State must select the sites to be included in the list under paragraph (1) only on the basis of the criteria set out in Annex III (Stage 1) to the Habitats Directive and relevant scientific information.

(3) A site may only be included in the list under paragraph (1) if—

- (a) it hosts a natural habitat type listed in Annex I to the Habitats Directive; or
- (b) it hosts a species listed in Annex II to the Habitats Directive which has a natural range including any part of the offshore marine area.

(4) In respect of an aquatic species which ranges over wide areas, a site is only eligible to be selected under paragraph (2) if it appears to the Secretary of State to constitute a clearly identifiable area which is distinct in providing the physical and biological features essential to that species for life and reproduction.

(5) The list transmitted to the Commission under paragraph (1) must—

- (a) in respect of each site indicate which natural habitat types specified in Annex I and species specified in Annex II to the Habitats Directive the site hosts; and
- (b) be accompanied with information on each site including—
 - (i) a chart of the site;
 - (ii) its name, location and extent; and
 - (iii) the data resulting from application of the criteria specified in Annex III (Stage 1) to the Habitats Directive.

(6) The information specified in paragraph (5)(b) must be provided in such format as is established by the Commission.

Notification of a proposal for a site of Community importance

8.—(1) If the Secretary of State proposes to include a site in the list to be transmitted by him under regulation 7, he must give to the Joint Nature Conservation Committee—

- (a) notice of that proposal; and
 - (b) an accompanying statement of his reasons for that proposal.
- (2) Where the Joint Nature Conservation Committee is given notice of a proposal under paragraph (1), the Committee must give notice of that proposal and provide a copy of the Secretary of State's statement of his reasons for that proposal to—
- (a) each of the devolved administrations;
 - (b) any of the following who in its opinion ought to be notified—
 - (i) competent authorities which exercise functions in relation to the site;
 - (ii) competent authorities which exercise functions in relation to a marine area adjacent to the site; and
 - (iii) persons whose activities are likely to be affected by the inclusion of the site in the list;
 - (c) such other persons as in its opinion ought to be notified; and
 - (d) such other persons as the Secretary of State directs.
- (3) A notice under paragraph (2) must specify the date (being not less than 12 weeks from the date of the giving of the notice) by which representations with respect to the proposal may be made to the Joint Nature Conservation Committee.
- (4) The Joint Nature Conservation Committee must provide to the Secretary of State a report describing the representations duly made, if any, that it received about the proposal, or where no such representations have been received, stating that fact.
- (5) The Secretary of State must consider the report provided by the Joint Nature Conservation Committee under paragraph (4).
- (6) The Secretary of State may issue guidance to the Joint Nature Conservation Committee for the purposes of its functions under this regulation and the Committee must have regard to that guidance in discharging any of those functions.
- (7) The Secretary of State may vary or revoke a direction under paragraph (2)(d).

Modification of list of sites

- 9.—(1) Where the Secretary of State considers it appropriate, in the light of the results of the surveillance referred to in Article 11 of the Habitats Directive or otherwise, he must propose to the Commission modifications of the list of sites which has been transmitted under regulation 7.
- (2) Before the Secretary of State proposes to the Commission such a modification, he must, if he considers it appropriate, give to the Joint Nature Conservation Committee—
- (a) notice of his intention to propose that modification; and
 - (b) an accompanying statement of his reasons for intending to propose it.
- (3) Where the Joint Nature Conservation Committee is given notice under paragraph (2), the Committee must give notice of the proposed modification and provide a copy of the Secretary of State's statement of his reasons for that proposed modification to—
- (a) each of the devolved administrations;
 - (b) any of the following who in its opinion ought to be notified—
 - (i) competent authorities which exercise functions in relation to the site;
 - (ii) competent authorities which exercise functions in relation to a marine area adjacent to the site; and
 - (iii) persons whose activities are likely to be affected by the inclusion of the site in the list;
 - (c) such other persons as in its opinion ought to be notified; and

(d) such other persons as the Secretary of State directs.

(4) A notice under paragraph (3) must specify the date (being not less than 12 weeks from the date of the giving of the notice) by which representations with respect to the proposed modification may be made to the Joint Nature Conservation Committee.

(5) The Joint Nature Conservation Committee must provide to the Secretary of State a report describing the representations duly made, if any, that it received about the proposal, or where no such representations have been received, stating that fact.

(6) The Secretary of State must consider the report provided by the Joint Nature Conservation Committee under paragraph (5).

(7) The Secretary of State may issue guidance to the Joint Nature Conservation Committee for the purposes of its functions under this regulation and the Committee must have regard to that guidance in discharging any of those functions.

(8) The Secretary of State may vary or revoke a direction under paragraph (3)(d).

Consultation as to inclusion of site omitted from the list

10.—(1) This regulation applies where consultation is initiated by the Commission in accordance with Article 5(1) of the Habitats Directive with respect to a site in the offshore marine area hosting a priority natural habitat type or priority species, and—

- (a) the Secretary of State and the Commission agree, within the six-month period mentioned in Article 5(2) of the Habitats Directive, that the site should be selected as a site of Community importance, or
- (b) the Council, acting on a proposal from the Commission in pursuance of Article 5(2) of the Habitats Directive, decides that the site should be so selected.

(2) Where this regulation applies, the site is to be treated for the purposes of these Regulations as having been placed on the list referred to in the third sub-paragraph of Article 4(2) of the Habitats Directive as from the date of the agreement referred to in paragraph (1)(a) or the decision referred to in paragraph (1)(b).

Designation of special areas of conservation

11.—(1) Once a site located in the offshore marine area has been adopted by the Commission as a site of Community importance in accordance with the third sub-paragraph of Article 4(2) of the Habitats Directive, the Secretary of State must designate that site as a special area of conservation as soon as possible and within six years of such adoption at the most.

(2) The Secretary of State must establish priorities for any site which he designates under paragraph (1), in the light of—

- (a) the importance of the site—
 - (i) for the maintenance or restoration at a favourable conservation status of natural habitat types specified in Annex I to the Habitats Directive or species specified in Annex II to that Directive, and
 - (ii) for the coherence of Natura 2000; and
- (b) the threats of degradation or destruction to which the site is exposed.

Classification of sites as special protection areas

12.—(1) The Secretary of State must classify as special protection areas such sites in the offshore marine area as he considers necessary to ensure that the objective specified in paragraph (2) is attained.

(2) The objective referred to in paragraph (1) is that those sites across the United Kingdom's territory which are most suitable in number and size for—

- (a) the conservation of the species listed in Annex I to the Wild Birds Directive which naturally occur in that territory, and
- (b) the conservation of regularly occurring migratory species of birds not listed in Annex I which naturally occur in that territory,

are classified as special protection areas.

(3) The Secretary of State must make his decision as to the sites to be classified under paragraph (1) only on the basis of relevant scientific information and—

- (a) in the case of a site to be classified for the purpose mentioned in paragraph (2)(a), on the basis of the criteria set out in Article 4(1) of the Wild Birds Directive; and
- (b) in the case of a site to be classified for the purpose mentioned in paragraph (2)(b), on the basis of the criteria set out in Article 4(2) of the Wild Birds Directive.

(4) Where a site is classified under paragraph (1), the Secretary of State must provide information on that site to the Commission including—

- (a) a chart of the site;
- (b) its name, location and extent; and
- (c) the data resulting from application of the criteria set out in Article 4(1) or Article 4(2) of the Wild Birds Directive.

(5) The information specified in paragraph (4) must be provided in such format as is established by the Commission.

(6) In this regulation “the United Kingdom's territory” means the United Kingdom (including its internal waters), the territorial sea adjacent to the United Kingdom, and the offshore marine area.

Notification of a proposal to classify a special protection area

13.—(1) If the Secretary of State proposes to classify a site as a special protection area under regulation 12, he must give to the Joint Nature Conservation Committee—

- (a) notice of that proposal; and
- (b) an accompanying statement of his reasons for that proposal.

(2) Where the Joint Nature Conservation Committee is given notice of a proposal under paragraph (1), the Committee must give notice of that proposal and provide a copy of the Secretary of State's statement of his reasons for that proposal to—

- (a) each of the devolved administrations;
- (b) any of the following who in its opinion ought to be notified—
 - (i) competent authorities which exercise functions in relation to the site;
 - (ii) competent authorities which exercise functions in relation to a marine area adjacent to the site; and
 - (iii) persons whose activities are likely to be affected by the classification of the site;
- (c) such other persons as in its opinion ought to be notified; and
- (d) such other persons as the Secretary of State directs.

(3) A notice under paragraph (2) must specify the date (being not less than 12 weeks from the date of the giving of the notice) by which representations with respect to the proposal may be made to the Joint Nature Conservation Committee.

(4) The Joint Nature Conservation Committee must provide to the Secretary of State a report describing the representations duly made, if any, that it received about the proposal, or where no such representations have been received, stating that fact.

(5) The Secretary of State must consider the report provided by the Joint Nature Conservation Committee under paragraph (4).

(6) The Secretary of State may issue guidance to the Joint Nature Conservation Committee for the purposes of its functions under this regulation and the Committee must have regard to that guidance in discharging any of those functions.

(7) The Secretary of State may vary or revoke a direction under paragraph (2)(d).

Hearings

14.—(1) The Secretary of State may give any person the opportunity of appearing before and being heard by, or of providing written representations to, a person appointed by him—

- (a) for the purpose of deciding whether to include a site in the list to be transmitted under regulation 7;
- (b) for the purpose of deciding whether to propose to the Commission a modification under regulation 9 to the list of sites transmitted under regulation 7; or
- (c) for the purpose of deciding whether to classify a site as a special protection area under regulation 12.

(2) Any person given the opportunity under paragraph (1) of appearing before and being heard by a person appointed by the Secretary of State may—

- (a) be represented by another person;
- (b) call persons to give evidence; and
- (c) put questions to any person who gives evidence at the hearing, including any person who gives expert evidence.

(3) The Secretary of State must consider any report of a person appointed by him under paragraph (1).

Meaning of “European offshore marine site” in these Regulations

15. In these Regulations a “European offshore marine site” means any of the following located in the offshore marine area—

- (a) a special area of conservation;
- (b) a site of Community importance which has been placed on the list referred to in the third sub-paragraph of Article 4(2) of the Habitats Directive;
- (c) a site hosting a priority natural habitat type or priority species in respect of which consultation has been initiated under Article 5(1) of the Habitats Directive, during the consultation period or pending a decision of the Council under Article 5(3);
- (d) a site classified as a special protection area under regulation 12; and
- (e) a site which has been proposed to the Commission by the Secretary of State as a site eligible for designation as a special area of conservation for the purposes of meeting the United Kingdom’s obligations under Article 4(1) of the Habitats Directive until such time as—
 - (i) the site is placed on the list of sites of Community importance referred to in the third sub-paragraph of Article 4(2) of the Habitats Directive; or
 - (ii) agreement is reached or a decision is taken pursuant to Article 4(2) of that Directive that the site is not to be placed on that list.

Duty to compile and maintain a register of European offshore marine sites

16.—(1) The Secretary of State must compile and maintain, in such form as he thinks fit, a register of European offshore marine sites.

(2) The Secretary of State must include in the register the following sites located in the offshore marine area—

- (a) special areas of conservation, as soon as they are designated by him;
- (b) sites of Community importance, as soon as they are placed on the list referred to in the third sub-paragraph of Article 4(2) of the Habitats Directive, until such time as they are designated as special areas of conservation;
- (c) any site hosting a priority natural habitat type or priority species in respect of which consultation has been initiated under Article 5(1) of the Habitats Directive, during the consultation period or pending a Council decision under Article 5(3);
- (d) special protection areas as soon as they are classified as such by him; and
- (e) any site which has been proposed to the Commission by the Secretary of State as a site eligible for designation as a special area of conservation for the purposes of meeting the United Kingdom's obligations under Article 4(1) of the Habitats Directive until such time as is mentioned in regulation 15(e).

(3) The register must—

- (a) in relation to each site included in it, provide the site's co-ordinates and a chart delineating its boundaries;
- (b) in relation to a site which is a special area of conservation, specify the natural habitat types listed in Annex I to the Habitats Directive and the species listed in Annex II to that Directive for which the site was designated as a special area of conservation;
- (c) in relation to a site which has been placed on the list referred to in the third sub-paragraph of Article 4(2) of the Habitats Directive, specify the natural habitat types listed in Annex I to the Habitats Directive and the species listed in Annex II to that Directive for which the site was placed on that list;
- (d) in relation to a site in respect of which consultation has been initiated under Article 5(1) of the Habitats Directive, specify the priority natural habitat type and priority species which the Secretary of State considers the site hosts;
- (e) in relation to a site which is a special protection area, specify the bird species for which the site was so classified; and
- (f) in relation to a site which is of the type mentioned in paragraph (2)(e), specify the natural habitat types listed in Annex I to the Habitats Directive and the species listed in Annex II to that Directive for which the site was proposed by the Secretary of State to the Commission.

(4) The Secretary of State may amend any entry in the register.

(5) The Secretary of State must remove the relevant entry—

- (a) if a special area of conservation is declassified by the Commission pursuant to Article 9 of the Habitats Directive; or
- (b) if a site otherwise ceases to fall within any of the categories listed in paragraph (2).

(6) The Secretary of State must keep a copy of the register entries available for public inspection at all reasonable hours and free of charge.

Notification of changes to the register

17.—(1) After including a site in the register, amending an entry in the register or removing an entry from the register, the Secretary of State must give notice of having done so to—

- (a) the Joint Nature Conservation Committee;
- (b) the devolved administrations;
- (c) any of the following which in his opinion ought to be notified—
 - (i) competent authorities which exercise functions in relation to the site which is affected; and
 - (ii) competent authorities which exercise functions in relation to a marine area adjacent to the site which is affected;
- (d) any international organisations who in his opinion ought to be notified; and
- (e) such other persons as in his opinion ought to be notified.

(2) Where a site adjoins the territory of another member State, the Secretary of State must, after including such a site in the register, amending an entry relating to such a site in the register, or removing an entry relating to such a site from the register, give notice of having done so to such authorities of that State as he considers appropriate.

(3) Where the Secretary of State gives notice under paragraph (1) or (2) in respect of the inclusion of a site in the register or the amendment of an entry in the register, the notice must be accompanied by a copy of—

- (a) in the case of a notice of the inclusion of a site in the register, the register entry;
- (b) in the case of a notice of the amendment of an entry in the register, the amended entry.

Site protection and management

Establishment of nature conservation objectives

18. As soon as is reasonably practicable after a European offshore marine site has been included in the register, the Joint Nature Conservation Committee must—

- (a) establish conservation objectives for the site and notify those objectives to such competent authorities as it considers appropriate; and
- (b) advise such competent authorities as it considers appropriate of any operations which in its opinion may adversely affect the integrity of the site.

Management schemes for European offshore marine sites

19.—(1) Any competent authority which exercises functions in relation to a European offshore marine site may, subject to paragraph (6), establish a management scheme for that site.

(2) A management scheme—

- (a) must set out how the competent authorities establishing the scheme propose to exercise their functions so as to secure in relation to that site compliance with the requirements of the Habitats Directive; and
- (b) where it relates to a site which has been designated as a special area of conservation, must set out how, for the purposes of securing compliance with the requirements of Article 6(1) of the Habitats Directive, the competent authorities establishing it propose to exercise their functions in order to maintain or restore at a favourable conservation status—

- (i) the natural habitat types listed in Annex I to the Habitats Directive which are found at the site; and
 - (ii) the species listed in Annex II to that Directive which are found at the site.
- (3) Before establishing a management scheme, the competent authorities concerned must consult—
- (a) the Joint Nature Conservation Committee;
 - (b) such other competent authorities having functions in relation to the site as they consider appropriate; and
 - (c) where the site adjoins a European marine site, such other persons who are parties to a management scheme for that European marine site as they consider appropriate.
- (4) Any competent authority consulted under paragraph (3)(b) must be given the opportunity of participating in the establishment of the scheme.
- (5) A competent authority may establish a single management scheme for two or more European offshore marine sites.
- (6) Only one management scheme may be established for each European offshore marine site.
- (7) A competent authority which has established a management scheme must review the scheme periodically, initially by the fifth anniversary of the date of the scheme's establishment and thereafter by each fifth anniversary of that date.
- (8) A management scheme may be amended at any time, but before amending a scheme the competent authority which established it must—
- (a) consult the Joint Nature Conservation Committee; and
 - (b) consult such other persons as they consider appropriate.
- (9) Before establishing or amending a management scheme for a site, the competent authorities concerned must have regard to—
- (a) any conservation objectives established for the site under regulation 18(a); and
 - (b) any advice provided under regulation 18(b) relating to that site.
- (10) As soon as a management scheme has been established or is amended, the competent authorities concerned must ensure that a copy of the scheme, or the amended scheme (as the case may be) is provided to—
- (a) the Secretary of State;
 - (b) the devolved administrations;
 - (c) those consulted under paragraph (3); and
 - (d) such other persons as the Secretary of State may direct.
- (11) The Secretary of State may amend or revoke a direction under paragraph (10)(d).
- (12) In paragraph (3)(c), "European marine site" means any site which is a European marine site for the purposes of the 1994 Regulations or the Conservation (Natural Habitats, &c.) Regulations (Northern Ireland) 1995(1).

Duty in relation to management schemes

20. Where a management scheme has been established, any competent authority which established that scheme must take reasonable steps to exercise its functions in accordance with that scheme.

(1) S.R. (N.I.) 1995 No 380.

Co-ordinated management of sites

21. Where a European offshore marine site adjoins a special area of conservation or a special protection area which has been (respectively) designated or classified by another member State, the Secretary of State must consult that State in relation to the co-ordinated management of the site and the area in question.

Conservation measures relating to special areas of conservation

22.—(1) In relation to any site designated as a special area of conservation under regulation 11, competent authorities must, in so far as their functions may be so exercised, exercise such of their functions as they consider appropriate for the purpose of giving effect to Article 6(1) of the Habitats Directive by taking conservation measures corresponding to the ecological requirements of—

- (a) the natural habitat types listed in Annex I to that Directive present on the site; and
- (b) the species listed in Annex II to that Directive which are present on the site.

(2) In considering what conservation measures may be necessary for the purposes of paragraph (1) in relation to a site, competent authorities must have regard to—

- (a) the need to maintain at, or restore to, favourable conservation status the natural habitat types and species mentioned in paragraph (1) which are present on the site;
- (b) the matters referred to in Article 2(3) of the Habitats Directive; and
- (c) any management scheme which has been established for the site.

(3) In so far as the duty in paragraph (1) has been met in respect of a site by any competent authority in Scotland, that paragraph does not apply to any other competent authority in respect of that site.

(4) Before a competent authority (other than a competent authority in Scotland) exercises any relevant function for the purposes of complying with paragraph (1), it must first consult the Scottish Ministers.

(5) Where, in relation to any site designated as a special area of conservation under regulation 11, paragraph (1) imposes a duty on more than one competent authority—

- (a) where the competent authorities do not include a competent authority in Scotland, the Secretary of State may give a direction that, in respect of any measure that may be necessary, the duty of the competent authorities in question is to be satisfied by the taking of that measure by such competent authority or authorities as the Secretary of State may specify in the direction, and any such direction shall have effect in the terms stated in the direction; and
- (b) where the competent authorities include one or more competent authorities in Scotland, the relevant administration may give a direction that, in respect of any measure that may be necessary, the duty of the competent authorities in question is to be satisfied by the taking of that measure by such competent authority or authorities as the relevant administration may specify in the direction, and any such direction shall have effect in the terms stated in the direction.

(6) A direction under paragraph (5)(b) may not be given unless the Scottish Ministers and the Secretary of State have agreed that it may.

(7) In this regulation—

“competent authority in Scotland” means a competent authority whose functions are exercisable solely in or as regards Scotland;

“the relevant administration” means—

- (a) in relation to a competent authority in Scotland, the Scottish Ministers; and
- (b) in relation to a competent authority other than a competent authority in Scotland, the Secretary of State; and

“relevant function” means any function exercisable for the purpose of securing any result which may instead be secured by the exercise of any function of the Scottish Ministers.

Prevention of deterioration of habitats and disturbance of species

23.—(1) In so far as their functions may be exercised to secure that appropriate steps are taken for the purpose mentioned in paragraph (2), competent authorities must exercise their functions to secure that such steps are taken.

- (2) The purpose referred to in paragraph (1) is the avoidance of—
 - (a) the disturbance of species specified in paragraph (3); and
 - (b) the deterioration of habitat or habitat types specified in paragraph (4).
- (3) The disturbance of species referred to in paragraph (2) is—
 - (a) in any site designated as a special area of conservation under regulation 11, the disturbance of any of the species listed in Annex II to the Habitats Directive for which the site was so designated, in so far as such disturbance could be significant in relation to the objectives of that Directive;
 - (b) in any site in the offshore marine area which has been placed on the list referred to in the third sub-paragraph of Article 4(2) of the Habitats Directive, the disturbance of any of the species listed in Annex II to the Habitats Directive for which the site was placed on that list, in so far as such disturbance could be significant in relation to the objectives of that Directive;
 - (c) in any site in the offshore marine area hosting a priority natural habitat type or priority species in respect of which consultation has been initiated under Article 5(1) of the Habitats Directive, the disturbance of any priority species, in so far as such disturbance could be significant in relation to the objectives of that Directive; and
 - (d) in any site classified as a special protection area under regulation 12, the disturbance of any of the species of bird for which the site was so classified, in so far as such disturbance could be significant in relation to the objectives of the Habitats Directive or the Wild Birds Directive.
- (4) The deterioration of habitat or habitat types referred to in paragraph (2) is—
 - (a) in any site designated as a special area of conservation under regulation 11—
 - (i) the deterioration of the habitat of any of the species listed in Annex II to the Habitats Directive for which the site was so designated, and
 - (ii) the deterioration of any of the natural habitat types listed in Annex I to the Habitats Directive for which the site was so designated;
 - (b) in any site in the offshore marine area which has been placed on the list referred to in the third sub-paragraph of Article 4(2) of the Habitats Directive—
 - (i) the deterioration of the habitat of any of the species listed in Annex II to the Habitats Directive for which the site was placed on that list, and
 - (ii) the deterioration of any of the natural habitat types listed in Annex I to the Habitats Directive for which the site was placed on that list;
 - (c) in any site in the offshore marine area hosting a priority natural habitat type or priority species in respect of which consultation has been initiated under Article 5(1) of the Habitats Directive—

- (i) the deterioration of the habitat of any such species, and
 - (ii) the deterioration of any priority natural habitat type; and
- (d) in any site classified as a special protection area under regulation 12, the deterioration of the habitats of any of the species of bird for which the site was classified as a special protection area.
- (5) The obligation in paragraph (1) only applies in relation to a site specified in paragraph (3) (c) or (4)(c)—
 - (a) during the consultation period; or
 - (b) where the Commission forwards a proposal to the Council regarding the site under Article 5(2) of the Habitats Directive, until such time as the Council makes a decision under Article 5(3) in relation to the site.
- (6) In considering the steps (if any) to be secured under paragraph (1), competent authorities must have regard to—
 - (a) the need to maintain at, or restore to, favourable conservation status the natural habitat types and species specified in paragraphs (3) and (4), and the habitats of those species, which are present on the site concerned;
 - (b) the matters referred to in Article 2(3) of the Habitats Directive;
 - (c) any management scheme which has been established for the site concerned; and
 - (d) the objectives of the Habitats Directive and, where appropriate, the Wild Birds Directive.
- (7) In so far as the duty in paragraph (1) has been met in respect of a site by any competent authority in Scotland, that paragraph does not apply to any other competent authority in respect of that site.
- (8) Before a competent authority (other than a competent authority in Scotland) exercises any relevant function for the purposes of complying with paragraph (1), it must first consult the Scottish Ministers.
- (9) Where, in respect of any site mentioned in paragraph (3) or (4), paragraph (1) imposes a duty on more than one competent authority—
 - (a) where the competent authorities do not include a competent authority in Scotland, the Secretary of State may give a direction that, in respect of any step that may be necessary, the duty of the competent authorities in question is to be satisfied by the taking of that step by such competent authority or authorities as the Secretary of State may specify in the direction, and any such direction shall have effect in the terms stated in the direction; and
 - (b) where the competent authorities include one or more competent authorities in Scotland, the relevant administration may give a direction that, in respect of any step that may be necessary, the duty of the competent authorities in question is to be satisfied by the taking of that step by such competent authority or authorities as the relevant administration may specify in the direction, and any such direction shall have effect in the terms stated in the direction.
- (10) A direction under paragraph (9)(b) may not be given unless the Scottish Ministers and the Secretary of State have agreed that it may.
- (11) Paragraph (1) shall not apply where—
 - (a) the cause of the disturbance of species or deterioration of habitat or habitat types specified in paragraph (3) or (4) is a plan or project that has been agreed to under regulation 26; or
 - (b) the disturbance of species specified in paragraph (3) is not unlawful under regulation 32 or Part 3 of these Regulations.
- (12) In this regulation—

“competent authority in Scotland” means a competent authority whose functions are exercisable solely in or as regards Scotland;

“the relevant administration” means—

- (a) in relation to a competent authority in Scotland, the Scottish Ministers; and
- (b) in relation to a competent authority other than a competent authority in Scotland, the Secretary of State; and

“relevant function” means any function exercisable for the purpose of securing any result which may instead be secured by the exercise of any function of the Scottish Ministers.

Plans and projects

Meaning of “European site” in these Regulations

24.—(1) — In these Regulations a “European site” means any of the following located in the United Kingdom—

- (a) a special area of conservation;
- (b) a site of Community importance which has been placed on the list referred to in the third sub-paragraph of Article 4(2) of the Habitats Directive;
- (c) a site hosting a priority natural habitat type or priority species in respect of which consultation has been initiated under Article 5(1) of the Habitats Directive, during the consultation period mentioned in Article 5(2) or pending a decision of the Council under Article 5(3);
- (d) a site classified as a special protection area pursuant to Article 4(1) or (2) of the Wild Birds Directive; and
- (e) a site which has been proposed to the Commission by the Secretary of State or any of the devolved administrations as a site eligible for designation as a special area of conservation for the purposes of meeting the United Kingdom’s obligations under Article 4(1) of the Habitats Directive, until such time as—
 - (i) it is placed on the list of sites of Community importance referred to in the third sub-paragraph of Article 4(2) of the Habitats Directive, or
 - (ii) agreement is reached or a decision is taken pursuant to Article 4(2) of that Directive that the site is not to be placed on that list.

(2) For the purposes of paragraph (1), where consultation is initiated by the Commission in accordance with Article 5(1) of the Habitats Directive with respect to a site in the United Kingdom hosting a priority natural habitat type or priority species, and—

- (a) it is agreed between the Commission and the Secretary of State, within the six-month period mentioned in Article 5(2) of the Habitats Directive, that the site should be selected as a site of Community importance; or
- (b) the Council, acting on a proposal from the Commission in pursuance of Article 5(2) of the Habitats Directive, decides that the site should be so selected,

the site is to be treated as having been placed on the list referred to in the third sub-paragraph of Article 4(2) of the Habitats Directive as from the date of the agreement referred to in sub-paragraph (a) or the decision referred to in sub-paragraph (b).

(3) In this regulation “the United Kingdom” means the United Kingdom (including its internal waters) and the territorial sea adjacent to the United Kingdom.

Protection of European offshore marine sites and European sites

25.—(1) Before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project which—

- (a) is to be carried out on or in any part of the waters or on or in any part of the seabed or subsoil comprising the offshore marine area, or on or in relation to an offshore marine installation,
- (b) is likely to have a significant effect on a European offshore marine site or a European site (either alone or in combination with other plans or projects), and
- (c) is not directly connected with or necessary to the management of the site,

a competent authority must make an appropriate assessment of the implications for the site in view of that site's conservation objectives.

(2) A person applying to a competent authority for any consent, permission or other authorisation for a plan or project in the offshore marine area must provide such information as the competent authority may reasonably require—

- (a) to enable it to determine whether an assessment under paragraph (1) is required; or
- (b) for the purposes of an assessment under paragraph (1).

(3) The competent authority must for the purposes of the assessment—

- (a) where it relates to a European offshore marine site, consult the Joint Nature Conservation Committee;
- (b) where it relates to a European site in England, consult Natural England;
- (c) where it relates to a European site in Wales, consult the Countryside Council for Wales;
- (d) where it relates to a European site in Scotland, consult Scottish Natural Heritage;
- (e) where it relates to a European site in Northern Ireland, consult the Department of the Environment in Northern Ireland; and
- (f) if it considers it appropriate, take the opinion of the general public and if it does so, take such steps for that purpose as it considers appropriate.

(4) In the light of the conclusions of the assessment, and subject to regulation 26, the competent authority may agree to the plan or project only if it has ascertained that it will not adversely affect the integrity of the European offshore marine site or European site (as the case may be).

(5) In considering whether a plan or project will adversely affect the integrity of a site, the competent authority must have regard to the manner in which it is proposed to be carried out and to any conditions or restrictions subject to which the competent authority proposes that the consent, permission or other authorisation should be given.

(6) This regulation does not apply in relation to—

- (a) a site which is a European offshore marine site by reason of regulation 15(c);
- (b) a site which is a European site by reason of regulation 24(1)(c);
- (c) the giving of any Petroleum Act approval, Petroleum Act authorisation, Petroleum Act consent, or Petroleum Act licence; or
- (d) any project to which paragraph 2 of Schedule 3 to the Environmental Impact Assessment and Natural Habitats (Extraction of Minerals by Marine Dredging) (England and Northern Ireland) Regulations 2007(2) applies.

(7) Subject to paragraph (8), where a plan or project requires an appropriate assessment both under this regulation and under the 1994 Regulations, the assessment required by this regulation need

not identify those effects of the plan or project that are specifically attributable to that part of it that is to be carried out in the offshore marine area, provided that an assessment made for the purposes of this regulation and the 1994 Regulations assesses the effects of the plan or project as a whole.

(8) Paragraph (7) does not apply to assessments under this regulation carried out by competent authorities whose functions are exercisable solely in or as regards Scotland.

(9) In this regulation—

“England” includes so much of the internal waters and territorial sea of the United Kingdom as are not part of Northern Ireland, Scotland or Wales;

“Northern Ireland” has the same meaning as in the Northern Ireland Act 1998⁽³⁾; and

“Wales” has the same meaning as in section 158(1) of the Government of Wales Act 2006⁽⁴⁾.

Considerations of overriding public interest

26.—(1) If it is satisfied that, there being no alternative solutions, the plan or project referred to in regulation 25(1) must be carried out for imperative reasons of overriding public interest (which, subject to paragraph (2), may be of a social or economic nature), the competent authority may agree to the plan or project notwithstanding a negative assessment of the implications for the site.

(2) Where the site concerned hosts a priority natural habitat type or a priority species, the reasons referred to in paragraph (1) must be either—

(a) reasons relating to human health, public safety or beneficial consequences of primary importance to the environment; or

(b) any other imperative reasons of overriding public interest.

(3) A competent authority may not agree to a plan or project under paragraph (1) for any reason referred to in paragraph (2)(b) unless it has had due regard to the opinion of the Commission in satisfying itself that there are such reasons.

(4) Where a competent authority other than the Secretary of State desires to obtain the opinion of the Commission as to whether reasons are to be considered imperative reasons of overriding public interest, it must submit a request to the Secretary of State—

(a) identifying the matter on which an opinion is sought; and

(b) accompanied by any documents or information that may be required.

(5) Where a competent authority has submitted a request in accordance with paragraph (4), the Secretary of State may, if he thinks fit, seek the opinion of the Commission, and if he does so, he must upon receiving the Commission’s opinion transmit it to the competent authority.

(6) Where a competent authority (other than the Secretary of State or a competent authority in Scotland) proposes to agree to a plan or project under this regulation notwithstanding a negative assessment of the implications for a European offshore marine site or a European site—

(a) it must notify the Secretary of State; and

(b) it must not agree to the plan or project before the end of the period of 21 days beginning with the day notified to it by the Secretary of State as that on which the authority’s notification was received by him, unless the Secretary of State authorises the authority to do so under paragraph (11)(b).

(7) Where a competent authority in Scotland other than the Scottish Ministers proposes to agree to a plan or project under this regulation notwithstanding a negative assessment of the implications for a European site in Scotland—

(3) 1998 c.47.

(4) 2006 c.32.

- (a) it must notify the Scottish Ministers; and
- (b) it must not agree to the plan or project before the end of the period of 21 days beginning with the day notified to it by the Scottish Ministers as that on which the authority's notification was received by them, unless the Scottish Ministers authorise the authority to do so under paragraph (11)(b).

(8) Where a competent authority in Scotland agrees to a plan or project under this regulation notwithstanding a negative assessment of the implications for a European site in Scotland, it must notify the Secretary of State as soon as practicable thereafter.

(9) Where a competent authority in Scotland other than the Scottish Ministers proposes to agree to a plan or project under this regulation notwithstanding a negative assessment of the implications for a European site outside Scotland or a European offshore marine site—

- (a) it must notify the Scottish Ministers and the Secretary of State; and
- (b) it may agree to the plan or project only after having received notification from the Scottish Ministers that the Scottish Ministers and the Secretary of State have agreed that it may do so.

(10) Where the Scottish Ministers propose to agree to a plan or project under this regulation notwithstanding a negative assessment of the implications for a European site outside Scotland or a European offshore marine site—

- (a) they must notify the Secretary of State; and
- (b) they may agree to the plan or project only after having obtained the Secretary of State's agreement, which may be given subject to such conditions or restrictions as the Secretary of State may specify.

(11) In any case within paragraph (6) or (7), the relevant administration may—

- (a) at any time before the competent authority has agreed to the plan or project in question, give a direction to the competent authority prohibiting it from agreeing to the plan or project, either indefinitely or during such period as may be specified in the direction; or
- (b) authorise the competent authority to agree to the plan or project subject to such conditions or restrictions as may be specified in the authorisation.

(12) The relevant administration may amend or revoke a direction or authorisation under paragraph (11) at any time before the competent authority has agreed to the plan or project in question.

(13) In any case within paragraph (9), the Scottish Ministers may give a direction to the competent authority prohibiting it from agreeing to the plan or project, either indefinitely or during such period as may be specified in the direction, and may amend or revoke any such direction at any time before the competent authority has agreed to the plan or project in question.

(14) Any agreement between the Scottish Ministers and the Secretary of State that is the subject of a notification under paragraph (9)(b) may be subject to such conditions or restrictions as may be specified in the notification, and where the Scottish Ministers and the Secretary of State so agree, the Scottish Ministers may, at any time before the competent authority has agreed to the plan or project in question, amend or revoke a notification under paragraph (9)(b).

(15) In this regulation—

“competent authority in Scotland” means a competent authority whose functions are exercisable solely in or as regards Scotland;

“the relevant administration” means—

- (a) in relation to a competent authority in Scotland, the Scottish Ministers; and
- (b) in relation to any other competent authority, the Secretary of State.

Review of existing decisions and consents

27.—(1) Where, before the date on which a site becomes a European offshore marine site, a competent authority has decided to undertake, or has given any consent, permission or other authorisation for, a plan or project to which regulation 25(1) would apply if it were to be considered at that date, the authority must as soon as reasonably practicable after that date review its decision, or as the case may be, consent, permission or other authorisation.

(2) Where, before the date on which a site becomes a European site or, if later, the commencement of these Regulations, a competent authority has decided to undertake, or has given any consent, permission or other authorisation for, a plan or project to which regulation 25(1) would apply if it were to be considered at that date, the authority must as soon as reasonably practicable after that date review its decision, or as the case may be, consent, permission or other authorisation.

(3) A competent authority must for the purpose of reviewing a decision, consent, permission or other authorisation under paragraph (1) or (2) make an appropriate assessment of the implications for the site in view of that site's conservation objectives, and the provisions of regulation 25(2), (3) and (7) apply, with the appropriate modifications, in relation to such a review.

(4) Where a competent authority reviews a decision, consent, permission or other authorisation under this regulation it must affirm, modify or revoke it.

(5) Subject to the following provisions of this Part, any review required by this regulation must be carried out under existing statutory procedures where such procedures exist, and if none exists the competent authority must determine the procedure to be followed, having regard to any guidance issued by the Secretary of State.

(6) Nothing in this regulation—

- (a) requires a review where a site is a European offshore marine site by reason of regulation 15(c);
- (b) requires a review where a site is a European site by reason of regulation 24(1)(c);
- (c) requires a review of a Petroleum Act approval, Petroleum Act authorisation, Petroleum Act consent or Petroleum Act licence;
- (d) requires a review of any project or agreement that falls to be similarly reviewed under the Environmental Impact Assessment and Natural Habitats (Extraction of Minerals by Marine Dredging) (England and Northern Ireland) Regulations 2007; or
- (e) affects anything done in pursuance of the decision, or the consent, permission or other authorisation, before the date mentioned in paragraph (1) or (2) (as the case may be).

(7) The Secretary of State may not issue guidance under paragraph (5) which relates to a function within devolved competence without the consent of the Scottish Ministers.

(8) Regulations 72 and 73 of the 1994 Regulations apply in relation to any decision under paragraph (4) revoking or modifying a consent granted under section 36 or 37 of the Electricity Act 1989⁽⁵⁾ as they apply in relation to a decision pursuant to regulation 71 of the 1994 Regulations⁽⁶⁾ revoking or varying any such consent, but with the following modifications—

- (a) omit—
 - (i) in regulations 72(1), 73(1) and 73(3), the words “, or a direction deeming planning permission to be granted”;
 - (ii) in regulation 72(1)(a), the words “or, as the case may be, in whose favour the direction was made”;

(5) 1989 c.29. Section 36 was amended by section 93 of the Energy Act 2004 and (in relation to Scotland) by article 2 of and Part 1 of Schedule 1 to, the Water Environment and Water Services (Scotland) Act 2003 (Consequential Provisions and Modifications) Order 2006 (S.I. 2006/1054).

(6) Regulation 71 was amended by the Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007, S.I. 2007/1843.

- (iii) in regulation 72(1)(b), the words “in the case of a consent under section 36 of the Electricity Act 1989,”;
 - (iv) regulation 72(2)(a); and
 - (v) in regulation 73(2)(a) and (b) and 73(3), the words “or direction”;
- (b) in their application in relation to a consent to be granted by the Scottish Ministers, for any reference to the Secretary of State substitute a reference to the Scottish Ministers.

Consideration on review

28.—(1) The following provisions apply where a decision, or a consent, permission or other authorisation falls to be reviewed under regulation 27.

(2) Subject as follows, the provisions of regulation 25(4) and (5) and regulation 26 apply, with the appropriate modifications, in relation to the decision on the review.

(3) The decision, or the consent, permission or other authorisation may be affirmed if it appears to the competent authority reviewing it that other action taken or to be taken by it, or by another competent authority, will secure that the plan or project does not adversely affect the integrity of the site.

(4) Where the avoidance of an adverse effect on the integrity of a site may be secured in a number of ways, the competent authority or authorities concerned must seek to ensure that the action taken is the least onerous to those affected.

(5) The Secretary of State may issue guidance to competent authorities for the purposes of paragraphs (3) and (4) as to the manner of determining which of different ways should be adopted for securing that a plan or project does not adversely effect the integrity of a site, and in particular as to—

- (a) the order of application of different controls; and
- (b) the extent to which account should be taken of the possible exercise of other powers.

(6) A competent authority must have regard to any guidance issued by the Secretary of State under paragraph (5) in discharging its functions under paragraph (3) or (4).

(7) Any modification or revocation under regulation 27(4) must be carried out under existing statutory procedures where such procedures exist, or if none exists, the competent authority must determine the procedure to be followed, having regard to any guidance given by the Secretary of State.

(8) The Secretary of State may not issue guidance under paragraph (5) which relates to a function within devolved competence without the consent of the Scottish Ministers.

Co-ordination where more than one competent authority is involved

29.—(1) The following provisions apply where a plan or project—

- (a) is undertaken by more than one competent authority;
- (b) requires the consent, permission or other authorisation of more than one competent authority; or
- (c) is undertaken by one or more competent authorities and requires the consent, permission or other authorisation of one or more other competent authorities.

(2) Nothing in regulation 25(1) or 27(3) requires a competent authority to assess any implication of a plan or project which would be more appropriately assessed under that provision by another competent authority.

(3) The Secretary of State may issue guidance to competent authorities for the purposes of regulations 25 to 28 as to the circumstances in which an authority may or should adopt the reasoning or conclusions of another competent authority as to whether a plan or project—

- (a) is likely to have a significant effect on a European offshore marine site or European site; or
- (b) may adversely affect the integrity of a European offshore marine site or European site.

(4) A competent authority must have regard to any guidance issued by the Secretary of State under paragraph (3) in discharging any of its functions under regulations 25 to 28.

(5) In determining whether a plan or project should be agreed to under regulation 26(1), a competent authority other than the Secretary of State must seek and have regard to the views of any other competent authority or authorities involved.

(6) The Secretary of State may not issue any guidance under paragraph (3) which relates to a function within devolved competence without the consent of the Scottish Ministers.

Compensatory measures

30.—(1) This regulation applies where, in accordance with regulation 26, notwithstanding a negative assessment of the implications for a European offshore marine site or European site—

- (a) a plan or project is agreed to; or
- (b) a decision, or a consent, permission or other authorisation, is affirmed on review.

(2) The appropriate authority must secure that any necessary compensatory measures are taken to ensure that the overall coherence of Natura 2000 is protected.

(3) The appropriate authority is—

- (a) where the plan or project is agreed to in the exercise of a function within devolved competence or by Scottish Ministers, or the decision, consent, permission or other authorisation is affirmed in the exercise of a function within devolved competence or by Scottish Ministers, the Scottish Ministers;
- (b) where the plan or project is agreed to by a Northern Ireland department, that Northern Ireland department;
- (c) where the decision, consent, permission or other authorisation is affirmed by a Northern Ireland department, that Northern Ireland department; and
- (d) in any other case, the Secretary of State.

Notification of compensatory measures

31.—(1) The appropriate authority must ensure that the Commission is notified of the compensatory measures that are taken pursuant to regulation 30(2).

(2) In this regulation “appropriate authority” is to be construed in accordance with regulation 30(3).

Offences

Offences relating to European offshore marine sites

32.—(1) Subject to paragraphs (2) and (3), paragraphs (4) to (8) apply to any person—

- (a) in any part of the waters within British fishery limits;
- (b) on any ship in any part of the waters within British fishery limits;
- (c) on a British aircraft over any part of the waters within British fishery limits;

- (d) on or under an offshore marine installation; or
 - (e) on any aircraft above an offshore marine installation, in so far as the presence of the aircraft above that installation is for purposes connected with the use of the installation.
- (2) Paragraphs (4) to (8) do not apply to—
- (a) a competent authority acting in the exercise of its functions, or
 - (b) any other person exercising such functions on behalf of a competent authority.
- (3) Paragraphs (6) to (8) do not apply to any person on a third country ship.
- (4) A person is guilty of an offence if—
- (a) without reasonable excuse, he intentionally disturbs animals of any of the species specified in paragraph (9) whilst the animals are in a site which has been designated as a special area of conservation under regulation 11; and
 - (b) the disturbance is likely significantly to affect—
 - (i) the ability of any significant group of animals of that species to survive, breed, or rear or nurture their young; or
 - (ii) the local distribution or abundance of that species.
- (5) A person is guilty of an offence if—
- (a) without reasonable excuse, he intentionally disturbs animals of any of the species specified in paragraph (10) whilst the animals are in a site in the offshore marine area which has been placed on the list referred to in the third sub-paragraph of Article 4(2) of the Habitats Directive; and
 - (b) the disturbance is likely significantly to affect—
 - (i) the ability of any significant group of animals of that species to survive, breed, or rear or nurture their young; or
 - (ii) the local distribution or abundance of that species.
- (6) A person is guilty of an offence if—
- (a) without reasonable excuse, he intentionally disturbs any wild bird whilst it is in a site which has been classified as a special protection area under regulation 12 and which is of a species of bird for which the site was so classified; and
 - (b) the disturbance—
 - (i) is such as is likely to impair the bird's ability to survive, breed, or rear or nurture its young; or
 - (ii) significantly affects the local distribution or abundance of the species to which the bird belongs.
- (7) A person is guilty of an offence if, without reasonable excuse, he intentionally or recklessly damages or destroys a natural habitat type listed in Annex I to the Habitats Directive—
- (a) in any site—
 - (i) in the offshore marine area which has been placed on the list referred to in the third sub-paragraph of Article 4(2) of the Habitats Directive, or
 - (ii) which has been designated as a special area of conservation under regulation 11; and
 - (b) by reason of which—
 - (i) in the case of a site placed on the list referred to in the third sub-paragraph of Article 4(2) of the Habitats Directive, the site in question was placed on that list; or
 - (ii) in the case of a site designated as a special area of conservation under regulation 11, the site in question was so designated.

(8) A person is guilty of an offence if, without reasonable excuse, he intentionally or recklessly damages or destroys—

- (a) the habitat in any site which has been designated as a special area of conservation under regulation 11 and which supports any animals of the species specified in paragraph (9);
- (b) the habitat in any site in the offshore marine area which has been placed on the list referred to in the third sub-paragraph of Article 4(2) of the Habitats Directive and which supports any animals of the species specified in paragraph (10); and
- (c) the habitat in any site which has been classified as a special protection area under regulation 12 which supports any birds of the species for which the site was so classified.

(9) The species referred to in paragraphs (4) and (8)(a) are the species listed in Annex II to the Habitats Directive for which the site in question was designated as a special area of conservation under regulation 11.

(10) The species referred to in paragraphs (5) and (8)(b) are the species listed in Annex II to the Habitats Directive for which the site in question was placed on the list mentioned in paragraph (5).

(11) For the purpose of paragraphs (4) to (8) (and without prejudice to any other reasonable excuse) it is a reasonable excuse that the action causing the disturbance, damage or destruction in question was carried out pursuant to, and in accordance with the terms of, a consent, permission or other authorisation granted by a competent authority.

(12) In proceedings for an offence under paragraph (7) or (8), where this paragraph applies the defendant shall not be taken recklessly to have done anything prohibited by that paragraph merely because—

- (a) his actions had the result that he did the thing in question; and
- (b) he intended those actions and knew that they might have that result.

(13) Paragraph (12) applies where the defendant shows that—

- (a) the actions in question were for the purpose, and in the course, of sea fishing; and
- (b) he had taken any steps that could reasonably be taken to ensure compliance with the requirements or conditions of any relevant Community instrument.

(14) In paragraph (13), “any relevant Community instrument” means any instrument relating to sea fishing which—

- (a) regulates such fishing for the purpose (whether or not the sole purpose) of minimising the extent to which it has a result of the kind referred to in paragraph (12) or the risk that it may have a result of that kind; and
- (b) is adopted by any Community instrument under—
 - (i) Article 37(2) of the EC Treaty; or
 - (ii) Council Regulation (EC) No 2371/2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy(7) or any instrument adopted thereunder.

(15) A person guilty of an offence under this regulation is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment, to a fine.

(16) In determining the amount of any fine to be imposed on a person convicted of an offence under this regulation, the court must in particular have regard to any financial benefit which has accrued or appears likely to accrue to that person in consequence of the offence.

(7) O.J. No. L358, 31.12.02, p. 59.

