STATUTORY INSTRUMENTS

# 2007 No. 1842

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

## PART 2

## CONSERVATION OF NATURAL HABITATS AND HABITATS OF SPECIES

*Site protection and management*

**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.