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STATUTORY INSTRUMENTS

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**2007 No. 1843**

**WILDLIFE  
COUNTRYSIDE**

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

*Made - - - - 22nd June 2007*

*Laid before Parliament 3rd July 2007*

*Coming into force in accordance with regulation 2*

The Secretary of State is a Minister designated <sup>M1</sup> for the purposes of making Regulations under section 2(2) of the European Communities Act 1972 <sup>M2</sup> in relation to measures relating to the conservation of natural habitats and of fauna and flora.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972.

It appears to the Secretary of State that it is expedient for any reference to an Annex to Council Directive [92/43/EEC](#) on the conservation of natural habitats and of wild flora and fauna <sup>M3</sup> or to Council Directive [79/409/EEC](#) on the conservation of wild birds <sup>M4</sup> to be construed as a reference to that Annex as amended from time to time.

In the exercise of powers conferred upon him by section 2(2) <sup>M5</sup> of, and paragraph 1A <sup>M6</sup> of Schedule 2 to, the European Communities Act 1972 and by section 307(3) and (5) of the Criminal Justice Act 2003 <sup>M7</sup>, he makes the following Regulations:

**Marginal Citations**

**M1** [European Communities \(Designation\) \(No. 4\) Order 1992 \(S.I. 1992/2870\)](#).

**M2** [1972 c.68](#).

**M3** Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora was last amended by Council Directive 2006/105/EC of 20 November 2006 adapting Directives 79/409/EEC, 92/43/EEC, 97/68/EC, 2001/80/EC and 2001/81/EC in the field of environment, by reason of the accession of Bulgaria and Romania (O.J. No. L363, 20.12.2006, p. 368; and see O.J. L80, 21.3.2007, p. 15, for the Corrigendum amending the original title).

**M4** Council Directive 79/409/EEC on the conservation of wild birds was last amended by Council Directive 2006/105/EC of 20 November 2006 adapting Directives 79/409/EEC, 92/43/EEC, 97/68/EC, 2001/80/EC and 2001/81/EC in the field of environment, by reason of the accession of Bulgaria and

Romania (O.J. No. L363, 20.12.2006, p. 368; and see O.J. L80, 21.3.2007, p. 15, for the Corrigendum amending the original title).

- M5** In so far as these Regulations deal with matters that are within the devolved competence of Scottish Ministers (by virtue of section 53 of the [Scotland Act 1998 \(c.46\)](#)), the power of the Secretary of State to make regulations in relation to those matters in or as regards Scotland is preserved by section 57(1) of the Scotland Act 1998 .
- M6** Paragraph 1A was inserted by section 28 of the [Legislative and Regulatory Reform Act 2006 \(c.51\)](#).
- M7** [2003 c.44](#).

### Citation **E+W+S**

1. These Regulations may be cited as the Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007.

### Commencement **E+W+S**

- 2.—(1) Subject to paragraph (2), these Regulations come into force on 21st August 2007.  
 (2) Paragraph (21) of regulation 5 comes into force on 21st November 2007.

### Extent **E+W+S**

- 3.—(1) Except as provided for in this regulation, these Regulations extend to England and Wales only.  
 (2) Regulations 1, 2 and 4 and this regulation also extend to Scotland so far as necessary.  
 (3) In regulation 5, paragraphs (2)(a), (2)(d) (except in respect of the definitions “premises” and “sample”), (3) (in respect of the insertion of paragraph (2B) only), (6), (22), (23)(a), (c) and (d), (24)(b), (25) to (27), (29)(c) and (d), (30), (33) to (35), (37) to (39), (41), (42), (44), (45) and (61) also extend to Scotland.  
 (4) Paragraphs (28), (29)(b), (32), (40), (47), (49) and (51) to (54) of regulation 5 extend to Scotland only.  
 (5) Regulations 6 and 7 also extend to any place (except Scotland) to which the enactments they amend extend.

### Interpretation **E+W+S**

4. In these Regulations, “the 1994 Regulations” means the Conservation (Natural Habitats, &c.) Regulations 1994 <sup>M8</sup>.

#### Marginal Citations

- M8** [S.I. 1994/2716](#). The 1994 Regulations make provision for the purpose of implementing, for Great Britain, Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora. In relation to Wales, the functions of the Secretary of State under the 1994 Regulations were transferred to the National Assembly for Wales (with the exception of those under regulations 71 to 78) by article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). By virtue of paragraphs 30 and 32 of Schedule 11 to the [Government of Wales Act 2006 \(c. 32\)](#), the relevant functions were transferred from the National Assembly for Wales to the Welsh Ministers. In relation to Scotland, the functions of the Secretary of State under the 1994 Regulations were, so far as they are exercisable within devolved competence, transferred

to the Scottish Ministers by section 53 of the Scotland Act 1998. Relevant amendments to the 1994 Regulations are noted in footnotes below.

**Amendments of the 1994 Regulations** **E+W+S**

5.—(1) The 1994 Regulations are amended as follows.

(2) In regulation 2 <sup>M9</sup> (interpretation and application), in paragraph (1)—

[<sup>F1</sup>(a) before the definition of “agriculture Minister” insert the following definition—  
““the 2007 Regulations” means the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007 <sup>M10</sup>.”;]

<sup>F2</sup>(b) .....

<sup>F2</sup>(c) .....

(d) [<sup>F3</sup>in the appropriate places insert the following definitions—

““British fishery limits” has the meaning given by the Fishery Limits Act 1976 <sup>M11</sup>.”;

<sup>F4c</sup> ... ”;

““European offshore marine site” means a European offshore marine site within the meaning of regulation 15 (meaning of European offshore marine site) of the 2007 Regulations.”;

““the offshore marine area” means—

(a) any part of the seabed and subsoil situated in any area designated under section 1(7) of the Continental Shelf Act 1964 <sup>M12</sup>; and

(b) any part of the waters within British fishery limits (except the internal waters of, and the territorial sea adjacent to, the United Kingdom, the Channel Islands and the Isle of Man);”;

““offshore marine installation” means any artificial island, installation or structure (other than a ship) which is situated—

(a) in any part of the waters in any area designated under section 1(7) of the Continental Shelf Act 1964; or

(b) in any part of the waters in any area designated under section 84(4) of the Energy Act 2004 <sup>M13</sup>.”;]

<sup>F5c</sup> ... ”;

<sup>F5c</sup> ... ”; and

<sup>F6</sup>(e) .....

(3) After paragraph (2) of regulation 2 (interpretation and application) insert—

<sup>F7c</sup>(2A) .....

[<sup>F8</sup>(2B) Any reference to a numbered provision of these Regulations is—

(a) in relation to England and Wales, to the provision of that number which has effect in England and Wales; and

(b) in relation to Scotland, to the provision of that number which has effect in Scotland.”].

<sup>F9</sup>(4) .....

<sup>F9</sup>(5) .....

[<sup>F10</sup>(6) For regulation 4 (nature conservation bodies) substitute the following regulation—

**“Nature Conservation bodies**

4.—(1) Subject to paragraph (2), in these Regulations “nature conservation body” means Natural England, the Countryside Council for Wales or Scottish Natural Heritage; and references to “the appropriate nature conservation body”, in relation to England, Wales or Scotland shall be construed accordingly.

(2) In Parts IV and IVA of these Regulations, “nature conservation body” also includes the Joint Nature Conservation Committee, and references to “the appropriate nature conservation body” in relation to a European offshore marine site shall be construed as meaning the Joint Nature Conservation Committee.”.]

- <sup>F11</sup>(7) .....
- <sup>F11</sup>(8) .....
- <sup>F11</sup>(9) .....
- <sup>F11</sup>(10) .....
- <sup>F11</sup>(11) .....
- <sup>F11</sup>(12) .....
- <sup>F11</sup>(13) .....
- <sup>F11</sup>(14) .....
- <sup>F11</sup>(15) .....
- <sup>F11</sup>(16) .....
- <sup>F11</sup>(17) .....
- <sup>F11</sup>(18) .....
- <sup>F11</sup>(19) .....
- <sup>F11</sup>(20) .....
- <sup>F11</sup>(21) .....

[<sup>F12</sup>(22) In regulation 47 (application of provisions of this Part)—

- (a) in paragraph (1)(a), after “European sites” insert “ in Great Britain and European offshore marine sites ”;
- (b) in paragraph (2)(b), after “European site” insert “ in Great Britain or European offshore marine site ”; and
- (c) after paragraph (2), add—

“(3) Nothing in these Regulations requires an appropriate assessment of any plan or project 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.”.]

(23) In regulation 48 (assessment of implications for European site)—

[<sup>F13</sup>(a) in paragraph (1)(a), after “Great Britain” insert “ or a European offshore marine site ”;]

<sup>F14</sup>(b) .....

[<sup>F15</sup>(c) in paragraph (5), after “European site” insert “ or European offshore marine site (as the case may be) ”;]

[<sup>F15</sup>(d) for paragraph (7), substitute—

“(7) This regulation does not apply in relation to a site which is—

- (a) a European site by reason of regulation 10(1)(c); or
- (b) a European offshore marine site by reason of regulation 15(c) of the 2007 Regulations.”; and]

<sup>F16</sup>(e) . . . . .

(24) In regulation 49 (considerations of overriding public interest)—

<sup>F17</sup>(a) . . . . .

[<sup>F18</sup>(b) in paragraph (5) for “a European site” substitute “ the site concerned ”.]

[<sup>F19</sup>(25) In regulation 50 (review of existing decisions and consents, &c), in paragraph (1), after “European site” insert “ or a European offshore marine site ”.]

[<sup>F19</sup>(26) In regulation 52 (co-ordination where more than one competent authority involved), in sub-paragraphs (a) and (b) of paragraph (3), after “European site” insert “ or a European offshore marine site ”.]

[<sup>F19</sup>(27) In regulation 53 (compensatory measures), in paragraph (a), after “European site” insert “ or European offshore marine site ”.]

(28) In regulation 53A <sup>M14</sup> (control of operations requiring consent)—

- (a) in paragraph (1) for “European site” substitute “ European sites in Great Britain and European offshore marine sites ”; and
- (b) in paragraph (2), after “European site” insert “ or European offshore marine site ”.

(29) In regulation 54 (grant of planning permission)—

<sup>F20</sup>(a) . . . . .

- (b) in paragraph (2) for “European site” substitute “ European sites in Great Britain and European offshore marine sites ”;

[<sup>F21</sup>(c) in paragraph (3), after “European site” insert “ or European offshore marine site ”; and]

[<sup>F21</sup>(d) in paragraph (4), after “European site” insert “ or European offshore marine site ”.]

[<sup>F22</sup>(30) In regulation 56(3) (planning permission: consideration on review), after “European site” insert “ or European offshore marine site ”.]

<sup>F23</sup>(31) . . . . .

(32) In regulation 58(6) (effect of orders made on review: Scotland), after “European site” insert “or European offshore marine site”.

[<sup>F24</sup>(33) In regulation 60 (general development orders), in paragraph (1)(a), after “Great Britain” insert “ or a European offshore marine site ”.]

[<sup>F24</sup>(34) In regulation 62 (general development orders: approval of local planning authority), in paragraph (6)—

- (a) after “In any other case” insert “ in which the application has been sent to the appropriate nature conservation body, ”; and
- (b) after “European site” insert “ or European offshore marine site ”.]

[<sup>F24</sup>(35) In regulation 64 (special development orders)—

- (a) in paragraph (2), for “this regulation” substitute “ paragraph (1) ”; and
- (b) after paragraph (2) insert the following paragraph—

“(3) A special development order made on or after 21st August 2007 may not grant planning permission for development which is likely to have a significant effect on a European offshore marine site (either alone or in combination with other plans or projects).”.]

F<sup>25</sup>(36) .....

[F<sup>26</sup>(37) After regulation 65 (simplified planning zones) insert the following regulation—

**“Simplified planning zones and European offshore marine sites**

**65A.** The adoption or approval of a simplified planning zone scheme on or after 21st August 2007 shall not have effect to grant planning permission for development which is likely to have a significant effect on a European offshore marine site (either alone or in combination with other plans or projects).”.]

[F<sup>26</sup>(38) After regulation 66 (enterprise zones) insert the following regulation—

**“Enterprise zones and European offshore marine sites**

**66A.** An order designating an enterprise zone, or the approval of a modified scheme, if made or given on or after 21st August 2007, shall not have effect to grant planning permission for development which is likely to have a significant effect on a European offshore marine site (either alone or in combination with other plans or projects).”.]

[F<sup>26</sup>(39) In regulation 69 (construction or improvement of highways or roads)—

- (a) in paragraph (1) for “European site” substitute “ European sites in Great Britain and European offshore marine sites ”; and
- (b) in paragraph (2) after “European site” insert “ or European offshore marine site ”.]

(40) In regulation 69A(1)<sup>M15</sup> (core and other paths) for “European site” substitute “ European sites in Great Britain and European offshore marine sites ”.

F<sup>27</sup>(41) .....

F<sup>27</sup>(42) .....

F<sup>27</sup>(43) .....

[F<sup>28</sup>(44) In regulation 83 (authorisations under Part I of the Environmental Protection Act 1990)—

- (a) omit paragraphs (1) and (2);
- (b) in paragraph (3), for “such authorisation as is mentioned in paragraph (1)” substitute “ authorisation under Part I of the Environmental Protection Act 1990 ”; and
- (c) in paragraph (5) omit “agreeing to a plan or project, or”.]

[F<sup>28</sup>(45) In regulation 84 (licences under Part II of the Environmental Protection Act 1990)—

- (a) in paragraph (1)—
  - (i) for “European site” substitute “ European sites in Great Britain and European offshore marine sites ”,
  - (ii) at the end of sub-paragraph (a) add “, and”,
  - (iii) at the end of sub-paragraph (b) omit “, and”, and
  - (iv) omit sub-paragraph (c);
- (b) in paragraph (2) after “European site” insert “ or European offshore marine site ”; and
- (c) in paragraph (4) after “European site” insert “ or European offshore marine site ”.]

<sup>F29</sup>(46) .....

(47) In regulation 84A (permits under the Pollution Prevention and Control (Scotland) Regulations 2000) as it has effect in Scotland—

- (a) in paragraph (1), for “European site” substitute “ European sites in Great Britain and European offshore marine sites ”;
- (b) in paragraph (2), after “European site” insert “ or European offshore marine site ”; and
- (c) in paragraph (4), after “European site” insert “ or European offshore marine site ”.

<sup>F30</sup>(48) .....

(49) In regulation 84B <sup>M16</sup> (abstraction and works authorised under water legislation) as it has effect in Scotland—

- (a) in paragraph (2), after “European site” insert “ or European offshore marine site ”; and
- (b) in paragraph (4), after “European site” insert “ or European offshore marine site ”.

<sup>F31</sup>(50) .....

(51) In regulation 85B <sup>M17</sup> (assessment of implications for European site) as it has effect in Scotland—

- (a) in paragraph (1)(a), after “Great Britain” insert “ or a European offshore marine site ”;
- (b) in paragraph (4), after “European site” insert “ or the European offshore marine site (as the case may be) ”; and
- (c) for paragraph (6) substitute—

“(6) This regulation does not apply in relation to a site which is—

- (a) a European site by reason of regulation 10(1)(c); or
- (b) a European offshore marine site by reason of regulation 15(c) of the 2007 Regulations.”.

(52) In regulation 85C <sup>M18</sup> (considerations of overriding public interest) as it has effect in Scotland—

- (a) in paragraph (1), after “European site” insert “ or the European offshore marine site (as the case may be) ”; and
- (b) in paragraph (5), for “a European site” substitute “ the site concerned ”.

(53) In regulation 85D <sup>M19</sup> (co-ordination for land use plan prepared by more than one planning authority) as it has effect in Scotland, in sub-paragraphs (a) and (b) of paragraph (3), after “European site”, insert “ or a European offshore marine site ”.

(54) In regulation 85E <sup>M20</sup> as it has effect in Scotland, after “European site” insert “ or a European offshore marine site ”.

<sup>F32</sup>(55) .....

<sup>F32</sup>(56) .....

<sup>F32</sup>(57) .....

<sup>F32</sup>(58) .....

<sup>F32</sup>(59) .....

<sup>F32</sup>(60) .....

[<sup>F33</sup>(61) After regulation 108 (service of notices) add the following regulations—

**“Advisory role of the JNCC**

**109.**—(1) The Joint Nature Conservation Committee may provide advice or make representations to any competent authority in relation to—

- (a) any question as to whether that authority is obliged to carry out an appropriate assessment in relation to a European offshore marine site under these Regulations;
- (b) any appropriate assessment on which that authority is obliged to consult the Committee under these Regulations;
- (c) any application made pursuant to regulation 62 of these Regulations and sent to the Committee by that authority pursuant to regulation 62(4); and
- (d) any decision of the Secretary of State in respect of which notice has been served on it by him under regulation 72(2)(b), 76(2)(b) or 80(2)(b) of these Regulations.

(2) The Joint Nature Conservation Committee may undertake, commission or support (whether by financial means or otherwise) such research and scientific work as it considers is required for the purposes of providing advice or making representations under this regulation.

(3) In this regulation and regulation 110 of these Regulations, “research” includes inquiries and investigations.

**Advisory role of Natural England, the Countryside Council for Wales and Scottish Natural Heritage**

**110.**—(1) Natural England may—

- (a) provide advice and assistance, or make representations, to any competent authority on any matter which relates to England and is connected with the discharge of the competent authority's functions under these Regulations; and
- (b) undertake, commission or support (whether by financial means or otherwise) such research and scientific work as it considers is required for the purposes of providing advice or assistance or making representations under sub-paragraph (a).

(2) The Countryside Council for Wales may—

- (a) provide advice and assistance, or make representations, to any competent authority on any matter which relates to Wales and is connected with the discharge of the competent authority's functions under these Regulations; and
- (b) undertake, commission or support (whether by financial means or otherwise) such research and scientific work as it considers is required for the purposes of providing advice or assistance or making representations under sub-paragraph (a).

(3) Scottish Natural Heritage may—

- (a) provide advice and assistance, or make representations, to any competent authority on any matter which relates to Scotland and is connected with the discharge of the competent authority's functions under these Regulations; and
- (b) undertake, commission or support (whether by financial means or otherwise) such research and scientific work as it considers is required for the purposes of providing advice or assistance or making representations under sub-paragraph (a).”.]

<sup>F34</sup>(62) .....

**Textual Amendments**

**F1** Reg. 5(2)(a) revoked (E.W.N.I.) (1.4.2010) by [The Conservation of Habitats and Species Regulations 2010 \(S.I. 2010/490\)](#), reg. 1(2), [Sch. 7 Pt. 2](#) (with reg. 125)



- F2** Reg. 5(2)(b)(c) revoked (1.4.2010) by The Conservation of Habitats and Species Regulations 2010 (S.I. 2010/490), reg. 1(2), **Sch. 7 Pt. 1** (with reg. 125)
- F3** Words in reg. 5(2)(d) revoked (E.W.N.I.) (1.4.2010) by The Conservation of Habitats and Species Regulations 2010 (S.I. 2010/490), reg. 1(2), **Sch. 7 Pt. 2** (with reg. 125)
- F4** Words in reg. 5(2)(d) revoked (S.) (16.8.2012) by The Conservation (Natural Habitats, c.) Amendment (Scotland) Regulations 2012 (S.S.I. 2012/228), reg. 1(1), **sch.**
- F5** Words in reg. 5(2)(d) revoked (1.4.2010) by The Conservation of Habitats and Species Regulations 2010 (S.I. 2010/490), reg. 1(2), **Sch. 7 Pt. 1** (with reg. 125)
- F6** Reg. 5(2)(e) revoked (1.4.2010) by The Conservation of Habitats and Species Regulations 2010 (S.I. 2010/490), reg. 1(2), **Sch. 7 Pt. 1** (with reg. 125)
- F7** Words in reg. 5(3) revoked (1.4.2010) by The Conservation of Habitats and Species Regulations 2010 (S.I. 2010/490), reg. 1(2), **Sch. 7 Pt. 1** (with reg. 125)
- F8** Words in reg. 5(3) revoked (E.W.N.I.) (1.4.2010) by The Conservation of Habitats and Species Regulations 2010 (S.I. 2010/490), reg. 1(2), **Sch. 7 Pt. 2** (with reg. 125)
- F9** Reg. 5(4)(5) revoked (1.4.2010) by The Conservation of Habitats and Species Regulations 2010 (S.I. 2010/490), reg. 1(2), **Sch. 7 Pt. 1** (with reg. 125)
- F10** Reg. 5(6) revoked (E.W.N.I.) (1.4.2010) by The Conservation of Habitats and Species Regulations 2010 (S.I. 2010/490), reg. 1(2), **Sch. 7 Pt. 2** (with reg. 125)
- F11** Reg. 5(7)-(21) revoked (1.4.2010) by The Conservation of Habitats and Species Regulations 2010 (S.I. 2010/490), reg. 1(2), **Sch. 7 Pt. 1** (with reg. 125)
- F12** Reg. 5(22) revoked (E.W.N.I.) (1.4.2010) by The Conservation of Habitats and Species Regulations 2010 (S.I. 2010/490), reg. 1(2), **Sch. 7 Pt. 2** (with reg. 125)
- F13** Reg. 5(23)(a) revoked (E.W.N.I.) (1.4.2010) by The Conservation of Habitats and Species Regulations 2010 (S.I. 2010/490), reg. 1(2), **Sch. 7 Pt. 2** (with reg. 125)
- F14** Reg. 5(23)(b) revoked (1.4.2010) by The Conservation of Habitats and Species Regulations 2010 (S.I. 2010/490), reg. 1(2), **Sch. 7 Pt. 1** (with reg. 125)
- F15** Reg. 5(23)(c)(d) revoked (E.W.N.I.) (1.4.2010) by The Conservation of Habitats and Species Regulations 2010 (S.I. 2010/490), reg. 1(2), **Sch. 7 Pt. 2** (with reg. 125)
- F16** Reg. 5(23)(e) revoked (1.4.2010) by The Conservation of Habitats and Species Regulations 2010 (S.I. 2010/490), reg. 1(2), **Sch. 7 Pt. 1** (with reg. 125)
- F17** Reg. 5(24)(a) revoked (1.4.2010) by The Conservation of Habitats and Species Regulations 2010 (S.I. 2010/490), reg. 1(2), **Sch. 7 Pt. 1** (with reg. 125)
- F18** Reg. 5(24)(b) revoked (E.W.N.I.) (1.4.2010) by The Conservation of Habitats and Species Regulations 2010 (S.I. 2010/490), reg. 1(2), **Sch. 7 Pt. 2** (with reg. 125)
- F19** Reg. 5(25)-(27) revoked (E.W.N.I.) (1.4.2010) by The Conservation of Habitats and Species Regulations 2010 (S.I. 2010/490), reg. 1(2), **Sch. 7 Pt. 2** (with reg. 125)
- F20** Reg. 5(29)(a) revoked (1.4.2010) by The Conservation of Habitats and Species Regulations 2010 (S.I. 2010/490), reg. 1(2), **Sch. 7 Pt. 1** (with reg. 125)
- F21** Reg. 5(29)(c)(d) revoked (E.W.N.I.) (1.4.2010) by The Conservation of Habitats and Species Regulations 2010 (S.I. 2010/490), reg. 1(2), **Sch. 7 Pt. 2** (with reg. 125)
- F22** Reg. 5(30) revoked (E.W.N.I.) (1.4.2010) by The Conservation of Habitats and Species Regulations 2010 (S.I. 2010/490), reg. 1(2), **Sch. 7 Pt. 2** (with reg. 125)
- F23** Reg. 5(31) revoked (1.4.2010) by The Conservation of Habitats and Species Regulations 2010 (S.I. 2010/490), reg. 1(2), **Sch. 7 Pt. 1** (with reg. 125)
- F24** Reg. 5(33)-(35) revoked (E.W.N.I.) (1.4.2010) by The Conservation of Habitats and Species Regulations 2010 (S.I. 2010/490), reg. 1(2), **Sch. 7 Pt. 2** (with reg. 125)
- F25** Reg. 5(36) revoked (1.4.2010) by The Conservation of Habitats and Species Regulations 2010 (S.I. 2010/490), reg. 1(2), **Sch. 7 Pt. 1** (with reg. 125)
- F26** Reg. 5(37)-(39) revoked (E.W.N.I.) (1.4.2010) by The Conservation of Habitats and Species Regulations 2010 (S.I. 2010/490), reg. 1(2), **Sch. 7 Pt. 2** (with reg. 125)
- F27** Reg. 5(41)(42)(43) revoked (1.4.2010) by The Conservation of Habitats and Species Regulations 2010 (S.I. 2010/490), reg. 1(2), **Sch. 7 Pt. 1** (with reg. 125)

- F28** Reg. 5(44)(45) revoked (E.W.N.I.) (1.4.2010) by [The Conservation of Habitats and Species Regulations 2010 \(S.I. 2010/490\)](#), reg. 1(2), **Sch. 7 Pt. 2** (with reg. 125)
- F29** Reg. 5(46) revoked (1.4.2010) by [The Conservation of Habitats and Species Regulations 2010 \(S.I. 2010/490\)](#), reg. 1(2), **Sch. 7 Pt. 1** (with reg. 125)
- F30** Reg. 5(48) revoked (1.4.2010) by [The Conservation of Habitats and Species Regulations 2010 \(S.I. 2010/490\)](#), reg. 1(2), **Sch. 7 Pt. 1** (with reg. 125)
- F31** Reg. 5(50) revoked (1.4.2010) by [The Conservation of Habitats and Species Regulations 2010 \(S.I. 2010/490\)](#), reg. 1(2), **Sch. 7 Pt. 1** (with reg. 125)
- F32** Reg. 5(55)-(60) revoked (1.4.2010) by [The Conservation of Habitats and Species Regulations 2010 \(S.I. 2010/490\)](#), reg. 1(2), **Sch. 7 Pt. 1** (with reg. 125)
- F33** Reg. 5(61) revoked (1.4.2010) by [The Conservation of Habitats and Species Regulations 2010 \(S.I. 2010/490\)](#), reg. 1(2), **Sch. 7 Pt. 2** (with reg. 125)
- F34** Reg. 5(62) revoked (1.4.2010) by [The Conservation of Habitats and Species Regulations 2010 \(S.I. 2010/490\)](#), reg. 1(2), **Sch. 7 Pt. 1** (with reg. 125)

### Marginal Citations

- M9** The definition of “the Habitats Directive” in regulation 2(1) of the 1994 Regulations was previously amended by regulation 2(2) of the [Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 1997 \(S.I. 1997/3055\)](#).
- M10** [S.I. 2007/1842](#).
- M11** [1976 c.86](#).
- M12** [1964 c.29](#). Section 1(7) was amended by the [Oil and Gas \(Enterprise\) Act 1982 \(c.23\)](#) section 37 and Schedule 3, paragraph 1. Areas have been designated under section 1(7) by [S.I. 2000/3062](#) and [2001/3670](#).
- M13** [2004 c.20](#). An area has been designated under section 84(4) by [S.I. 2004/2668](#).
- M14** Regulation 53A was inserted by regulations 3 and 16(b) of the [Conservation \(Natural Habitats, &c\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#).
- M15** Regulation 69A was inserted by section 99 of, and paragraphs 14 and 16 of Schedule 2 to, the [Land Reform \(Scotland\) Act 2003 \(asp 2\)](#).
- M16** Regulation 84B (as it has effect in Scotland) was inserted by regulation 20 of the [Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2007 \(S.S.I. 2007/80\)](#).
- M17** Regulation 85B (as it has effect in Scotland) was inserted by regulation 22 of and Schedule 1 to the [Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2007 \(S.S.I. 2007/80\)](#).
- M18** Regulation 85C (as it has effect in Scotland) was inserted by regulation 22 of and Schedule 1 to the [Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2007 \(S.S.I. 2007/80\)](#).
- M19** Regulation 85D (as it has effect in Scotland) was inserted by regulation 22 of and Schedule 1 to the [Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2007 \(S.S.I. 2007/80\)](#).
- M20** Regulation 85E (as it has effect in Scotland) was inserted by regulation 22 of and Schedule 1 to the [Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2007 \(S.S.I. 2007/80\)](#).

### Amendment of the Conservation of Seals Act 1970 **E+W**

6. In section 10 (power to grant licences) of the Conservation of Seals Act 1970 <sup>M21</sup>—
- (a) after subsection (4) insert the following subsection—
- “(4A) A licence under this section does not authorise the use of any method of killing or taking seals which is inconsistent with regulation 41 of the Conservation (Natural Habitats, &c.) Regulations 1994 or any other enactment for the time being in force for the purpose of giving effect to Article 15 of the Habitats Directive (as read subject to any derogation permitted by Article 16 of that Directive).”; and
- (b) after subsection (5) add the following subsection—

“(6) In subsection (4A), the Habitats Directive means the Directive of the Council of the European Communities dated 21st May 1992 (No. [92/43/EEC](#)) on the conservation of natural habitats and of wild flora and fauna.”

#### Marginal Citations

**M21** [1970 c.30](#). Section 10 has been amended by section 1(1)(b) and (7) of, and paragraph 10 of Schedule 1 to, the [Nature Conservancy Act 1973 \(c.54\)](#); sections 12 and 73 of, and paragraph 7 of Schedule 7 and Schedule 17 to, the [Wildlife and Countryside Act 1981 \(c.69\)](#); section 132 of, and paragraph 5 of Schedule 9 to, the [Environmental Protection Act 1990 \(c. 43\)](#); sections 76(1) and 102 of, and paragraph 4 of Part 2 of Schedule 10 to, and Part 3 of Schedule 16 to the [Countryside and Rights of Way Act 2000 \(c.37\)](#); section 57 of, and paragraph 3(a) of Schedule 7 to, the [Nature Conservation \(Scotland\) Act 2004 \(asp 6\)](#); and section 105(1) of, and paragraph 57(1), (2) and (3) of Part 1 of Schedule 11 to, the [Natural Environment and Rural Communities Act 2006 \(c.14\)](#).

#### Amendment of the Wildlife and Countryside Act 1981 **E+W**

- 7.—(1) The Wildlife and Countryside Act 1981 <sup>M22</sup> is amended as follows.
- (2) In section 1 (protection of wild birds, their nests and eggs)—
- (a) in subsection (3A)—
- (i) in paragraph (c), for the words “Council Directive [79/409/EEC](#) on the conservation of wild birds” substitute “the Wild Birds Directive”, and
- (ii) in paragraph (d), for the words “the Council Directive referred to in paragraph (c)” substitute “the Wild Birds Directive”; and
- (b) in subsection (6A), for the words “the Directive of the Council of the European Communities dated 2nd April 1979 (No [1979/409/EEC](#)) on the conservation of wild birds” substitute “the Wild Birds Directive”.
- (3) In section 6 (sale etc of live or dead wild birds, eggs etc), in subsection (5A), for the words “the Directive of the Council of the European Communities dated 2nd April 1979 (No [1979/409/EEC](#)) on the conservation of wild birds” substitute “the Wild Birds Directive”.
- (4) In section 9 <sup>M23</sup> (protection of certain wild animals), for subsection (4) substitute the following subsection—
- “(4) Subject to the provisions of this Part, a person is guilty of an offence if intentionally or recklessly—
- (a) he damages or destroys any structure or place which any wild animal specified in Schedule 5 uses for shelter or protection;
- (b) he disturbs any such animal while it is occupying a structure or place which it uses for shelter or protection; or
- (c) he obstructs access to any structure or place which any such animal uses for shelter or protection.”.
- (5) In section 16 (power to grant licences), in subsection (9A), for the words “the Directive of the Council of the European Communities dated 2nd April 1979 (No [1979/409/EEC](#)) on the conservation of wild birds” substitute “the Wild Birds Directive”.
- (6) In section 27 (interpretation of Part I), before the definition of “wild plant” insert the following definition—
- ““the Wild Birds Directive” means Council Directive [79/409/EEC](#) on the conservation of wild birds

<sup>M24</sup>,”

- (7) In Schedule 5<sup>M25</sup> (animals which are protected)—
- (a) after each of “Butterfly, Large Blue”, “Cat, Wild”, “Dormouse”, “Lizard, Sand”, “Otter, Common”, “Snake, Smooth”, “Sturgeon”, and “Toad, Natterjack”, insert “ (in respect of section 9(4)(b) and (c) and (5) only) ”;
  - (b) after “Bats, Horseshoe (all species)” insert “ but in respect of section 9(4)(b) and (c) and (5) only ”;
  - (c) after “Bats, Typical (all species)” insert “ but in respect of section 9(4)(b) and (c) and (5) only ”;
  - (d) for “Newt, Great Crested (otherwise known as Warty newt)” substitute “ Newt, Great Crested or Warty (in respect of section 9(4)(b) and (c) and (5) only) ”;
  - (e) omit “Turtles, Marine (all species)” and “Dermochelyidae and Cheloniidae”;
  - (f) after “Whales (all species)” insert “ but in respect of section 9(4A) and (5) only ”;
  - (g) omit any entries relating to dolphins or porpoises; and
  - (h) add at the appropriate place the following entries—

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“Dolphins (all species but in respect of Cetacea”  
section 9(4A) and (5) only)

“Porpoises (all species but in respect of Cetacea”  
section 9(5) only)

“Turtle, Flatback Natator depressus”

“Turtle, Green Sea (in respect of Chelonia mydas”  
section 9(4)(b) and (c) and (5) only)

“Turtle, Hawksbill (in respect of Eretmochelys imbricata”  
section 9(4)(b) and (c) and (5) only)

“Turtle, Kemp's Ridley Sea (in respect of Lepidochelys kempii”  
section 9(4)(b) and (c) and (5) only)

“Turtle, Leatherback Sea (in respect of Dermochelys coriacea”  
section 9(4)(b) and (c) and (5) only)

“Turtle, Loggerhead Sea (in respect of Caretta caretta”  
section 9(4)(b) and (c) and (5) only)

“Turtle, Olive Ridley Lepidochelys olivacea”.

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- (8) In Schedule 8<sup>M26</sup> (plants which are protected)—
- (a) after “Dock, Shore” insert “ (in respect of section 13(2) only) ”;
  - (b) after “Fern, Killarney” insert “ (in respect of section 13(2) only) ”;
  - (c) after “Gentian, Early” insert “ (in respect of section 13(2) only) ”;
  - (d) after “Lady's-slipper” insert “ (in respect of section 13(2) only) ”;
  - (e) after “Marshwort, Creeping” insert “ (in respect of section 13(2) only) ”;
  - (f) after “Naiad, Slender” insert “ (in respect of section 13(2) only) ”;
  - (g) after “Orchid, Fen” insert “ (in respect of section 13(2) only) ”;
  - (h) after “Plantain, Floating Water” insert “ (in respect of section 13(2) only) ”; and
  - (i) after “Saxifrage, Marsh” insert “ (in respect of section 13(2) only) ”.

### Marginal Citations

- M22** 1981 c.69. There are amendments to the [Wildlife and Countryside Act 1981 \(c.69\)](#) that are not relevant for the purposes of these Regulations, though relevant amendment are noted in footnotes below.
- M23** [Section 9\(4\) of the Wildlife and Countryside Act 1981 \(c.69\)](#) was amended by section 81(1) of, and paragraph 5(a) of Schedule 12 to, the [Countryside and Rights of Way Act 2000 \(c.37\)](#). Section 9(4A) was inserted into the [Wildlife and Countryside Act 1981 \(c. 69\)](#) by section 81(1) of, and paragraph 5(b) of Schedule 12 to, the [Countryside and Rights of Way Act 2000 \(c.37\)](#).
- M24** Council Directive 79/409/EEC (OJ No. L103, 25.4.1979, p.1). The Directive was last amended by Council Directive 2006/105/EC of 20 November 2006 adapting Directives 79/409/EEC, 92/43/EEC, 97/68/EC, 2001/80/EC and 2001/81/EC in the field of environment, by reason of the accession of Bulgaria and Romania (O.J. No. L363, 20.12.2006, p. 368; and see O.J. L80, 21.3.2007, p. 15, for the Corrigendum amending the original title).
- M25** The entries relating to the wild cat, dolphins (all species), the dormouse, porpoises (all species) and marine turtles (all species) were inserted by article 2 of the [Wildlife and Countryside Act 1981 \(Variation of Schedules\) Order 1988, S.I. 1988/288](#). The entry relating to the sturgeon was inserted by article 2 of the [Wildlife and Countryside Act 1981 \(Variation of Schedules 5 and 8\) Order 1992 \(S.I. 1992/2350\)](#).
- M26** The entry relating to the creeping marshwort was inserted by article 3 of the [Wildlife and Countryside Act 1981 \(Variation of Schedules\) Order 1988 \(S.I. 1988/288\)](#). The entries relating to the shore dock, the early gentian, the slender naiad, the floating water plantain and the marsh saxifrage were inserted by article 3 of the [Wildlife and Countryside Act 1981 \(Variation of Schedules 5 and 8\) Order 1992 \(S.I. 1992/2350\)](#).

### Amendment of the Countryside and Rights of Way Act 2000 **E+W**

8. Omit sub-paragraph (a) of paragraph 5 of Schedule 12 to the Countryside and Rights of Way Act 2000 <sup>M27</sup>.

### Marginal Citations

- M27** [2000 c.37](#).

### Transitional provisions **E+W**

9.—(1) In relation to any offence alleged to have been committed under regulation 39(2)(a) of the 1994 Regulations before 21st November 2007, it shall be a defence for any person to show—

- (a) that an application for a licence under regulation 44 of the 1994 Regulations had been made by him (or on his behalf) to the appropriate authority before that date to authorise the possession or control of the animal, part of an animal or other thing in question;
- (b) that the application had not been refused by the appropriate authority to whom the application had been made; and
- (c) that—
  - (i) the animal in question, or the animal from which the part or the thing in question is derived, had not been taken or killed, or had been lawfully taken or killed, before 21st August 2007; or
  - (ii) the animal, part of an animal or other thing in question had been lawfully sold (whether to him or to any other person) before 21st August 2007.

(2) In relation to any offence alleged to have been committed under regulation 43(2)(a) of the 1994 Regulations before 21st November 2007, it shall be a defence for any person to show—

- (a) that an application for a licence under regulation 44 of the 1994 Regulations had been made by him (or on his behalf) to the appropriate authority before that date to authorise the possession or control of the plant, part of a plant or other thing in question; and
- (b) that the application had not been refused by the appropriate authority to whom the application had been made; and
- (c) that the plant, part of a plant or other thing in question had been lawfully sold (whether to him or to any other person) before 21st August 2007.

(3) In this regulation—

“appropriate authority” means—

- (a) where the offence is alleged to have been committed in England, the Secretary of State or Natural England; or
- (b) where the offence is alleged to have been committed in Wales, the Welsh Ministers or the Countryside Council for Wales; and

“lawfully” means without any contravention of the 1994 Regulations or Part 1 of the Wildlife and Countryside Act 1981.

Department for Environment, Food and Rural  
Affairs

*Barry Gardiner*  
Parliamentary Under Secretary of State,

SCHEDULE 1 **E+W**

Regulation 5(55)

Part IVA of the 1994 Regulations

“PART IVA **E+W**”

APPROPRIATE ASSESSMENTS FOR LAND USE PLANS FOR ENGLAND AND WALES

**Interpretation**

**85A.**—(1) This Part extends to England and Wales only.

(2) In this Part—

“the 1990 Act” means the Town and Country Planning Act 1990 <sup>M28</sup>;

“the 1999 Act” means the Greater London Authority Act 1999 <sup>M29</sup>;

“the 2004 Planning Act” means the Planning and Compulsory Purchase Act 2004 <sup>M30</sup>;

“the 2005 Order” means the Planning and Compulsory Purchase Act 2004 (Commencement No.3 and Consequential, Transitional and Saving Provisions) (Wales) Order 2005 <sup>M31</sup>;

“land use plan” means—

- (a) the regional spatial strategy under Part 1 (regional functions) of the 2004 Planning Act;
- (b) the spatial development strategy under section 334 (the spatial development strategy) of the 1999 Act;
- (c) a local development document as provided for in Part 2 (local development) of the 2004 Planning Act other than a statement of community involvement under section 18 (statement of community involvement) of that Act;
- (d) a local development plan as provided for in Part 6 (Wales) of the 2004 Planning Act;
- (e) the Wales Spatial Plan under section 60 (Wales Spatial Plan) of the 2004 Planning Act;
- (f) an alteration or replacement of a structure plan, unitary development plan, local plan, minerals local plan, or waste local plan under Part 2 (development plans) of the 1990 Act <sup>M32</sup> to the extent permitted by Schedule 8 (transitional provisions) to the 2004 Planning Act; or
- (g) a unitary development plan as provided for in Part 2 of the 1990 Act to the extent permitted by section 122(3) (regulations and orders) of the 2004 Planning Act and article 4 of the 2005 Order;

“plan-making authority” means—

- (a) a regional planning body recognised by the Secretary of State under section 2(1) (regional planning bodies) of the 2004 Planning Act;
- (b) the Mayor of London when exercising powers under section 341(1) or (2) (alteration or replacement) of the 1999 Act;
- (c) an authority which, by virtue of Part 1 (planning authorities) of the 1990 Act or an order under section 29(2) (joint committees) of the 2004 Planning Act, is a local planning authority;
- (d) the Secretary of State when exercising powers under—

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- (i) section 21 (intervention by Secretary of State) or section 27 (Secretary of State's default power) of the 2004 Planning Act; or
  - (ii) section 19(1) (approval of a unitary development plan by the Secretary of State), section 35A(4) (calling in of proposal for approval by the Secretary of State) or section 45(1) (approval of proposals by the Secretary of State) of the 1990 Act <sup>M33</sup> to the extent permitted by Schedule 8 to the 2004 Planning Act; or
  - (e) the Welsh Ministers when exercising powers under—
    - (i) section 60(3), section 65 (intervention by Assembly) or section 71(4) (Assembly's default power) of the 2004 Planning Act; or
    - (ii) under section 19(1) of the 1990 Act to the extent permitted by section 122(3) of the 2004 Planning Act and article 4 of the 2005 Order.
- (3) References in this Part to giving effect to a land use plan are to—
- (a) the publication, under section 9(6) (RSS: further procedure) of the 2004 Planning Act, of a revision of a regional spatial strategy;
  - (b) the approval, under section 21(9) or section 27(4) of the 2004 Planning Act, of a local development document;
  - (c) the adoption, under section 23 (adoption of local development documents) of the 2004 Planning Act, of a local development document other than a statement of community involvement under section 18 (statement of community involvement) of that Act;
  - (d) the publication, under section 341 (alteration or replacement) of the 1999 Act, of alterations of the spatial development strategy or a new spatial development strategy to replace it;
  - (e) the publication, under section 60 (Wales Spatial Plan) of the 2004 Planning Act, of a revision of the Wales Spatial Plan;
  - (f) the adoption, under section 67 (adoption of local development plan) of the 2004 Planning Act, of a local development plan;
  - (g) the approval, under section 65(9) or section 71(4) of the 2004 Planning Act, of a local development plan;
  - (h) the adoption, under section 35(1) (adoption of proposals), or approval under section 35A(4) of the 1990 Act, of an alteration or replacement of a structure plan to the extent permitted by paragraph 2(2) of Schedule 8 to the 2004 Planning Act;
  - (i) the adoption, under section 15(1) (adoption of unitary development plans by local planning authority) <sup>M34</sup> and that provision as applied by section 21(2) (alteration or replacement) <sup>M35</sup> of the 1990 Act, of an alteration or replacement of a unitary development plan to the extent permitted by paragraph 4(1) of Schedule 8 to the 2004 Planning Act;
  - (j) the approval, under section 19(1) and that provision as applied by section 21(2) of the 1990 Act, of an alteration or replacement of a unitary development plan to the extent permitted by paragraph 4(1) of Schedule 8 to the 2004 Planning Act;
  - (k) the adoption, under section 43(1) (adoption of proposals) <sup>M36</sup> or approval under section 45(1) of the 1990 Act, of an alteration or replacement of a local plan or a minerals local plan or waste local plan to the extent permitted by paragraph 9(1), 10(1) or 14 of Schedule 8 to the 2004 Planning Act;



**Changes to legislation:** There are currently no known outstanding effects for the The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007. (See end of Document for details)

- (l) the adoption, under section 15(1) of the 1990 Act, of a unitary development plan to the extent permitted by section 122(3) of the 2004 Planning Act and article 4 of the 2005 Order; or
- (m) the approval, under section 19(1) of the 1990 Act, of a unitary development plan to the extent permitted by section 122(3) of the 2004 Planning Act and article 4 of the 2005 Order.

### **Assessment of implications for European sites and European offshore marine sites**

**85B.**—(1) Where a land use plan—

- (a) is likely to have a significant effect on a European site in Great Britain or a European offshore marine site (either alone or in combination with other plans or projects), and
- (b) is not directly connected with or necessary to the management of the site,

the plan-making authority for that plan shall, before the plan is given effect, make an appropriate assessment of the implications for the site in view of that site's conservation objectives.

(2) The plan-making authority shall for the purposes of the assessment consult the appropriate nature conservation body and have regard to any representations made by that body within such reasonable time as the authority specifies.

(3) They shall also, if they consider it appropriate, take the opinion of the general public, and if they do so, they shall take such steps for that purpose as they consider appropriate.

(4) In the light of the conclusions of the assessment, and subject to regulation 85C (considerations of overriding public interest), the plan-making authority or, in the case of a regional spatial strategy, the Secretary of State shall give effect to the land use plan only after having ascertained that it will not adversely affect the integrity of the European site or the European offshore marine site (as the case may be).

(5) A plan-making authority shall provide such information as the Secretary of State or the Welsh Ministers may reasonably require for the purposes of the discharge of the obligations of the Secretary of State or the Welsh Ministers under this Part.

(6) This regulation does not apply in relation to a site which is—

- (a) a European site by reason of regulation 10(1)(c); or
- (b) a European offshore marine site by reason of regulation 15(c) of the 2007 Regulations.

### **Considerations of overriding public interest**

**85C.**—(1) If the plan-making authority is satisfied that, there being no alternative solutions, the land use plan must be given effect for imperative reasons of overriding public interest (which, subject to paragraph (3), may be of a social or economic nature), they may give effect to the land use plan notwithstanding a negative assessment of the implications for the European site or the European offshore marine site (as the case may be).

(2) In relation to a regional spatial strategy under Part 1 (regional functions) of the 2004 Planning Act, paragraph (1) applies to the Secretary of State as it applies to a plan-making authority in the case of any other land use.

(3) 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

*Changes to legislation: There are currently no known outstanding effects for the The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007. (See end of Document for details)*

(b) any other imperative reasons of overriding public interest, provided that the competent authority has had due regard to the opinion of the European Commission in satisfying themselves that there are such reasons.

(4) Where a plan-making authority, other than the Secretary of State or the Welsh Ministers, desire to obtain the opinion of the European Commission as to whether reasons are to be considered imperative reasons of overriding public interest, they shall submit a written request to the Secretary of State for a plan relating to England and to the Welsh Ministers for a plan relating to Wales—

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

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

(5) The Secretary of State may, if he thinks fit, seek the opinion of the European Commission for—

(a) a plan relating to England; or

(b) at the request of the Welsh Ministers, a plan relating to Wales.

(6) The Secretary of State shall send any opinion obtained under paragraph (5) to—

(a) in the case of a plan relating to England, the plan-making authority, and

(b) in the case of a plan relating to Wales, the Welsh Ministers.

(7) The Welsh Ministers shall, upon receiving the opinion, transmit it to the plan-making authority.

(8) Where a plan-making authority, other than the Secretary of State or the Welsh Ministers, propose to give effect to a land use plan under this regulation, they shall notify—

(a) the Secretary of State, if the plan relates to England; or

(b) the Welsh Ministers, if the plan relates to Wales.

(9) The plan-making authority shall not give effect to the land use plan before the end of the period of 21 days beginning with the day notified by the Secretary of State or the Welsh Ministers as that on which their notification was received, unless—

(a) the Secretary of State, in relation to a plan relating to England, or

(b) the Welsh Ministers, in relation to a plan relating to Wales,

notifies them that they may do so.

(10) Without prejudice to any other power, the Secretary of State (in relation to a plan relating to England), or the Welsh Ministers (in relation to a plan relating to Wales), may give directions to the authority in any such case prohibiting them from giving effect to the land use plan, either indefinitely or during such period as may be specified in the direction.

### **Co-ordination for land use plan prepared by more than one authority**

**85D.**—(1) The following provisions apply where two or more local planning authorities prepare a joint local development document under section 28 (joint local development documents) or a joint local development plan under section 72 (joint local development plans) of the 2004 Planning Act.

(2) Nothing in paragraph (1) of regulation 85B (assessment of implications for European site or European offshore marine site) requires a local planning authority to assess any implications of a joint local development document or plan which would be more appropriately assessed under that provision by another local planning authority.

(3) The Secretary of State (in relation to England) and the Welsh Ministers (in relation to Wales) may issue guidance to local planning authorities for the purposes of regulation 85B(1)

**Changes to legislation:** There are currently no known outstanding effects for the The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007. (See end of Document for details)

as to the circumstances in which an authority may or should adopt the reasoning or conclusions of another authority as to whether a joint local planning document or plan—

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

(4) The local planning authorities concerned shall have regard to any such guidance.

(5) In determining whether a joint local development document or plan should be adopted under regulation 85C (considerations of overriding public interest), a local planning authority shall seek and have regard to the views of the other local planning authorities concerned.

### Compensatory measures

**85E.** Where in accordance with regulation 85C (considerations of overriding public interest) a land use plan is given effect notwithstanding a negative assessment of the implications for a European site or European offshore marine site, the Secretary of State (where the plan relates to England) and the Welsh Ministers (where the plan relates to Wales) shall secure that any necessary compensatory measures are taken to ensure that the overall coherence of Natura 2000 is protected.”

#### Marginal Citations

**M28** 1990 c.8.

**M29** 1999 c.29.

**M30** 2004 c.5.

**M31** S.I. 2005/1229 (W.87) (C.56) has been amended. See, the [Planning and Compulsory Purchase Act 2004 \(Commencement No. 4 and Consequential, Transitional and Savings Provisions\) \(Wales\) Order 2005 \(S.I. 2005/2722\) \(W.193\) \(C.110\)](#) and the [Planning and Compulsory Purchase Act 2004 \(Commencement No.4 and Consequential, Transitional and Savings Provisions\) \(Wales\) \(Amendment\) Order 2006 \(S.I. 2006/842\) \(W.77\)](#).

**M32** Sections 32 to 40 in Part 2 of the 1990 Act were substituted by section 27 of, and paragraph 17 of Schedule 4 to, the [Planning and Compulsory Purchase Act 1991 \(c.34\)](#). Part 2 of the 1990 Act was repealed by section 120 of, and Schedule 9 to, the [Planning and Compulsory Purchase Act 2004](#), subject to transitional provisions in section 119 of, and Schedule 8 to, that Act.

**M33** The functions of the Secretary of State under sections 19(1), 35A(4) and 45(1) were, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales by the [National Assembly for Wales \(Transfer of Functions\) Order 1999 \(S.I. 1999/672\)](#), [article 2](#); see entry in Schedule 1 for the [Town and Country Planning Act 1990](#). Section 35A was inserted by section 27 of, and paragraphs 1 and 17 of Schedule 4 to, the [Planning and Compensation Act 1991 \(c.34\)](#). By virtue of paragraphs 30 and 32 of Schedule 11 to the [Government of Wales Act 2006 \(c. 32\)](#), the relevant functions were transferred from the National Assembly for Wales to the Welsh Ministers.

**M34** As substituted by section 27 of, and paragraphs 1 and 6 of Schedule 4 to, the [Planning and Compensation Act 1991 \(c.34\)](#).

**M35** As amended by sections 27 and 84(6) of, and paragraph 12(2) of Schedule 4 and Schedule 19 to, the [Planning and Compensation Act 1991 \(c.34\)](#).

**M36** As amended by section 27 of, and paragraphs 1 and 19(1) of Schedule 4 to, the [Planning and Compensation Act 1991 \(c.34\)](#).

**Changes to legislation:** There are currently no known outstanding effects for the The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007. (See end of Document for details)

SCHEDULE 2 **E+W**

Regulation 5(62)

“SCHEDULE 2A **E+W**”

Regulation 39(8)(a)

EXCLUDED POPULATIONS OF CERTAIN SPECIES

<i>Common Name</i>	<i>Scientific Name</i>	<i>Excluded countries and areas</i>
Beaver, Eurasian	Castor fiber	Estonia, Finland, Latvia, Lithuania, Poland, and Sweden
Hamster, Common (or Black bellied)	Cricetus cricetus	Hungary
Wolf, Grey	Canis lupus	Bulgaria, Estonia, Greece north of the 39th parallel, Latvia, Lithuania, Poland, Slovakia, Spain north of the River Duero, and the reindeer management area in Finland as defined in paragraph 2 of Finnish Act No: 848/90 of 14th September 1990 on reindeer management M37
Lynx, Eurasian	Lynx lynx	Estonia
Viper, Seoane's	Vipera seoanni	Spain

NOTE: The common name or names given in the first column to this Schedule are included by way of guidance only; in the event of any dispute or proceedings, the common name or names must not be taken into account.”

**Marginal Citations**

**M37** A copy of this Finnish Act can be obtained from the Wildlife Species Conservation Division, Defra, Temple Quay House, 2 The Square, Temple Quay, Bristol BS1 6EB.

**EXPLANATORY NOTE**

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

These Regulations amend the Conservation (Natural Habitats, &c.) Regulations 1994 (“the 1994 Regulations”), which make provision implementing Council Directive [92/43/EEC](#) on the conservation of natural habitats and of wild flora and fauna (“the Habitats Directive”) (O.J.

No. L206, 22.07.92, p.7). These Regulations generally extend only to England and Wales, and, in so far as they amend the 1994 Regulations in relation to England and Wales, corresponding amendments to the 1994 Regulations have been made in respect of Scotland by S.S.I. 2007/80. These Regulations make certain amendments, however, which extend to Scotland as well as to England and Wales; and certain other amendments which only extend to Scotland. The definitions of “the Habitats Directive” and “the Wild Birds Directive” in regulation 2(1) of the 1994 Regulations are amended. References in the 1994 Regulations to the annexes to the Habitats Directive are now ambulatory.

Regulation 2(1) is also amended to include a definition of “European offshore marine site” and there are related amendments in regulations 5(22) to 5(54) which, amongst other things, insert references to European offshore marine sites and provide for the Joint Nature Conservation Committee to be consulted where such sites are involved. These amendments ensure that Part IV of the 1994 Regulations (and Part IVA as it applies to Scotland) apply in respect of certain plans and projects that are likely to have an adverse effect on a European offshore marine site. The effects of plans and projects that are carried out on or in the offshore marine area or on or in relation to an offshore marine installation are governed by the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007. Regulation 2(1) of the 1994 Regulations is amended to include related definitions.

Regulation 5 of the 1994 Regulations is amended so that National Park authorities become relevant authorities in relation to marine areas and European marine sites.

Regulation 5(8) substitutes a new regulation 9, which specifies the status of a site that has been omitted from the national list and which has subsequently been the subject of an agreement between the Secretary of State and the European Commission, following a consultation process, or the subject of a decision of the Council of the European Communities, in each case pursuant to Article 5 of the Habitats Directive.

Regulation 5(9) amends the definition of “European site” so that the provisions in the 1994 Regulations relating to European sites apply in relation to all sites in Great Britain in the list sent to the European Commission under Article 4(1) of the Habitats Directive (and not just such sites in England). Regulation 5(10) makes an amendment requiring such sites in Wales to be registered under regulation 11 of the 1994 Regulations.

Regulation 5(12) inserts new regulations 37A to 37E into the 1994 Regulations. New regulations 37A and 37B impose, amongst other things, duties on the Secretary of State and the Welsh Ministers to make arrangements for surveillance of the conservation status of natural habitat types of Community interest and species of Community interest and to take action in the light of that surveillance. Similarly, regulation 5(16) inserts new regulations 41A and 41B creating duties to make arrangements to monitor the incidental capture and killing of animals of the species listed in Annex IV(a) to the Habitats Directive and to take conservation measures in the light of that monitoring.

New regulation 37C makes it an offence for any person on board a ship to introduce into territorial waters any live animal or plant that is not native to Great Britain. New regulation 37D provides for licences to be granted in respect of such introductions, and new regulation 37E creates an offence of knowingly or recklessly furnishing false information for the purposes of obtaining such a licence.

Regulation 5(13) replaces regulation 39 of the 1994 Regulations. The principal changes here are as follows:

- (a) it is made an offence deliberately to injure a European protected species of animal, and the offence in regulation 39(1)(b) of deliberately disturbing a European protected species of animal is refined;
- (b) regulation 39(2) of the 1994 Regulations is also amended so that the offences there relate to all of the protected species or subspecies of animal listed in Annex IV(a) to the Habitats Directive (as opposed to native species only); and a similar change is made by regulation 5(17) (which

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replaces regulation 43) so that all Annex II(b) and IV(b) plants (other than bryophytes) are covered in the offence in regulation 43(2);

- (c) new defences are set out in regulations 39(5), 39(8) and 43(7);
- (d) new regulation 39(17) provides that, in sentencing for the offence of damaging or destroying a breeding site or resting place, a court is to have particular regard to whether the offence could have reasonably been avoided.

Regulation 5(14) substitutes a new regulation 40. The principal changes here are that the pre-existing defences in regulation 40 of the 1994 Regulations (with the exception of those relating to mercy killing and tending injured animals) are removed. New defences are provided relating to action taken for investigating etc offences under Part 3 of the 1994 Regulations and certain other enactments. The new regulation 43 (which is substituted by regulation 5(17)) also contains similar defences to offences relating to plants.

Regulation 5(15) amends regulation 41 of the 1994 Regulations to make it an offence to use any indiscriminate means of capturing or killing an animal of the species protected by regulation 41, which is capable of causing the local disappearance of, or serious disturbance to, such species.

Regulation 5(18) provides a new power to grant licences under regulation 44 of the 1994 Regulations for the taking or keeping of animals or plants of a European protected species under strictly supervised conditions.

Regulation 5(21) creates a new offence of breaching a licence condition.

Regulation 49(2)(b) of the 1994 Regulations is amended by regulation 5(24) to provide that, in the determination of whether there are imperative reasons of overriding public interest justifying a plan or project, the opinion of the European Commission is a matter to which the competent authority must have regard.

Regulation 5(48) inserts new regulation 84B into the 1994 Regulations so that certain authorisations under the Water Industry Act 1991 and the Water Resources Act 1991 are covered by Part IV.

Regulation 5(55) inserts a new Part IVA (appropriate assessments for land use plans) into the 1994 Regulations, containing new regulations 85A to 85E.

New regulation 85A provides that Part IVA extends to England and Wales only and defines “land-use plan” and “plan-making authority”.

A plan-making authority must consider whether their land-use plan is likely to have a significant effect on a European site in Great Britain or a European offshore marine site. If any significant effect is not directly connected with or necessary to the management of the site, an appropriate assessment must be made of the implications for the site in view of that site's conservation objectives, undertaking any necessary consultation (new regulation 85B).

The plan-making authority is to give effect to the plan only after having ascertained that it will not adversely affect the integrity of the site (new regulation 85B(4)), unless they are satisfied that there are no alternative solutions and there are imperative reasons of overriding public interest as set out in new regulation 85C.

Where a plan-making authority propose to give effect to a plan notwithstanding a negative assessment, they must notify, in England, the Secretary of State or, in Wales, the Welsh Ministers (new regulation 85C(8)). The subsequent procedure is set out in new regulation 85C(9) and (10). New regulation 85D provides for co-ordination where two or more local planning authorities prepare a joint local development document under section 28 of the Planning and Compulsory Act 2004.

In the event of a plan being given effect despite a negative assessment for reasons of overriding public interest, new regulation 85E requires that any necessary compensatory measures are to be taken to ensure that the overall coherence of Natura 2000 is protected.

Regulations 5(57) to 5(59) make amendments changing how the offences under Part 3 of the 1994 Regulations are to be enforced. For example, the powers of constables are extended to so that samples can be taken. Provision is made for the appointment of wildlife inspectors and they are given powers to investigate offences and whether licence conditions are being met. Finally, the

time limit for bringing summary proceedings under regulation 102(1) is extended to cover all Part III offences.

Regulation 5(60) deals with application of criminal offences under Part III of the 1994 Regulations in relation to the Crown.

Regulation 6 amends section 10 of the Conservation of Seals Act 1970 to make it clear that there are other restrictions under the Habitats Directive on methods of killing or taking seals.

Regulations 7(7) and 7(8) respectively amend Schedules 5 and 8 to the Wildlife and Countryside Act 1981 to remove certain species from the protection given by sections 9(1), (2) and 13(1), and part of the protection provided under section 9(4), of that Act. Sections 9(1), (2) and (4) of the Wildlife and Countryside Act 1981 prohibit the killing, injuring and taking, possession and control and (in certain circumstances) disturbance of certain animals and protect their places of shelter and protection. Section 13(1) prohibits the uprooting of protected plants and, in some cases, also picking and destruction.

Regulation 7(6) updates the references to the Wild Birds Directive in the Wildlife and Countryside Act 1981 so that the Act refers to that Directive as last amended on the date these Regulations are made.

A number of other minor or consequential amendments are made, as well as a transitional provision, in regulation 9, relating to offences in regulation 39(2)(a) and 43(2)(a) of the 1994 Regulations.

A full Regulatory Impact Assessment of the effect that this instrument will have on the costs of business and the voluntary sector has been prepared in respect of these Regulations. A transposition note setting out how the amendments transpose the provisions of the Habitats Directive has also been prepared. Copies of both documents are available from the Wildlife Habitats and Biodiversity Division, Defra, Temple Quay, Bristol, BS1 6EB. In addition, copies of these documents have been placed in the libraries of both Houses of Parliament.

**Changes to legislation:**

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