STATUTORY INSTRUMENTS

2017 No. 1013

WILDLIFE

The Conservation of Offshore Marine Habitats and Species Regulations 2017

Made - - - -	*30th October 2017*
Laid before Parliament	*31st October 2017*
Coming into force - -	*30th November 2017*

The Secretary of State is designated [M1] for the purposes of section 2(2) of the European Communities Act 1972 [M2] in relation to the environment.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Secretary of State that it is expedient for any reference in these Regulations to an Annex to the Habitats Directive or to the Wild Birds Directive (as defined in these Regulations) to be construed as a reference to that Annex as amended from time to time.

The Secretary of State makes these Regulations in exercise of the powers conferred by section 2(2) [M3] of, and paragraph 1A [M4] of Schedule 2 to, the European Communities Act 1972.

Marginal Citations

M1 S.I. 2008/301.

M2 1972 c. 68. Section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c. 51), **Part 3**, section 27(1); and the European Union (Amendment) Act 2008 (c. 7), **Part 1** of the Schedule.

M3 In so far as these Regulations deal with matters that are within the devolved competence of Scottish Ministers, 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 (c. 46).

M4 Paragraph 1A was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (c. 51).

PART 1

INTRODUCTORY PROVISIONS

Citation and commencement

1. These Regulations may be cited as the Conservation of Offshore Marine Habitats and Species Regulations 2017 and come into force on 30th November 2017.

Interpretation

2.—(1) In these Regulations—

"the 1994 Regulations" means the Conservation (Natural Habitats, &c.) Regulations 1994 [M5];

"the 2017 Regulations" means the Conservation of Habitats and Species Regulations 2017 [M6];

[[F1]"the United Kingdom territory" means "the United Kingdom (including its internal waters), the territorial sea adjacent and the offshore marine area;**]**

"a British aircraft" means an aircraft registered in the United Kingdom;

"British fishery limits" has the meaning given by the Fishery Limits Act 1976 [M7];

"competent authority" has the meaning given in regulation 5;

"competent authority in Scotland" means a competent authority whose functions are exercisable solely in or as regards Scotland or the Scottish offshore region;

"competent authority in Wales" means a competent authority whose functions are exercisable solely in relation to Wales or the Welsh offshore region;

"DAERA" means Department of Agriculture, Environment and Rural Affairs;

"devolved administrations" means the Scottish Ministers, the Welsh Ministers and, in Northern Ireland, the DAERA;

"Energy Act licence" means a licence which is granted (or is to be granted) under Part 1 of the Energy Act 2008 [M8];

"European offshore marine site" has the meaning given by regulation 18;

"European protected species" means the species of animals listed in Schedule 1;

"European site" has the meaning given by regulation 27;

"functions" includes powers and duties;

"the Habitats Directive" means Council Directive 92/43/EEC[M9] on the conservation of natural habitats and of wild fauna and flora, and any reference to an Annex to that Directive is a reference to that Annex as amended from time to time **[**[F2]under regulation 144 of the 2017 Regulations**]**;

"installation abandonment measures" means any measures taken in connection with the abandonment of—

(a) an offshore installation within the meaning of Part 4 of the Petroleum Act 1998 [M10], or submarine pipeline within the meaning of that Part; or

(b) a carbon storage installation, within the meaning of section 30 of the Energy Act 2008 [M11];

whether or not the measures are taken in pursuance of an abandonment programme, and for this purpose "an abandonment programme" means—

(a) an abandonment programme under Part 4 of the Petroleum Act 1998; and

(b) an abandonment programme under that Part, as it applies by virtue of section 30 of the Energy Act 2008;

"the Joint Committee" means the Joint Nature Conservation Committee [M12];

"management scheme" means—

(a) for the purposes of regulation 22(3)(c), a scheme established under regulation 34 of the 1994 Regulations, regulation 29 of the Conservation (Natural Habitats, &c.) Regulations (Northern Ireland) 1995 [M13] or regulation 38 of the 2017 Regulations; and

(b) for all other purposes, a scheme established under regulation 22(1);

[[F3]"the national site network" means the network of sites in the United Kingdom's territory consisting of such sites as—

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

(b) at any time on or after exit day are European sites or European marine sites for the purposes of any of the retained transposing regulations;**]**

"Natura 2000" means the European network of special areas of conservation, and special protection areas under the Wild Birds Directive, provided for by Article 3(1) of the Habitats Directive **[**[F4](but see paragraphs (3) and (4))**]**;

"Northern Ireland department" has the same meaning as in the Northern Ireland Act 1998 [M14];

"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 [M15]; 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 [M16];

"Petroleum Act approval" means an approval of an abandonment programme under section 32 of the Petroleum Act 1998 [M17];

"Petroleum Act authorisation" means an authorisation granted pursuant to section 14 of the Petroleum Act 1998 relating to the construction or use of a pipe-line;

"Petroleum Act licence" means a licence which is granted under or has effect as if granted under the Petroleum Act 1998, or a licence which is to be granted under that Act;

"Petroleum or Energy Act consent" means—

(a) a consent granted pursuant to a Petroleum Act licence or an Energy Act licence, including any consent required pursuant to the Offshore Petroleum Productions and Pipe-lines (Assessment of Environmental Effects) Regulations 1999 [M18]**[**[F5]or the Offshore Oil and Gas Exploration, Production, Unloading and Storage (Environmental Impact Assessment) Regulations 2020**]**; or

(b) a consent granted pursuant to regulation 4(1) of the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001 [M19];

"premises" includes land, buildings, movable structures, ships and vehicles;

"the register" means the register of European offshore marine sites provided for by regulation 19;

[[F6]"the relevant administration", except where otherwise specified, means—

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

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

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

[[F6]"the retained transposing regulations", means—

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

(b) the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995;

(c) the 2017 Regulations; and

(d) these Regulations;**]**

"Scotland" has the same meaning as in the Scotland Act 1998 [M20];

"Scottish inshore region" means the area of sea within the seaward limits of the territorial sea adjacent to Scotland;

"Scottish offshore region" means so much of the offshore marine area as—

(a) consists of waters within the Scottish zone and the sea bed and subsoil subjacent to those waters;

(b) areas which lie outside the Scottish zone but which are nearer to any point on the baselines from which the breadth of the territorial sea adjacent to Scotland is measured than to any point on the baselines in any other part of the United Kingdom;

"Scottish zone" has the same meaning as in the Scotland Act 1998 [M21];

"ship" means any vessel (including hovercraft, submersible craft and other floating craft) other than one which permanently rests on, or is permanently attached to, the seabed;

"statutory undertaker" means a person who is, or is deemed to be, a statutory undertaker for the purposes of any provision of Part 11 of the Town and Country Planning Act 1990 [M22], Part 10 of the Town and Country Planning (Scotland) Act 1997 [M23] or the Planning Act (Northern Ireland) 2011 [M24];

"territorial sea" means the territorial sea of the United Kingdom;

"third country ship" means a ship which—

(a) is flying the flag of, or is registered in, any State or territory **[**[F7]other than the United Kingdom**]**; and

(b) is not registered in **[**[F8]the United Kingdom**]**;

"Wales" has the same meaning as in the Government of Wales Act 2006 [M25];

"the Welsh inshore region" means the area of sea within the seaward limits of the territorial sea adjacent to Wales;

"the Welsh offshore region" means so much of the offshore marine area as consists of waters within the Welsh Zone and the sea bed and subsoil subjacent to those waters;

"the Welsh Zone" has the same meaning as in the Government of Wales Act 2006 [M26];

"wild bird" means a bird which—

(a) is a member of a species referred to in Article 1 of the Wild Birds Directive; and

(b) is wild;

"the Wild Birds Directive" means Directive 2009/147/EC of the European Parliament and of the Council on the conservation of wild birds [M27] and any reference to an Annex to that Directive is a reference to the Annex as amended from time to time **[**[F9]under regulation 144 of the 2017 Regulations for the purposes specified in paragraph (1) of that regulation**]**;

"wildlife officer" means a person authorised under regulation 58;

"within devolved competence"—

(a) in relation to Scotland is to be construed in accordance with section 54 of the Scotland Act 1998; and

(b) in relation to Wales is to be construed in accordance with section 108 of the Government of Wales Act 2006, or (upon its coming into force) section 108A of that Act [M28].

(2) Unless the context suggests otherwise,—

(a) expressions used in these Regulations and in the Habitats Directive have the same meaning as in that Directive; and

(b) expressions used in these Regulations and in the Wild Birds Directive (but not in the Habitats Directive) have the same meaning as in the Wild Birds Directive.

[[F10](3) For the purposes of these Regulations, and any guidance issued by the Secretary of State, the devolved administrations or the Joint Committee relating to the application of these Regulations, on or after exit day, references to "Natura 2000" (other than in this regulation) are to be construed as references to the national site network.

(4) Paragraph (3) does not affect the interpretation of these Regulations as they had effect, or any guidance as it applied, before exit day.

(5) The Habitats Directive is to be construed for the purposes of these Regulations as if—

(a) any reference to "the European territory of Member States to which the Treaty applies" included a reference to the United Kingdom;

(b) any reference to "Member State" or "Member States" included a reference to the United Kingdom;

(c) any reference to "of Community interest", included, in relation to the United Kingdom, a reference to "of national interest";

(d) in Article 1(d) and (h), the reference to "the Community" were a reference to "the European Union or the United Kingdom"; and

(e) in Article 1(1), the reference to "a site of Community importance designated by the Member States" included, in relation to the United Kingdom, a reference to a site of national importance designated under any of the retained transposing regulations.

(6) The Wild Birds Directive is to be construed for the purposes of these Regulations as if any reference to "the European territory of the Member States to which the Treaty applies" included a reference to the United Kingdom.**]**

Textual Amendments

F1 Words in reg. 2(1) inserted (31.12.2020) by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **33(2)(a)**; 2020 c. 1, Sch. 5 para. 1(1)

F2 Words in reg. 2(1) inserted (31.12.2020) by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **33(2)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

F3 Words in reg. 2(1) inserted (31.12.2020) by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **33(2)(c)**; 2020 c. 1, Sch. 5 para. 1(1)

F4 Words in reg. 2(1) inserted (31.12.2020) by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **33(2)(d)**; 2020 c. 1, Sch. 5 para. 1(1)

F5 Words in reg. 2 inserted (31.12.2020 immediately before 11 p.m.) by The Offshore Oil and Gas Exploration, Production, Unloading and Storage (Environmental Impact Assessment) Regulations 2020 (S.I. 2020/1497), reg. 1(1), **Sch. 7 para. 6(2)** (with reg. 1(2)-(6), 20)

F6 Words in reg. 2(1) inserted (31.12.2020) by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **33(2)(e)**; 2020 c. 1, Sch. 5 para. 1(1)

F7 Words in reg. 2(1) substituted (31.12.2020) by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **33(2)(f)(i)**; 2020 c. 1, Sch. 5 para. 1(1)

F8 Words in reg. 2(1) substituted (31.12.2020) by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **33(2)(f)(ii)**; 2020 c. 1, Sch. 5 para. 1(1)

F9 Words in reg. 2(1) inserted (31.12.2020) by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **33(2)(g)**; 2020 c. 1, Sch. 5 para. 1(1)

F10 Reg. 2(3)-(6) inserted (31.12.2020) by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **33(3)**; 2020 c. 1, Sch. 5 para. 1(1)

Marginal Citations

M5 S.I. 1994/2716, to which relevant amendments have been made by the Environment Act 1995 (c. 25), **paragraph 233** of Schedule 22, the Land Reform (Scotland) Act 2003 (asp 2), **paragraphs 14** and 16 of Schedule 2; and by S.I. 1996/525, 1996/973, 1997/3055, 1999/1820, 2000/192, 2000/1973 and 2007/1843 and S.S.I. 2000/323 and 2004/475.

M6 S.I. 2017/1012.

M7 1976 c. 86.

M8 2008 c. 32.

M9 OJ No. L206, 22.7.92, p.7, as last amended by Council Directive 2013/17/EU (OJ No. L 158, 10.6.2013, p.193), and see OJ No. L 80, 21.3.2007, p.15, for the corrigendum amending the original title.

M10 1998 c. 17.

M11 The definition of "carbon storage installation" in section 30(5) was amended by S.I. 2011/2453.

M12 The Joint Committee was continued in existence by section 31 of the Natural Environment and Rural Communities Act 2006 (c. 16) and reconstituted in accordance with Schedule 4 to that Act.

M13 S.R. (N.I.) 1995 No. 380.

M14 1998 c. 47.

M15 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. 1987/1265, 2000/3062 and 2001/3670.

M16 2004 c. 20. Section 84(4) was substituted by the Marine and Coastal Access Act 2009 (c. 23), **Schedule 4**, paragraph 4. An area has been designated under section 84(4) by S.I. 2004/2668.

M17 1998 c. 17. Section 32 was amended by the Energy Act 2016 (c. 20), **Schedule 2**, paragraphs 1 and 4.

M18 S.I. 1999/360, amended by S.I. 2007/933, 2011/1043 and 2016/912.

M19 S.I. 2001/1754, amended by S.I. 2007/77.

M20 1998 c. 46.

M21 1998 c. 46. See sections 126(1) and (2) of that Act.

M22 1990 c. 8. Section 262, which defines "statutory undertakers", was amended by the Planning and Compensation Act 1991 (c. 34), **Schedule 6**, paragraph 22; the Utilities Act 2000 (c. 27), **section 76**; and the Transport Act 2000 (c. 38), **Schedule 5**, paragraph 6; and by S.I. 2001/1149 and 2013/755.

M23 1997 c. 8. Section 214, which defines "statutory undertakers", was amended by the Utilities Act 2000 (c. 27), **section 76**; and the Transport Act 2000 (c. 38), **Schedule 5**, paragraph 10; and by S.I. 2001/1149.

M24 2011 c. 25.

M25 2006 c. 32. See section 158(1).

M26 See section 158(1). The definition of "the Welsh zone" was inserted by the Marine and Coastal Access Act 2009 (c. 23), **section 43(1)** and (2).

M27 OJ No. L 20, 26.1.10, p.7, last amended by Council Directive 2013/17/EU (OJ No. L158, 10.6.2013, p.193).

M28 2006 c. 32. Section 108A is substituted for section 108 by the Wales Act 2017 (c. 4), **section 3(1)**, as from a date to be appointed.

Application to the Crown

3.—(1) These Regulations bind the Crown.

(2) No contravention by the Crown of any provision of these Regulations makes the Crown criminally liable, but the High Court or in Scotland the Court of Session may, on the application of any person appearing to either Court to have an interest, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) Notwithstanding paragraph (2), the provisions of these Regulations apply to persons in the public service of the Crown as they apply to any other person.

Rights under international law

4.—(1) This regulation applies in relation to—

(a) a third country ship;

(b) a warship which is being used by the government of a State other than the United Kingdom (whether or not it is a third country ship); and

(c) any other ship which is being used by the government of a State other than the United Kingdom for any non-commercial purpose.

(2) Nothing in these Regulations is to be taken to interfere or require interference with the right of freedom of navigation or other rights under rules of international law.

(3) A wildlife officer must not exercise any of the powers set out in regulations 60 and 65 in relation to a ship to which this regulation applies unless—

(a) in the case of a third country ship (other than a ship which is being used as mentioned in paragraph (1)(b) or (c)), the United Kingdom is entitled under international law to exercise those powers without the consent of the flag state; or

(b) the Commissioners have given authority to exercise the powers.

(4) The Commissioners must not give their authority under paragraph (3)(b) unless the flag state has consented to the United Kingdom exercising those powers, whether generally or in relation to the ship in question.

(5) In giving their authority under paragraph (3)(b), the Commissioners must impose such conditions or limitations on the exercise of the powers as are necessary to give effect to any conditions or limitations imposed by the flag state.

(6) In this regulation—

"the Commissioners" means the Commissioners for Her Majesty's Revenue and Customs;

"flag state", in relation to a ship, means the State whose flag that ship is flying or entitled to fly.

Meaning of "competent authority"

5.—(1) In these Regulations, "competent authority" means—

(a) a Minister of the Crown, government department, public or statutory undertaker, or public body of any description or person holding a public office;

(b) the Scottish Ministers;

(c) the Welsh Ministers;

(d) any Northern Ireland department; and

(e) any person exercising any function of a person or body referred to in sub-paragraphs (a) to (d).

(2) In paragraph (1)(a), "public office" means—

(a) an office under Her Majesty;

(b) an office created or continued in existence by a public general Act of Parliament; or

(c) an office the remuneration in respect of which is paid out of public funds.

Duty of competent authorities

6.—(1) In relation to the offshore marine area, any competent authority having functions relevant to marine conservation must exercise those functions so as to secure compliance with the requirements of the Habitats Directive and the Wild Birds Directive.

(2) Paragraph (1) applies, in particular, to functions under the following enactments—

(a) the Whaling Industry (Regulation) Act 1934 [M29];

(b) section 34 of the Coast Protection Act 1949 [M30] (restriction of works detrimental to navigation);

(c) the Sea Fish (Conservation) Act 1967 [M31];

(d) the Prevention of Oil Pollution Act 1971 [M32];

(e) the Fishery Limits Act 1976 [M33];

(f) the Fisheries Act 1981 [M34];

(g) Part 2 of the Food and Environment Protection Act 1985 [M35] (deposits in the sea);

(h) sections 128 and 129 of the Merchant Shipping Act 1995 [M36] (prevention of pollution from ships and further provision for prevention of pollution from ships);

(i) the Pollution Prevention and Control Act 1999 [M37];

[[F11](j) the Merchant Shipping (Prevention of Oil Pollution) Regulations 2019];

(k) the Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation Convention) Regulations 1998 [M38];

(l) the Offshore Installations (Emergency Pollution Control) Regulations 2002 [M39];

(m) the Planning Act 2008 [M40];

(n) the Marine Act, in particular any functions under Parts 3, 4, 5 and 6 of that Act (marine planning, marine licensing, nature conservation and management of inshore fisheries, respectively); and

(o) these Regulations.

(3) Without prejudice to the generality of paragraph (1), in relation to the offshore marine area a competent authority must take such steps in the exercise of its functions as it considers appropriate to secure the objective in paragraph (4), so far as lies within its powers.

(4) The objective is the preservation, maintenance and re-establishment of a sufficient diversity and area of habitat for wild birds in the United Kingdom, including by means of the upkeep, management and creation of such habitat, as appropriate, having regard to the requirements of Article 2 of the Wild Birds Directive.

(5) In paragraph (4), "the United Kingdom" includes the offshore marine area.

(6) In subsection (3)(a) of section 123 of the Marine Act (creation of network of conservation sites), as it applies in relation to the offshore marine area [M41], the reference to "the conservation or improvement of the marine environment" includes the objective in paragraph (4), and accordingly the duty in section 124 of the Marine Act (report) applies in relation to that objective.

(7) In considering which measures may be appropriate for the purpose of securing or contributing to the objective in paragraph (4), appropriate account must be taken of economic and recreational requirements.

(8) In this regulation "the Marine Act" means the Marine and Coastal Access Act 2009 [M42].

[[F12]6A.—(1) The Secretary of State must publish, at least every six years from exit day, a report on the implementation of the measures for the conservation of the natural habitat types listed in Annex I to the Habitats Directive and species listed in Annex II to that Directive.

(2) The report must include in particular—

(a) information concerning conservation measures taken under Article 6(1) of the Habitats Directive;

(b) information on provisions mentioned in Article 12 of the new Wild Birds Directive;

(c) an evaluation of the impact of those conservation measures on the conservation status of the natural habitat types listed in Annex I to the Habitats Directive and of the species listed in Annex II to that Directive;

(d) the main results of the surveillance undertaken under Part 4 of these Regulations.

(3) The report must be published in such form as the Secretary of State sees fit.

(4) The report, must be submitted in draft to the devolved administrations for verification.**]**

Textual Amendments

F11 Words in reg. 6(2)(j) substituted (1.3.2019) by The Merchant Shipping (Prevention of Oil Pollution) Regulations 2019 (S.I. 2019/42), reg. 1(1), **Sch. para. 6** (with regs. 2, 5)

F12 Reg. 6A inserted (31.12.2020) by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **34**; 2020 c. 1, Sch. 5 para. 1(1)

Marginal Citations

M29 1934 c. 49.

M30 1949 c. 74. Section 34 was amended by section 36(1) and (2) of the Merchant Shipping Act 1998 (c. 12), and repealed, subject to transitional provisions by the Marine and Coastal Access Act (c. 23), Part 1, paragraph 1 of Schedule 8; section 34 was repealed in relation to Scotland by the Marine (Scotland) Act 2010 (2010 asp 5), Part 1, paragraph 1 of Schedule 4. For transitional provisions in relation to England and Wales, see the 2009 Act, Part 2, paragraph 2, and Part 4, paragraph 9, of Schedule 9.

M31 1967 c. 84.

M32 1971 c. 60.

M33 1976 c. 86.

M34 1981 c. 29.

M35 1985 c. 48.

M36 1995 c. 21. Section 128 was amended by the Merchant Shipping and Maritime Security Act 1997 (c. 28), **sections 12** and 29, and paragraph 3(2) of Schedule 6, and paragraph 3(3) of Schedule 7; and the Merchant Shipping (Pollution) Act 2006 (c. 8), **section 2**.

M37 1999 c. 24.

M38 S.I. 1998/1056, amended by S.I. 2015/386 and 2016/992.

M39 S.I. 2002/1861, amended by S.I. 2010/1513 and 2015/664.

M40 2008 c. 29.

M41 Section 123(3)(a) applies in relation to the "UK marine area", defined in section 42 of the Marine Act in terms which include the area comprised in the offshore marine area.

M42 2009 c. 23.

PART 2

CONSERVATION OF NATURAL HABITATS AND HABITATS OF SPECIES

European offshore marine sites

[F13Duty to designate special areas of conservation

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

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

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

(a) the maintenance, or restoration, at favourable conservation status in their natural range, of the natural habitat types listed in Annex I to the Habitats Directive or the species listed in Annex II to that Directive; and

(b) the maintenance of biological diversity within the Atlantic biogeographic region.

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

(5) in determining which sites are of national importance for the purposes of paragraph (1), the relevant administration must—

(a) apply the Annex III criteria;

(b) make its determination only on the basis of relevant scientific information; and

(c) have regard to the importance of the population of a species or area of a habitat, found in the United Kingdom's territory, in ensuring that the objectives in paragraph (3) are met .

(6) For the purposes of paragraph (5)(a), the Annex III criteria are to be construed as if—

(a) for "Community importance" there were substituted "national importance";

(b) a reference to a "Member State" is to be taken to be a reference to the relevant administration;

(c) for "continuous ecosystem situated on both sides of one or more internal Community frontiers" there were substituted "continuous ecosystem extending beyond the borders of the United Kingdom; and

(d) for "the biogeographical regions concerned and/or for the whole of the territory referred to in Article 2" there were substituted "the Atlantic biogeographical region"".

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

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

(9) In this regulation, "the Annex III criteria" means the criteria set out in Annex III to the Habitats Directive**]**

Textual Amendments

F13 Reg. 7 substituted (31.12.2020) by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **35**; 2020 c. 1, Sch. 5 para. 1(1)

[F14Priorities for designating special areas of conservation

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

(a) the importance of the sites for the maintenance or restoration at a favourable conservation status of—

(i) a natural habitat type specified in Annex I to the Habitats Directive; or

(ii) a species specified in Annex II to the Habitats Directive;

(b) the importance of the sites for the coherence of national site network; and

(c) the threats of degradation or destruction to which the sites are exposed.**]**

Textual Amendments

F14 Reg. 7A inserted (31.12.2020) by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **36**; 2020 c. 1, Sch. 5 para. 1(1)

Notification of a proposal for a site of Community importance

8.—(1) **[**F15If the relevant administration proposes to designate a site as a special area of conservation, it**]** must give to the Joint Committee notice of that proposal and an accompanying statement of reasons.

F16(2) . . . . . .

F16(3) . . . . . .

(4) But neither the Scottish Ministers nor the Welsh Minister may give notice of a proposal to the Joint Committee as described in paragraph **[**F17(1)**]** unless the Secretary of State has agreed to that proposal.

(5) Where, under paragraph (1) F18..., the Joint Committee is given notice of a proposal, the Joint Committee must give notice of that proposal and provide a copy of the accompanying statement of reasons for that proposal to the following—

(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;

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

(e) where the Scottish Ministers or the Welsh Ministers have given notice under paragraph **[**F19(1)**]**—

(i) the Secretary of State; and

(ii) such other persons as the Scottish Ministers or the Welsh Ministers respectively direct.

(6) A notice under paragraph (5) 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 Committee.

(7) The Joint Committee must provide to the relevant administration 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.

(8) The relevant administration must consider the report provided by the Joint Committee under paragraph (7).

(9) The **[**[F20]relevant administration**]** may issue guidance to the Joint Committee for the purposes of its functions under this regulation and the Joint Committee must have regard to that guidance in discharging any of those functions.

[F21](10) . . . . . .

(11) The Secretary of State may vary or revoke a direction under paragraph (5)(d), and the Scottish Ministers or the Welsh Ministers may vary or revoke a direction under paragraph (5)(e)(ii).

[F22](12) . . . . . .

Textual Amendments

F15 Words in reg. 8(1) substituted (31.12.2020) by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **37(2)**; 2020 c. 1, Sch. 5 para. 1(1)

F16 Reg. 8(2)(3) omitted (31.12.2020) by virtue of The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **37(3)**; 2020 c. 1, Sch. 5 para. 1(1)

F17 Word in reg. 8(4) substituted (31.12.2020) by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **37(4)**; 2020 c. 1, Sch. 5 para. 1(1)

F18 Words in reg. 8(5) omitted (31.12.2020) by virtue of The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **37(5)(a)**; 2020 c. 1, Sch. 5 para. 1(1)

F19 Word in reg. 8(5)(e) substituted (31.12.2020) by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **37(5)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

F20 Words in reg. 8(9) substituted (31.12.2020) by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **37(6)**; 2020 c. 1, Sch. 5 para. 1(1)

F21 Reg. 8(10) omitted (31.12.2020) by virtue of The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **37(7)**; 2020 c. 1, Sch. 5 para. 1(1)

F22 Reg. 8(12) omitted (31.12.2020) by virtue of The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **37(7)**; 2020 c. 1, Sch. 5 para. 1(1)

Modification of list of sites

[F23]**9.** . . . . . .

Textual Amendments

F23 Regs. 9-11 omitted (31.12.2020) by virtue of The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **38**; 2020 c. 1, Sch. 5 para. 1(1)

Consultation as to inclusion of site omitted from the list

[F23]**10.** . . . . . .

Textual Amendments

F23 Regs. 9-11 omitted (31.12.2020) by virtue of The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **38**; 2020 c. 1, Sch. 5 para. 1(1)

Designation of special areas of conservation

[F23]**11.** . . . . . .

Textual Amendments

F23 Regs. 9-11 omitted (31.12.2020) by virtue of The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **38**; 2020 c. 1, Sch. 5 para. 1(1)

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 the Secretary of State considers necessary to ensure that the objective specified in paragraph (2) is attained.

(2) The objective is that there are classified as special protection areas 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.

(3) The Secretary of State must make the 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.

[[F24](4) In applying the criteria referred to in sub-paragraphs (3)(a) and (b), references in Articles 4(1) and (4(2) of the Wild Birds Directive to classifying the most suitable territories "in the geographical sea and land area where this Directive applies" are to be construed as referring to the most suitable sites in the offshore marine area, having regard to the importance of such territories for ensuring the survival and reproduction of that species in their area of distribution.**]**

[F25](5) . . . . . .

[F25](6) . . . . . .

(7) Nothing in this regulation requires the Secretary of State to classify as, or as part of, a special protection area any site which is or forms part of a site classified as a special protection area by—

(a) the Scottish Ministers under regulation 13(1); or

(b) the Welsh Ministers under regulation 13(2).

Textual Amendments

F24 Reg. 12(4) substituted (31.12.2020) by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **39(2)**; 2020 c. 1, Sch. 5 para. 1(1)

F25 Reg. 12(5)(6) omitted (31.12.2020) by virtue of The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **39(3)**; 2020 c. 1, Sch. 5 para. 1(1)

Classification of sites in the Scottish offshore region and the Welsh offshore region as special protection areas

13.—(1) The Scottish Ministers must classify as special protection areas such sites in the Scottish offshore region as they consider necessary to ensure that the objective specified in paragraph (3) is attained.

(2) The Welsh Ministers must classify as special protection areas such sites in the Welsh offshore region as they consider necessary to ensure that the objective specified in paragraph (3) is attained.

(3) The objective 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, in so far as they consist of sites in the Scottish offshore or Welsh offshore regions (as the case may be).

(4) The Scottish Ministers must make their 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 (3)(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 (3)(b), on the basis of the criteria set out in Article 4(2) of the Wild Birds Directive.

(5) But the Scottish Ministers may only classify a site as a special protection area under paragraph (1) if the Secretary of State has agreed that they so classify the site.

(6) The Welsh Ministers must make their decision as to the sites to be classified under paragraph (2) 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 (3)(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 (3)(b), on the basis of the criteria set out in Article 4(2) of the Wild Birds Directive.

(7) But the Welsh Ministers may only classify a site as a special protection area under paragraph (2) if the Secretary of State has agreed that they so classify the site.

(8) Where a site is classified under paragraph (1) or (2), the Scottish Ministers and the Welsh Ministers respectively must provide information on that site to the Secretary of State, 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 (2) of the Wild Birds Directive.

[F26](9) . . . . . .

[F26](10) . . . . . .

Textual Amendments

F26 Reg. 13(9)(10) omitted (31.12.2020) by virtue of The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **40**; 2020 c. 1, Sch. 5 para. 1(1)

Notification of a proposal to classify a special protection area

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

(a) notice of that proposal; and

(b) an accompanying statement of reasons for that proposal.

(2) Paragraph (1) does not apply in relation to any site in respect of which—

(a) the Scottish Ministers have given notice to the Joint Committee under paragraph (3); or

(b) the Welsh Ministers have given notice to the Joint Committee under paragraph (5).

(3) If the Scottish Ministers propose to classify a site as a special protection area under regulation 13, they must give to the Joint Committee—

(a) notice of that proposal; and

(b) an accompanying statement of reasons for that proposal.

(4) But the Scottish Ministers may not give notice of a proposal to the Joint Committee as described in paragraph (3) unless the Secretary of State has agreed to that proposal.

(5) If the Welsh Ministers propose to classify a site as a special protection area under regulation 13, they must give to the Joint Committee—

(a) notice of that proposal; and

(b) an accompanying statement of reasons for that proposal.

(6) But the Welsh Ministers may not give notice of a proposal to the Joint Committee as described in paragraph (5) unless the Secretary of State has agreed to that proposal.

(7) Where the Joint Committee is given notice of a proposal under paragraph (1), (3) or (5), the Joint Committee must give notice of that proposal and provide a copy of the accompanying statement of 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 are to be notified;

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

(e) where the Scottish Ministers have given notice under paragraph (3)—

(i) the Secretary of State; and

(ii) such other persons as the Scottish Ministers direct;

(f) where the Welsh Ministers have given notice under paragraph (5)—

(i) the Secretary of State; and

(ii) such other persons as the Welsh Ministers direct.

(8) A notice under paragraph (7) 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 Committee.

(9) The Joint Committee must provide to the relevant administration a report describing the representations, if any, that it received about the proposal, or where no such representations have been received, stating that fact.

(10) The relevant administration must consider the report provided by the Joint Committee under paragraph (9).

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

(12) The Scottish Ministers may issue guidance to the Joint Committee for the purposes of its functions under this regulation in relation to site proposals under paragraph (3), and the Joint Committee must have regard to that guidance in discharging any of those functions.

(13) The Welsh Ministers may issue guidance to the Joint Committee for the purposes of its functions under this regulation in relation to site proposals under paragraph (5), and the Joint Committee must have regard to that guidance in discharging any of those functions.

(14) The Secretary of State may vary or revoke a direction under paragraph (7)(d), the Scottish Ministers may vary or revoke a direction under paragraph (7)(e)(ii), and the Welsh Ministers may vary or revoke a direction under paragraph (7)(f)(ii).

(15) In this regulation "the relevant administration" means—

(a) in relation to a report concerning a site proposal under paragraph (1), the Secretary of State;

(b) in relation to a report concerning a site proposal under paragraph (3), the Scottish Ministers; and

(c) in relation to a report concerning a site proposal under paragraph (5), the Welsh Ministers.

Hearings

15.—(1) The **[**[F27]relevant administration**]** may give any person the opportunity of appearing before and being heard by, or of providing representations to, a person appointed by the **[**[F27]relevant administration**]**—

(a) for the purpose of deciding whether to include a site in the list to be transmitted under regulation 7(1);

[F28](b) . . . . . .

(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 **[**[F27]relevant administration**]** 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 **[**[F27]relevant administration**]** must consider any report of a person appointed under paragraph (1).

(4) Where **[**[F29]a relevant administration**]** proposes to exercise any function under this regulation in relation to any matter in relation to which functions are exercisable by **[**[F30]another relevant administration**]** under **[**[F31]this regulation**]**, **[**[F29]a relevant administration**]** must consult **[**[F32]that other administration**]**.

[F33](5) . . . . . .

Textual Amendments

F27 Words in reg. 15(1)-(3) substituted (31.12.2020) by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **41(2)**; 2020 c. 1, Sch. 5 para. 1(1)

F28 Reg. 15(1)(b) omitted (31.12.2020) by virtue of The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **41(3)**; 2020 c. 1, Sch. 5 para. 1(1)

F29 Words in reg. 15(4) substituted (31.12.2020) by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **41(4)(a)**; 2020 c. 1, Sch. 5 para. 1(1)

F30 Words in reg. 15(4) substituted (31.12.2020) by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **41(4)(b)(i)**; 2020 c. 1, Sch. 5 para. 1(1)

F31 Words in reg. 15(4) substituted (31.12.2020) by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **41(4)(c)**; 2020 c. 1, Sch. 5 para. 1(1)

F32 Words in reg. 15(4) substituted (31.12.2020) by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **41(4)(b)(ii)**; 2020 c. 1, Sch. 5 para. 1(1)

F33 Reg. 15(5) omitted (31.12.2020) by virtue of The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **41(5)**; 2020 c. 1, Sch. 5 para. 1(1)

Hearings conducted by the Scottish Ministers

[F34]**16.** . . . . . .

Textual Amendments

F34 Regs. 16, 17 omitted (31.12.2020) by virtue of The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **41(6)**; 2020 c. 1, Sch. 5 para. 1(1)

Hearings conducted by the Welsh Ministers

[F34]**17.** . . . . . .

Textual Amendments

F34 Regs. 16, 17 omitted (31.12.2020) by virtue of The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **41(6)**; 2020 c. 1, Sch. 5 para. 1(1)

Meaning of "European offshore marine site"

18. 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 **[**[F35]before exit day**]**;

[F36](c) . . . . . .

(d) a site classified as a special protection area under regulation 12 or 13; and

[[F37](e) a site which, before exit day, was proposed to the European Commission under Article 4(1) of the Habitats Directive, until such time as—

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

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

Textual Amendments

F35 Words in reg. 18(b) inserted (31.12.2020) by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **42(a)**; 2020 c. 1, Sch. 5 para. 1(1)

F36 Reg. 18(c) omitted (31.12.2020) by virtue of The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **42(b)**; 2020 c. 1, Sch. 5 para. 1(1)

F37 Reg. 18(e) substituted (31.12.2020) by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **42(c)**; 2020 c. 1, Sch. 5 para. 1(1)

[[F38]Management objectives of the national site network

18A.—(1) The Secretary of State and the devolved administrations must, in co-operation with each other, manage, and where necessary adapt, the national site network, so far as it consists of European offshore marine sites, with a view to contributing to the achievement of the management objectives of the national site network.

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

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

(i) the natural habitat types listed in Annex 1 to the Habitats Directive;

(ii) the species listed in Annex II to that Directive whose natural range includes any part of the United Kingdom's territory;

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

(i) the species of birds listed in Annex I to the Wild Birds Directive which naturally occur in the United Kingdom's territory;

(ii) regularly occurring migratory species of birds not listed in that Annex which naturally occur in the United Kingdom's territory;

(c) to contribute to securing compliance with the requirements of Article 2 of the new Wild Birds Directive for the purposes of the duty in regulation 6(1) in relation to the species of birds in paragraph (b) within their area of distribution.

(3) In complying with the obligation in paragraph (1), the Secretary of State and the devolved administrations must have regard—

(a) in relation to sites designated under regulation 7(1) to—

(i) the importance of the sites for meeting the objective in paragraph 2(a);

(ii) the importance of the sites for the coherence of national site network;

(iii) the threats of degradation or destruction (including deterioration and disturbance of protected features) to which the sites are exposed;

(b) in relation to sites classified under regulation 12(1)—

(i) the importance of the sites for meeting the objectives in paragraph 2(b) and (c);

(ii) in the case of migratory species, the importance of their breeding, moulting and wintering areas and staging points along their migration routes;

(iii) the importance of the sites for the coherence of the national site network;

(iii) the threats of degradation or destruction (including deterioration and disturbance of protected features) to which the sites are exposed.

(4) In paragraph (2)(a), "proportionate" means proportionate to the relative importance of—

(a) the part of the natural range lying in the United Kingdom's territory, and

(b) the part of the natural range lying outside the United Kingdom's territory,

for achieving a favourable conservation status.**]**

Textual Amendments

F38 Reg. 18A inserted (31.12.2020) by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **43**; 2020 c. 1, Sch. 5 para. 1(1)

Register of European offshore marine sites

19.—(1) The Secretary of State must compile and maintain, in such form as the Secretary of State considers appropriate, a register of European offshore marine sites.

(2) The Secretary of State must include European offshore marine sites in the register as follows—

(a) special areas of conservation, as soon as they are designated;

(b) sites of Community importance, **[**[F39]which before exit day were**]** 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;

[F40](c) . . . . . .

(d) special protection areas as soon as they are classified as such; and

(e) any site which **[**[F41], before exit day,**]** 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 18(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;

[F42](d) . . . . . .

(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.

[[F43](5) Where a site ceases to fall within any of the categories in paragraph (2) for which it is listed in the register the relevant administration must amend the relevant entry in the register in respect of that site.**]**

(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.

Textual Amendments

F39 Words in reg. 19(2)(b) substituted (31.12.2020) by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **44(2)(a)**; 2020 c. 1, Sch. 5 para. 1(1)

F40 Reg. 19(2)(c) omitted (31.12.2020) by virtue of The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **44(2)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

F41 Words in reg. 19(2)(e) inserted (31.12.2020) by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **44(2)(c)**; 2020 c. 1, Sch. 5 para. 1(1)

F42 Reg. 19(3)(d) omitted (31.12.2020) by virtue of The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **44(3)**; 2020 c. 1, Sch. 5 para. 1(1)

F43 Reg. 19(5) substituted (31.12.2020) by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **44(4)**; 2020 c. 1, Sch. 5 para. 1(1)

Notification of changes to the register

20.—(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 Committee;

(b) the devolved administrations;

(c) any competent authorities which exercise functions in relation to the site which is affected or a marine area adjacent to the site which is affected, and which in the Secretary of State's opinion it would be appropriate to notify;

(d) any international organisations which in the Secretary of State's opinion it would be appropriate to notify; and

(e) such other persons as in the Secretary of State's opinion it would be appropriate to notify.

(2) Where a site adjoins the territory of **[**[F44]a**]** 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 the Secretary of State 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.

Textual Amendments

F44 Word in reg. 20(2) substituted (31.12.2020) by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **45**; 2020 c. 1, Sch. 5 para. 1(1)

Site protection and management

Establishment of nature conservation objectives

21. As soon as is reasonably practicable after a European offshore marine site has been included in the register, the Joint 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

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

(2) A management scheme—

(a) must set out how a competent authority establishing the scheme proposes to exercise its functions so as to secure in relation to that site compliance with the requirements of the Habitats Directive or the Wild Birds 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 authority establishing it proposes to exercise its functions in order to maintain or restore to 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 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 Committee; and

(b) consult such other persons as it considers 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 21(a); and

(b) any advice provided under regulation 21(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);

(d) such other persons as the Secretary of State may direct;

(e) in the case of a management scheme entered into by a competent authority in Scotland in relation to a site in the Scottish offshore region, such other persons as the Scottish Ministers may direct; and

(f) in the case of a management scheme entered into by a competent authority in Wales in relation to a site in the Welsh offshore region, such other persons as the Welsh Ministers may direct.

(11) The Secretary of State may vary or revoke a direction under paragraph (10)(d), the Scottish Ministers may vary or revoke a direction under paragraph (10)(e) and the Welsh Ministers may vary or revoke a direction under paragraph (10)(f).

(12) In paragraph (3)(c), "European marine site" means any site which is a European marine site for the purposes of the 1994 Regulations, the Conservation (Natural Habitats, &c.) Regulations (Northern Ireland) 1995 [M43] or the 2017 Regulations.

Marginal Citations

M43 S.R. (N.I.) 1995 No. 380.

Duty in relation to management schemes

23. 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.

Co-ordinated management of sites

24.—(1) Where a European offshore marine site, other than any such site in the Scottish offshore region or the Welsh offshore region, adjoins a special area of conservation or a special protection area which has been (respectively) designated or classified by **[**[F45]a**]** 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.

(2) Where a European offshore marine site in the Scottish offshore region adjoins a special area of conservation or a special protection area which has been (respectively) designated or classified by **[**[F45]a**]** member State, the Scottish Ministers must, and the Secretary of State may, consult that State in relation to the co-ordinated management of the site and the area in question.

(3) Where a European offshore marine site in the Welsh offshore region adjoins a special area of conservation or a special protection area which has been (respectively) designated or classified by **[**[F45]a**]** member State, the Welsh Ministers must, and the Secretary of State may, consult that State in relation to the co-ordinated management of the site and the area in question.

(4) Before the Secretary of State consults under paragraph (2) in relation to a site, or a part of a site, in relation to which the Scottish Ministers must consult under that paragraph, the Secretary of State must consult the Scottish Ministers.

(5) Before the Secretary of State consults under paragraph (3) in relation to a site, or a part of a site, in relation to which the Welsh Ministers must consult under that paragraph, the Secretary of State must consult the Welsh Ministers.

Textual Amendments

F45 Word in reg. 24(1)-(3) substituted (31.12.2020) by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **46**; 2020 c. 1, Sch. 5 para. 1(1)

Conservation measures relating to special areas of conservation

25.—(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 or competent authority in Wales, 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 or Wales) exercises any relevant function for the purposes of complying with paragraph (1), it must first consult the Scottish Ministers and the Welsh 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 or Wales, 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 has effect in the terms stated in the direction; and

(b) where the competent authorities include one or more competent authorities in Scotland or Wales, 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 has effect in the terms stated in the direction.

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

(7) In this regulation—

"the relevant administration" means—

(a) in relation to a competent authority in Scotland, the Scottish Ministers;

(b) in relation to a competent authority in Wales, the Welsh Ministers; and

(c) in relation to a competent authority other than a competent authority in Scotland or in Wales, 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 either the Scottish Ministers or the Welsh Ministers.

Prevention of deterioration of habitats and disturbance of species

26.—(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)(a) 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; **[**[F46]and**]**

[F47](c) . . . . . .

(d) in any site classified as a special protection area under regulation 12 or 13, 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)(b) 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; **[**[F48]and**]**

[F49](c) . . . . . .

(d) in any site classified as a special protection area under regulation 12 or 13, the deterioration of the habitats of any of the species of bird for which the site was so classified.

[F50](5) . . . . . .

(6) In considering the steps (if any) to be taken 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 or competent authority in Wales, 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 or competent authority in Wales) exercises any relevant function for the purposes of complying with paragraph (1), it must first consult the Scottish Ministers or the Welsh Ministers (as the case may be), and for this purpose, a "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 or the Welsh 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 or in Wales, 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 has effect in the terms stated in the direction; and

(b) where the competent authorities include one or more competent authorities in Scotland or in Wales, 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 has effect in the terms stated in the direction.

(10) A direction under paragraph (9)(b) may not be given unless the Scottish Ministers or the Welsh Ministers (as the case may be) and the Secretary of State have agreed that it may.

(11) So far as lies within its powers, a competent authority in exercising any function in or in relation to the offshore marine area must use all reasonable endeavours to avoid any pollution or deterioration of habitats of wild birds (except habitats beyond the outer limits of the area to which the Wild Birds Directive applies).

(12) Paragraph (1) does 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 28; or

(b) the disturbance of species specified in paragraph (3) is not a criminal offence under regulation 38 or Part 3.

(13) In this regulation—

"the relevant administration" means—

(a) in relation to a competent authority in Scotland, the Scottish Ministers;

(b) in relation to a competent authority in Wales, the Welsh Ministers; and

(c) in relation to any other competent authority, the Secretary of State.

Textual Amendments

F46 Word in reg. 26(3)(b) inserted (31.12.2020) by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **47(2)(a)**; 2020 c. 1, Sch. 5 para. 1(1)

F47 Reg. 26(3)(c) and word omitted (31.12.2020) by virtue of The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **47(2)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

F48 Word in reg. 26(4)(b)(ii) inserted (31.12.2020) by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **47(3)(a)**; 2020 c. 1, Sch. 5 para. 1(1)

F49 Reg. 26(4)(c) omitted (31.12.2020) by virtue of The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **47(3)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

F50 Reg. 26(5) omitted (31.12.2020) by virtue of The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **47(4)**; 2020 c. 1, Sch. 5 para. 1(1)

Plans and projects

Meaning of "European site"

27.—(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 **[**[F51]before exit day**]**;

[F52](c) . . . . . .

(d) a site classified **[**[F53]before exit day**]** as a special protection area pursuant to Article 4(1) or (2) of the Wild Birds Directive **[**[F53]or classified after exit day under the retained transposing legislation**]**; and

[[F54](e) a site which before exit day was proposed to the European Commission under Article 4(1) of the Habitats Directive, until such time as—

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

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

[F55](2) . . . . . .

[F55](3) . . . . . .

(4) In this regulation "the United Kingdom" means the United Kingdom (including its internal waters) and the territorial sea adjacent to the United Kingdom.

Textual Amendments

F51 Words in reg. 27(1)(b) inserted (31.12.2020) by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **48(2)(a)**; 2020 c. 1, Sch. 5 para. 1(1)

F52 Reg. 27(1)(c) omitted (31.12.2020) by virtue of The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **48(2)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

F53 Words in reg. 27(1)(d) inserted (31.12.2020) by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **48(2)(c)**; 2020 c. 1, Sch. 5 para. 1(1)

F54 Reg. 27(1)(e) substituted (31.12.2020) by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **48(2)(d)**; 2020 c. 1, Sch. 5 para. 1(1)

F55 Reg. 27(2)(3) omitted (31.12.2020) by virtue of The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **48(3)**; 2020 c. 1, Sch. 5 para. 1(1)

Protection of European offshore marine sites and European sites

28.—(1) Before deciding to undertake, or give any consent, permission or other authorisation for, a relevant plan or project, a competent authority must make an appropriate assessment of the implications of the plan or project for the site in view of that site's conservation objectives.

(2) In paragraph (1), a "relevant plan or project" is 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.

(3) 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).

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

(a) where it relates to a European offshore marine site, consult the Joint 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 Natural Resources Body 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 DAERA; 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.

(5) In the light of the conclusions of the assessment, and subject to regulation 29, 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).

(6) 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.

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

[F56](a) . . . . . .

[F57](b) . . . . . .

(c) the granting by the Secretary of State **[**[F58]or the agreement to the grant**]** of any Petroleum Act approval, Petroleum Act authorisation, Petroleum or Energy Act consent, Petroleum Act licence, or Energy Act licence.

(8) Where a plan or project requires an appropriate assessment both under this regulation and under the Conservation Regulations, the assessment so far as relating to that part of it that is to be carried out in the offshore marine area need not identify the extent to which the effects of the plan or project are specifically attributable to that part, provided that an assessment made for the purposes of this regulation and the Conservation Regulations assesses the effects of the plan or project as a whole.

(9) In paragraph (8) "the Conservation Regulations" means the 1994 Regulations or the 2017 Regulations (as the case may be).

(10) 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; and

"Northern Ireland" has the same meaning as in the Northern Ireland Act 1998 [M44].

Textual Amendments

F56 Reg. 28(7)(a) omitted (31.12.2020) by virtue of The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **49**; 2020 c. 1, Sch. 5 para. 1(1)

F57 Reg. 28(7)(b) omitted (31.12.2020) by virtue of The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **49**; 2020 c. 1, Sch. 5 para. 1(1)

F58 Words in reg. 28(7) inserted (31.12.2020 immediately before 11 p.m.) by The Offshore Oil and Gas Exploration, Production, Unloading and Storage (Environmental Impact Assessment) Regulations 2020 (S.I. 2020/1497), reg. 1(1), **Sch. 7 para. 6(3)** (with reg. 1(2)-(6), 20)

Marginal Citations

M44 1998 c. 47.

Considerations of overriding public interest

29.—(1) If it is satisfied that, there being no alternative solutions, the plan or project referred to in regulation 28(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 **[**[F59]other than the relevant administration**]** 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 **[**[F60]relevant administration**]** in satisfying itself that there are such reasons.

(4) Where a competent authority other than the **[**[F61]relevant administration**]** desires to obtain the opinion of the **[**[F61]relevant administration**]** as to whether reasons are to be considered imperative reasons of overriding public interest, it must submit a request to the **[**[F61]relevant administration**]**—

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

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

[[F62](5) In giving its opinion as to whether the reasons are imperative reasons of overriding public interest, the relevant administration must have regard to the national interest, and provide its opinion to the competent authority.

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

(a) the Joint Nature Conservation Committee;

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

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

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

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

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

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

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

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

Textual Amendments

F59 Words in reg. 29(3) inserted (31.12.2020) by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **50(2)(a)**; 2020 c. 1, Sch. 5 para. 1(1)

F60 Words in reg. 29(3) substituted (31.12.2020) by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **50(2)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

F61 Words in reg. 29(4) substituted (31.12.2020) by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **50(3)**; 2020 c. 1, Sch. 5 para. 1(1)

F62 Reg. 29(5)-(7) substituted (31.12.2020) by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **50(4)**; 2020 c. 1, Sch. 5 para. 1(1)

Agreement to plan or project: England and Northern Ireland

30.—(1) Where a competent authority in England or in Northern Ireland proposes to agree to a plan or project under regulation 29 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 the Secretary of State, unless the Secretary of State authorises the authority to do so under paragraph (2)(b).

(2) In any case within paragraph (1), the Secretary of State 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.

(3) The Secretary of State may amend or revoke a direction or authorisation under paragraph (2) at any time before the competent authority has agreed to the plan or project in question.

Agreement to plan or project: Scotland

31.—(1) Where a competent authority in Scotland other than the Scottish Ministers proposes to agree to a plan or project under regulation 29 notwithstanding a negative assessment of the implications for a European site in Scotland or for a European offshore marine site in the Scottish offshore region—

(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 (2)(b).

(2) In any case within paragraph (1), the Scottish Ministers 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.

(3) The Scottish Ministers may amend or revoke a direction or authorisation under paragraph (2) at any time before the competent authority has agreed to the plan or project in question.

(4) Where a competent authority in Scotland agrees to a plan or project under regulation 29 notwithstanding a negative assessment of the implications for a European site in Scotland or for a European offshore marine site in the Scottish offshore region, it must notify the Secretary of State as soon as practicable following that agreement.

(5) Where the Scottish Ministers propose to agree to a plan or project under regulation 29 notwithstanding a negative assessment of the implications for a European site outside Scotland or a European offshore marine site outside the Scottish offshore region—

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

(b) they may agree to the plan or project only after having been notified of the Secretary of State's agreement, which may be given subject to such conditions or restrictions as the Secretary of State may specify.

(6) Where a competent authority in Scotland other than the Scottish Ministers proposes to agree to a plan or project under regulation 29 notwithstanding a negative assessment of the implications for a European site outside Scotland or a European offshore marine site outside the Scottish offshore region—

(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.

(7) In any case within paragraph (6), 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.

(8) Any agreement between the Scottish Ministers and the Secretary of State that is the subject of a notification under paragraph (6)(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 (6)(b).

Agreement to plan or project: Wales

32.—(1) Where a competent authority in Wales other than the Welsh Ministers proposes to agree to a plan or project under regulation 29 notwithstanding a negative assessment of the implications for a European site in Wales or for a European offshore marine site in the Welsh offshore region—

(a) it must notify the Welsh 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 Welsh Ministers as that on which the authority's notification was received by them, unless the Welsh Ministers authorise the authority to do so under paragraph (2)(b).

(2) In any case within paragraph (1), the Welsh Ministers 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.

(3) The Welsh Ministers may amend or revoke a direction or authorisation under paragraph (2) at any time before the competent authority has agreed to the plan or project in question.

(4) Where a competent authority in Wales agrees to a plan or project under regulation 29 notwithstanding a negative assessment of the implications for a European site in Wales or for a European offshore marine site in the Welsh offshore region, it must notify the Secretary of State as soon as practicable following that agreement.

(5) Where the Welsh Ministers propose to agree to a plan or project under regulation 29 notwithstanding a negative assessment of the implications for a European site outside Wales or a European offshore marine site outside the Welsh offshore region—

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

(b) they may agree to the plan or project only after having been notified of the Secretary of State's agreement, which may be given subject to such conditions or restrictions as the Secretary of State may specify.

(6) Where a competent authority in Wales other than the Welsh Ministers proposes to agree to a plan or project under regulation 29 notwithstanding a negative assessment of the implications for a European site outside Wales or a European offshore marine site outside the Welsh offshore region—

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

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

(7) In any case within paragraph (6), the Welsh 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.

(8) Any agreement between the Welsh Ministers and the Secretary of State that is the subject of a notification under paragraph (6)(b) may be subject to such conditions or restrictions as may be specified in the notification, and where the Welsh Ministers and the Secretary of State so agree, the Welsh 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 (6)(b).

Review of existing decisions and consents

33.—(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 28(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 28(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 28(3), (4) and (8) 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 or, in relation to the Scottish offshore region, by the Scottish Ministers, or in relation to the Welsh offshore region, by the Welsh Ministers.

(6) Nothing in this regulation—

[F63](a) . . . . . .

[F64](b) . . . . . .

(c) requires a review by the Secretary of State of a Petroleum Act approval, Petroleum Act authorisation, Petroleum or Energy Act consent, Petroleum Act licence or Energy Act licence;

(d) requires a review of any plan or project in relation to which a review has been carried out under regulation 27 of the Offshore Marine Conservation (Natural Habitats, &c. Regulations 2007 [M45];

(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 or the Welsh Ministers, as the case may be.

(8) The Scottish Ministers may only issue guidance under paragraph (5)—

(a) to a competent authority in Scotland; or

(b) where guidance is issued to a competent authority other than a competent authority in Scotland, subject to and in accordance with the agreement of the Secretary of State.

(9) The Welsh Ministers may only issue guidance under paragraph (5)—

(a) to a competent authority in Wales; or

(b) where guidance is issued to a competent authority other than a competent authority in Wales, subject to and in accordance with the agreement of the Secretary of State.

(10) Regulations 90 and 91 of the 2017 Regulations (consents under Electricity Act 1989 [M46]: procedure on review and effect of review) apply in relation to any decision under paragraph (4) revoking or modifying a consent granted under section 36 [M47] or 37 [M48] of the Electricity Act 1989 as they apply in relation to a decision pursuant to regulation 90 of the 2017 Regulations revoking or varying any such consent, but with the modifications specified in paragraphs (11) and (12).

(11) The modifications to regulation 90 referred to in paragraph (10) are—

(a) in paragraph (1)—

(i) for “89(3), (5) or (6)” substitute “ 89(3) or (5) ”; and

(ii) omit “or a direction deeming planning permission to be granted”;

(b) in paragraph (2)—

(i) in sub-paragraph (a), omit “or, as the case may be, in whose favour the direction was made”; and

(ii) in sub-paragraph (b), omit "in the case of a consent under section 36 of the Electricity Act 1989,";

(c) omit paragraph (3)(a); and

(d) in paragraph (5)—

(i) omit ", or the relevant planning authority,"; and

(ii) in the words before sub-paragraph (a), omit "or the relevant planning authority (as the case may be)".

(12) The modifications to regulation 91 referred to in paragraph (10) are—

(a) in paragraph (1)—

(i) for "89(3), (5) or (6)" substitute " 89(3) or (5) "; and

(ii) omit "or a direction deeming planning permission to be granted"; and

(b) in paragraphs (2) and (3), omit "or direction" (in each place where it occurs).

Textual Amendments

F63 Reg. 33(6)(a) omitted (31.12.2020) by virtue of The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **51**; 2020 c. 1, Sch. 5 para. 1(1)

F64 Reg. 33(6)(b) omitted (31.12.2020) by virtue of The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **51**; 2020 c. 1, Sch. 5 para. 1(1)

Marginal Citations

M45 S.I. 2007/1842, amended by S.I. 2009/7, 2010/491 and 2012/1928, and revoked by these Regulations.

M46 1989 c. 29.

M47 Section 36 was amended by the Energy Act 2004 (c. 20), **section 93(1)** and (3); the Planning Act 2008 (c. 29), **paragraphs 31** and 32 of Schedule 2; the Marine and Coastal Access Act 2009 (c. 23), **section 12(7)(a)** and (8); the Energy Act 2016, section 78; the Wales Act 2017 (c. 4) section 39; and, in relation to Scotland, by S.I. 2006/1054, **paragraph 1(1)** and (2) of Schedule 1.

M48 Section 37 was amended by the Planning Act 2008 (c. 29), **paragraphs 31** and 33 of Schedule 2; and the Wales Act 2017 (c. 4), **section 42**.

Consideration on review

34.—(1) The following provisions apply where a decision, or a consent, permission or other authorisation falls to be reviewed under regulation 33.

(2) Subject as follows, the provisions of regulation 28(4) and (5) and regulations 29 to 32 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 affect 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) The Scottish Ministers and the Welsh Ministers may issue guidance to competent authorities in Scotland and competent authorities in Wales, respectively, 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 affect 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.

(7) 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).

(8) A competent authority in Scotland must have regard to any guidance issued by the Scottish Ministers under paragraph (6) in discharging its functions under paragraph (3) or (4).

(9) A competent authority in Wales must have regard to any guidance issued by the Welsh Ministers under paragraph (6) in discharging its functions under paragraph (3) or (4).

(10) Any modification or revocation under regulation 33(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, or, in relation to a competent authority in Scotland, the Scottish Ministers, or in relation to a competent authority in Wales, the Welsh Ministers.

(11) 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 or the Welsh Ministers (as the case may be).

Co-ordination where more than one competent authority is involved

35.—(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 28(1) or 33(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 28 to 34 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) The Scottish Ministers may issue guidance to competent authorities in Scotland for the purposes of regulations 28, 29, 31, 33 and 34 as to the circumstances in which a competent authority in Scotland may or must 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.

(5) The Welsh Ministers may issue guidance to competent authorities in Wales for the purposes of regulations 28, 29, and 32 to 34 as to the circumstances in which a competent authority in Wales

may or must 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.

(6) 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 28 to 34.

(7) A competent authority in Scotland must have regard to any guidance issued by the Scottish Ministers under paragraph (4) in discharging any of its functions under regulations 28, 29, 31, 33 and 34.

(8) A competent authority in Wales must have regard to any guidance issued by the Welsh Ministers under paragraph (5) in discharging any of its functions under regulations 28, 29, and 32 to 34.

(9) In determining whether a plan or project should be agreed to under regulation 29(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.

(10) 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 or the Welsh Ministers (as the case may be).

Compensatory measures

36.—(1) This regulation applies where, notwithstanding a negative assessment of the implications for a European offshore marine site or European site—

(a) a plan or project is agreed to in accordance with regulation 29; or

(b) a decision, or a consent, permission or other authorisation, is affirmed on review in accordance with regulations 29 and 34(3).

(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, or the decision, consent, permission or other authorisation is affirmed, in the exercise of a function within devolved competence in respect of Scotland or by the Scottish Ministers, the Scottish Ministers;

(b) where the plan or project is agreed to, or the decision, consent, permission or other authorisation is affirmed, in the exercise of a function within devolved competence in respect of Wales or by the Welsh Ministers, the Welsh Ministers;

(c) where the plan or project is agreed to, or 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

37.—**[**[F65](1) The appropriate authority must ensure that the compensatory measures taken pursuant to regulation 36(2) are notified to each of the following (other than the appropriate authority itself)—

(a) the Secretary of State;

(b) the devolved administrations.**]**

(2) In this regulation "appropriate authority" is to be construed in accordance with regulation 36(3).

Textual Amendments

F65 Reg. 37(1) substituted (31.12.2020) by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **52**; 2020 c. 1, Sch. 5 para. 1(1)

Offences

Offences relating to European offshore marine sites

38.—(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 **[**[F66]unless the United Kingdom is entitled under international law to exercise those powers without the consent of the flag state**]**.

(4) A person is guilty of an offence if—

(a) without reasonable excuse, that person 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) their ability 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, that person 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) their ability 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, that person intentionally disturbs any wild bird whilst it is in a site which has been classified as a special protection area under regulation 12 or 13 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, that person 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, that person 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 or 13 which supports any birds of the species for which the site was so classified.

(9) The species referred to in paragraphs (4)(a) 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)(a) 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 those paragraphs.

(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 ("D") is not to be taken recklessly to have done anything prohibited by that paragraph merely because—

(a) D's actions had the result that D did the thing in question; and

(b) D intended those actions and knew that they might have that result.

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

(a) the actions in question were for the purpose, and in the course, of sea fishing; and

(b) D had taken any steps that could reasonably be taken to ensure compliance with the requirements or conditions of any **[**[F67]relevant retained EU law**]**.

(14) In paragraph (13), "any **[**[F68]relevant retained EU law**]**" 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 EU instrument under—

(i) Article 43 of the Treaty on the Functioning of the European Union; or

(ii) Council Regulation (EU) No. 1380/2013 on the Common Fisheries Policy, as amended from time to time [M49] or any instrument adopted thereunder.

(15) A person guilty of an offence under this regulation is liable, either on summary conviction or 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.

Textual Amendments

F66 Words in reg. 38(3) inserted (31.12.2020) by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **53(2)**; 2020 c. 1, Sch. 5 para. 1(1)

F67 Words in reg. 38(13) substituted (31.12.2020) by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **53(3)**; 2020 c. 1, Sch. 5 para. 1(1)

F68 Words in reg. 38(14) substituted (31.12.2020) by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **53(3)**; 2020 c. 1, Sch. 5 para. 1(1)

Marginal Citations

M49 OJ No. L 354, 28.12.2013, p.22, as amended by Council Regulation (EU) No 1385/2013 (OJ No. L 354, 28.12.2013, p.86) and Regulation (EU) 2015/812 (OJ No. L 133, 29.5.2015, p.1).

PART 3

PROTECTION OF SPECIES

Application of offences in Part 3

39.—(1) Subject to paragraphs (2) and (3), regulations 40, 42, 43, 45, 47 and 49 (in so far as they are capable of so applying) apply to any person—

(a) in any part of the waters comprised in the offshore marine area;

(b) on a ship in any part of the waters comprised in the offshore marine area;

(c) on a British aircraft over the waters comprised in the offshore marine area;

(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) Regulations 40, 42, 43 and 49 do not apply to any person on a third country ship **[**[F69]unless the United Kingdom is entitled under international law to exercise those powers without the consent of the flag state**]**.

(3) Regulation 45(3) only applies in relation to a person on a third country ship where—

(a) the animal in question is a relevant animal; or

(b) the part in question is from, or the thing in question is derived from, a relevant animal.

(4) In paragraph (3) "a relevant animal" is an animal of a European protected species which was taken or killed in any part of the waters within British fishery limits.

Textual Amendments

F69 Words in reg. 39(2) inserted (31.12.2020) by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **54**; 2020 c. 1, Sch. 5 para. 1(1)

Protection of birds

Protection of wild birds, their eggs and nests

40.—(1) Subject to regulations 41 and 55, a person who deliberately—

(a) captures, injures, or kills any wild bird,

(b) takes, damages or destroys the nest of any wild bird while that nest is in use or being built, or

(c) takes or destroys an egg of any wild bird,

is guilty of an offence.

(2) Subject to regulations 41 and 55, a person who keeps—

(a) any live or dead wild bird or any part of, or anything derived from, such a bird, or

(b) an egg of a wild bird or any part of such an egg,

is guilty of an offence.

(3) In any proceedings for an offence under paragraph (1)—

(a) in relation to an offence under sub-paragraph (a), the bird in question is to be presumed to have been wild unless the contrary is shown; and

(b) in relation to an offence under sub-paragraph (b) or (c), if the prosecution proves that the nest or egg in question is of a bird which is a member of a species referred to in Article 1 of the Wild Birds Directive, it is to be presumed that the bird was a wild bird unless the contrary is shown.

(4) In any proceedings for an offence under paragraph (1), where this paragraph applies the defendant ("D") is not to be taken deliberately to have done anything prohibited by that paragraph merely because—

(a) D's actions had the result that D did the thing in question; and

(b) D intended those actions and knew that they might have that result.

(5) Paragraph (4) applies where the defendant ("D") shows that—

(a) the actions in question were for the purpose, and in the course, of sea fishing;

(b) D did not intend those actions to have the result in question; and

(c) D had taken any steps that could reasonably be taken to ensure compliance with the requirements or conditions of any **[**[F70]relevant retained EU law**]**.

(6) In paragraph (5), "any **[**[F71]relevant retained EU law**]**" 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 (4) or the risk that it may have a result of that kind; and

(b) **[**[F72]transposes an instrument adopted**]** by any EU instrument under—

(i) Article 43 of the Treaty on the Functioning of the European Union;

(ii) Council Regulation (EU) No. 1380/2013 on the Common Fisheries Policy, as amended from time to time [M50] or any instrument adopted thereunder; or

(iii) Regulation (EC) No. 2371/2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy [M51] or any instrument adopted thereunder.

(7) In this regulation "destroy", in relation to an egg, includes doing anything to the egg which is calculated to prevent it from hatching.

Textual Amendments

F70 Words in reg. 40(5)(c) substituted (31.12.2020) by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **55(a)**; 2020 c. 1, Sch. 5 para. 1(1)

F71 Words in reg. 40(6) substituted (31.12.2020) by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **55(a)**; 2020 c. 1, Sch. 5 para. 1(1)

F72 Words in reg. 40(6)(b) substituted (31.12.2020) by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **55(b)**; 2020 c. 1, Sch. 5 para. 1(1)

Marginal Citations

M50 OJ No. L 354, 28.12.2013, p. 22, as amended by Council Regulation (EU) No 1385/2013 (OJ No. L 354, 28.12.2013, p. 86) and Regulation (EU) 2015/812 (OJ No. L 133, 29.5.2015, p. 1).

M51 O.J. No. L358, 31.12.02, p. 59.

Defences to the offences in regulation 40

41.—(1) A person ("P") is not guilty of the offence under regulation 40(1)(a) of deliberately capturing a wild bird or an offence under regulation 40(2)(a), if P shows that the act in question—

(a) was in relation to a bird that had been disabled otherwise than by P's unlawful act; and

(b) was done solely for one or both of the purposes of—

(i) tending it and releasing it when no longer disabled, or

(ii) releasing it after it had been tended.

(2) A person ("P") is not guilty of an offence under regulation 40(1)(a) or (2)(a) if P shows that the act in question—

(a) was in relation to a bird that had been seriously disabled otherwise than by P's unlawful act and that there was no reasonable chance of its recovering; and

(b) was done solely for one or both of the purposes of—

(i) ending the bird's life, or

(ii) disposing of it (otherwise than by sale or exchange) as soon as practicable after it was dead.

(3) A person is not guilty of the offence under regulation 40(1) of deliberately injuring a wild bird if that person shows that this was done solely for the purpose of taking a sample by virtue of regulation 63(2).

(4) A person is not guilty of an offence under regulation 40(2) if that person shows that the act in question was done solely for the purpose of investigating whether one or more of the following offences was being or had been committed—

(a) an offence under regulation 40, 42, 43 or 57;

(b) an offence of attempting to commit an offence under regulation 40, 42 or 43; or

(c) an offence under regulation 69 which relates to an offence under regulation 40, 42 or 43.

(5) A person is not guilty of an offence under regulation 40(2) if that person shows—

(a) in the case of a wild bird, or any part of, or anything derived, from any such bird—

(i) where the bird is a dead bird, that the bird had not been killed, or that it had been lawfully killed, by any person; and

(ii) whether the bird is live or dead, that the bird had not been captured or had been lawfully captured;

(b) in the case of an egg of a wild bird, that the egg had not been taken from the wild; and

(c) in the case of part of any such egg, that the egg had not been taken from the wild or destroyed in the wild by any person.

(6) A person ("P") is not guilty of an offence under regulation 40(2) if P shows that the wild bird, egg, or part of an egg had been lawfully sold (whether to P or to any other person) or had otherwise been lawfully acquired by P.

(7) In paragraphs (5) and (6), "lawfully" means—

(a) without contravention of Part 1 of the Wildlife and Countryside Act 1981 [M52], the Wildlife (Northern Ireland) Order 1985 [M53], the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007 [M54] or these Regulations; or

(b) in the case of a bird, egg or other thing killed, taken or sold in Gibraltar or a member State [F73]..., without contravention (as the case may be) of the law of Gibraltar or the law of that State implementing the Wild Birds Directive.

Textual Amendments

F73 Words in reg. 41(7)(b) omitted (31.12.2020) by virtue of The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **56**; 2020 c. 1, Sch. 5 para. 1(1)

Marginal Citations

M52 1981 c. 69.

M53 S.I. 1985/171 (N.I. 2).

M54 S.I. 2007/1842, amended by S.I. 2009/7, 2010/491 and 2012/1928, and revoked by these Regulations.

Prohibition of certain methods of capturing or killing wild birds

42.—(1) Subject to regulation 55, a person is guilty of an offence if that person uses for the purpose of capturing or killing any wild bird—

(a) any of the means listed in paragraph (2);

(b) any other means of capturing or killing which is indiscriminate or capable of causing the local disappearance of any species of wild bird; or

(c) any means of capturing or killing from a mechanically propelled vehicle, including a ship or an aircraft, while in immediate pursuit of a wild bird with a view to capturing or killing that bird.

[[F74](2) The prohibited means of capturing or killing wild birds are those listed in Schedule 2A.**]**

Textual Amendments

F74 Reg. 42(2) substituted (31.12.2020) by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **57**; 2020 c. 1, Sch. 5 para. 1(1)

Sale etc. of live or dead wild birds, eggs etc.

43.—(1) Subject to paragraph (3) and regulation 55, it is an offence for a person—

(a) to be in possession of,

(b) to transport for the purpose of sale,

(c) to sell, or

(d) to offer or expose for sale,

anything to which this paragraph applies.

(2) Paragraph (1) applies to—

(a) any live or dead wild bird, or any part of, or anything derived from, such a bird; or

(b) an egg of a wild bird.

(3) A person ("P") is not guilty of an offence under paragraph (1) in respect of any bird belonging to a species referred to in Part A of Annex III to the Wild Birds Directive, or any egg of such a bird, or anything derived from such a bird, if P shows that—

(a) the bird, egg or other thing had been lawfully killed or taken; or

(b) the bird, egg or other thing had been lawfully sold (whether to P or any other person) or otherwise lawfully acquired by P.

(4) In paragraph (3) "lawfully" means—

(a) without contravention of Part 1 of the Wildlife and Countryside Act 1981, the Wildlife (Northern Ireland) Order 1985, the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007 [M55] or these Regulations; or

(b) in the case of a bird, egg or other thing killed, taken or sold in Gibraltar or a member State [F75]..., without contravention (as the case may be) of the law of Gibraltar or the law of that State implementing the Wild Birds Directive.

(5) In any proceedings for an offence under this regulation—

(a) the bird in question is to be presumed to have been wild unless the contrary is shown; and

(b) if the prosecution proves—

(i) that the part of a bird in question, or the egg in question, is of a bird which is a member of a species referred to in Article 1 of the Wild Birds Directive, or

(ii) that the thing in question is derived from such a bird,

it is to be presumed that the bird was a wild bird unless the contrary is shown.

(6) In this regulation—

(a) "egg" includes part of an egg; and

(b) "sale" includes hire, barter and exchange, and cognate expressions are to be construed accordingly.

Textual Amendments

F75 Words in reg. 43(4)(b) omitted (31.12.2020) by virtue of The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **58**; 2020 c. 1, Sch. 5 para. 1(1)

Marginal Citations

M55 S.I. 2007/1842, amended by S.I. 2009/7, 2010/491 and 2012/1928, and revoked by these Regulations.

Penalties

44. A person guilty of an offence under regulation 40, 42 or 43 is liable, either on summary conviction or on conviction on indictment, to a fine.

Protection of wild animals

Protection of wild animals listed in Annex IV(a) to the Habitats Directive

45.—(1) Subject to regulations 46 and 55, a person who—

(a) deliberately captures, injures, or kills any wild animal of a European protected species,

(b) deliberately disturbs wild animals of any such species,

(c) deliberately takes or destroys the eggs of such an animal, or

(d) damages or destroys, or does anything to cause the deterioration of, a breeding site or resting place of such an animal,

is guilty of an offence.

(2) For the purposes of paragraph (1)(b), disturbance of animals includes in particular any disturbance which is likely—

(a) to impair their ability—

(i) to survive, to breed or reproduce, or to rear or nurture their young; or

(ii) in the case of animals of a hibernating or migratory species, to hibernate or migrate; or

(b) to affect significantly the local distribution or abundance of the species to which they belong.

(3) Subject to regulations 39(3), 46 and 55, it is an offence for a person—

(a) to keep or transport,

(b) to sell or exchange, or

(c) to offer for sale or exchange,

anything to which this paragraph applies.

(4) Paragraph (3) applies to—

(a) any live or dead animal or part of an animal—

(i) which has been taken from the wild; and

(ii) which is of a species or subspecies listed in Annex IV(a) to the Habitats Directive; and

(b) any part of, or anything derived from, such an animal or any such part of an animal.

(5) Paragraphs (1) and (3) apply regardless of the stage of the life of the animal in question.

(6) Unless the contrary is shown, in any proceedings for an offence under paragraph (1) the animal in question is to be presumed to have been a wild animal.

(7) In any proceedings for an offence under paragraph (3), where it is alleged that an animal or a part of an animal was taken from the wild, it is to be presumed, unless the contrary is shown, that the animal in question or part of it was taken from the wild.

(8) The Secretary of State, or the Joint Committee with the approval of the Secretary of State, may publish guidance as to the application of the offence in paragraph (1)(b) or (d) in relation to particular species of animals or particular activities.

(9) In proceedings for an offence under paragraph (1)(b) or (d), a court must take into account any relevant guidance published under paragraph (8).

(10) In any proceedings for an offence under paragraph (1), where this paragraph applies the defendant ("D") is not to be taken deliberately to have done anything mentioned in sub-paragraph (a), (b) or (c) of that paragraph merely because—

(a) D's actions had the result that D did the thing in question; and

(b) D intended those actions and knew that they might have that result.

(11) Paragraph (10) applies where the defendant ("D") shows that—

(a) the actions in question were for the purpose, and in the course, of sea fishing;

(b) D did not intend those actions to have the result in question; and

(c) D had taken any steps that could reasonably be taken to ensure compliance with the requirements or conditions of any **[**[F76]relevant retained EU law**]**.

(12) In paragraph (11), "any **[**[F77]relevant retained EU law**]**" 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 (10) or the risk that it may have a result of that kind; and

(b) **[**[F78]transposes an instrument**]** is adopted by any EU instrument under—

(i) Article 43 of the Treaty on the Functioning of the European Union; or

(ii) Council Regulation (EU) No. 1380/2013 on the Common Fisheries Policy, as amended from time to time [M56] or any instrument adopted thereunder.

(13) In determining the amount of any fine to be imposed on a person convicted of an offence under paragraph (1)(d), the court must in particular have regard to whether that person could reasonably have avoided the damage or destruction of the breeding site or resting place concerned.

(14) In this regulation "destroy", in relation to an egg, includes doing anything to the egg which is calculated to prevent it from hatching.

(15) Regulation 38 does not apply in relation to anything done by a person which is an offence under this regulation.

Textual Amendments

F76 Words in reg. 45(11)(c) substituted (31.12.2020) by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **59(2)**; 2020 c. 1, Sch. 5 para. 1(1)

F77 Words in reg. 45(12) substituted (31.12.2020) by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **59(2)**; 2020 c. 1, Sch. 5 para. 1(1)

F78 Words in reg. 45(12)(b) added (31.12.2020) by virtue of The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **59(3)**; 2020 c. 1, Sch. 5 para. 1(1)

Marginal Citations

M56 OJ No. L 354, 28.12.2013, p. 22, as amended by Council Regulation (EU) 1385/2013 (OJ No. L 354, 28.12.2013, p. 86) and Regulation (EU) 2015/812 (OJ No. L 133, 29.5.2015, p. 1).

Defences to the offences in regulation 45

46.—(1) A person ("P") is not guilty of the offence under regulation 45(1)(a) of deliberately capturing a wild animal of a European protected species, or an offence under regulation 45(3)(a), if P shows that the act in question—

(a) was in relation to an animal that had been disabled otherwise than by P's unlawful act; and

(b) was done solely for one or both of the purposes of—

(i) tending and releasing it when no longer disabled; or

(ii) releasing it after it had been tended.

(2) A person ("P") is not guilty of an offence under regulation 45(1)(a) or (3)(a) if P shows that the act in question—

(a) was in relation to an animal that had been seriously disabled otherwise than by P's unlawful act and that there was no reasonable chance of its recovering; and

(b) was done solely for one or both of the purposes of—

(i) ending the animal's life; or

(ii) disposing of it (otherwise than by sale or exchange) as soon as practicable after it was dead.

(3) A person is not guilty of the offence under regulation 45(1)(a) of deliberately injuring a wild animal of a European protected species if that person shows that this was done solely for the purpose of taking a sample by virtue of regulation 63(2).

(4) A person is not guilty of an offence under regulation 45(3) if that person shows that the animal or part of the animal in question, or the animal or part of the animal from which the part or thing in question is derived, was lawfully taken from the wild.

(5) A person is not guilty of an offence under regulation 45(3) if that person shows that the animal, or the animal from which the part or thing in question is derived—

(a) is of a species listed in the second column of Schedule 2 and was from a population occurring in a country or area which is specified in respect of that species in the third column of that Schedule;

(b) is of the species *Capra aegagrus* (wild goat) and was not from a population occurring naturally in any member State;

(c) is of the subspecies *Ovis gmelini musimon* (European mouflon) and was not from a population occurring naturally in Corsica or Sardinia; or

(d) is of the species *Coregonus oxyrhynchus* (houting) and was either from Finland or was not from an anadromous population.

(6) A person is not guilty of an offence under regulation 45(3)(a) if that person shows that the act in question was done solely for the purpose of investigating whether one or more of the following offences was being or had been committed—

(a) an offence under regulation 45, 47 or 57;

(b) an offence of attempting to commit an offence under regulation 45 or 47; or

(c) an offence under regulation 71 which relates to an offence under regulation 45 or 47.

(7) The defences in paragraphs (1) to (3) and (6) do not apply where it is shown by the prosecution that the defendant's action did not satisfy the conditions in paragraph (8).

(8) Those conditions are that——

(a) there was no satisfactory alternative; and

(b) the action was not detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range.

(9) For the purposes of any proceedings for an offence under regulation 45(3), the common names given in parenthesis in paragraph (5) are to be disregarded.

(10) For the purposes of paragraph (4), an animal, or part of an animal, is to be treated as having been lawfully taken from the wild if—

[[F79](aa) it was taken from the wild in the United Kingdom without contravention of the law and before 10th June 1994;**]**

(a) it was taken from the wild in the European territory of a member State, being territory to which the Treaty on the Functioning of the European Union applies, without contravention of the law of that member State and before the implementation date; or

(b) it was taken from the wild elsewhere.

(11) In this regulation—

"the implementation date" means—

(a) where the relevant State became a member State before 10th June 1994, 10th June 1994, and

(b) in any other case, the date on which the relevant State became a member State; and

"relevant State" means the State in whose territory the animal, or part of it, was taken from the wild.

Textual Amendments

F79 Reg. 46(10)(aa) inserted (31.12.2020) by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **60**; 2020 c. 1, **Sch. 5 para. 1(1)**

Prohibition of certain methods of capturing or killing wild animals

47.—(1) This regulation applies in relation to the capturing or killing of a wild animal—

(a) of any of the species listed in Schedule 3; or

(b) of a European protected species, where the capture or killing is otherwise permitted in accordance with these Regulations.

(2) Subject to regulation 55, a person is guilty of an offence if that person uses for the purpose of capturing or killing any such wild animal—

[[F80](a) any means listed in paragraph 1 or 2 of Schedule 3A;

(b) any form of capturing or killing from any mode of transport listed in paragraph 3 of Schedule 3A**]**;

(c) any form of capturing or killing from a ship whilst it is being propelled by a motor; or

(d) any form of capturing or killing from an aircraft.

[F81](3) . . . . . .

[F82](4) . . . . . .

Textual Amendments

F80 Reg. 47(2)(a)(b) substituted (31.12.2020) by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **61(2)**; 2020 c. 1, Sch. 5 para. 1(1)

F81 Reg. 47(3) omitted (31.12.2020) by virtue of The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **61(3)**; 2020 c. 1, Sch. 5 para. 1(1)

F82 Reg. 47(4) omitted (31.12.2020) by virtue of The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **61(3)**; 2020 c. 1, Sch. 5 para. 1(1)

Penalties

48. A person guilty of an offence under regulation 45 or 47 is liable, either on summary conviction or on conviction on indictment, to a fine.

Protection of plants

Offences relating to wild plants listed in Annex IV(b) to the Habitats Directive

49.—(1) Subject to paragraphs (4) and (5) and regulation 55, it is an offence for a person—

(a) to keep or transport,

(b) to sell or exchange, or

(c) to offer for sale or exchange,

anything to which this paragraph applies.

(2) Paragraph (1) applies to—

(a) any live or dead plant, or part of a plant—

(i) which has been taken in the wild; and

(ii) which is of a species or subspecies listed in Annex II(b) (other than any bryophyte), or listed in Annex IV(b), to the Habitats Directive; and

(b) any part of, or anything derived from, such a plant or such a part of a plant.

(3) Paragraph (1) applies regardless of the stage of the biological cycle of the plant in question.

(4) A person is not guilty of an offence under paragraph (1) if that person shows that the plant or part of the plant in question, or the plant or part of the plant from which the part or thing in question is derived, was lawfully taken in the wild.

(5) A person is not guilty of an offence under paragraph (1)(a) if that person shows that the act in question was done solely for the purpose of investigating whether one or more of the following offences is being or has been committed—

(a) an offence under this regulation or regulation 57;

(b) an offence of attempting to commit an offence under this regulation; or

(c) an offence under regulation 71 which relates to an offence under this regulation.

(6) For the purposes of paragraph (4), a plant, or part of a plant, is to be treated as having been lawfully taken in the wild if—

[[F83](aa) it was taken from the wild in the United Kingdom without contravention of the law and before 10th June 1994;**]**

(a) it was taken in the wild in the European territory of a member State, being territory to which the Treaty on the Functioning of the European Union applies, without contravention of the law of that member State and before the implementation date; or

(b) it was taken in the wild elsewhere.

(7) In any proceedings for an offence under this regulation, where it is alleged that a plant or part of a plant was taken in the wild, it is to be presumed, unless the contrary is shown, that that plant or part of a plant was taken in the wild.

(8) A person guilty of an offence under this regulation is liable, either on summary conviction or on conviction on indictment, to a fine.

(9) In this regulation—

"the implementation date" means—

(a) where the relevant State became a member State before 10th June 1994, 10th June 1994; and

(b) in any other case, the date on which the relevant State became a member State; and

"relevant State" means the State in whose territory the plant, or part of it, was taken in the wild.

Textual Amendments

F83 Reg. 49(6)(aa) inserted (31.12.2020) by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **62**; 2020 c. 1, Sch. 5 para. 1(1)

PART 4

ADDITIONAL PROTECTION OF HABITATS AND WILD ANIMALS AND PLANTS

Duties relating to surveillance and monitoring

Surveillance of conservation status of habitats and species

50.—(1) In relation to the offshore marine area, the Secretary of State must make arrangements in accordance with paragraphs (9) to (11) for the surveillance of the conservation status of **[**[F84]natural habitat types listed in Annex I of the Habitats Directive and species of wild fauna and flora listed in Annex II, IV or V of that Directive**]**, and in particular priority natural habitat types and priority species.

(2) In relation to the Scottish offshore region, the Scottish Ministers must make arrangements in accordance with paragraphs (9) to (11) for the surveillance of the conservation status of **[**[F84]natural habitat types listed in Annex I of the Habitats Directive and species of wild fauna and flora listed in Annex II, IV or V of that Directive**]**, and in particular priority natural habitat types and priority species.

(3) In relation to the Welsh offshore region, the Welsh Ministers must make arrangements in accordance with paragraphs (9) to (11) for the surveillance of the conservation status of **[**[F84]natural habitat types listed in Annex I of the Habitats Directive and species of wild fauna and flora listed in Annex II, IV or V of that Directive**]**, and in particular priority natural habitat types and priority species

(4) Before the Secretary of State makes any arrangements under paragraph (1) for surveillance in relation to the Scottish offshore region or the Welsh offshore region, the Secretary of State must consult the Scottish Ministers or the Welsh Ministers, respectively.

(5) The Secretary of State must from time to time—

(a) consult the devolved administrations about the arrangements made under paragraph (1);

(b) provide the devolved administrations with such information as the Secretary of State considers appropriate that has been derived from the surveillance arranged under paragraph (1); and

(c) review the arrangements made under paragraph (1) and, if the Secretary of State thinks it appropriate, revise those arrangements.

(6) The Scottish Ministers must from time to time—

(a) consult the other devolved administrations and the Secretary of State about the arrangements made under paragraph (2);

(b) provide the other devolved administrations and the Secretary of State with such information as the Scottish Ministers consider appropriate that has been derived from the surveillance arranged under paragraph (2); and

(c) review the arrangements made under paragraph (2) and, if they think it appropriate, revise those arrangements.

(7) The Welsh Ministers must from time to time—

(a) consult the other devolved administrations and the Secretary of State about the arrangements made under paragraph (3);

(b) provide the other devolved administrations and the Secretary of State with such information as the Welsh Ministers consider appropriate that has been derived from the surveillance arranged under paragraph (3); and

(c) review the arrangements made under paragraph (3) and, if they think it appropriate, revise those arrangements.

(8) The Joint Committee must—

(a) assess how and to what extent surveillance of the conservation status of each relevant habitat and species needs to be carried out, having regard to—

(i) whether a habitat or species is a priority natural habitat type or priority species; and

(ii) the conservation status of the habitat or species; and

(b) advise the relevant administration as to the need for such surveillance.

(9) The relevant administration must ensure that the necessary surveillance is carried out on an ongoing basis.

(10) Surveillance for the purposes of this regulation may be carried out by—

(a) the Joint Committee; or

(b) any other person acting pursuant to, and in accordance with, an agreement with the relevant administration or the Joint Committee.

(11) In this regulation—

(a) a “relevant” habitat or species means a habitat or species in the offshore marine area of a type referred to in paragraph (1), (2) or (3);

(b) “the relevant administration” means—

(i) in relation to surveillance under paragraph (1), the Secretary of State;

(ii) in relation to surveillance under paragraph (2), the Scottish Ministers; and

(iii) in relation to surveillance under paragraph (3), the Welsh Ministers.

Textual Amendments

F84 Words in reg. 50(1)-(3) substituted (31.12.2020) by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **63**; 2020 c. 1, Sch. 5 para. 1(1)

Protection of certain animals and plants from exploitation

51.—(1) The Secretary of State must, as required in the light of information derived from surveillance carried out under regulation 50 or otherwise arranged for the purposes of Article 11 of the Habitats Directive, ensure that measures are taken for the purpose described in paragraph (2).

(2) The purpose referred to in paragraph (1) is to ensure that—

(a) the taking in the wild of specimens of a species listed in Annex V to the Habitats Directive, and

(b) the exploitation of any such specimens in the waters comprising the offshore marine area,

are compatible with that species being maintained at a favourable conservation status.

(3) Where measures are required under paragraph (1), the Secretary of State must make arrangements for surveillance for the purpose of establishing whether the taking in the wild of specimens of the species concerned, and the exploitation of specimens of that species, are compatible with the maintenance of the species at a favourable conservation status.

(4) In so far as arrangements for measures mentioned in paragraph (1) may be made by either the Scottish Ministers or the Welsh Ministers in the exercise of any of their respective functions for the purpose mentioned in paragraph (2), paragraph (1) applies to the Scottish Ministers and the Welsh Ministers as it applies to the Secretary of State.

(5) The obligation of the Secretary of State under paragraph (1) is to be treated as satisfied in so far as it has been met by either the Scottish Ministers or the Welsh Ministers.

(6) Insofar as arrangements for measures mentioned in paragraph (1) may be made by any Northern Ireland department in the exercise of any of its functions for the purpose mentioned in paragraph (2), paragraph (1) applies to that department as it applies to the Secretary of State.

(7) The obligation of the Secretary of State under paragraph (1) is to be treated as satisfied insofar as it has been met by any Northern Ireland department.

(8) Before the Secretary of State exercises any relevant function for the purpose of complying with paragraph (1), the Secretary of State must first consult—

(a) the Scottish Ministers, in the case of a relevant function exercisable for the purpose referred to in paragraph (9)(a);

(b) the Welsh Ministers, in the case of a relevant function exercisable for the purpose referred to in paragraph (9)(b); or

(c) the DAERA, in the case of a relevant function exercisable for the purpose referred to in paragraph (9)(c).

(9) In this regulation, "relevant function" means any function of the Secretary of State exercisable for the purpose of—

(a) securing any result which may instead be secured by the exercise of any function of the Scottish Ministers;

(b) securing any result which may instead be secured by the exercise of any function of the Welsh Ministers; or

(c) securing any result which may instead be secured by the exercise of any function of any Northern Ireland department.

Monitoring incidental capture and killing

52.—(1) The relevant administration must make arrangements in accordance with paragraphs (4) and (5) to establish a system for monitoring—

(a) the capture of animals of any species listed in Annex IV(a) to the Habitats Directive, and

(b) the killing of any such animals,

which (in either case) is incidental to any activity that takes place in the waters comprised in the offshore marine area.

(2) The relevant administration must, from time to time—

(a) consult the other administrations about the arrangements made under paragraph (1);

(b) provide the other administrations with such information as it considers appropriate derived from the monitoring arranged under paragraph (1); and

(c) review the arrangements made under paragraph (1) and, if it thinks it appropriate, revise those arrangements.

(3) The Joint Committee must, in relation to the species of animals listed in Annex IV(a) to the Habitats Directive which are found in the offshore marine area—

(a) identify the risks of incidental capture and killing to which those species are subject, and the activities which give rise to such risks;

(b) maintain a record of instances of incidental capture or killing of animals of those species of which the Joint Committee is aware as a result of the surveillance carried out under regulation 50, the monitoring carried out under this regulation, or otherwise;

(c) assess to what extent monitoring of incidental capture and killing is needed, having regard to—

(i) the risks identified under sub-paragraph (a);

(ii) the instances of incidental capture or killing recorded under sub-paragraph (b);

(iii) whether the species is a priority species; and

(iv) the conservation status of the species; and

(d) advise the relevant administration as to the need for such monitoring.

(4) The relevant administration must ensure that the necessary monitoring of incidental capture and killing is carried out.

(5) Monitoring for the purposes of this regulation may be carried out by—

(a) the Joint Committee;

(b) any other competent authority;

(c) any other person acting pursuant to, and in accordance with—

(i) an agreement with the relevant administration or the Joint Committee; or

(ii) a condition of a licence or other authorisation granted by a competent authority.

(6) Before the Secretary of State exercises any functions under this regulation in relation to a matter in relation to which functions are also exercisable by the Scottish Ministers or the Welsh Ministers, the Secretary of State must consult the Scottish Ministers or Welsh Ministers, respectively.

(7) The obligations of the Secretary of State under this regulation in relation to the Scottish offshore region or the Welsh offshore region are to be treated as satisfied in so far as corresponding obligations of the Scottish Ministers or the Welsh Ministers, respectively, have been met by them.

(8) In this regulation—

(a) "the other administrations" means the administrations other than the relevant administration, and for this purpose "the administrations" means the Secretary of State and the devolved administrations; and

(b) "the relevant administration" means—

(i) in relation to the monitoring of activity taking place in the offshore marine area, the Secretary of State;

(ii) in relation to the monitoring of activity taking place in the Scottish offshore region, the Scottish Ministers; and

(iii) in relation to the monitoring of activity taking place in the Welsh offshore region, the Welsh Ministers.

Protection from incidental capture and killing

53.—(1) The Secretary of State must, as required in the light of information derived from monitoring carried out under regulation 52 or otherwise arranged for the purposes of Article 12(4) of the Habitats Directive, make arrangements for further research, or ensure that conservation measures are taken, for the purpose specified in paragraph (2).

(2) The purpose referred to in paragraph (1) is to ensure that the capture or killing (as the case may be) of animals of a species listed in Annex IV(a) to the Habitats Directive which is incidental to any activity that takes place in the waters comprised in the offshore marine area does not have a significant negative impact on that species.

(3) In so far as arrangements for further research or conservation measures mentioned in paragraph (1) may be made by the Scottish Ministers, the Welsh Ministers or any Northern Ireland Department in the exercise of any of their functions for the purpose mentioned in paragraph (2), paragraph (1) applies to the Scottish Ministers, the Welsh Ministers and that Northern Ireland Department, as the case may be, as it applies to the Secretary of State.

(4) The obligation of the Secretary of State under paragraph (1) is to be treated as satisfied in so far as it has been met by the Scottish Ministers, the Welsh Ministers or any Northern Ireland Department.

(5) Before the Secretary of State exercises any relevant function for the purpose of complying with paragraph (1), the Secretary of State must first consult—

(a) the Scottish Ministers, in the case of a relevant function exercisable for the purpose referred to in paragraph (6)(a);

(b) the Welsh Ministers in the case of a relevant function exercisable for the purpose referred to in paragraph (6)(b); or

(c) in Northern Ireland, the DAERA in the case of a relevant function exercisable for the purpose referred to in paragraph (6)(c).

(6) In this regulation, "relevant function" means any function of the Secretary of State exercisable for the purpose of—

(a) securing any result which may instead be secured by the exercise of any function of the Scottish Ministers;

(b) securing any result which may instead be secured by the exercise of any function of the Welsh Ministers; or

(c) securing any result which may instead be secured by the exercise of any function of any Northern Ireland department.

Introduction of new species

Introduction of new species

54.—(1) Subject to regulation 55(11)—

(a) a person on an offshore marine installation commits an offence if that person deliberately introduces into any relevant part of the waters in any area designated under section 1(7) of the Continental Shelf Act 1964 [M57] any live animal or plant of a kind having a natural range that does not include those waters; and

(b) a person in, or on board a ship in, any relevant part of the waters comprised in the offshore marine area commits an offence if, other than in accordance with paragraph (3), that person deliberately introduces into any part of those waters any live animal or plant of a kind having a natural range that does not include those waters.

(2) For the purposes of paragraph (1), "relevant part" means any part where the introduction would give rise to a risk of prejudice to natural habitats within their natural range or a risk of prejudice to wild native flora or fauna (whether in the place of introduction or elsewhere).

(3) An introduction is in accordance with this paragraph if—

(a) it resulted from a discharge of water carried as ballast and the discharge was necessary for the purpose of protecting the safety of any person or ship; and

(b) all reasonably practicable steps were taken—

(i) to avoid its occurring in an area where it would give rise to a risk of prejudice to natural habitats within their natural range or a risk of prejudice to wild native flora or fauna (whether in the place of introduction or elsewhere); and

(ii) to minimise any risk of such prejudice.

(4) In any proceedings for an offence under paragraph (1)(b), a court must have regard to any guidance about steps which may be taken to avoid committing an offence under paragraph (1)(b) which is issued for the purposes of this paragraph by the Secretary of State, or—

(a) in relation to the Scottish offshore region, by the Scottish Ministers; or

(b) in relation to the Welsh offshore region, by the Welsh Ministers.

(5) The Scottish Ministers or the Welsh Ministers may only issue guidance under paragraph (4) with the agreement of the Secretary of State.

(6) In any proceedings for an offence under paragraph (1)(b), it is for the defendant to show that the introduction in question was in accordance with paragraph (3).

(7) A person guilty of an offence under this regulation is liable, either on summary conviction or on conviction on indictment, to a fine.

(8) This regulation does not apply to a person on board a third country ship **[**[F85]unless the United Kingdom is entitled under international law to exercise those powers without the consent of the flag state**]**.

Textual Amendments

F85 Words in reg. 54(8) inserted (31.12.2020) by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **64**; 2020 c. 1, Sch. 5 para. 1(1)

Marginal Citations

M57 1964 c. 29. Section 1(7) was amended by the Oil and Gas (Enterprise) Act 1982 (c. 23) paragraph 1 of Schedule 3. Areas have been designated under section 1(7) by S.I. 1987/1265, 2000/3062 (revoked by S.I. 2013/3162), 2001/3670 (revoked by S.I. 2013/3162), and 2013/3162.

PART 5

LICENCES

Power to grant licences

55.—(1) Regulations 40, 42 and 43 do not apply to anything done under and in accordance with the terms of a licence granted by the relevant administration under this paragraph, and—

(a) in the interests of preserving public health, public safety or air safety;

(b) for the purpose of preventing serious damage to fisheries;

(c) for the purpose of protecting flora or fauna;

(d) for scientific or educational purposes; or

(e) for the purposes of the re-population of an area with, or the re-introduction into an area of, wild birds (including any breeding necessary for those purposes).

(2) The relevant administration must not grant a licence for any purpose mentioned in paragraph (1) unless satisfied that, as regards that purpose, there is no other satisfactory solution.

(3) The relevant administration may grant a licence to permit the capture, keeping or other judicious use of certain wild birds notwithstanding that the licence is not for a purpose within paragraph (1).

(4) The relevant administration must not grant a licence under paragraph (3) unless satisfied that—

(a) there is no other satisfactory solution than granting the licence; and

(b) the grant of the licence would be consistent with the restrictions in Article 9(1)(c) of the Wild Birds Directive (namely "under strictly supervised conditions and on a selective basis" and in respect of a small number of birds).

(5) Regulations 40, 42 and 43 do not apply to anything done under and in accordance with the terms of a licence granted by the relevant administration under paragraph (3).

(6) Regulations 45, 47 and 49 do not apply to anything done under and in accordance with the terms of a licence granted by the relevant administration under this paragraph, and—

(a) in the interests of public health or public safety or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment;

(b) for the purpose of preventing serious damage to fisheries;

(c) for the purpose of preventing serious damage to property,

(d) in the interest of protecting wild flora or fauna or conserving natural habitats;

(e) for the purpose of preventing the spread of disease;

(f) for scientific or educational purposes; or

(g) for the purposes of the re-population of an area with, or the re-introduction into an area of, wild animals or wild plants (including any breeding or artificial propagation necessary for those purposes).

(7) The relevant administration must not grant a licence under paragraph (6) unless satisfied—

(a) that there is no satisfactory alternative; and

(b) that the action authorised will not be detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range.

(8) The relevant administration may grant a licence to permit the taking or keeping of certain specimens of any of the species or subspecies listed in Annex II(b) (other than any bryophyte) or Annex IV to the Habitats Directive notwithstanding that the licence is not for a purpose within paragraph (6).

(9) The relevant administration must not grant a licence under paragraph (8) unless satisfied—

(a) that the grant of the licence would be consistent with the restrictions in Article 16(1)(e) of the Habitats Directive (namely "under strictly supervised conditions, on a selective basis and to a limited extent" and "in limited numbers");

(b) that there is no satisfactory alternative; and

(c) that the action authorised will not be detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range.

(10) Regulations 45, 47 and 49 do not apply to anything done under and in accordance with the terms of a licence granted by the relevant administration under paragraph (8).

(11) Regulation 54 does not apply to anything done under and in accordance with the terms of a licence granted by the relevant administration under this paragraph.

(12) The relevant administration must not grant a licence under paragraph (11) unless satisfied that the action authorised by the licence will not prejudice natural habitats within their natural range or wild native fauna or flora.

(13) The relevant administration must not grant a licence for any purpose under this regulation unless it has been advised by the Joint Committee as to the circumstances in which, in the Joint Committee's opinion, licences should be granted for the purpose in question.

(14) The relevant administration may charge for a licence under this regulation such reasonable sum as it may determine.

(15) In this regulation "the relevant administration" means—

(a) in relation to the licensing of anything done—

(i) in any part of the waters comprising the offshore marine area outside the Scottish offshore region and the Welsh offshore region, or

(ii) in the course of carrying on any activity specified in paragraph (16) in any part of the offshore marine area,

the Secretary of State; and

(b) in relation to the licensing of anything done in the course of carrying out any activity other than one specified in paragraph (16)—

(i) in the Scottish offshore region, the Scottish Ministers; and

(ii) in the Welsh offshore region, the Welsh Ministers.

(16) The activities specified in this paragraph are—

(a) an activity for which a licence under section 3 of the Petroleum Act 1998 [M58] is required or which is permitted by section 2 of the Petroleum (Production) Act 1934 [M59] (licences to search for and get petroleum);

(b) constructing or maintaining a pipeline in respect of any part of which an authorisation (within the meaning of Part 3 of the Petroleum Act 1998) is in force;

(c) establishing or maintaining an offshore installation (within the meaning of Part 4 of the Petroleum Act 1998) [M60];

(d) taking any installation abandonment measures;

(e) an activity for which a licence under section 4 or 18 of the Energy Act 2008 [M61] is required (gas unloading, storage and recovery, and carbon dioxide storage);

(f) any activity other than those specified in sub-paragraphs (a) to (e), relating to a matter which is a reserved matter by virtue of section D2 (oil and gas) in Part 2 of Schedule 5 to the Scotland Act 1998 [M62];

(g) any activity relating to a matter which is a reserved matter by virtue of paragraph 9 of Part 1 of that Schedule (defence); and

(h) any activity relating to a matter which is a reserved matter by virtue of section E3 (marine transport) in Part 2 of that Schedule.

(17) For the purposes of paragraph (15)(a), a thing is to be treated as done in a part of the waters referred to in paragraph (i) of that paragraph if it is done on any ship in, or any British aircraft flying over, any such part, or on any aircraft flying over an offshore marine installation in any such part, or on or under any such offshore marine installation.

(18) In relation to an application for a licence received by the Secretary of State before these Regulations come into force, paragraph (15)(b)(ii) applies as if for "the Welsh Ministers" there were substituted " the Secretary of State ".

Marginal Citations

M58 1998 c. 17. Section 3 was amended by the Scotland Act 2016, section 48; and by S.I. 2016/898.

M59 1934 c. 36. The whole of the Petroleum (Production) Act 1934 was repealed by Part 1 of Schedule 5 to the Petroleum Act 1998 (c. 17) subject to savings in respect of licences in force immediately before the coming into force of that Act (paragraph 4 of Schedule 3).

M60 Section 44, which defines "offshore installation", was amended by the Energy Act 2008 (c. 32), **Schedule 1**, paragraph 11.

M61 2008 c. 32. Section 4 was amended by the Energy Act 2016 (c. 20), **Schedule 1**, paragraphs 41 and 42; and by S.I. 2017/524. Section 18 was amended by the Energy Act 2016 (c. 20), **Schedule 1**, paragraphs 41 and 53; and by S.I. 2011/2453 and 2017/524; and by S.S.I. 2011/224.

M62 1998 c. 46.

[[F86]Report on licences

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

(2) A report published under paragraph (1) must specify—

(a) the species to which the licence relates, and the reason for granting the licence, including the nature of the risk, with, if appropriate a reference to alternatives rejected and scientific data used;

(b) in relation to any animal species, any means authorised for the capture or killing of the species and the reasons for the use of that means;

(c) the circumstances of when and where the licence was granted; and

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

Textual Amendments

F86 Reg. 55A inserted (31.12.2020) by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **65**; 2020 c. 1, Sch. 5 para. 1(1)

Licences: supplementary provisions

56.—(1) Subject to the provisions of this regulation, a licence under regulation 55—

(a) may be, to any degree, general or specific;

(b) may be granted either to persons of a class or to a particular person; and

(c) may be subject to compliance with any specified conditions.

(2) For the purposes of such a licence the definition of a class of persons may be framed by reference to their being authorised by any other person, or by reference to any other circumstances whatever.

(3) A licence under regulation 55(1) or (3) must specify—

(a) the species of wild birds in respect of which, the circumstances in which, and the conditions subject to which, any action authorised by the licence may be taken; and

(b) the methods, means or arrangements which are authorised or required for the taking of the action.

(4) A licence under regulation 55(6) which authorises any person to kill wild animals must specify the area within which and the means or methods by which the wild animals may be killed.

(5) A licence under regulation 55(8) may only be granted to such persons as are named in the licence.

(6) A licence under regulation 55(8) must specify—

(a) the species of animal or plant specimens which may be taken or kept;

(b) the maximum number of specimens which may be taken or kept or which particular specimens may be taken or kept;

(c) the conditions subject to which the action authorised by the licence may be taken and in particular—

(i) the methods, means or arrangements by which the specimens may be taken or kept;

(ii) when or over what period the action authorised by the licence may be taken; and

(iii) where it authorises any person to take specimens, the area from which they may be taken.

(7) A licence under regulation 55 may be modified or revoked at any time by the relevant administration, but otherwise it is valid for the period stated in the licence.

(8) In paragraph (7), "the relevant administration" is to be construed in accordance with regulation 55(15), (16) and (18).

False statements made for obtaining licence

57.—(1) A person ("P") is guilty of an offence if, for the purposes of obtaining (whether for P or another) the grant of a licence under regulation 55, P—

(a) makes a statement or representation, or furnishes a document or information, which P knows to be false in a material particular; or

(b) recklessly makes a statement or representation, or furnishes a document or information, which is false in a material particular.

(2) A person guilty of an offence under this regulation is liable, either on summary conviction or on conviction on indictment, to a fine.

PART 6

ENFORCEMENT AND SUPPLEMENTARY PROVISION RELATING TO CRIMINAL OFFENCES

Enforcement

Wildlife officers

58.—(1) The Secretary of State, the Scottish Ministers or the Welsh Ministers may authorise any person to be a wildlife officer.

(2) A competent authority other than a competent authority in Scotland or a competent authority in Wales may authorise any person to be a wildlife officer, subject to and in accordance with the agreement of the Secretary of State.

(3) A competent authority in Scotland (other than the Scottish Ministers) or a competent authority in Wales (other than the Welsh Ministers) may authorise any person to be a wildlife officer, subject to and in accordance with the agreement of the Scottish Ministers or Welsh Ministers respectively.

(4) An authorisation under paragraph (1), (2) or (3) must be in writing and may be subject to any conditions or limitations specified in it.

(5) Payments may be made by way of remuneration, allowances, expenses or otherwise—

(a) by the Secretary of State to any person authorised by the Secretary of State under paragraph (1);

(b) by the Scottish Ministers to any person authorised by them under paragraph (1);

(c) by the Welsh Ministers to any person authorised by them under paragraph (1); and

(d) by a competent authority to any person authorised by it under paragraph (2) or (3).

(6) An agreement under paragraph (2) or (3) may be subject to conditions or limitations and may make provision for payment by the relevant administration to reimburse the competent authority for the expenses it incurs in connection with and for the purposes of the agreement.

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

(a) in relation to an agreement under paragraph (2), the Secretary of State; and

(b) in relation to an agreement under paragraph (3), the Scottish Ministers or the Welsh Ministers as the case may be.

Enforcement functions of wildlife officers appointed by the Scottish Ministers or the Welsh Ministers and competent authorities in Scotland or Wales

59.—(1) A wildlife officer appointed by the Scottish Ministers under regulation 58(1) or by a competent authority in Scotland under regulation 58(3)—

(a) may only exercise any function under regulations 60 to 67 for the purposes of ascertaining whether an offence under these Regulations is being or has been committed in the Scottish offshore region; and

(b) in relation to anything done in the course of carrying on an activity falling within paragraph (3), may only exercise any such function subject to and in accordance with the agreement of the Secretary of State.

(2) A wildlife officer appointed by the Welsh Ministers under regulation 58(1) or by a competent authority in Wales under regulation 58(3)—

(a) may only exercise any function under regulations 60 to 67 for the purposes of ascertaining whether an offence under these Regulations is being or has been committed in the Welsh offshore region; and

(b) in relation to anything done in the course of carrying on an activity falling within paragraph (3), may only exercise any such function subject to and in accordance with the agreement of the Secretary of State.

(3) The activities falling within this paragraph are—

(a) an activity for which a licence under section 3 of the Petroleum Act 1998 [M63] or section 2 of the Petroleum (Production) Act 1934 [M64] (licences to search for and get petroleum) is required;

(b) constructing or maintaining a pipeline in respect of which, or any part of which, an authorisation (within the meaning of Part 3 of the Petroleum Act 1998) is in force;

(c) establishing or maintaining an offshore installation (within the meaning of Part 4 of the Petroleum Act 1998 [M65]);

(d) taking any installation abandonment measures;

(e) an activity for which a licence under section 4 or 18 of the Energy Act 2008 [M66] is required (gas unloading, storage and recovery, and carbon dioxide storage);

(f) any activity other than those specified in sub-paragraphs (a) to (e), relating to a matter which is a reserved matter by virtue of section D2 (oil and gas) in Part 2 of Schedule 5 to the Scotland Act 1998 [M67];

(g) any activity relating to a matter which is a reserved matter by virtue of paragraph 9 of Part 1 of that Schedule (defence); and

(h) any activity relating to a matter which is a reserved matter by virtue of section E3 (marine transport) in Part 2 of that Schedule.

Marginal Citations

M63 1998 c. 17. Section 3 was amended by the Scotland Act 2016, section 48; and by S.I. 2016/898.

M64 1934 c. 36. The whole of the Petroleum (Production) Act 1934 was repealed by Part 1 of Schedule 5 to the Petroleum Act 1998 (c. 17) subject to savings in respect of licences in force immediately before the coming into force of that Act (paragraph 4 of Schedule 3).

M65 Section 44, which defines "offshore installation", was amended by the Energy Act 2008 (c. 32), **Schedule 1**, paragraph 11

M66 2008 c. 32. Section 4 was amended by the Energy Act 2016 (c. 20), **Schedule 1**, paragraphs 41 and 42; and by S.I. 2017/524. Section 18 was amended by the Energy Act 2016 (c. 20), **Schedule 1**, paragraphs 41 and 53; and by S.I. 2011/2453, and 2017/524; and by S.S.I. 2011/224.

M67 1998 c. 46.

Powers of boarding, entry and inspection

60.—(1) For the purposes of ascertaining whether an offence under these Regulations is being or has been committed on or from a ship to which this paragraph applies or on or from an offshore marine installation, a wildlife officer may at any time, and (if required to do so) upon producing duly authenticated authorisation, board and inspect the ship or offshore marine installation in question.

(2) Paragraph (1) applies to—

(a) a ship, wherever it may be—

(i) which is registered in the United Kingdom under Part 2 of the Merchant Shipping Act 1995 [M68];

(ii) which, as a Government ship, is registered in the United Kingdom in pursuance of an Order in Council under section 308 of that Act;

(iii) which is within section 1(1)(d) of that Act and is not a third country ship; or

(iv) which is registered under the law of Gibraltar;

(b) any other ship within British fishery limits; or

(c) an offshore marine installation.

(3) A wildlife officer may at all reasonable hours, and (if required to do so) upon producing duly authenticated authorisation, enter and inspect any premises, other than any premises referred to in paragraph (2), in the United Kingdom for the purpose of ascertaining whether an offence under these Regulations has been committed.

(4) In relation to premises which are a dwelling, the power conferred by paragraph (3) may only be exercised on the grant of a warrant by a justice.

(5) A justice may only issue a warrant under paragraph (4) if, on an application made by a wildlife officer, the justice is satisfied—

(a) that the officer has reasonable grounds for believing that there is material in the dwelling which is likely to be of substantial value (whether in itself or together with other material) to the investigation of an offence under these Regulations; and

(b) that—

(i) it is not practicable to communicate with any person entitled to grant entry to the dwelling;

(ii) a person entitled to grant entry to the dwelling has unreasonably refused a wildlife officer entry;

(iii) entry to the dwelling is unlikely to be granted unless a warrant is produced; or

(iv) the purpose of entry may be frustrated or seriously prejudiced unless a wildlife officer arriving at the dwelling can secure immediate entry to it.

(6) Sections 15 and 16 of the Police and Criminal Evidence Act 1984 [M69] (which respectively relate to safeguards in respect of warrants and the execution of warrants) and articles 17 and 18 of the Police and Criminal Evidence (Northern Ireland) Order 1989 [M70] (which make provision corresponding to those sections) have effect (in relation to England and Wales and in relation to Northern Ireland respectively) in relation to warrants issued to wildlife officers under this regulation as they have effect in relation to warrants issued to constables.

(7) In this regulation—

a "justice" means—

(a) in relation to England and Wales and Northern Ireland, a justice of the peace; and

(b) in relation to Scotland, a sheriff, stipendiary magistrate or justice of the peace;

"the United Kingdom" means the United Kingdom (including its internal waters) and the territorial sea adjacent to the United Kingdom;

"Government Ship" has the meaning given in section 308 of the Merchant Shipping Act 1995.

Marginal Citations

M68 1995 c. 21. Section 15 has been amended by S.I. 2002/794 and 2015/664.

M69 1984 c. 60. Section 15 was amended by Part 2 of Schedule 17 to, the Serious Organised Crime and Police Act 2005 (c. 15), **sections 113** and 114; and by S.I. 2005/3496. Section 16 was amended by section 2 of the Criminal Justice Act 2003 (c. 44) and the Serious Organised Crime and Police Act 2005, sections 113 and 114 and by S.I. 2005/3496.

M70 S.I. 1989/1341 (N.I. 12).

Additional powers

61. Regulations 62 to 64 apply where a wildlife officer has boarded any ship or offshore marine installation or entered any premises by virtue of regulation 60.

Powers to make inquiries and examine things

62.—(1) A wildlife officer may, for the purposes of ascertaining whether an offence has been or is being committed under these Regulations—

(a) make any inquiry of any person on board the ship or offshore marine installation or at the premises; or

(b) examine anything there.

(2) A wildlife officer may require any person on board the ship or offshore marine installation, or an occupier of the premises, to do anything to facilitate the officer's examination of anything.

Powers relating to specimens

63.—(1) A wildlife officer may, for the purpose of ascertaining whether an offence has been or is being committed under these Regulations, require any person on board the ship or offshore marine installation, or at the premises, who is in possession or control of a specimen, to make that specimen available for inspection.

(2) A wildlife officer may, subject to paragraph (3), take a sample from any specimen found on the ship or offshore marine installation or at the premises or which is made available under paragraph (1).

(3) No sample may be taken under paragraph (2) from a live bird, other animal or plant except for the purpose of establishing its identity or ancestry.

(4) A wildlife officer may take and remove from the ship, offshore marine installation or premises any specimen which is not a live bird, other animal or plant, if there are reasonable grounds for believing it is evidence of an offence under these Regulations.

(5) In this regulation—

"sample" means a sample of blood, tissue or other biological material; and

"specimen" means—

(a) any bird, other animal or plant; or

(b) any part of, or anything derived from, a bird, other animal or plant.

Powers relating to documents and recording evidence of offences

64.—(1) A wildlife officer may, for the purposes of ascertaining whether an offence has been or is being committed under these Regulations, require any person on board the ship or offshore marine installation, or at the premises, to produce any document in that person's possession or control, and may take copies of any such document.

(2) A wildlife officer may take and remove any document from the ship, offshore marine installation or premises, if there are reasonable grounds for believing it is evidence of an offence under these Regulations.

(3) Nothing in paragraph (2) permits any document to be taken or removed from a ship, offshore marine installation or premises which is required by law to be carried on the ship or offshore marine installation or to be kept at the premises.

(4) A wildlife officer may use any device for the purpose of taking visual images or sound recordings of anything which the officer believes is evidence of an offence under these Regulations.

Further powers in relation to ships

65.—(1) In order to ascertain whether an offence is being or has been committed under these Regulations by a person on board a ship, a wildlife officer may require the ship to stop and do anything which will facilitate the boarding of the ship.

(2) Where a wildlife officer has reasonable grounds for believing that an offence is being or has been committed under these Regulations by a person on board a ship, the officer may—

(a) require the master, or other person for the time being in charge of the ship, to take it and its crew to the port which appears to the officer to be the nearest convenient port; and

(b) detain the ship in port, or require the master, or other person for the time being in charge of the ship, to do so.

(3) A wildlife officer who detains any ship must serve on the person in charge notice in writing stating that it is to be detained until the notice is withdrawn by service of a further notice in writing signed by a wildlife officer.

Assistance for wildlife officers

66.—(1) A wildlife officer may—

(a) be accompanied by any other person the officer considers necessary; and

(b) bring any equipment or materials the officer considers necessary.

(2) A person assisting a wildlife officer may perform any of that officer's functions but only under that officer's supervision.

Power to use reasonable force

67. A wildlife officer, or a person assisting an officer by virtue of regulation 66, may use reasonable force, if necessary, in the exercise of functions under these Regulations.

Liability of wildlife officers

68. A wildlife officer, or a person assisting an officer by virtue of regulation 66, is not to be personally liable in any civil or criminal proceedings for anything done in the purported exercise of functions under these Regulations if the court is satisfied that the act was done in good faith and there were reasonable grounds for doing it.

Offences in relation to wildlife officers

69.—(1) A person ("P") is guilty of an offence if P—

(a) intentionally obstructs a wildlife officer, or a person assisting an officer by virtue of regulation 66, in the exercise of functions under these Regulations;

(b) assaults a wildlife officer, or a person assisting an officer by virtue of regulation 66, in the exercise of functions under these Regulations;

(c) fails without reasonable excuse to comply with a requirement under regulation 62(2), 63(1), 64(1) or 65 reasonably made by a wildlife officer or by a person assisting an officer by virtue of regulation 66;

(d) prevents any other person from complying with any such requirement; or

(e) in purporting to give information requested by a wildlife officer, or by a person assisting an officer by virtue of regulation 66, makes a statement which P knows to be false in a material particular.

(2) A person guilty of an offence under this regulation is liable, either on summary conviction or on conviction on indictment, to a fine.

Supplementary provision relating to criminal offences

Jurisdiction of courts

70. Proceedings for prosecuting an offence under these Regulations may be taken, and the offence may for all incidental purposes be treated as having been committed, in any part of the United Kingdom.

Possession of means of committing offence

71.—(1) Subject to paragraph (2), a person who, for the purpose of committing an offence under Part 3, is in possession of anything capable of being used for committing the offence, is guilty of an offence and punishable in the same manner as for that offence.

(2) An offence under paragraph (1) may only be committed by a person—

(a) in the United Kingdom; or

(b) at a place where, or on a ship or aircraft on which and in a place where, the offence under Part 3 could have been committed.

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

Offences by bodies corporate etc.

72.—(1) If an offence under these Regulations committed by a body corporate is shown—

(a) to have been committed with the consent or connivance of an officer, or

(b) to be attributable to any neglect on the part of an officer,

the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) If the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with the member's functions of management as if the member were an officer of the body.

(3) If an offence under these Regulations committed by a Scottish partnership is shown—

(a) to have been committed with the consent or connivance of a partner, or

(b) to be attributable to any neglect on the part of a partner,

the partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

(4) In this regulation—

(a) "officer", in relation to a body corporate, means a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity; and

(b) "partner" includes a person purporting to act as a partner.

Territorial Waters Jurisdiction Act 1878

73. Section 3 of the Territorial Waters Jurisdiction Act 1878 [M71] (consents to prosecutions of offences committed on the open sea by persons who are not British citizens) does not apply to any proceedings for an offence under these Regulations.

Marginal Citations

M71 1878 c. 73.

PART 7

MISCELLANEOUS

Research

74.—(1) The Secretary of State must take such steps to encourage research and scientific work relating to the offshore marine area as the Secretary of State considers necessary—

(a) having regard to the objectives in Article 2, and the obligation in Article 11, of the Habitats Directive; and

(b) for the purpose of the protection or management, and in relation to the use, of any population of wild birds.

[F87](2) . . . . . .

(3) In deciding what steps to take under paragraph (1), the Secretary of State must have particular regard to the need for research and scientific work—

(a) on the subjects listed in Annex V to the Wild Birds Directive; or

(b) which may be required to implement Article 4 of the Habitats Directive.

(4) This regulation applies to—

(a) the Scottish Ministers as it applies to the Secretary of State, but as if, in paragraphs (1) and (2), the reference to the offshore marine area were a reference to the Scottish offshore region; and

(b) the Welsh Ministers as it applies to the Secretary of State, but as if, in paragraphs (1) and (2), the reference to the offshore marine area were a reference to the Welsh offshore region.

(5) Before the Secretary of State takes any steps under this regulation in relation to the Scottish offshore region or the Welsh offshore region under this regulation, the Secretary of State must consult the Scottish Ministers or the Welsh Ministers (respectively).

Textual Amendments

F87 Reg. 74(2) omitted (31.12.2020) by virtue of The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **66**; 2020 c. 1, Sch. 5 para. 1(1)

Nature conservation education

75. The Joint Committee must take such steps as it considers appropriate to promote public awareness of, and to disseminate information on—

(a) the need to protect species of wild flora and fauna found in the offshore marine area; and

(b) the need to conserve the habitats of such flora and fauna and natural habitats found in the offshore marine area.

Re-introduction of species

76.—(1) If the relevant administration considers that re-introducing a species to which this regulation applies into any part of the waters comprised in the offshore marine area might contribute to the conservation of that species, the relevant administration—

(a) must make arrangements for a study to be carried out to consider the desirability of doing so; and

(b) may, if the relevant administration considers it appropriate, carry out or cause to be carried out an investigation in accordance with paragraph (5) for the purpose of ascertaining whether the re-introduction of the species would contribute effectively to re-establishing the species at a favourable conservation status.

(2) Paragraph (3) applies if the study under paragraph (1)(a) concludes that any such re-introduction would be desirable—

(a) in the light of an investigation carried out under paragraph (1)(b); or

(b) where no such investigation has been carried out, subject to such an investigation being carried out and reaching a conclusion in the affirmative.

(3) Where this paragraph applies, and subject to paragraph (4), the relevant administration may make arrangements to re-introduce the species into such waters after—

(a) carrying out such an investigation; and

(b) consulting such persons as the relevant administration considers may have an interest in the re-introduction.

(4) The relevant administration must not proceed with the re-introduction unless the conclusion of the investigation carried out under paragraph (1)(b) is in the affirmative.

(5) Any investigation under paragraph (1)(b) must—

(a) consider whether the species concerned has been re-introduced in the territory of **[**[F88]any**]** member States or elsewhere; and

(b) take account of any evidence relating to any such re-introductions which is relevant for the purposes of the investigation.

(6) This regulation applies to such species in Annex IV of the Habitats Directive as are native to the offshore marine area.

(7) Before the Secretary of State exercises any functions under this regulation in relation to the waters comprising the Scottish offshore region or the waters comprising the Welsh offshore

region under this regulation, the Secretary of State must consult the Scottish Ministers or the Welsh Ministers, respectively.

(8) In this regulation, "the relevant administration" means—

(a) in relation to the re-introduction of species in any part of the waters comprised in the Scottish offshore region, the Scottish Ministers;

(b) in relation to the re-introduction of species in any part of the waters comprised in the Welsh offshore region, the Welsh Ministers; and

(c) in relation to the re-introduction of species in other any part of the waters comprising the offshore marine area, the Secretary of State.

Textual Amendments

F88 Word in reg. 76(5)(a) substituted (31.12.2020) by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **67**; 2020 c. 1, Sch. 5 para. 1(1)

Advisory role of the Joint Committee

77.—(1) The Joint Committee may—

(a) provide advice and assistance, or make representations, to a competent authority on a nature conservation matter which 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 the Joint Committee considers is required for the purposes of providing advice or assistance or making representations under sub-paragraph (a).

(2) In this regulation and regulation 78, "research" includes inquiries and investigations.

Advice on appropriate assessments

78.—(1) Natural England may provide advice and may make representations to a competent authority in relation to—

(a) any question as to whether that authority is obliged to carry out an appropriate assessment upon which it must consult Natural England under these Regulations; and

(b) any appropriate assessment upon which that authority must consult Natural England under these Regulations.

(2) The Natural Resources Body for Wales may provide advice or make representations to a competent authority in relation to—

(a) any question as to whether that authority is obliged to carry out an appropriate assessment upon which it must consult the Natural Resources Body for Wales under these Regulations; and

(b) any appropriate assessment upon which that authority must consult the Natural Resources Body for Wales under these Regulations.

(3) Scottish Natural Heritage may provide advice and may make representations to a competent authority in relation to—

(a) any question as to whether that authority is obliged to carry out an appropriate assessment upon which it must consult Scottish Natural Heritage under these Regulations; and

(b) any appropriate assessment upon which that authority must consult Scottish Natural Heritage under these Regulations.

(4) Natural England, the Natural Resources Body for Wales and Scottish Natural Heritage may each undertake, commission or support (whether by financial means or otherwise) such research and scientific work as they think is required for the purposes of providing advice or making representations under this regulation.

Reports to the Commission

[F89]**79.** . . . . . .

Textual Amendments

F89 Reg. 79 omitted (31.12.2020) by virtue of The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **68**; 2020 c. 1, Sch. 5 para. 1(1)

Form of communications

80.—(1) Subject to paragraph (2), where—

(a) a person is required to give notice to any person of any matter,

(b) a person may make representations on a matter to any person, or

(c) a request must be submitted to the Secretary of State,

the notice, representations or request (together with any accompanying information or documents) must be in writing.

(2) A notice, representations or a request (and any accompanying information or documents) may be given or sent by means of an electronic communication if the intended recipient consents.

(3) In this regulation and in regulation 81, "electronic communication" has the meaning given in section 15(1) of the Electronic Communications Act 2000 [M72].

Marginal Citations

M72 2000 c. 7. The definition of "electronic communication" in section 15(1) was amended by the Communications Act 2003 (c. 21), **paragraph 158** of Schedule 17.

Notices

81.—(1) Any notice required under these Regulations may be given to a person by—

(a) leaving it at that person's proper address;

(b) sending it by post to that person at that address; or

(c) where an address for receipt by electronic communication has been given by that person, sending it by means of electronic communication to that person at that address.

(2) Any such notice may—

(a) in the case of a body corporate (other than a limited liability partnership) be given to the secretary or clerk of that body;

(b) in the case of a limited liability partnership, be given to a member; and

(c) in the case of a partnership (other than a limited liability partnership), be given to a partner or person having control or management of the partnership business.

(3) For the purpose of this regulation and of section 7 of the Interpretation Act 1978 [M73] (reference to service by post) in its application to this regulation, the proper address of any person to whom any such notice is to be given is the person's last known address, except that—

(a) in the case of a body corporate (other than a limited liability partnership) or its secretary or clerk, it is the address of the registered or principal office of that body;

(b) in the case of a limited liability partnership or a member of a limited liability partnership, it is the registered or principal office of that partnership; and

(c) in the case of a partnership (other than a limited liability partnership) or person having control of the partnership business, it is the principal office of that partnership.

(4) For the purposes of paragraph (3) the principal office of a company registered outside the United Kingdom or of a partnership carrying on business outside the United Kingdom is its principal office within the United Kingdom.

(5) If a person ("P") to be given any such notice has specified an address in the United Kingdom other than P's proper address within the meaning of paragraph (3) as the one at which P or another person on P's behalf will accept notices of the same description as that notice, that address is also to be treated for the purposes of this regulation and section 7 of the Interpretation Act 1978 as P's proper address.

(6) Where a notice is given by means of an electronic communication, it is deemed to be given by properly addressing and transmitting the electronic communication.

(7) Where a notice given by means of electronic communication is received by the recipient outside that person's normal office hours, it will be taken to have been received on the next working day.

(8) In this regulation "working day" means a day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday within the meaning of the Banking and Financial Dealings Act 1971 [M74].

Marginal Citations

M73 1978 c. 30.

M74 1971 c. 80.

Review

82.—(1) The Secretary of State must from time to time—

(a) carry out a review of these Regulations;

(b) set out the conclusions of the review in a report; and

(c) publish the report.

(2) In carrying out the review the Secretary of State must, so far as is reasonable, have regard to how the Habitats Directive and the Wild Birds Directive are implemented in other member States.

(3) The report must in particular—

(a) set out the objectives intended to be achieved by the regulatory system established by these Regulations;

(b) assess the extent to which those objectives are achieved; and

(c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) The first report under this regulation must be published before the end of the period of five years beginning with the coming into force of these Regulations.

(5) Reports under this regulation are afterwards to be published at intervals not exceeding five years.

Revocations

83. The following are revoked—

(a) the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007 [M75];

(b) the Offshore Marine Conservation (Natural Habitats, &c.) (Amendment) Regulations 2009 [M76];

(c) the Offshore Marine Conservation (Natural Habitats, &c.) (Amendment) Regulations 2010 [M77];

(d) the Offshore Marine Conservation (Natural Habitats, &c.) (Amendment) Regulations 2012 [M78].

Marginal Citations

M75 S.I. 2007/1842, amended by S.I. 2009/7, 2010/491 and 2012/1928.

M76 S.I. 2009/7.

M77 S.I. 2010/491.

M78 S.I. 2012/1928.

Consequential amendments

84. Schedule 4 (amendments to legislation) has effect.

[[F90]Amendment of Schedules

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

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

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

Textual Amendments

F90 Regs. 84A, 84B inserted (31.12.2020) by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **69**; 2020 c. 1, Sch. 5 para. 1(1)

[[F90]Statutory instruments

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

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

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

Textual Amendments

F90 Regs. 84A, 84B inserted (31.12.2020) by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **69**; 2020 c. 1, Sch. 5 para. 1(1)

Saving

85. Notwithstanding the revocation of the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007, regulation 75 (amendments to the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001 [M79]) continues to have effect.

Marginal Citations

M79 S.I. 2001/1754.

Transitional provisions

86.—(1) Any licence granted by a relevant administration before 30th November 2017 under regulation 49(1), (3), (6), (8) or (11) of the 2007 Regulations (power to grant licences) has effect from that date as a licence granted under regulation 55(1), (3), (6), (8) or (11), respectively, of these Regulations (power to grant licences).

(2) Any application for a licence under regulation 49(1), (3), (6), (8) or (11) of the 2007 Regulations (power to grant licences) which is made before 30th November 2017, and which is not withdrawn or determined before that date, is to be treated as an application made under regulation 55(1), (3), (6), (8) or (11), respectively, of these Regulations (power to grant licences).

(3) Any management scheme established by a competent authority under regulation 19 of the 2007 Regulations (management schemes for offshore marine sites) which is in force immediately before 30th November 2017 has effect from that date as if it were a management scheme established by the competent authority in question under regulation 22 (management schemes for European offshore marine sites) of these Regulations.

(4) Any authorisation of a wildlife officer under regulation 52 of the 2007 Regulations (wildlife officers) which is in force immediately before 30th November 2017 has effect from that date as if it were an authorisation granted under regulation 58 of these Regulations (wildlife officers).

(5) In this regulation, the "2007 Regulations" means the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007 [M80].

Marginal Citations

M80 S.I. 2007/1842, as amended by S.I. 2009/7, **S.I**. 2010/490, S.I. 2010/491, **S.I**. 2010/1513, S.I. 2011/2043, **S.I**. 2012/1809, S.I. 2012/1928, **S.I**. 2013/755, S.I. 2015/191, **S.I**. 2016/912, S.S.I. 2007/485 and SSI 2015/320.

[[F91]Transitional provisions: EU exit

86A.—(1) Where before exit day a site in the offshore marine area has been adopted in accordance with the procedure laid out in Article 4(2) of the Habitats Directive (list of sites of Community importance), the relevant administration must designate that site as a special area of conservation as soon as possible and no later than six years from the date of adoption of that site.

(2) Paragraph (3) applies where before exit day a site in the offshore marine area—

(a) has been proposed as eligible for identification as of Community importance in accordance with the procedure laid out in Article 4(2) of the Habitats Directive (list of sites of Community importance) as part of a list of sites transmitted to the European Commission; and

(b) has not yet been so identified as being of Community importance.

(3) Where this paragraph applies, the relevant administration must within six years of exit day—

(a) designate the site as a special area of conservation; or

(b) give notice to the Joint Committee of its intention not to designate the site, and publish, in such form as it sees fit, its reasons for not designating the site, having regard the objective in regulation 7(3).**]**

Textual Amendments

F91 Reg. 86A inserted (31.12.2020) by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **70**; 2020 c. 1, Sch. 5 para. 1(1)

Department for Environment, Food and Rural Affairs

Thérèse Coffey
Parliamentary Under Secretary of State

SCHEDULE 1

Regulation 2(1)

EUROPEAN PROTECTED SPECIES

Common name	***Scientific Name***
Dolphins, porpoises and whales (all species)	Cetacea
Sturgeon, Common	Acipenser sturio
Turtles, Marine	Caretta caretta Chelonia mydas Dermochelys coriacea Eretmochelys imbricata Lepidochelys kempii

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

SCHEDULE 2

Regulation 46(5)(a)

EXCLUDED POPULATIONS OF CERTAIN SPECIES

Common Name	***Scientific Name***	***Excluded countries and areas***
Beaver, Eurasian	Castor fiber	Estonia, Finland, Latvia, Lithuania, Poland, and Sweden
Hamster, European (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 **M81**
Lynx, Eurasian	Lynx lynx	Estonia
Viper, Seoane's	Vipera seoanni	Spain

Marginal Citations

M81 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.

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

[F92SCHEDULE 2A

Regulation 42(2)

Prohibited Methods of Capturing or Killing of Wild Birds

Textual Amendments

F92 Sch. 2A inserted (31.12.2020) by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), reg. 1, **Sch. 2**; 2020 c. 1, Sch. 5 para. 1(1)

1. The prohibited means of capturing or killing wild birds are—

(a) snares, limes or hooks;

(b) using blind or mutilated birds as live decoys;

(c) sound recordings;

(d) electrical or electronic devices capable of killing or stunning;

(e) artificial light sources;

(f) mirrors or other dazzling devices;

(g) devices for illuminating targets;

(h) sighting devices for night shooting comprising an electronic image magnifier or image converter;

(i) explosives;

(j) nets or traps;

(k) poisoned or anaesthetic bait; and

(l) automatic or semi-automatic weapons with a magazine capable of holding more than two rounds of ammunition.**]**

SCHEDULE 3

Regulation 47(1)(a)

ANIMALS WHICH MAY NOT BE TAKEN OR KILLED IN CERTAIN WAYS

Common name	***Scientific name***
Seals (all species)	Phocidae
Shad, Alis Shad, Twaite	Alosa alosa Alosa fallax
Sturgeon (all species except the common sturgeon)	Acipenseridae (except Acipenser sturio)

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

[F93SCHEDULE 3A

Regulation 47(2)

Prohibited Methods of Capturing or Killing Wild Animals

Textual Amendments

F93 Sch. 3A inserted (31.12.2020) by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), reg. 1, **Sch. 3**; 2020 c. 1, Sch. 5 para. 1(1)

1. The prohibited means of capturing or killing mammals are—

(a) the use of blind or mutilated animals as live decoys;

(b) sound recordings;

(c) electrical and electronic devices capable of killing or stunning;

(d) artificial light sources;

(e) mirrors and other dazzling devices;

(f) devices for illuminating targets;

(g) sighting devices for night shooting comprising an electronic image magnifier or image converter;

(h) explosives;

(i) nets which are non-selective according to their principle or their conditions of use;

(j) traps which are non-selective according to their principle or their conditions of use;

(k) bows and crossbows;

(l) poisons and poisoned or anaesthetic bait;

(m) gassing or smoking out; and

(n) semi-automatic or automatic weapons with a magazine capable of holding more than two rounds of ammunition.

2. The prohibited methods of capturing or killing fish are—

(a) poison; and

(b) explosives.**]**

SCHEDULE 4

Regulation 84

AMENDMENTS TO LEGISLATION

PART 1

PRIMARY LEGISLATION

Amendment of the Town and Country Planning Act 1990

1.—(1) The Town and Country Planning Act 1990 [M82] is amended as follows.

(2) In sub-paragraph (5) of paragraph 6 (development likely to have significant effects on environment etc), in paragraph (a) of the definition of "qualifying European site", for "the Offshore Marine Conservation (Natural Habitats, &c) Regulations 2007" substitute " the Conservation of Offshore Marine Habitats and Species Regulations 2017 (S.I. 2017/1013) ".

Marginal Citations
M82 1990 c. 8. Schedule 4C was inserted by the Localism Act 2010 (c. 20), **Schedule 11**.

Amendment of the Marine and Coastal Access Act 2009

2.—(1) The Marine and Coastal Access Act 2009 [M83] is amended as follows.

(2) In subsection (9) of section 123 (creation of network of conservation sites), for paragraph (b) of the definition of "European marine site" substitute—

"(b) a European offshore marine site within the meaning of the Conservation of Offshore Marine Habitats and Species Regulations 2017 (S.I. 2017/1013),".

(3) In subsection (2) of section 237 (enforcement of nature conservation legislation), for paragraph (e) substitute—

"(e) the Conservation of Offshore Marine Habitats and Species Regulations 2017 (S.I. 2017/1013);".

Marginal Citations
M83 2009 c. 23.

Amendment of the Marine (Scotland) Act 2010

3.—(1) The Marine (Scotland) Act 2010 [M84] is amended as follows.

(2) In subsection (9) of section 79 (creation of network of conservation sites), for the definition of "European offshore marine site" substitute—

""European offshore marine site" has the meaning given by the Conservation of Offshore Marine Habitats and Species Regulations 2017 (S.I. 2017/1013),".

Marginal Citations
M84 2010 asp 5.

PART 2

SUBORDINATE LEGISLATION

Amendment of the Legislative and Regulatory Reform (Regulatory Functions) Order 2007

4.—(1) The Legislative and Regulatory Reform (Regulatory Functions) Order 2007 [M85] is amended as follows.

(2) In Part 2 of the Schedule to that Order, for "Offshore Marine Conservation (Natural Habitats, &c.) 2007" substitute " Conservation of Offshore Marine Habitats and Species Regulations 2017 ".

Marginal Citations
M85 S.I. 2007/3544, to which there are amendments not relevant to these Regulations.

Amendment of the Marine Management Organisation (Prescription of Powers to Fix Fees and Charges) Order 2010

5.—(1) The Marine Management Organisation (Prescription of Powers to Fix Fees and Charges) Order 2010 [M86] is amended as follows.

(2) In the table in the Schedule, omit the entry in respect of the Offshore Marine Conservation (Natural Habitats, &c) Regulations 2007, and in its place substitute—

"**Conservation of Offshore Marine Habitats and Species Regulations 2017**	
Regulation 55(14)	To charge a reasonable sum for a licence issued under regulation 55.".

Marginal Citations

M86 S.I. 2010/603.

Amendment of the Merchant Shipping (Ship-to-Ship Transfers) Regulations 2010

[F94]**6.** . . . . . .

Textual Amendments

F94 Sch. 4 para. 6 revoked (26.2.2020) by The Merchant Shipping (Ship-to-Ship Transfers) Regulations 2020 (S.I. 2020/94), reg. 1, **Sch. 4**

Amendment of the Marine Strategy Regulations 2010

7.—(1) The Marine Strategy Regulations 2010 [M87] are amended as follows.

(2) In Schedule 2 (enactments in relation to which duty in regulation 4 applies), for "The Offshore Marine Conservation (Natural Habitats) Regulations 2007" substitute " The Conservation of Offshore Marine Habitats and Species Regulations 2017 ".

Marginal Citations

M87 S.I. 2010/1627, to which there are amendments not relevant to these Regulations.

Amendment of the Marine Licensing (Exempted Activities) (Scottish Offshore Region) Order 2011

8.—(1) The Marine Licensing (Exempted Activities) (Scottish Offshore Region) Order 2011 [M88] is amended as follows.

(2) In Article 3 (interpretation), for paragraph (b) of the definition of "a European Site" substitute "a European offshore marine site within the meaning of regulation 18 of the Conservation of Offshore Marine Habitats and Species Regulations 2017".

Marginal Citations

M88 S.S.I. 2011/57 amended by S.S.I. 2012/25; there are other amendments not relevant to these Regulations.

Amendment of the Marine Licensing (Exempted Activities) (Scottish Inshore Region) Order 2011

9.—(1) The Marine Licensing (Exempted Activities) (Scottish Inshore Region) Order 2011 [M89] is amended as follows.

(2) In article 2 (interpretation), in paragraph (2), for paragraph (b) of the definition of "a European site" substitute "a European offshore marine site within the meaning of regulation 18 of the Conservation of Offshore Marine Habitats and Species Regulations 2017".

Marginal Citations

M89 S.S.I. 2011/204, to which there are amendments not relevant to these Regulations.

Amendment of the Marine Licensing (Exempted Activities) Order 2011

10.—(1) The Marine Licensing (Exempted Activities) Order 2011 [M90] is amended as follows.

(2) In article 3 (interpretation), for paragraph (b) of the definition of "a European site" substitute—

"(b) "European offshore marine site" as defined in regulation 18 of the Conservation of Offshore Marine Habitats and Species Regulations 2017;".

Marginal Citations

M90 S.I. 2011/409, to which there are amendments not relevant to these Regulations.

Amendment of the Marine Licensing (Exempted Activities) (Wales) Order 2011

11.—(1) The Marine Licensing (Exempted Activities) (Wales) Order 2011 [M91] is amended as follows.

(2) In article 3 (interpretation), for paragraph (b) of the definition of "European Site", substitute—

"(b) "European offshore marine site" within the meaning of regulation 18 of the Conservation of Offshore Marine Habitats and Species Regulations 2017;".

Marginal Citations

M91 W.S.I. 2011/559, to which there are amendments not relevant to these Regulations.

Amendment of the Neighbourhood Planning (General) Regulations 2012

12.—(1) The Neighbourhood Planning (General) Regulations 2012 [M92] are amended as follows.

(2) In the basic condition prescribed in paragraph 1 of Schedule 2 (neighbourhood development plans), for "the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007" substitute " the Conservation of Offshore Marine Habitats and Species Regulations 2017 ".

Marginal Citations

M92 S.I. 2012/637, to which there are amendments not relevant to these Regulations.

Amendment of the Nitrate Pollution Prevention (Wales) Regulations 2013

13.—(1) The Nitrate Pollution Prevention (Wales) Regulations 2013 [M93] are amended as follows.

(2) In regulation 13A (application for a derogation), for the definition of "European offshore marine site" in paragraph (15)(a) substitute—

""European offshore marine site" has the meaning given in regulation 18 of the Conservation of Offshore Marine Habitats and Species Regulations 2017; and".

Marginal Citations

M93 W.S.I 2013/2506, to which there are amendments not relevant to these Regulations.

Amendment of the Marine Licensing (Application Fees) Regulations 2014

14.—(1) The Marine Licensing (Application Fees) Regulations 2014 [M94] are amended as follows.

(2) In paragraph 2(3) of the Schedule (application bands and maximum caps), in the definition of "European site", for the words "regulation 15" to the end, substitute " regulation 18 of the Conservation of Offshore Marine Habitats and Species Regulations 2017 ".

Marginal Citations

M94 S.I. 2014/615, to which there are amendments not relevant to these Regulations.

Amendment of the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015

15.—(1) The Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015 [M95] are amended as follows.

(2) In Schedule 2 (prescription of consents)—

(a) for the entry "Offshore Marine Conservation (Natural Habitats. &c) Regulations 2007" in the column entitled "Act" substitute "Conservation of Offshore Marine Habitats and Species Regulations 2017"; and

(b) for the entry "A licence under regulation 49 (power to grant licences)" in the column entitled "consent or authorisation" substitute "A licence under regulation 55 (power to grant licences)".

Marginal Citations

M95 S.I. 2015/462.

Amendment of the Town and Country Planning (Development Management Procedure) (England) Order 2015

16.—(1) The Town and Country Planning (Development Management Procedure) (England) Order 2015 [M96] is amended as follows.

(2) In article 2 (interpretation), for the definition of "qualifying European site" substitute—

""qualifying European site" means—

(a) a European offshore marine site within the meaning of regulation 18 of the Conservation of Offshore Marine Habitats and Species Regulations 2017; or

(b) a European site within the meaning of regulation 8(1) of the Conservation of Offshore Marine Habitats and Species Regulations 2017;".

Marginal Citations

M96 S.I. 2015/595, to which there are amendments not relevant to these Regulations.

Amendment of the Nitrate Pollution Prevention Regulations 2015

17.—(1) The Nitrate Pollution Prevention Regulations 2015 [M97] are amended as follows.

(2) In regulation 37 (determination of application), in paragraph (6), for the definition of "European offshore marine site" substitute—

""European offshore marine site" has the meaning given by regulation 18 of the Conservation of Offshore Marine Habitats and Species Regulations 2017.".

Marginal Citations

M97 S.I. 2015/668, to which there are amendments not relevant to these Regulations.

Amendment of the Environmental Damage (Prevention and Remediation) (England) Regulations 2015

18.—(1) The Environmental Damage (Prevention and Remediation) (England) Regulations 2015 [M98] are amended as follows.

(2) In paragraph 5(d) of Schedule 1 (express authorisation of damage to a protected species, natural habitat or to a site of special scientific interest), for "the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007" substitute " the Conservation of Offshore Marine Habitats and Species Regulations 2017 ".

Marginal Citations

M98 S.I. 2015/810, to which there are amendments not relevant to these Regulations.

Amendment of the Town and Country Planning (Brownfield Land Register) Regulations 2017

19.—(1) The Town and Country Planning (Brownfield Land Register) Regulations 2017 [M99] are amended as follows.

(2) In regulation 14, (exemptions for certain types of land), in paragraph (5), in paragraph (a) of the definition of "qualifying European site", for "regulation 15 of the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007" substitute " regulation 18 of the Conservation of Offshore Marine Habitats and Species Regulations 2017 ".

Marginal Citations
M99 S.I. 2017/403.

Amendment of the Electricity Works (Environmental Impact Assessment) England and Wales Regulations 2017

20.—(1) The Electricity Works (Environmental Impact Assessment) England and Wales Regulations 2017 [M100] are amended as follows.

(2) In regulation 8 (co-ordination of environmental impact assessment with Habitats Regulations assessment), in paragraph (2), for "regulation 25 of the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007" substitute " regulation 28 of the Conservation of Offshore Marine Habitats and Species Regulations 2017 ".

Marginal Citations
M100 S.I. 2017/580.

Amendment of the Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017

21.—(1) The Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 [M101] are amended as follows.

(2) In regulation 38 (co-ordination of assessments), in paragraph (2), for paragraph (b) of the definition of "habitats regulation appraisal" substitute "regulation 28 of the Conservation of Offshore Marine Habitats and Species Regulations 2017".

Marginal Citations
M101 S.S.I. 2017/115.

EXPLANATORY NOTE

(This note is not part of the Regulations)
These Regulations consolidate the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007 (S.I. 2007/1842) with subsequent amending instruments, and make minor modifications reflecting changes to related legislation. The instruments being consolidated by these Regulations made, amongst things, provision for implementing Council Directive 2009/147/EC on the conservation of wild birds (OJ No. L20, 26.01.2010, p.7.) and Council Directive

92/43/EEC on the conservation of natural habitats and of wild fauna and flora (OJ No. L206, 22.7.92, p.7) in relation to marine areas where the United Kingdom has jurisdiction beyond its territorial sea. The Regulations make provision in relation to the offshore marine area, offshore marine installations and certain ships and aircraft. The "offshore marine area" is defined in regulation 2(1).

The Regulations also make provision enabling the Welsh Ministers to carry out certain functions (which are currently functions of the Secretary of State) in offshore waters adjacent to Wales. These functions include the selection, notification and designation of special areas of conservation as required by the Habitats Directive and the granting of licences for certain activities that would otherwise constitute an offence in the Welsh offshore region in respect of European protected species.

Part 1 contains introductory provisions. Regulation 5 identifies the competent authorities for the purposes of these Regulations. Regulation 6 imposes a duty on competent authorities exercising functions relevant to marine conservation to do so in such a way as to secure compliance with the requirements of the Directives.

Part 2 makes provision for the conservation of natural habitats and habitats of species. Regulations 7 to 20 make provision for the selection, registration and notification of sites in the offshore marine area to be protected under the Habitats and Wild Birds Directives ("European offshore marine sites", which term is defined in regulation 18). Regulations 21 to 24 make provision about the management of European offshore marine sites, including provision enabling management schemes to be made for these sites (regulation 22). Regulation 25 makes provision requiring competent authorities to establish conservation measures in respect of special areas of conservation in the offshore marine area that have been designated under regulation 11. Regulation 26 makes provision requiring competent authorities to exercise their functions to secure that steps are taken to avoid the disturbance of species and deterioration of habitat in respect of the offshore marine sites specified in regulation 26(3) and (4). Regulations 28 to 36 require (amongst other things) the effect of plans and projects in the offshore marine area (or on offshore marine installations) that are likely to have a significant effect on a European offshore marine site or a European site (as defined in regulation 27) to be considered before the plan or project is authorised. Subject to certain exceptions, the authorisation of such plans and projects is precluded where the integrity of the site would be adversely affected. Regulations 33 and 34 also require certain authorisations granted before a site became a European offshore marine site or European site to be reviewed and in certain circumstances revoked where the integrity of the site would be adversely affected. Regulation 38 imposes offences in relation to offshore marine sites, as regards the intentional disturbance of animals for the protection of which the site has been designated or listed; the intentional disturbance of wild birds in a classified site; and the intentional or reckless damage or destruction of habitats.

Part 3 creates offences for the protection of wild birds, animals and plants, which in some instances are subject to defences. In particular, regulations 40 and 45 make it an offence deliberately to kill or take, respectively, wild birds or their eggs, and animals belonging to the species listed in Schedule 1. Protection is also afforded to birds' nests, and to the breeding sites and resting places of the species of animals specified in Schedule 1 (regulation 45). Regulations 42 and 47 create offences prohibiting the use of certain methods of killing and taking wild birds and animals (respectively). Regulations 43, 45(3) and 49 make it an offence, subject to certain exceptions, to trade in or keep wild birds and certain species of wild animals and plants.

Part 4 requires the Secretary of State to make arrangements for surveillance and monitoring of species and habitats in the offshore marine area and to take further action for the protection of species, in the light of that surveillance or monitoring. In certain cases the Scottish Ministers, the Welsh Ministers and Northern Ireland departments must also take measures to protect species under this Part. Regulation 54 makes it an offence deliberately to introduce a non-native animal or plant.

Part 5 makes provision for the licensing of activities which would otherwise be offences under Part 3 and regulation 54 (in Part 4).

Part 6 gives to the Secretary of State and competent authorities power to appoint or make arrangements for the appointment of persons ("wildlife officers") to investigate offences under the Regulations. Powers to search and enter and gather evidence are provided to wildlife officers. Part 6 also makes supplementary provision relating to offences under the Regulations.
Part 7 deals with a number of miscellaneous matters including education, research and reporting to the European Commission on the implementation of the Habitats Directive. Under Articles 16 and 17 of the Habitats Directive respectively, member States must provide reports to the Commission on derogations granted under the Directive and on its implementation. Regulation 79 of these Regulations ensures that there is an authority responsible for sending those reports, namely the Secretary of State. Regulation 85 contains a saving for amendments to the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001 (S.I. 2001/1754). Regulation 86 makes transitional provision in respect of licences granted before the coming into force of these Regulations.
A transposition note setting out how the two Directives mentioned above have been transposed has been prepared. An impact assessment for this instrument has not been produced since, subject to the provision made in respect of Wales, it involves the consolidation of existing legislation with no changes in policy. In respect of the changes to the powers of the Welsh Government, these have been considered in the impact assessment which accompanied the Wales Bill. That impact assessment is accessible at http://webarchive.nationalarchives.gov.uk/20160611073307/https:/www.gov.uk/government/uploads/system/uploads/attachment_data/file/527740/Wales_Bill_impact_assessment.pdf.
These documents are available from the Wildlife Habitats and Biodiversity Division, Defra, Temple Quay, Bristol, BS1 6EB. In addition, copies of both of these documents have been placed in the libraries of both Houses of Parliament.

Status:
Point in time view as at 31/12/2020.

Changes to legislation:
There are currently no known outstanding effects for the The Conservation of Offshore Marine Habitats and Species Regulations 2017.