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## STATUTORY INSTRUMENTS

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# 2017 No. 1013

## The Conservation of Offshore Marine Habitats and Species Regulations 2017

### 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 <sup>M1</sup>;

“the 2017 Regulations” means the Conservation of Habitats and Species Regulations 2017 <sup>M2</sup>;

“a British aircraft” means an aircraft registered in the United Kingdom;

“British fishery limits” has the meaning given by the Fishery Limits Act 1976 <sup>M3</sup>;

“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 <sup>M4</sup>;

“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](#) <sup>M5</sup> 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;

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

*Status: Point in time view as at 30/11/2017.*

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(a) an offshore installation within the meaning of Part 4 of the Petroleum Act 1998 <sup>M6</sup>, 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 <sup>M7</sup>; 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 <sup>M8</sup>;

“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 <sup>M9</sup> or regulation 38 of the 2017 Regulations; and

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

“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;

“Northern Ireland department” has the same meaning as in the Northern Ireland Act 1998 <sup>M10</sup>;

“the offshore marine area” means—

(a) any part of the seabed and subsoil situated in any area designated under section 1(7) of the Continental Shelf Act 1964 <sup>M11</sup>; and

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

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

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

(b) in any part of the waters in any area designated under section 84(4) of the Energy Act 2004 <sup>M12</sup>;

“Petroleum Act approval” means an approval of an abandonment programme under section 32 of the Petroleum Act 1998 <sup>M13</sup>;

“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 <sup>M14</sup>; or

(b) a consent granted pursuant to regulation 4(1) of the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001 <sup>M15</sup>;

“premises” includes land, buildings, movable structures, ships and vehicles;

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

“Scotland” has the same meaning as in the Scotland Act 1998 <sup>M16</sup>;

“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 <sup>M17</sup>;

“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 <sup>M18</sup>, Part 10 of the Town and Country Planning (Scotland) Act 1997 <sup>M19</sup> or the Planning Act (Northern Ireland) 2011 <sup>M20</sup>;

“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 (other than Gibraltar) which is not a member State; and
- (b) is not registered in a member State;

“Wales” has the same meaning as in the Government of Wales Act 2006 <sup>M21</sup>;

“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 <sup>M22</sup>;

“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 <sup>M23</sup> and any reference to an Annex to that Directive is a reference to the Annex as amended from time to time;

“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 <sup>M24</sup>.

(2) Unless the context suggests otherwise,—

*Status: Point in time view as at 30/11/2017.*

*Changes to legislation: There are currently no known outstanding effects for the The Conservation of Offshore Marine Habitats and Species Regulations 2017, PART 1. (See end of Document for details)*

- (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.

#### **Marginal Citations**

- M1** 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.
- M2** S.I. 2017/1012.
- M3** 1976 c. 86.
- M4** 2008 c. 32.
- M5** 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.
- M6** 1998 c. 17.
- M7** The definition of “carbon storage installation” in section 30(5) was amended by S.I. 2011/2453.
- M8** 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.
- M9** S.R. (N.I.) 1995 No. 380.
- M10** 1998 c. 47.
- M11** 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.
- M12** 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.
- M13** 1998 c. 17. Section 32 was amended by the [Energy Act 2016 \(c. 20\)](#), [Schedule 2](#), paragraphs 1 and 4.
- M14** S.I. 1999/360, amended by S.I. 2007/933, 2011/1043 and 2016/912.
- M15** S.I. 2001/1754, amended by S.I. 2007/77.
- M16** 1998 c. 46.
- M17** 1998 c. 46. See sections 126(1) and (2) of that Act.
- M18** 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.
- M19** 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.
- M20** 2011 c. 25.
- M21** 2006 c. 32. See section 158(1).
- M22** 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).
- M23** 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).
- M24** 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 <sup>M25</sup>;
- (b) section 34 of the Coast Protection Act 1949 <sup>M26</sup> (restriction of works detrimental to navigation);
- (c) the Sea Fish (Conservation) Act 1967 <sup>M27</sup>;
- (d) the Prevention of Oil Pollution Act 1971 <sup>M28</sup>;
- (e) the Fishery Limits Act 1976 <sup>M29</sup>;
- (f) the Fisheries Act 1981 <sup>M30</sup>;
- (g) Part 2 of the Food and Environment Protection Act 1985 <sup>M31</sup> (deposits in the sea);
- (h) sections 128 and 129 of the Merchant Shipping Act 1995 <sup>M32</sup> (prevention of pollution from ships and further provision for prevention of pollution from ships);
- (i) the Pollution Prevention and Control Act 1999 <sup>M33</sup>;
- (j) the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996 <sup>M34</sup>;
- (k) the Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation Convention) Regulations 1998 <sup>M35</sup>;
- (l) the Offshore Installations (Emergency Pollution Control) Regulations 2002 <sup>M36</sup>;
- (m) the Planning Act 2008 <sup>M37</sup>;
- (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 <sup>M38</sup>, 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 <sup>M39</sup>.

### Marginal Citations

- M25** 1934 c. 49.
- M26** 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.
- M27** 1967 c. 84.
- M28** 1971 c. 60.
- M29** 1976 c. 86.
- M30** 1981 c. 29.
- M31** 1985 c. 48.
- M32** 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](#).
- M33** 1999 c. 24.
- M34** S.I. 1996/2154, amended by S.I. 1997/1910, 1999/1957, 2000/483, 2004/303 and 2005/1916.
- M35** S.I. 1998/1056, amended by S.I. 2015/386 and 2016/992.
- M36** S.I. 2002/1861, amended by S.I. 2010/1513 and 2015/664.
- M37** 2008 c. 29.
- M38** [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.
- M39** 2009 c. 23.

**Status:**

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**Changes to legislation:**

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