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STATUTORY INSTRUMENTS

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**2017 No. 1013**

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

**PART 2**

**CONSERVATION OF NATURAL HABITATS AND HABITATS OF SPECIES**

*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.
- (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 relevant EU instrument.

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

- (a) regulates such fishing for the purpose (whether or not the sole purpose) of minimising the extent to which it has a result of the kind referred to in paragraph (12) or the risk that it may have a result of that kind; and
- (b) is adopted by any 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<sup>(1)</sup> 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.

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(1) 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).