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## EXPLANATORY NOTE

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

These Regulations amend the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007 (“the 2007 Regulations”) which make provision for implementing Council Directive [79/409/EEC](#) on the conservation of wild birds (“the Wild Birds Directive”) (OJNo. L103, 25.4.79, p.1.) and Council Directive [92/43/EEC](#) on the conservation of natural habitats and of wild flora and fauna (“the Habitats Directive”) (OJ No. L206, 22.07.92, p.7) in relation to marine areas where the United Kingdom has jurisdiction beyond its territorial sea.

These Regulations make amendments to the 2007 Regulations pursuant to the enactment of the Planning Act 2008<sup>(1)</sup> and the Marine and Coastal Access Act 2009<sup>(2)</sup>, and provide for the devolution to the Scottish Ministers of certain of the Secretary of State’s marine nature conservation functions in the Scottish offshore region. They do not provide for the devolution of any legislative competence.

Regulation 3 makes provision for the interpretation of terms used in the regulations. The definition of “the Wild Birds Directive” is substituted, so that this means Directive [2009/147/EC](#) of the European Parliament and of the Council on the conservation of wild birds (OJ No L 20, 26.1.10, p. 7) (which repeals and replaces Council Directive [79/409/EEC](#) on the conservation of wild birds). The definition of a “competent authority in Scotland” is amended so as to refer to a competent authority whose functions are exercisable solely in or as regards the Scottish offshore region. Consequential amendments are made to regulations 22(7), 23(12) and 26(15) of the 2007 Regulations (in regulations 16 and 17).

Regulation 4 adds the Planning Act 2008 and the Marine and Coastal Access Act 2009 to the illustrative list of enactments in regulation 6(2) of the 2007 Regulations (functions relevant to marine conservation must be exercised so as to secure compliance with the requirements of the Wild Birds Directive and the Habitats Directive).

Regulations 5 to 11 provide for the Scottish Ministers to select sites in the Scottish offshore region to be protected under the Habitats and Wild Birds Directives, and to transmit those sites to the Secretary of State in advance of their formal designation or classification.

Regulations 12 and 13 make provision for representations to the Scottish Ministers on site selection.

Regulation 14 makes provision for the Scottish Ministers to give directions to a competent authority in Scotland.

Regulation 15 makes provision for the Scottish Ministers to consult other Member States to co-ordinate the management of adjoining sites which have been designated or (respectively) classified as special areas of conservation or special protection areas.

Regulation 17 makes provision for a competent authority in Scotland (as defined) to consult the Scottish Ministers where it proposes to agree a plan or project notwithstanding a negative assessment of the implications for a European offshore marine site in the Scottish offshore region. It also provides for the Secretary of State to notify the Scottish Ministers where a competent authority in Scotland submits a request to the Secretary of State to seek the European Commission’s opinion under regulation 26(4) of the 2007 Regulations.

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(1) 2008 c. 29.

(2) 2009 c. 23.

**Changes to legislation:** There are currently no known outstanding effects for the *The Offshore Marine Conservation (Natural Habitats, &c.) (Amendment) Regulations 2010 (revoked)*. (See end of Document for details)

Regulations 18 to 20 make provision for the Scottish Ministers to issue guidance to a competent authority in the Scottish offshore region. This is subject to the Secretary of State's agreement where guidance is issued to a competent authority other than a competent authority in Scotland.

Regulations 21 and 22 make provision for the Scottish Ministers to make arrangements for the surveillance of habitats and species, and the monitoring of incidental capture and killing in relation to the Scottish offshore region.

Regulation 23 makes provision for the Scottish Ministers to issue guidance (with the agreement of the Secretary of State) about steps which can be taken to avoid committing an offence under regulation 48 of the 2007 Regulations (which relates to the introduction of new species).

Regulations 24 and 25 make provision for the Scottish Ministers to license activities in the Scottish offshore region which would otherwise be offences under Part 3 and regulation 48 (in Part 4) of the 2007 Regulations, except for the licensing functions retained by the Secretary of State which are specified in new regulation 49(15) and (16).

Regulation 26 makes provision for the Scottish Ministers and a competent authority in Scotland to authorise a person to be a wildlife officer. Regulation 27 makes provision for such wildlife officers to carry out enforcement functions in the Scottish offshore region. In relation to certain activities (set out in new regulation 52A(2)) such wildlife officers may only carry out enforcement functions subject to and in accordance with the agreement of the Secretary of State.

Regulation 28 makes provision for the Scottish Ministers to encourage research and scientific work relating to the Scottish offshore region and to supply appropriate information to member States and to the European Commission.

Regulation 29 makes provision for Scottish Ministers to consider whether to re-introduce species in the waters comprised in the Scottish offshore region.

An impact assessment has not been prepared in relation to these Regulations as it has no impact on business, charities or the public sector.

A transposition note setting out how the amendments transpose the provisions of the Wild Birds and Habitats Directives is available from the Marine and Fisheries Directorate, Department for Environment, Food and Rural Affairs, Temple Quay House, Bristol BS1 6EB, and is annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website.

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#### **Textual Amendments**

- F1** Regulations revoked (30.11.2017) by [The Conservation of Offshore Marine Habitats and Species Regulations 2017 \(S.I. 2017/1013\)](#), **regs. 1, 83(c)** (with **regs. 3, 4(2)**)

**Changes to legislation:**

There are currently no known outstanding effects for the The Offshore Marine Conservation (Natural Habitats, &c.) (Amendment) Regulations 2010 (revoked).