
STATUTORY INSTRUMENTS

2017 No. 1013

The Conservation of Offshore Marine
Habitats and Species Regulations 2017

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⁽¹⁾ or section 2 of the Petroleum (Production) Act 1934⁽²⁾ (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⁽³⁾);
- (d) taking any installation abandonment measures;
- (e) an activity for which a licence under section 4 or 18 of the Energy Act 2008⁽⁴⁾ 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⁽⁵⁾;
- (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.

(1) 1998 c. 17. Section 3 was amended by the Scotland Act 2016, section 48; and by S.I. 2016/898.

(2) 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).

(3) Section 44, which defines “offshore installation”, was amended by the Energy Act 2008 (c. 32), Schedule 1, paragraph 11

(4) 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.

(5) 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⁽⁶⁾;
- (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⁽⁷⁾ (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⁽⁸⁾ (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—

⁽⁶⁾ 1995 c. 21. Section 15 has been amended by S.I. 2002/794 and 2015/664.

⁽⁷⁾ 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.

⁽⁸⁾ S.I. 1989/1341 (N.I. 12).

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.

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⁽⁹⁾ (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.

⁽⁹⁾ 1878 c. 73.