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DRAFT STATUTORY INSTRUMENTS

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**2019 No.**

**The Conservation (Natural Habitats, etc.) (Amendment)  
(Northern Ireland) (EU Exit) Regulations 2019**

**PART 1**

Introduction

**Citation, commencement and extent.**

- 1.—(1) These Regulations may be cited as the Conservation (Natural Habitats, etc.) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 and come into force on exit day.
- (2) These Regulations extend to Northern Ireland only.

**PART 2**

Amendments to primary legislation

**Amendment to the Wildlife (Northern Ireland) Order 1985**

2. In Article 2(2) (General interpretation) of the Wildlife (Northern Ireland) Order 1985(1) in the definition of “wild bird”, after “visitor to” insert “the United Kingdom or”.

**Amendment to the Water (Northern Ireland) Order 1999**

- 3.—(1) The Water (Northern Ireland) Order 1999(2) is amended as follows.
- (2) In Article 36—
- (a) in the heading, for “Community” substitute “retained EU”;
  - (b) in paragraph (1)—
    - (i) omit “enabling Her Majesty’s Government in the United Kingdom”;
    - (ii) for sub-paragraph (a) (but not the final “or”), substitute—
      - “(a) giving effect to any retained EU obligation or exercising any related right”;
    - (iii) at the beginning of sub-paragraph (b), insert “enabling Her Majesty’s Government in the United Kingdom”;
  - (c) in paragraph (2), in the definition of “regulations”, in paragraph (a), for “Community” substitute “retained EU”.

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(1) [S.I. 1985/171](#) (N.I. 2) Amendments have been made by the Wildlife and Natural Environment Act (Northern Ireland) 2011 (c.15) by [S.I. 1989/1341](#) (N.I. 12), [S.I. 1995/761](#) (N.I. 6), [S.R. 2004 No.435](#), [S.I. 2006/3336](#) (N.I. 21), [S.R. 2013 No. 206](#)

(2) [SI 1999/662](#).

- (3) In Article 54—
- (a) in the heading, for “Community” substitute “retained EU”;
  - (b) in paragraph (1), for the words from “enabling Her Majesty’s Government in the United Kingdom” to the end substitute “giving effect to any retained EU obligation or enabling Her Majesty’s Government in the United Kingdom to exercise any related right”.

## PART 3

### Amendments to the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995

#### **Amendment of the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995**

4. The Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995(3) are amended as follows.

#### **Amendments of regulation 2 (Interpretation and application)**

- 5.—(1) Regulation 2 is amended as follows.
- (2) In paragraph (2)—
- (a) after the definition of “competent authority”, insert—
    - ““conservation” has the meaning given by Article 1(a) of the Habitats Directive;
    - “conservation status” and “favourable conservation status” have the meanings given by paragraphs (e) (in relation to habitats) and (i) (in relation to species) of Article 1 of the Habitats Directive;”;
  - (b) after the definition of “marine area”, insert—
    - ““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, European marine sites and European offshore marine sites for the purposes of any of the retained transposing regulations;”;
  - (c) in the definition of “Natura 2000”, at the end insert— “(but see paragraphs (5) and (6))”;
  - (d) after the definition of “owner”, insert—
    - ““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 (exploration and exploitation of continental shelf(4); and
      - (b) any part of the waters within British fishery limits(5)(except the internal waters of, and the territorial sea adjacent to, the United Kingdom, the Channel Islands and the Isle of Man);”;

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(3) S.R.(N.I.) 1995 No.380. Amendments have been made by the Marine Act (Northern Ireland) 2013 (c.10), section 40, by S.R. 2004 No.435, 2007 No.345, 2009 No.8, 2011 No.216, 2012 No.368 and 2015 No.182.

(4) 1964 c. 29. Section 1(7) was amended by the oil and Gas (Enterprise) Act 1982 (c. 23), Schedule 3, paragraph 1; and the Energy Act 2011 (c.16), section 103. Areas have been designated under section 1(7) by S.I. 1987/1265 and 2013/3162.

(5) As defined by section 1 of Fishery Limits Act 1976 (c. 86).

- (e) after the definition of “relevant authorities”, insert—
- ““the requirements of the Directives” is to be interpreted in accordance with paragraphs (3) and (4) of regulation 2A;
- “the retained transposing regulations” means—
- (i) the Offshore Marine Conservation Regulations 2017<sup>(6)</sup>;
- (ii) the Conservation of Habitats and Species Regulations 2017<sup>(7)</sup>;
- (iii) the Conservation (Natural Habitats, &c.) Regulations 1994<sup>(8)</sup>; and
- (iv) these Regulations;
- and “the other retained transposing regulations” means the retained transposing regulations other than these Regulations;”;
- (f) after the definition of “simplified planning zone”, insert—
- ““special area of conservation” has the meaning given by Article 1(l) of the Habitats Directive and includes any such site designated after exit day under the retained transposing regulations;”;
- (g) after the definition of “statutory undertaker”, insert—
- ““the United Kingdom’s territory” means the United Kingdom and the offshore marine area;”.
- (3) In paragraph (2A)(b), for “as amended from time to time”, substitute “as it had effect immediately before exit day, or as subsequently amended under regulation 77”.
- (4) For paragraph (3) substitute—
- “(3) Expressions not defined in paragraph (2) which are used in these Regulations and also in the Habitats Directive have the meaning they bear in that Directive.”.
- (5) After paragraph (4), insert—
- “(5) For the purposes of these Regulations, and any guidance issued before exit day by the Department 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.
- (6) Paragraph (5) does not affect the interpretation of these Regulations as they had effect, or any guidance as it applied, before exit day.”.

## Insertion of new regulation 2A

6. After regulation 2, insert—

### “**Interpretation: the Directives**

**2A.**—(1) The Habitats Directive is to be construed for the purposes of these Regulations as if—

- (a) any reference to “the European territory of the 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;

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<sup>(6)</sup> S.I. 2017/1013.

<sup>(7)</sup> S.I. 2017/1012.

<sup>(8)</sup> S.I. 1994/2716. Relevant amendments are made by paragraph 15 of Schedule 2 to the Land Reform (Scotland) Act 2003 (asp 2), by S.I. 1997/3055, 2007/1843 and 2010/490, and by S.S.I. 2004/475, 2007/80, 2011/155 and 2012/228.

- (c) any reference to “of Community interest” included, in relation to the United Kingdom, a reference to “of national interest”;
  - (d) in Articles 1(d) and (h), references to “the Community” were references to “the European Union or the United Kingdom”; and
  - (e) in Article 1(l), the reference to “a site of Community importance designated by the Member State” included, in relation to the United Kingdom, a reference to a site of national importance designated under any of the retained transposing regulations.
- (2) The Wild Birds Directive is to be construed for the purposes of these Regulations as if—
- (a) any reference to “the European territory of the Member States to which the Treaty applies” included a reference to the United Kingdom; and
  - (b) any reference to “Member State” or “Member States” included a reference to the United Kingdom.
- (3) Any reference in these Regulations to “the requirements of the Directives” is to be construed as if the objectives of the Directives included the objectives referred to regulation 8C(2).
- (4) The Department may, after consultation with such other bodies or persons as it considers appropriate, issue guidance as to the interpretation of the requirements of the Directives.
- (5) Any guidance issued under paragraph (4) shall be published by the Department in such manner as it considers appropriate.”.

### **Amendment of regulation 3 (Duties relating to compliance with the Directives)**

7. In regulation 3, after paragraph (3) insert—

“(4) In complying with their duties under paragraphs (1) and (3), the Northern Ireland Department or the competent authority shall have regard to any guidance issued under regulation 2A(4).”.

### **Insertion of new regulation 3ZA**

8. After regulation 3, insert—

#### **“Reports**

**3ZA.**—(1) Within six years from exit day, and at least every six years thereafter, the Department shall publish, in such form as it sees fit, a report on the implementation of the measures taken for the purpose of giving effect to the provisions of the Directives, and the achievement of the objectives set out in Article 2 of the Habitats Directive and Articles 2 and 3 of the Wild Birds Directive.

(2) The report under paragraph (1) shall 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 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 of the Habitats Directive, and of the species listed in Annex II of that Directive; and
- (d) the main results of the surveillance undertaken under regulations 9A and 36A.”.

## Amendments of regulations 6 and 7

### 9. For regulations 6 and 7, substitute—

#### **“Duty to designate special areas of conservation**

6.—(1) The Department shall, having regard to the priorities established under regulation 7, designate as special areas of conservation such sites in Northern Ireland as it considers to be 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 animal species ranging over wide areas, those sites determined to be of national importance shall correspond to places within the natural range of such species which present the physical or biological factors essential to their life and reproduction.

(5) 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.

(6) In determining which sites are of national importance for the purposes of paragraph (1), the Department shall—

(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 for the purpose of meeting the objectives in paragraph (3).

(7) For the purposes of paragraph (6)(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 Department;

(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”;

(8) In applying the Annex III criteria, the Department shall—

(a) in relation to the application of stage 1 of the Annex III criteria, have regard to the advice of the appropriate authority; and

(b) in relation to the application of stage 2 of the Annex III criteria, have regard to the advice of the Joint Nature Conservation Committee.

(9) In this regulation, “the Annex III criteria” means the criteria set out in Annex III to the Habitats Directive.

### **Priorities for designating special areas of conservation**

7.—(1) The Department shall, in accordance with paragraph (2), establish priorities for designating as special areas of conservation such sites as it has determined to be sites of national importance.

- (2) Priorities for the purpose of paragraph (1) shall be established in the light of—
- (a) the importance of the sites for the maintenance at or restoration to 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 such sites for the coherence of the national site network; and
  - (c) the threats of degradation or destruction to which the sites are exposed.”.

### **Omission of regulation 8 (Consultation as to inclusion of site omitted from the list)**

10. Omit regulation 8.

### **Amendment of regulation 8A (Classification of sites as special protection areas)**

11.—(1) Regulation 8A is amended as follows.

(2) For paragraph (4), substitute—

“(4) In applying the criteria referred to in sub-paragraphs (3)(a) and (b) in relation to any species, 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 territories in the United Kingdom’s territory, having regard to the importance of such territories for ensuring the survival and reproduction of that species in their area of distribution.”.

(3) Omit paragraph (5).

(4) Omit sub-paragraph (6)(a).

### **Insertion of new regulation 8C**

12. After regulation 8B, insert—

#### **“Management objectives of the national site network**

8C.—(1) The Department shall, in co-operation with any other authority having a corresponding responsibility, manage, and where necessary adapt, the national site network, so far as it consists of European 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 at, 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 I 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 Wild Birds Directive for the purposes of the duty in regulation 3(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 Department shall have regard—
- (a) in relation to any European site which is not of a kind mentioned in regulation 9(1)(d), to the considerations mentioned in paragraph (4);
  - (b) in relation to European sites of a kind mentioned in regulation 9(1)(d), to the considerations mentioned in paragraph (5).
- (4) The considerations mentioned in paragraph (3)(a) are—
- (a) the importance of the sites for meeting the objective in paragraph (2)(a);
  - (b) the importance of the sites for the coherence of the national site network;
  - (c) the threats of degradation or destruction (including deterioration and disturbance of protected features) to which the sites are exposed.
- (5) The considerations mentioned in paragraph (3)(b) are—
- (a) the importance of the sites for meeting the objectives in paragraphs 2(b) and (c);
  - (b) in the case of migratory species, the importance of their breeding, moulting and wintering areas and staging points along the migratory routes;
  - (c) the importance of the sites for the coherence of national site network;
  - (d) the threats of degradation or destruction (including deterioration and disturbance of protected features) to which the sites are exposed.
- (6) 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.”.

### **Amendment of regulation 9 (Meaning of “European Site” in these Regulations)**

**13.**—(1) Regulation 9 is amended as follows.

(2) In paragraph (1)—

- (a) in sub-paragraph (b), at the end insert “before exit day”;
- (b) omit sub-paragraph (c);
- (c) in sub-paragraph (d), after “classified” insert “before exit day”, and after the closing parenthesis, insert “or classified after exit day under the retained transposing regulations”; and
- (d) in sub-paragraph (e)—
  - (i) after “which”, insert “before exit day”, and for “under regulation 6(4)” substitute “in accordance with Article 4(1) of the Habitats Directive”; and
  - (ii) for heads (i) and (ii) substitute—

- “(i) the site is designated as a special area of conservation under regulation 7 or under the equivalent provision in the other retained transposing regulations;  
or
- (ii) the Department gives notice of its intention not to designate the site, setting out the reasons for its decision, in accordance with regulation 75(3).”

(3) Omit paragraph (2).

**Amendment of regulation 9A (Surveillance of conservation status of habitats and species)**

14.—(1) Regulation 9A is amended as follows.

(2) In paragraph (1), for “Community”, in both places where it occurs, substitute “national”.

(3) For paragraph 1C, substitute—

“(1C) In this regulation—

“natural habitats of national interest” means natural habitat types listed in Annex 1 to the Habitats Directive;

“relevant” habitat or species means a habitat or a species of a type referred to in paragraph (1); and

“species of national interest” means species of wild fauna and flora listed in Annex II, IV, or V to the Habitats Directive.”

(4) In paragraph (2) omit “or otherwise arranged for the purpose of Article 11 of the Habitats Directive,”.

**Amendment of regulation 10 (Duty to compile and maintain a register of European sites)**

15.—(1) Regulation 10 is amended as follows.

(2) In paragraph (2)—

(a) in sub-paragraph (b), for “as soon as they are” substitute “which before exit day were”;

(b) omit sub-paragraph (c); and

(c) in sub-paragraph (e), for “under regulation 6(4)” substitute “before exit day”.

(3) For sub-paragraph (4)(a), substitute—

“(a) relating to a site which is no longer a European site; or”.

**Amendment of regulation 17 (Supplementary provisions as to consents)**

16. In regulation 17—

(a) in sub-paragraph 4(b), for “European Commission” substitute “Department”;

(b) omit paragraph (6).

**Amendment of regulation 34 (Protection of wild animals)**

17. In regulation 34(6), before sub-paragraph (a), insert—

“(az) it was taken from the wild in the United Kingdom, without contravention of the law and before 10<sup>th</sup> June 1994; or”.



### **Amendment of regulation 36 (Prohibition of certain methods of capturing or killing wild animals)**

- 18.—(1) Regulation 36 is amended as follows.
- (2) In paragraph (2), for sub-paragraphs (a) and (b), substitute—
- “(a) any means listed in paragraphs 1 or 2 of Schedule 3A;
  - (b) any form of capturing or killing from the modes of transport listed in paragraph 3 of Schedule 3A; or”.
- (3) Omit paragraphs (3) to (5).

### **Amendment of regulation 36A (Monitoring incidental capturing and killing)**

19. In regulation 36A(2) omit “or otherwise arranged for the purpose of Article 12(4) of the Habitats Directive,”.

### **Amendment of regulation 38 (Protection of wild plants)**

20. In regulation 38(6), before sub-paragraph (a), insert—
- “(az) it was taken from the wild in the United Kingdom, without contravention of the law and before 10th June 1994; or”.

### **Amendment of regulation 40 (Licences: supplementary provisions)**

21. In regulation 40, after paragraph 5, insert—
- “(6) Within two years from exit day, and thereafter within two years of the publication of the last such report, the Department shall publish, in such form as it sees fit, a report on licences granted under regulation 39 in the preceding two years.
  - (7) The reports made under paragraph (6) shall specify—
    - (a) the species which are subject to the licence and the reason for granting it, 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) 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.”.

### **Amendment of regulation 43 (Assessment of implications for European sites in Northern Ireland and European offshore marine sites)**

22. In regulation 43, omit paragraph (8).

### **Amendment of regulation 44 (Consideration of overriding public interest)**

- 23.—(1) Regulation 44 is amended as follows.
- (2) In paragraphs (2)(b) and (3), for “European Commission” substitute “Department”.
- (3) For paragraph (4) substitute—

“(4) The Department shall have regard to the national interest, and provide their decision as to whether the reasons are to be considered imperative reasons of overriding public interest.”.

(4) After paragraph (4), insert—

“(4A) Before deciding if reasons are imperative reasons of overriding public interest, the Department shall consult the following, and have regard to their opinion—

- (a) the Joint Nature Conservation Committee;
- (b) the Secretary of State;
- (c) the Scottish Ministers;
- (d) the Welsh Ministers; and
- (e) any other person the Department considers appropriate.”.

#### **Amendment of regulation 64B (Assessment of implications for European site)**

24. In regulation 64B, omit paragraph (6).

#### **Amendment of regulation 64C (Considerations of overriding public interest)**

25.—(1) Regulation 64C is amended as follows.

(2) In paragraph (2)(b), for “European Commission” substitute “Department”.

#### **Amendment of regulation 74A (Research)**

26. In regulation 74A, omit paragraph (2).

#### **Insertion of new regulations 75 to 77**

27. After regulation 74A, insert—

##### **“Transitional provisions: EU exit**

75.—(1) Where before exit day a site in Northern Ireland has been adopted in accordance with the procedure set out in Article 4(2) of the Habitats Directive (list of sites of Community importance), the Department shall 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 a site in Northern Ireland—

- (a) has before exit day been proposed, in a list of sites transmitted to the European Commission, 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); and
- (b) has not yet been so identified as being of Community importance.

(3) Where this paragraph applies, the Department shall within six years of exit day designate the site as a special area of conservation or give notice of its intention not to designate the site, and publish, in such form as it sees fit, its reasons for not designating it.

#### **Amendment of Schedules**

76.—(1) The Department may by regulations amend Schedule 2 or 4 for the purpose of adding any species listed in Annex IV(a) or (b) to the Habitats Directive where it is satisfied that the natural range of that species includes any area in Northern Ireland.

(2) The Department may by regulations make such other amendments as it considers necessary for adapting Schedules 2 to 4 to technical and scientific progress.

(3) Regulation 78 applies in relation to any amendment made under paragraph (1) or (2).

#### **Amendment of the Annexes to the Directives**

77.—(1) Paragraph (2) applies for the purposes of the application of the Annexes so far as they are relevant to any reference in these Regulations to—

- (a) the Directives;
- (b) the Annexes; or
- (c) any provisions of the Directives to which the Annexes relate.

(2) The Department may by regulations make such amendments to the Annexes as it considers necessary for the purpose of adapting them to technical and scientific progress.

(3) Regulation 78 applies in relation to any amendment made under paragraph (2).

(4) In this regulation, “the Annexes” means—

- (a) Annexes I to IV to the Habitats Directive; and
- (b) Annexes I to V to the Wild Birds Directive.”.

#### **Regulations**

78.—(1) Regulations made under regulation 76(2) amending Schedule 2, or under regulation 77 amending Annex IV to the Habitats Directive, shall not be made unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.

(2) Regulations made in any other case shall be subject to negative resolution.”.

#### **Insertion of new Schedule 3A**

28. After Schedule 3 insert Schedule 3A, as set out in the Schedule.

Signed by authority of the Secretary of State for Department for Environment and Rural Affairs.

Date

*Name*  
Parliamentary Under Secretary of State  
Department for Environment, Food and Rural  
Affairs