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STATUTORY INSTRUMENTS

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**2007 No. 1842**

**WILDLIFE**

**The Offshore Marine Conservation  
(Natural Habitats, &c.) Regulations 2007**

<i>Made</i>	- - - -	<i>24th June 2007</i>
<i>Laid before Parliament</i>		<i>3rd July 2007</i>
<i>Coming into force</i>	- -	<i>21st August 2007</i>

The Secretary of State is a Minister designated<sup>(1)</sup> for the purposes of making Regulations under section 2(2) of the European Communities Act 1972<sup>(2)</sup> in relation to measures relating to the conservation of natural habitats and of wild flora and fauna.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972.

It appears to the Secretary of State that it is expedient for any reference to an Annex to the Habitats Directive or to the Wild Birds Directive (as defined in these Regulations) to be construed as a reference to that Annex as amended from time to time.

In the exercise of the powers conferred by section 2(2)<sup>(3)</sup> of, and paragraph 1A<sup>(4)</sup> of Schedule 2 to, the European Communities Act 1972, he makes the following Regulations:

**PART 1**

**INTRODUCTORY PROVISIONS**

**Citation and commencement**

**1.** These Regulations may be cited as the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007 and come into force on 21st August 2007.

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(1) [S.I. 1992/2870](#).

(2) [1972 c.68](#).

(3) In so far as these Regulations deal with matters that are within the devolved competence of Scottish Ministers, the power of the Secretary of State to make regulations in relation to those matters in or as regards Scotland is preserved by section 57(1) of the Scotland Act 1998 ([c.46](#)).

(4) Paragraph 1A was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 ([c.51](#)).

**Interpretation**

2.—(1) —In these Regulations—

(a) subject to sub-paragraph (b)—

(i) “the Habitats Directive” means Council Directive [92/43/EEC](#)(**5**) on the conservation of natural habitats and of wild fauna and flora(**6**); and

(ii) “the Wild Birds Directive” means Council Directive [79/409/EEC](#)(**7**) on the conservation of wild birds(**8**); and

(b) references to any Annex to the Habitats Directive or any Annex to the Wild Birds Directive are references to that Annex as amended from time to time.

(2) In these Regulations—

“the 1994 Regulations” means the Conservation (Natural Habitats, &c.) Regulations 1994(**9**);

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

“British fishery limits” has the meaning given by the Fishery Limits Act 1976(**10**);

“competent authority” is to be construed in accordance with regulation [5](#);

“devolved administrations” means the Scottish Ministers, the Welsh Ministers and, in Northern Ireland, the Department of the Environment;

“the EC Treaty” means the Treaty establishing the European Community(**11**);

“European offshore marine site” has the meaning given by regulation [15](#);

“European protected species” means the species of animals listed in Schedule 1;

“European site” has the meaning given by regulation [24](#);

“functions” includes powers and duties;

“management scheme” means—

(a) for the purposes of regulation 19(3)(c), a scheme established under regulation 34 of the 1994 Regulations or regulation 29 of the Conservation (Natural Habitats, &c.) Regulations (Northern Ireland) 1995(**12**);

(b) for all other purposes, a scheme established under regulation [19](#)(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(**13**);

“the offshore marine area” means—

(5) O.J. No. L206, 22.7.92, p 7.

(6) The Habitats Directive was last amended by Council Directive [2006/105/EC](#) of 20 November 2006 adapting Directives [79/409/EEC](#), [92/43/EEC](#), [97/68/EC](#), [2001/80/EC](#) and [2001/81/EC](#) in the field of environment, by reason of the accession of Bulgaria and Romania (O.J. No. L363, 20.12.2006, p. 368; and see O.J. L80, 21.3.2007, p. 15, for the Corrigendum amending the original title).

(7) O.J. No. L103, 25.4.79, p.1.

(8) The Wild Birds Directive was last amended by Council Directive [2006/105/EC](#) (referred to above).

(9) [S.I. 1994/2716](#), to which relevant amendments have been made by the Environment Act 1995 (c.25), the Countryside and Rights of Way Act 2000 (c.37), the Land Reform (Scotland) Act 2003 (asp 2), [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](#).

(10) 1976 c.86.

(11) A consolidated version can be found at O.J. No. C321E, 29.12.06.

(12) [S.R. \(N.I.\) 1995 No 380](#).

(13) 1998 c.47.

(a) any part of the seabed and subsoil situated in any area designated under section 1(7) of the Continental Shelf Act 1964<sup>(14)</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>(15)</sup>;

“Petroleum Act approval” means an approval of an abandonment programme under section 32 of the Petroleum Act 1998<sup>(16)</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 consent” means—

(a) a consent granted pursuant to a Petroleum Act licence, including any consent required pursuant to the Offshore Petroleum Productions and Pipe-lines (Assessment of Environmental Effects) Regulations 1999<sup>(17)</sup>; or

(b) a consent granted pursuant to regulation 4(1) of the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001<sup>(18)</sup>;

“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;

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

“the register” means the register of European offshore marine sites provided for by regulation 16;

“Scotland” has the same meaning as in the Scotland Act 1998<sup>(19)</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;

“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;

“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;

“wildlife officer” means a person authorised by the Secretary of State under regulation 52(1) or by a competent authority under regulation 52(2); and

“within devolved competence” is to be construed in accordance with section 54 of the Scotland Act 1998.

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<sup>(14)</sup> 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.

<sup>(15)</sup> 2004 c.20. An area has been designated under section 84(4) by S.I. 2004/2668.

<sup>(16)</sup> 1998 c.17.

<sup>(17)</sup> S.I. 1999/360, amended by S.I. 2007/933.

<sup>(18)</sup> S.I. 2001/1754, amended by S.I. 2007/77.

<sup>(19)</sup> 1998 c.46.

- (3) Unless the context otherwise requires—
- (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 that Directive.

### **Application to the Crown**

3.—(1) Subject to paragraph (2), these Regulations bind the Crown.

(2) No contravention by the Crown of any provision of these Regulations shall make the Crown criminally liable, but the High Court or in Scotland the Court of Session may, on the application of any person appearing to the 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 shall 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 53 and 58 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) For the purposes of these Regulations the expression “competent authority” means—

- (a) any 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) “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(20);
  - (b) section 34 of the Coast Protection Act 1949(21) (restriction of works detrimental to navigation);
  - (c) the Sea Fish (Conservation) Act 1967(22);
  - (d) the Prevention of Oil Pollution Act 1971(23);
  - (e) the Fishery Limits Act 1976(24);
  - (f) the Fisheries Act 1981(25);
  - (g) Part 2 of the Food and Environment Protection Act 1985(26) (deposits in the sea);
  - (h) the Radioactive Substances Act 1993(27);
  - (i) sections 128 and 129 of the Merchant Shipping Act 1995(28) (prevention of pollution from ships and further provision for prevention of pollution from ships);
  - (j) the Pollution Prevention and Control Act 1999(29);
  - (k) the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996(30);
  - (l) the Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation Convention) Regulations 1998(31);
  - (m) the Offshore Installations (Emergency Pollution Control) Regulations 2002(32); and

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(20) 1934 c.49.

(21) 1949 c.74. Section 34 was amended by section 36(1) and (2) of the Merchant Shipping Act 1998 (c.12).

(22) 1967 c.84.

(23) 1971 c.60.

(24) 1976 c.86.

(25) 1981 c.29.

(26) 1985 c.48.

(27) 1993 c.12. An Order in Council under section 11 of the Petroleum Act 1998 (c.17) may make provision for applying the 1993 Act to offshore installations in areas designated under section 1(7) of the Continental Shelf Act 1964 (c.29).

(28) 1995 c.21. Section 128 was amended by sections 12 and 29 of, and paragraph 3(2) of Schedule 6 and paragraph 3(3) of Schedule 7 to, the Merchant Shipping and Maritime Security Act 1997 (c.28), and by section 2 of the Merchant Shipping (Pollution) Act 2006 (c.8).

(29) 1999 c.24.

(30) S.I. 1996/2154, amended by S.I. 1997/1910, 1999/1957, 2000/483, 2004/303 and 2005/1916.

(31) S.I. 1998/1056.

(32) S.I. 2002/1861.

- (n) these Regulations.

## PART 2

### CONSERVATION OF NATURAL HABITATS AND HABITATS OF SPECIES

#### *European offshore marine sites*

#### **List of sites eligible for identification as of Community importance**

7.—(1) The Secretary of State must transmit to the Commission a list of those sites in the offshore marine area which he regards as eligible for selection as sites of Community importance.

(2) The Secretary of State must select the sites to be included in the list under paragraph (1) only on the basis of the criteria set out in Annex III (Stage 1) to the Habitats Directive and relevant scientific information.

(3) A site may only be included in the list under paragraph (1) if—

- (a) it hosts a natural habitat type listed in Annex I to the Habitats Directive; or
- (b) it hosts a species listed in Annex II to the Habitats Directive which has a natural range including any part of the offshore marine area.

(4) In respect of an aquatic species which ranges over wide areas, a site is only eligible to be selected under paragraph (2) if it appears to the Secretary of State to constitute a clearly identifiable area which is distinct in providing the physical and biological features essential to that species for life and reproduction.

(5) The list transmitted to the Commission under paragraph (1) must—

- (a) in respect of each site indicate which natural habitat types specified in Annex I and species specified in Annex II to the Habitats Directive the site hosts; and
- (b) be accompanied with information on each site including—
  - (i) a chart of the site;
  - (ii) its name, location and extent; and
  - (iii) the data resulting from application of the criteria specified in Annex III (Stage 1) to the Habitats Directive.

(6) The information specified in paragraph (5)(b) must be provided in such format as is established by the Commission.

#### **Notification of a proposal for a site of Community importance**

8.—(1) If the Secretary of State proposes to include a site in the list to be transmitted by him under regulation 7, he must give to the Joint Nature Conservation Committee—

- (a) notice of that proposal; and
- (b) an accompanying statement of his reasons for that proposal.

(2) Where the Joint Nature Conservation Committee is given notice of a proposal under paragraph (1), the Committee must give notice of that proposal and provide a copy of the Secretary of State's statement of his reasons for that proposal to—

- (a) each of the devolved administrations;
- (b) any of the following who in its opinion ought to be notified—
  - (i) competent authorities which exercise functions in relation to the site;

- (ii) competent authorities which exercise functions in relation to a marine area adjacent to the site; and
  - (iii) persons whose activities are likely to be affected by the inclusion of the site in the list;
  - (c) such other persons as in its opinion ought to be notified; and
  - (d) such other persons as the Secretary of State directs.
- (3) A notice under paragraph (2) must specify the date (being not less than 12 weeks from the date of the giving of the notice) by which representations with respect to the proposal may be made to the Joint Nature Conservation Committee.
- (4) The Joint Nature Conservation Committee must provide to the Secretary of State a report describing the representations duly made, if any, that it received about the proposal, or where no such representations have been received, stating that fact.
- (5) The Secretary of State must consider the report provided by the Joint Nature Conservation Committee under paragraph (4).
- (6) The Secretary of State may issue guidance to the Joint Nature Conservation Committee for the purposes of its functions under this regulation and the Committee must have regard to that guidance in discharging any of those functions.
- (7) The Secretary of State may vary or revoke a direction under paragraph (2)(d).

#### **Modification of list of sites**

- 9.—(1) Where the Secretary of State considers it appropriate, in the light of the results of the surveillance referred to in Article 11 of the Habitats Directive or otherwise, he must propose to the Commission modifications of the list of sites which has been transmitted under regulation 7.
- (2) Before the Secretary of State proposes to the Commission such a modification, he must, if he considers it appropriate, give to the Joint Nature Conservation Committee—
- (a) notice of his intention to propose that modification; and
  - (b) an accompanying statement of his reasons for intending to propose it.
- (3) Where the Joint Nature Conservation Committee is given notice under paragraph (2), the Committee must give notice of the proposed modification and provide a copy of the Secretary of State's statement of his reasons for that proposed modification to—
- (a) each of the devolved administrations;
  - (b) any of the following who in its opinion ought to be notified—
    - (i) competent authorities which exercise functions in relation to the site;
    - (ii) competent authorities which exercise functions in relation to a marine area adjacent to the site; and
    - (iii) persons whose activities are likely to be affected by the inclusion of the site in the list;
  - (c) such other persons as in its opinion ought to be notified; and
  - (d) such other persons as the Secretary of State directs.
- (4) A notice under paragraph (3) must specify the date (being not less than 12 weeks from the date of the giving of the notice) by which representations with respect to the proposed modification may be made to the Joint Nature Conservation Committee.
- (5) The Joint Nature Conservation Committee must provide to the Secretary of State a report describing the representations duly made, if any, that it received about the proposal, or where no such representations have been received, stating that fact.

(6) The Secretary of State must consider the report provided by the Joint Nature Conservation Committee under paragraph (5).

(7) The Secretary of State may issue guidance to the Joint Nature Conservation Committee for the purposes of its functions under this regulation and the Committee must have regard to that guidance in discharging any of those functions.

(8) The Secretary of State may vary or revoke a direction under paragraph (3)(d).

### **Consultation as to inclusion of site omitted from the list**

**10.**—(1) This regulation applies where consultation is initiated by the Commission in accordance with Article 5(1) of the Habitats Directive with respect to a site in the offshore marine area hosting a priority natural habitat type or priority species, and—

- (a) the Secretary of State and the Commission agree, within the six-month period mentioned in Article 5(2) of the Habitats Directive, that the site should be selected as a site of Community importance, or
- (b) the Council, acting on a proposal from the Commission in pursuance of Article 5(2) of the Habitats Directive, decides that the site should be so selected.

(2) Where this regulation applies, the site is to be treated for the purposes of these Regulations as having been placed on the list referred to in the third sub-paragraph of Article 4(2) of the Habitats Directive as from the date of the agreement referred to in paragraph (1)(a) or the decision referred to in paragraph (1)(b).

### **Designation of special areas of conservation**

**11.**—(1) Once a site located in the offshore marine area has been adopted by the Commission as a site of Community importance in accordance with the third sub-paragraph of Article 4(2) of the Habitats Directive, the Secretary of State must designate that site as a special area of conservation as soon as possible and within six years of such adoption at the most.

(2) The Secretary of State must establish priorities for any site which he designates under paragraph (1), in the light of—

- (a) the importance of the site—
  - (i) for the maintenance or restoration at a favourable conservation status of natural habitat types specified in Annex I to the Habitats Directive or species specified in Annex II to that Directive, and
  - (ii) for the coherence of Natura 2000; and
- (b) the threats of degradation or destruction to which the site is exposed.

### **Classification of sites as special protection areas**

**12.**—(1) The Secretary of State must classify as special protection areas such sites in the offshore marine area as he considers necessary to ensure that the objective specified in paragraph (2) is attained.

(2) The objective referred to in paragraph (1) is that those sites across the United Kingdom's territory which are most suitable in number and size for—

- (a) the conservation of the species listed in Annex I to the Wild Birds Directive which naturally occur in that territory, and
- (b) the conservation of regularly occurring migratory species of birds not listed in Annex I which naturally occur in that territory,

are classified as special protection areas.



(3) The Secretary of State must make his decision as to the sites to be classified under paragraph (1) only on the basis of relevant scientific information and—

- (a) in the case of a site to be classified for the purpose mentioned in paragraph (2)(a), on the basis of the criteria set out in Article 4(1) of the Wild Birds Directive; and
- (b) in the case of a site to be classified for the purpose mentioned in paragraph (2)(b), on the basis of the criteria set out in Article 4(2) of the Wild Birds Directive.

(4) Where a site is classified under paragraph (1), the Secretary of State must provide information on that site to the Commission including—

- (a) a chart of the site;
- (b) its name, location and extent; and
- (c) the data resulting from application of the criteria set out in Article 4(1) or Article 4(2) of the Wild Birds Directive.

(5) The information specified in paragraph (4) must be provided in such format as is established by the Commission.

(6) In this regulation “the United Kingdom’s territory” means the United Kingdom (including its internal waters), the territorial sea adjacent to the United Kingdom, and the offshore marine area.

#### **Notification of a proposal to classify a special protection area**

**13.**—(1) If the Secretary of State proposes to classify a site as a special protection area under regulation 12, he must give to the Joint Nature Conservation Committee—

- (a) notice of that proposal; and
- (b) an accompanying statement of his reasons for that proposal.

(2) Where the Joint Nature Conservation Committee is given notice of a proposal under paragraph (1), the Committee must give notice of that proposal and provide a copy of the Secretary of State’s statement of his reasons for that proposal to—

- (a) each of the devolved administrations;
- (b) any of the following who in its opinion ought to be notified—
  - (i) competent authorities which exercise functions in relation to the site;
  - (ii) competent authorities which exercise functions in relation to a marine area adjacent to the site; and
  - (iii) persons whose activities are likely to be affected by the classification of the site;
- (c) such other persons as in its opinion ought to be notified; and
- (d) such other persons as the Secretary of State directs.

(3) A notice under paragraph (2) must specify the date (being not less than 12 weeks from the date of the giving of the notice) by which representations with respect to the proposal may be made to the Joint Nature Conservation Committee.

(4) The Joint Nature Conservation Committee must provide to the Secretary of State a report describing the representations duly made, if any, that it received about the proposal, or where no such representations have been received, stating that fact.

(5) The Secretary of State must consider the report provided by the Joint Nature Conservation Committee under paragraph (4).

(6) The Secretary of State may issue guidance to the Joint Nature Conservation Committee for the purposes of its functions under this regulation and the Committee must have regard to that guidance in discharging any of those functions.

(7) The Secretary of State may vary or revoke a direction under paragraph (2)(d).

### Hearings

14.—(1) The Secretary of State may give any person the opportunity of appearing before and being heard by, or of providing written representations to, a person appointed by him—

- (a) for the purpose of deciding whether to include a site in the list to be transmitted under regulation 7;
- (b) for the purpose of deciding whether to propose to the Commission a modification under regulation 9 to the list of sites transmitted under regulation 7; or
- (c) for the purpose of deciding whether to classify a site as a special protection area under regulation 12.

(2) Any person given the opportunity under paragraph (1) of appearing before and being heard by a person appointed by the Secretary of State may—

- (a) be represented by another person;
- (b) call persons to give evidence; and
- (c) put questions to any person who gives evidence at the hearing, including any person who gives expert evidence.

(3) The Secretary of State must consider any report of a person appointed by him under paragraph (1).

### Meaning of “European offshore marine site” in these Regulations

15. In these Regulations a “European offshore marine site” means any of the following located in the offshore marine area—

- (a) a special area of conservation;
- (b) a site of Community importance which has been placed on the list referred to in the third sub-paragraph of Article 4(2) of the Habitats Directive;
- (c) a site hosting a priority natural habitat type or priority species in respect of which consultation has been initiated under Article 5(1) of the Habitats Directive, during the consultation period or pending a decision of the Council under Article 5(3);
- (d) a site classified as a special protection area under regulation 12; and
- (e) a site which has been proposed to the Commission by the Secretary of State as a site eligible for designation as a special area of conservation for the purposes of meeting the United Kingdom’s obligations under Article 4(1) of the Habitats Directive until such time as—
  - (i) the site is placed on the list of sites of Community importance referred to in the third sub-paragraph of Article 4(2) of the Habitats Directive; or
  - (ii) agreement is reached or a decision is taken pursuant to Article 4(2) of that Directive that the site is not to be placed on that list.

### Duty to compile and maintain a register of European offshore marine sites

16.—(1) The Secretary of State must compile and maintain, in such form as he thinks fit, a register of European offshore marine sites.

(2) The Secretary of State must include in the register the following sites located in the offshore marine area—

- (a) special areas of conservation, as soon as they are designated by him;

- (b) sites of Community importance, as soon as they are placed on the list referred to in the third sub-paragraph of Article 4(2) of the Habitats Directive, until such time as they are designated as special areas of conservation;
  - (c) any site hosting a priority natural habitat type or priority species in respect of which consultation has been initiated under Article 5(1) of the Habitats Directive, during the consultation period or pending a Council decision under Article 5(3);
  - (d) special protection areas as soon as they are classified as such by him; and
  - (e) any site which has been proposed to the Commission by the Secretary of State as a site eligible for designation as a special area of conservation for the purposes of meeting the United Kingdom's obligations under Article 4(1) of the Habitats Directive until such time as is mentioned in regulation 15(e).
- (3) The register must—
- (a) in relation to each site included in it, provide the site's co-ordinates and a chart delineating its boundaries;
  - (b) in relation to a site which is a special area of conservation, specify the natural habitat types listed in Annex I to the Habitats Directive and the species listed in Annex II to that Directive for which the site was designated as a special area of conservation;
  - (c) in relation to a site which has been placed on the list referred to in the third sub-paragraph of Article 4(2) of the Habitats Directive, specify the natural habitat types listed in Annex I to the Habitats Directive and the species listed in Annex II to that Directive for which the site was placed on that list;
  - (d) in relation to a site in respect of which consultation has been initiated under Article 5(1) of the Habitats Directive, specify the priority natural habitat type and priority species which the Secretary of State considers the site hosts;
  - (e) in relation to a site which is a special protection area, specify the bird species for which the site was so classified; and
  - (f) in relation to a site which is of the type mentioned in paragraph (2)(e), specify the natural habitat types listed in Annex I to the Habitats Directive and the species listed in Annex II to that Directive for which the site was proposed by the Secretary of State to the Commission.
- (4) The Secretary of State may amend any entry in the register.
- (5) The Secretary of State must remove the relevant entry—
- (a) if a special area of conservation is declassified by the Commission pursuant to Article 9 of the Habitats Directive; or
  - (b) if a site otherwise ceases to fall within any of the categories listed in paragraph (2).
- (6) The Secretary of State must keep a copy of the register entries available for public inspection at all reasonable hours and free of charge.

#### **Notification of changes to the register**

- 17.—(1) After including a site in the register, amending an entry in the register or removing an entry from the register, the Secretary of State must give notice of having done so to—
- (a) the Joint Nature Conservation Committee;
  - (b) the devolved administrations;
  - (c) any of the following which in his opinion ought to be notified—
    - (i) competent authorities which exercise functions in relation to the site which is affected; and

- (ii) competent authorities which exercise functions in relation to a marine area adjacent to the site which is affected;
  - (d) any international organisations who in his opinion ought to be notified; and
  - (e) such other persons as in his opinion ought to be notified.
- (2) Where a site adjoins the territory of another member State, the Secretary of State must, after including such a site in the register, amending an entry relating to such a site in the register, or removing an entry relating to such a site from the register, give notice of having done so to such authorities of that State as he considers appropriate.
- (3) Where the Secretary of State gives notice under paragraph (1) or (2) in respect of the inclusion of a site in the register or the amendment of an entry in the register, the notice must be accompanied by a copy of—
- (a) in the case of a notice of the inclusion of a site in the register, the register entry;
  - (b) in the case of a notice of the amendment of an entry in the register, the amended entry.

#### *Site protection and management*

#### **Establishment of nature conservation objectives**

- 18.** As soon as is reasonably practicable after a European offshore marine site has been included in the register, the Joint Nature Conservation Committee must—
- (a) establish conservation objectives for the site and notify those objectives to such competent authorities as it considers appropriate; and
  - (b) advise such competent authorities as it considers appropriate of any operations which in its opinion may adversely affect the integrity of the site.

#### **Management schemes for European offshore marine sites**

- 19.—**(1) Any competent authority which exercises functions in relation to a European offshore marine site may, subject to paragraph (6), establish a management scheme for that site.
- (2) A management scheme—
- (a) must set out how the competent authorities establishing the scheme propose to exercise their functions so as to secure in relation to that site compliance with the requirements of the Habitats Directive; and
  - (b) where it relates to a site which has been designated as a special area of conservation, must set out how, for the purposes of securing compliance with the requirements of Article 6(1) of the Habitats Directive, the competent authorities establishing it propose to exercise their functions in order to maintain or restore at a favourable conservation status—
    - (i) the natural habitat types listed in Annex I to the Habitats Directive which are found at the site; and
    - (ii) the species listed in Annex II to that Directive which are found at the site.
- (3) Before establishing a management scheme, the competent authorities concerned must consult—
- (a) the Joint Nature Conservation Committee;
  - (b) such other competent authorities having functions in relation to the site as they consider appropriate; and
  - (c) where the site adjoins a European marine site, such other persons who are parties to a management scheme for that European marine site as they consider appropriate.

(4) Any competent authority consulted under paragraph (3)(b) must be given the opportunity of participating in the establishment of the scheme.

(5) A competent authority may establish a single management scheme for two or more European offshore marine sites.

(6) Only one management scheme may be established for each European offshore marine site.

(7) A competent authority which has established a management scheme must review the scheme periodically, initially by the fifth anniversary of the date of the scheme's establishment and thereafter by each fifth anniversary of that date.

(8) A management scheme may be amended at any time, but before amending a scheme the competent authority which established it must—

- (a) consult the Joint Nature Conservation Committee; and
- (b) consult such other persons as they consider appropriate.

(9) Before establishing or amending a management scheme for a site, the competent authorities concerned must have regard to—

- (a) any conservation objectives established for the site under regulation 18(a); and
- (b) any advice provided under regulation 18(b) relating to that site.

(10) As soon as a management scheme has been established or is amended, the competent authorities concerned must ensure that a copy of the scheme, or the amended scheme (as the case may be) is provided to—

- (a) the Secretary of State;
- (b) the devolved administrations;
- (c) those consulted under paragraph (3); and
- (d) such other persons as the Secretary of State may direct.

(11) The Secretary of State may amend or revoke a direction under paragraph (10)(d).

(12) In paragraph (3)(c), "European marine site" means any site which is a European marine site for the purposes of the 1994 Regulations or the Conservation (Natural Habitats, &c.) Regulations (Northern Ireland) 1995(33).

### **Duty in relation to management schemes**

**20.** Where a management scheme has been established, any competent authority which established that scheme must take reasonable steps to exercise its functions in accordance with that scheme.

### **Co-ordinated management of sites**

**21.** Where a European offshore marine site adjoins a special area of conservation or a special protection area which has been (respectively) designated or classified by another member State, the Secretary of State must consult that State in relation to the co-ordinated management of the site and the area in question.

### **Conservation measures relating to special areas of conservation**

**22.—(1)** In relation to any site designated as a special area of conservation under regulation 11, competent authorities must, in so far as their functions may be so exercised, exercise such of their functions as they consider appropriate for the purpose of giving effect to Article 6(1) of the

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(33) S.R. (N.I.) 1995 No 380.

Habitats Directive by taking conservation measures corresponding to the ecological requirements of—

- (a) the natural habitat types listed in Annex I to that Directive present on the site; and
- (b) the species listed in Annex II to that Directive which are present on the site.

(2) In considering what conservation measures may be necessary for the purposes of paragraph (1) in relation to a site, competent authorities must have regard to—

- (a) the need to maintain at, or restore to, favourable conservation status the natural habitat types and species mentioned in paragraph (1) which are present on the site;
- (b) the matters referred to in Article 2(3) of the Habitats Directive; and
- (c) any management scheme which has been established for the site.

(3) In so far as the duty in paragraph (1) has been met in respect of a site by any competent authority in Scotland, that paragraph does not apply to any other competent authority in respect of that site.

(4) Before a competent authority (other than a competent authority in Scotland) exercises any relevant function for the purposes of complying with paragraph (1), it must first consult the Scottish Ministers.

(5) Where, in relation to any site designated as a special area of conservation under regulation 11, paragraph (1) imposes a duty on more than one competent authority—

- (a) where the competent authorities do not include a competent authority in Scotland, the Secretary of State may give a direction that, in respect of any measure that may be necessary, the duty of the competent authorities in question is to be satisfied by the taking of that measure by such competent authority or authorities as the Secretary of State may specify in the direction, and any such direction shall have effect in the terms stated in the direction; and
- (b) where the competent authorities include one or more competent authorities in Scotland, the relevant administration may give a direction that, in respect of any measure that may be necessary, the duty of the competent authorities in question is to be satisfied by the taking of that measure by such competent authority or authorities as the relevant administration may specify in the direction, and any such direction shall have effect in the terms stated in the direction.

(6) A direction under paragraph (5)(b) may not be given unless the Scottish Ministers and the Secretary of State have agreed that it may.

(7) In this regulation—

“competent authority in Scotland” means a competent authority whose functions are exercisable solely in or as regards Scotland;

“the relevant administration” means—

- (a) in relation to a competent authority in Scotland, the Scottish Ministers; and
- (b) in relation to a competent authority other than a competent authority in Scotland, the Secretary of State; and

“relevant function” means any function exercisable for the purpose of securing any result which may instead be secured by the exercise of any function of the Scottish Ministers.

### **Prevention of deterioration of habitats and disturbance of species**

**23.**—(1) In so far as their functions may be exercised to secure that appropriate steps are taken for the purpose mentioned in paragraph (2), competent authorities must exercise their functions to secure that such steps are taken.

- (2) The purpose referred to in paragraph (1) is the avoidance of—
  - (a) the disturbance of species specified in paragraph (3); and
  - (b) the deterioration of habitat or habitat types specified in paragraph (4).
- (3) The disturbance of species referred to in paragraph (2) is—
  - (a) in any site designated as a special area of conservation under regulation 11, the disturbance of any of the species listed in Annex II to the Habitats Directive for which the site was so designated, in so far as such disturbance could be significant in relation to the objectives of that Directive;
  - (b) 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, the disturbance of any of the species listed in Annex II to the Habitats Directive for which the site was placed on that list, in so far as such disturbance could be significant in relation to the objectives of that Directive;
  - (c) in any site in the offshore marine area hosting a priority natural habitat type or priority species in respect of which consultation has been initiated under Article 5(1) of the Habitats Directive, the disturbance of any priority species, in so far as such disturbance could be significant in relation to the objectives of that Directive; and
  - (d) in any site classified as a special protection area under regulation 12, the disturbance of any of the species of bird for which the site was so classified, in so far as such disturbance could be significant in relation to the objectives of the Habitats Directive or the Wild Birds Directive.
- (4) The deterioration of habitat or habitat types referred to in paragraph (2) is—
  - (a) in any site designated as a special area of conservation under regulation 11—
    - (i) the deterioration of the habitat of any of the species listed in Annex II to the Habitats Directive for which the site was so designated, and
    - (ii) the deterioration of any of the natural habitat types listed in Annex I to the Habitats Directive for which the site was so designated;
  - (b) 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—
    - (i) the deterioration of the habitat of any of the species listed in Annex II to the Habitats Directive for which the site was placed on that list, and
    - (ii) the deterioration of any of the natural habitat types listed in Annex I to the Habitats Directive for which the site was placed on that list;
  - (c) in any site in the offshore marine area hosting a priority natural habitat type or priority species in respect of which consultation has been initiated under Article 5(1) of the Habitats Directive—
    - (i) the deterioration of the habitat of any such species, and
    - (ii) the deterioration of any priority natural habitat type; and
  - (d) in any site classified as a special protection area under regulation 12, the deterioration of the habitats of any of the species of bird for which the site was classified as a special protection area.
- (5) The obligation in paragraph (1) only applies in relation to a site specified in paragraph (3) (c) or (4)(c)—
  - (a) during the consultation period; or

- (b) where the Commission forwards a proposal to the Council regarding the site under Article 5(2) of the Habitats Directive, until such time as the Council makes a decision under Article 5(3) in relation to the site.
- (6) In considering the steps (if any) to be secured under paragraph (1), competent authorities must have regard to—
- (a) the need to maintain at, or restore to, favourable conservation status the natural habitat types and species specified in paragraphs (3) and (4), and the habitats of those species, which are present on the site concerned;
  - (b) the matters referred to in Article 2(3) of the Habitats Directive;
  - (c) any management scheme which has been established for the site concerned; and
  - (d) the objectives of the Habitats Directive and, where appropriate, the Wild Birds Directive.
- (7) In so far as the duty in paragraph (1) has been met in respect of a site by any competent authority in Scotland, that paragraph does not apply to any other competent authority in respect of that site.
- (8) Before a competent authority (other than a competent authority in Scotland) exercises any relevant function for the purposes of complying with paragraph (1), it must first consult the Scottish Ministers.
- (9) Where, in respect of any site mentioned in paragraph (3) or (4), paragraph (1) imposes a duty on more than one competent authority—
- (a) where the competent authorities do not include a competent authority in Scotland, the Secretary of State may give a direction that, in respect of any step that may be necessary, the duty of the competent authorities in question is to be satisfied by the taking of that step by such competent authority or authorities as the Secretary of State may specify in the direction, and any such direction shall have effect in the terms stated in the direction; and
  - (b) where the competent authorities include one or more competent authorities in Scotland, the relevant administration may give a direction that, in respect of any step that may be necessary, the duty of the competent authorities in question is to be satisfied by the taking of that step by such competent authority or authorities as the relevant administration may specify in the direction, and any such direction shall have effect in the terms stated in the direction.
- (10) A direction under paragraph (9)(b) may not be given unless the Scottish Ministers and the Secretary of State have agreed that it may.
- (11) Paragraph (1) shall not apply where—
- (a) the cause of the disturbance of species or deterioration of habitat or habitat types specified in paragraph (3) or (4) is a plan or project that has been agreed to under regulation 26; or
  - (b) the disturbance of species specified in paragraph (3) is not unlawful under regulation 32 or Part 3 of these Regulations.
- (12) In this regulation—
- “competent authority in Scotland” means a competent authority whose functions are exercisable solely in or as regards Scotland;
- “the relevant administration” means—
- (a) in relation to a competent authority in Scotland, the Scottish Ministers; and
  - (b) in relation to a competent authority other than a competent authority in Scotland, the Secretary of State; and
- “relevant function” means any function exercisable for the purpose of securing any result which may instead be secured by the exercise of any function of the Scottish Ministers.



## *Plans and projects*

### **Meaning of “European site” in these Regulations**

**24.—(1)** — In these Regulations a “European site” means any of the following located in the United Kingdom—

- (a) a special area of conservation;
- (b) a site of Community importance which has been placed on the list referred to in the third sub-paragraph of Article 4(2) of the Habitats Directive;
- (c) a site hosting a priority natural habitat type or priority species in respect of which consultation has been initiated under Article 5(1) of the Habitats Directive, during the consultation period mentioned in Article 5(2) or pending a decision of the Council under Article 5(3);
- (d) a site classified as a special protection area pursuant to Article 4(1) or (2) of the Wild Birds Directive; and
- (e) a site which has been proposed to the Commission by the Secretary of State or any of the devolved administrations as a site eligible for designation as a special area of conservation for the purposes of meeting the United Kingdom’s obligations under Article 4(1) of the Habitats Directive, until such time as—
  - (i) it is placed on the list of sites of Community importance referred to in the third sub-paragraph of Article 4(2) of the Habitats Directive, or
  - (ii) agreement is reached or a decision is taken pursuant to Article 4(2) of that Directive that the site is not to be placed on that list.

(2) For the purposes of paragraph (1), where consultation is initiated by the Commission in accordance with Article 5(1) of the Habitats Directive with respect to a site in the United Kingdom hosting a priority natural habitat type or priority species, and—

- (a) it is agreed between the Commission and the Secretary of State, within the six-month period mentioned in Article 5(2) of the Habitats Directive, that the site should be selected as a site of Community importance; or
- (b) the Council, acting on a proposal from the Commission in pursuance of Article 5(2) of the Habitats Directive, decides that the site should be so selected,

the site is to be treated as having been placed on the list referred to in the third sub-paragraph of Article 4(2) of the Habitats Directive as from the date of the agreement referred to in sub-paragraph (a) or the decision referred to in sub-paragraph (b).

(3) In this regulation “the United Kingdom” means the United Kingdom (including its internal waters) and the territorial sea adjacent to the United Kingdom.

### **Protection of European offshore marine sites and European sites**

**25.—(1)** Before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project which—

- (a) is to be carried out on or in any part of the waters or on or in any part of the seabed or subsoil comprising the offshore marine area, or on or in relation to an offshore marine installation,
- (b) is likely to have a significant effect on a European offshore marine site or a European site (either alone or in combination with other plans or projects), and
- (c) is not directly connected with or necessary to the management of the site,

a competent authority must make an appropriate assessment of the implications for the site in view of that site's conservation objectives.

(2) A person applying to a competent authority for any consent, permission or other authorisation for a plan or project in the offshore marine area must provide such information as the competent authority may reasonably require—

- (a) to enable it to determine whether an assessment under paragraph (1) is required; or
- (b) for the purposes of an assessment under paragraph (1).

(3) The competent authority must for the purposes of the assessment—

- (a) where it relates to a European offshore marine site, consult the Joint Nature Conservation Committee;
- (b) where it relates to a European site in England, consult Natural England;
- (c) where it relates to a European site in Wales, consult the Countryside Council for Wales;
- (d) where it relates to a European site in Scotland, consult Scottish Natural Heritage;
- (e) where it relates to a European site in Northern Ireland, consult the Department of the Environment in Northern Ireland; and
- (f) if it considers it appropriate, take the opinion of the general public and if it does so, take such steps for that purpose as it considers appropriate.

(4) In the light of the conclusions of the assessment, and subject to regulation 26, the competent authority may agree to the plan or project only if it has ascertained that it will not adversely affect the integrity of the European offshore marine site or European site (as the case may be).

(5) In considering whether a plan or project will adversely affect the integrity of a site, the competent authority must have regard to the manner in which it is proposed to be carried out and to any conditions or restrictions subject to which the competent authority proposes that the consent, permission or other authorisation should be given.

(6) This regulation does not apply in relation to—

- (a) a site which is a European offshore marine site by reason of regulation 15(c);
- (b) a site which is a European site by reason of regulation 24(1)(c);
- (c) the giving of any Petroleum Act approval, Petroleum Act authorisation, Petroleum Act consent, or Petroleum Act licence; or
- (d) any project to which paragraph 2 of Schedule 3 to the Environmental Impact Assessment and Natural Habitats (Extraction of Minerals by Marine Dredging) (England and Northern Ireland) Regulations 2007(34) applies.

(7) Subject to paragraph (8), where a plan or project requires an appropriate assessment both under this regulation and under the 1994 Regulations, the assessment required by this regulation need not identify those effects of the plan or project that are specifically attributable to that part of it that is to be carried out in the offshore marine area, provided that an assessment made for the purposes of this regulation and the 1994 Regulations assesses the effects of the plan or project as a whole.

(8) Paragraph (7) does not apply to assessments under this regulation carried out by competent authorities whose functions are exercisable solely in or as regards Scotland.

(9) In this regulation—

“England” includes so much of the internal waters and territorial sea of the United Kingdom as are not part of Northern Ireland, Scotland or Wales;

“Northern Ireland” has the same meaning as in the Northern Ireland Act 1998(35); and

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(34) S.I. 2007/1067.

(35) 1998 c.47.

“Wales” has the same meaning as in section 158(1) of the Government of Wales Act 2006(36).

### **Considerations of overriding public interest**

**26.**—(1) If it is satisfied that, there being no alternative solutions, the plan or project referred to in regulation 25(1) must be carried out for imperative reasons of overriding public interest (which, subject to paragraph (2), may be of a social or economic nature), the competent authority may agree to the plan or project notwithstanding a negative assessment of the implications for the site.

(2) Where the site concerned hosts a priority natural habitat type or a priority species, the reasons referred to in paragraph (1) must be either—

- (a) reasons relating to human health, public safety or beneficial consequences of primary importance to the environment; or
- (b) any other imperative reasons of overriding public interest.

(3) A competent authority may not agree to a plan or project under paragraph (1) for any reason referred to in paragraph (2)(b) unless it has had due regard to the opinion of the Commission in satisfying itself that there are such reasons.

(4) Where a competent authority other than the Secretary of State desires to obtain the opinion of the Commission as to whether reasons are to be considered imperative reasons of overriding public interest, it must submit a request to the Secretary of State—

- (a) identifying the matter on which an opinion is sought; and
- (b) accompanied by any documents or information that may be required.

(5) Where a competent authority has submitted a request in accordance with paragraph (4), the Secretary of State may, if he thinks fit, seek the opinion of the Commission, and if he does so, he must upon receiving the Commission’s opinion transmit it to the competent authority.

(6) Where a competent authority (other than the Secretary of State or a competent authority in Scotland) proposes to agree to a plan or project under this regulation notwithstanding a negative assessment of the implications for a European offshore marine site or a European site—

- (a) it must notify the Secretary of State; and
- (b) it must not agree to the plan or project before the end of the period of 21 days beginning with the day notified to it by the Secretary of State as that on which the authority’s notification was received by him, unless the Secretary of State authorises the authority to do so under paragraph (11)(b).

(7) Where a competent authority in Scotland other than the Scottish Ministers proposes to agree to a plan or project under this regulation notwithstanding a negative assessment of the implications for a European site in Scotland—

- (a) it must notify the Scottish Ministers; and
- (b) it must not agree to the plan or project before the end of the period of 21 days beginning with the day notified to it by the Scottish Ministers as that on which the authority’s notification was received by them, unless the Scottish Ministers authorise the authority to do so under paragraph (11)(b).

(8) Where a competent authority in Scotland agrees to a plan or project under this regulation notwithstanding a negative assessment of the implications for a European site in Scotland, it must notify the Secretary of State as soon as practicable thereafter.

(9) Where a competent authority in Scotland other than the Scottish Ministers proposes to agree to a plan or project under this regulation notwithstanding a negative assessment of the implications for a European site outside Scotland or a European offshore marine site—

- (a) it must notify the Scottish Ministers and the Secretary of State; and
- (b) it may agree to the plan or project only after having received notification from the Scottish Ministers that the Scottish Ministers and the Secretary of State have agreed that it may do so.

(10) Where the Scottish Ministers propose to agree to a plan or project under this regulation notwithstanding a negative assessment of the implications for a European site outside Scotland or a European offshore marine site—

- (a) they must notify the Secretary of State; and
- (b) they may agree to the plan or project only after having obtained the Secretary of State's agreement, which may be given subject to such conditions or restrictions as the Secretary of State may specify.

(11) In any case within paragraph (6) or (7), the relevant administration may—

- (a) at any time before the competent authority has agreed to the plan or project in question, give a direction to the competent authority prohibiting it from agreeing to the plan or project, either indefinitely or during such period as may be specified in the direction; or
- (b) authorise the competent authority to agree to the plan or project subject to such conditions or restrictions as may be specified in the authorisation.

(12) The relevant administration may amend or revoke a direction or authorisation under paragraph (11) at any time before the competent authority has agreed to the plan or project in question.

(13) In any case within paragraph (9), the Scottish Ministers may give a direction to the competent authority prohibiting it from agreeing to the plan or project, either indefinitely or during such period as may be specified in the direction, and may amend or revoke any such direction at any time before the competent authority has agreed to the plan or project in question.

(14) Any agreement between the Scottish Ministers and the Secretary of State that is the subject of a notification under paragraph (9)(b) may be subject to such conditions or restrictions as may be specified in the notification, and where the Scottish Ministers and the Secretary of State so agree, the Scottish Ministers may, at any time before the competent authority has agreed to the plan or project in question, amend or revoke a notification under paragraph (9)(b).

(15) In this regulation—

“competent authority in Scotland” means a competent authority whose functions are exercisable solely in or as regards Scotland;

“the relevant administration” means—

- (a) in relation to a competent authority in Scotland, the Scottish Ministers; and
- (b) in relation to any other competent authority, the Secretary of State.

### **Review of existing decisions and consents**

27.—(1) Where, before the date on which a site becomes a European offshore marine site, a competent authority has decided to undertake, or has given any consent, permission or other authorisation for, a plan or project to which regulation 25(1) would apply if it were to be considered at that date, the authority must as soon as reasonably practicable after that date review its decision, or as the case may be, consent, permission or other authorisation.

(2) Where, before the date on which a site becomes a European site or, if later, the commencement of these Regulations, a competent authority has decided to undertake, or has given any consent, permission or other authorisation for, a plan or project to which regulation 25(1) would apply if it were to be considered at that date, the authority must as soon as reasonably practicable after that date review its decision, or as the case may be, consent, permission or other authorisation.

(3) A competent authority must for the purpose of reviewing a decision, consent, permission or other authorisation under paragraph (1) or (2) make an appropriate assessment of the implications for the site in view of that site's conservation objectives, and the provisions of regulation 25(2), (3) and (7) apply, with the appropriate modifications, in relation to such a review.

(4) Where a competent authority reviews a decision, consent, permission or other authorisation under this regulation it must affirm, modify or revoke it.

(5) Subject to the following provisions of this Part, any review required by this regulation must be carried out under existing statutory procedures where such procedures exist, and if none exists the competent authority must determine the procedure to be followed, having regard to any guidance issued by the Secretary of State.

(6) Nothing in this regulation—

- (a) requires a review where a site is a European offshore marine site by reason of regulation 15(c);
- (b) requires a review where a site is a European site by reason of regulation 24(1)(c);
- (c) requires a review of a Petroleum Act approval, Petroleum Act authorisation, Petroleum Act consent or Petroleum Act licence;
- (d) requires a review of any project or agreement that falls to be similarly reviewed under the Environmental Impact Assessment and Natural Habitats (Extraction of Minerals by Marine Dredging) (England and Northern Ireland) Regulations 2007; or
- (e) affects anything done in pursuance of the decision, or the consent, permission or other authorisation, before the date mentioned in paragraph (1) or (2) (as the case may be).

(7) The Secretary of State may not issue guidance under paragraph (5) which relates to a function within devolved competence without the consent of the Scottish Ministers.

(8) Regulations 72 and 73 of the 1994 Regulations apply in relation to any decision under paragraph (4) revoking or modifying a consent granted under section 36 or 37 of the Electricity Act 1989(37) as they apply in relation to a decision pursuant to regulation 71 of the 1994 Regulations(38) revoking or varying any such consent, but with the following modifications—

- (a) omit—
  - (i) in regulations 72(1), 73(1) and 73(3), the words “, or a direction deeming planning permission to be granted”;
  - (ii) in regulation 72(1)(a), the words “or, as the case may be, in whose favour the direction was made”;
  - (iii) in regulation 72(1)(b), the words “in the case of a consent under section 36 of the Electricity Act 1989,”;
  - (iv) regulation 72(2)(a); and
  - (v) in regulation 73(2)(a) and (b) and 73(3), the words “or direction”;
- (b) in their application in relation to a consent to be granted by the Scottish Ministers, for any reference to the Secretary of State substitute a reference to the Scottish Ministers.

### Consideration on review

**28.**—(1) The following provisions apply where a decision, or a consent, permission or other authorisation falls to be reviewed under regulation 27.

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(37) 1989 c.29. Section 36 was amended by section 93 of the Energy Act 2004 and (in relation to Scotland) by article 2 of and Part 1 of Schedule 1 to, the Water Environment and Water Services (Scotland) Act 2003 (Consequential Provisions and Modifications) Order 2006 (S.I. 2006/1054).

(38) Regulation 71 was amended by the Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007, S.I. 2007/1843.

(2) Subject as follows, the provisions of regulation 25(4) and (5) and regulation 26 apply, with the appropriate modifications, in relation to the decision on the review.

(3) The decision, or the consent, permission or other authorisation may be affirmed if it appears to the competent authority reviewing it that other action taken or to be taken by it, or by another competent authority, will secure that the plan or project does not adversely affect the integrity of the site.

(4) Where the avoidance of an adverse effect on the integrity of a site may be secured in a number of ways, the competent authority or authorities concerned must seek to ensure that the action taken is the least onerous to those affected.

(5) The Secretary of State may issue guidance to competent authorities for the purposes of paragraphs (3) and (4) as to the manner of determining which of different ways should be adopted for securing that a plan or project does not adversely effect the integrity of a site, and in particular as to—

- (a) the order of application of different controls; and
- (b) the extent to which account should be taken of the possible exercise of other powers.

(6) A competent authority must have regard to any guidance issued by the Secretary of State under paragraph (5) in discharging its functions under paragraph (3) or (4).

(7) Any modification or revocation under regulation 27(4) must be carried out under existing statutory procedures where such procedures exist, or if none exists, the competent authority must determine the procedure to be followed, having regard to any guidance given by the Secretary of State.

(8) The Secretary of State may not issue guidance under paragraph (5) which relates to a function within devolved competence without the consent of the Scottish Ministers.

### **Co-ordination where more than one competent authority is involved**

**29.**—(1) The following provisions apply where a plan or project—

- (a) is undertaken by more than one competent authority;
- (b) requires the consent, permission or other authorisation of more than one competent authority; or
- (c) is undertaken by one or more competent authorities and requires the consent, permission or other authorisation of one or more other competent authorities.

(2) Nothing in regulation 25(1) or 27(3) requires a competent authority to assess any implication of a plan or project which would be more appropriately assessed under that provision by another competent authority.

(3) The Secretary of State may issue guidance to competent authorities for the purposes of regulations 25 to 28 as to the circumstances in which an authority may or should adopt the reasoning or conclusions of another competent authority as to whether a plan or project—

- (a) is likely to have a significant effect on a European offshore marine site or European site; or
- (b) may adversely affect the integrity of a European offshore marine site or European site.

(4) A competent authority must have regard to any guidance issued by the Secretary of State under paragraph (3) in discharging any of its functions under regulations 25 to 28.

(5) In determining whether a plan or project should be agreed to under regulation 26(1), a competent authority other than the Secretary of State must seek and have regard to the views of any other competent authority or authorities involved.

(6) The Secretary of State may not issue any guidance under paragraph (3) which relates to a function within devolved competence without the consent of the Scottish Ministers.

### **Compensatory measures**

**30.**—(1) This regulation applies where, in accordance with regulation 26, notwithstanding a negative assessment of the implications for a European offshore marine site or European site—

- (a) a plan or project is agreed to; or
- (b) a decision, or a consent, permission or other authorisation, is affirmed on review.

(2) The appropriate authority must secure that any necessary compensatory measures are taken to ensure that the overall coherence of Natura 2000 is protected.

(3) The appropriate authority is—

- (a) where the plan or project is agreed to in the exercise of a function within devolved competence or by Scottish Ministers, or the decision, consent, permission or other authorisation is affirmed in the exercise of a function within devolved competence or by Scottish Ministers, the Scottish Ministers;
- (b) where the plan or project is agreed to by a Northern Ireland department, that Northern Ireland department;
- (c) where the decision, consent, permission or other authorisation is affirmed by a Northern Ireland department, that Northern Ireland department; and
- (d) in any other case, the Secretary of State.

### **Notification of compensatory measures**

**31.**—(1) The appropriate authority must ensure that the Commission is notified of the compensatory measures that are taken pursuant to regulation 30(2).

(2) In this regulation “appropriate authority” is to be construed in accordance with regulation 30(3).

## *Offences*

### **Offences relating to European offshore marine sites**

**32.**—(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, he 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) the ability of any significant group of animals of that species 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, he 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) the ability of any significant group of animals of that species 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, he intentionally disturbs any wild bird whilst it is in a site which has been classified as a special protection area under regulation 12 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, he 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, he 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 which supports any birds of the species for which the site was so classified.
- (9) The species referred to in paragraphs (4) 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) 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 paragraph (5).

(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 shall not be taken recklessly to have done anything prohibited by that paragraph merely because—

- (a) his actions had the result that he did the thing in question; and
- (b) he intended those actions and knew that they might have that result.

(13) Paragraph (12) applies where the defendant shows that—

- (a) the actions in question were for the purpose, and in the course, of sea fishing; and
- (b) he had taken any steps that could reasonably be taken to ensure compliance with the requirements or conditions of any relevant Community instrument.

(14) In paragraph (13), “any relevant Community 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 Community instrument under—
  - (i) Article 37(2) of the EC Treaty; or
  - (ii) Council Regulation (EC) No 2371/2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy(39) or any instrument adopted thereunder.

(15) A person guilty of an offence under this regulation is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
- (b) 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.

## PART 3

### PROTECTION OF SPECIES

#### Application of offences in Part 3

**33.**—(1) Subject to paragraphs (2) and (3), regulations 34, 36, 37, 39, 41 and 43 (in so far as they are capable of so applying) apply to any person—

- (a) in any part of the waters comprised in the offshore marine area;
- (b) on a ship in any part of the waters comprised in the offshore marine area;
- (c) on a British aircraft over the waters comprised in the offshore marine area;

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(39) O.J. No. L358, 31.12.02, p. 59.

- (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) Regulations 34, 36, 37 and 43 do not apply to any person on a third country ship.
- (3) Regulation 39(2) only applies in relation to a person on a third country ship where—
  - (a) the animal in question is a relevant animal; or
  - (b) the part in question is from, or the thing in question is derived from, a relevant animal.
- (4) In paragraph (3) “a relevant animal” is an animal of a European protected species which was taken or killed in any part of the waters within British fishery limits.

### *Protection of birds*

#### **Protection of wild birds, their eggs and nests**

- 34.**—(1) Subject to regulations 35 and 49, a person is guilty of an offence if he deliberately—
- (a) captures, injures, or kills any wild bird;
  - (b) takes, damages or destroys the nest of any wild bird while that nest is in use or being built; or
  - (c) takes or destroys an egg of any wild bird.
- (2) Subject to regulations 35 and 49, a person is guilty of an offence if he keeps—
- (a) any live or dead wild bird or any part of, or anything derived from, such a bird; or
  - (b) an egg of a wild bird or any part of such an egg.
- (3) In any proceedings for an offence under this regulation—
- (a) in relation to an offence under paragraph (1)(a), the bird in question is to be presumed to have been wild unless the contrary is shown; and
  - (b) in relation to an offence under paragraph (1)(b) or (c), if the prosecution prove that the nest or egg in question is of a bird which is a member of a species referred to in Article 1 of the Wild Birds Directive, it is to be presumed that the bird was a wild bird unless the contrary is shown.
- (4) In any proceedings for an offence under paragraph (1), where this paragraph applies the defendant shall not be taken deliberately to have done anything prohibited by either of those paragraphs merely because—
- (a) his actions had the result that he did the thing in question; and
  - (b) he intended those actions and knew that they might have that result.
- (5) Paragraph (4) applies where the defendant shows that—
- (a) the actions in question were for the purpose, and in the course, of sea fishing;
  - (b) he did not intend those actions to have the result in question; and
  - (c) he had taken any steps that could reasonably be taken to ensure compliance with the requirements or conditions of any relevant Community instrument.
- (6) In paragraph (5), “any relevant Community 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 (4) or the risk that it may have a result of that kind; and

(b) is adopted by any Community instrument under—

- (i) Article 37(2) of the EC Treaty; or
- (ii) Council Regulation (EC) No 2371/2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy(40) or any instrument adopted thereunder.

(7) In this regulation “destroy”, in relation to an egg, includes doing anything to the egg which is calculated to prevent it from hatching.

#### **Defences to the offences in regulation 34**

**35.**—(1) A person is not guilty of the offence under regulation 34(1)(a) of deliberately capturing a wild bird or an offence under regulation 34(2)(a), if he shows that the act in question—

- (a) was in relation to a bird that had been disabled otherwise than by his unlawful act; and
- (b) was done solely for one or both of the purposes of—
  - (i) tending it and releasing it when no longer disabled; or
  - (ii) releasing it after it had been tended.

(2) A person is not guilty of an offence under regulation 34(1)(a) or under regulation 34(2)(a), if he shows that the act in question—

- (a) was in relation to a bird that had been seriously disabled otherwise than by his unlawful act and that there was no reasonable chance of its recovering; and
- (b) was done solely for one or both of the purposes of—
  - (i) ending the bird’s life; or
  - (ii) disposing of it (otherwise than by sale or exchange) as soon as practicable after it was dead.

(3) A person is not guilty of the offence under regulation 34(1) of deliberately injuring a wild bird if he shows that this was done solely for the purpose of taking a sample by virtue of regulation 56(2).

(4) A person is not guilty of an offence under regulation 34(2) if he shows that the act in question was done solely for the purpose of investigating whether one or more of the following offences was being or had been committed—

- (a) an offence under regulation 34, 36, 37, or 51;
- (b) an offence of attempting to commit an offence under regulation 34, 36 or 37; or
- (c) an offence under regulation 64 which relates to an offence under regulation 34, 36, or 37.

(5) A person is not guilty of an offence under regulation 34(2) if he shows—

- (a) in the case of a wild bird, or any part of, or anything derived, from any such bird—
  - (i) where the bird is a dead bird, that the bird had not been killed, or that it had been lawfully killed, by any person; and
  - (ii) whether the bird is live or dead, that the bird had not been captured or had been lawfully captured;
- (b) in the case of an egg of a wild bird, that the egg had not been taken from the wild; and
- (c) in the case of part of any such egg, that the egg had not been taken from the wild or destroyed in the wild by any person.

(6) A person is not guilty of an offence under regulation 34(2) if he shows that the wild bird, egg, or part of an egg had been lawfully sold (whether to him or to any other person) or had otherwise been lawfully acquired by him.

(7) In paragraphs (5) and (6) “lawfully” means—

- (a) without contravention of Part 1 of the Wildlife and Countryside Act 1981<sup>(41)</sup>, the Wildlife (Northern Ireland) Order 1985<sup>(42)</sup>, or these Regulations; or
- (b) in the case of a bird, egg or other thing killed, taken or sold in Gibraltar or a member State (other than the United Kingdom), without contravention (as the case may be) of the law of Gibraltar or the law of that State implementing the Wild Birds Directive.

### **Prohibition of certain methods of capturing or killing wild birds**

**36.**—(1) Subject to regulation 49, a person is guilty of an offence if he uses for the purpose of capturing or killing any wild bird—

- (a) any of the means listed in paragraph (2) below;
- (b) any other means of capturing or killing which is indiscriminate or capable of causing the local disappearance of any species of wild bird; or
- (c) any means of capturing or killing from any mechanically propelled vehicle, including any ship or any aircraft, while in immediate pursuit of a wild bird with a view to capturing or killing that bird.

(2) The prohibited means of capturing or killing wild birds are—

- (a) snares, limes or hooks;
- (b) using blind or mutilated birds as live decoys;
- (c) sound recordings;
- (d) electrical or electronic devices capable of killing or stunning;
- (e) artificial light sources;
- (f) mirrors or other dazzling devices;
- (g) devices for illuminating targets;
- (h) sighting devices for night shooting comprising an electronic image magnifier or image converter;
- (i) explosives;
- (j) nets or traps;
- (k) poisoned or anaesthetic bait; and
- (l) automatic or semi-automatic weapons with a magazine capable of holding more than two rounds of ammunition.

### **Sale etc of live or dead wild birds, eggs etc**

**37.**—(1) Subject to paragraph (2) and regulation 49, a person is guilty of an offence if he sells, offers or exposes for sale, or has in his possession or transports for the purpose of sale—

- (a) any live or dead wild bird, or any part of, or anything derived from, such a bird; or
- (b) an egg of a wild bird.

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<sup>(41)</sup> 1981 c.69.

<sup>(42)</sup> S.I. 1985/171 (N.I. 2)

(2) A person is not guilty of an offence by reason of paragraph (1) in respect of any bird belonging to a species referred to in Annex III/1 to the Wild Birds Directive, or any egg of such a bird, or anything derived from such a bird, if he shows that—

- (a) the bird, egg or other thing had been lawfully killed or taken; or
- (b) the bird, egg or other thing had been lawfully sold (whether to him or any other person) or otherwise lawfully acquired by him.

(3) In paragraph (2) “lawfully” means—

- (a) without contravention of Part 1 of the Wildlife and Countryside Act 1981, the Wildlife (Northern Ireland) Order 1985, or these Regulations; or
- (b) in the case of a bird, egg or other thing killed, taken or sold in Gibraltar or a member State (other than the United Kingdom), without contravention (as the case may be) of the law of Gibraltar or that State implementing the Wild Birds Directive .

(4) In any proceedings for an offence under this regulation—

- (a) the bird in question is to be presumed to have been wild unless the contrary is shown; and
- (b) if the prosecution prove—
  - (i) that the part of a bird in question, or the egg in question, is of a bird which is a member of a species referred to in Article 1 of the Wild Birds Directive, or
  - (ii) that the thing in question is derived from such a bird,it is to be presumed that the bird was a wild bird unless the contrary is shown.

(5) In this regulation—

- (a) “egg” includes part of an egg; and
- (b) “sale” includes hire, barter and exchange and cognate expressions shall be construed accordingly.

## **Penalties**

**38.**—(1) A person guilty of an offence under regulation 34, 36 or 37 is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment, to a fine.

## *Protection of wild animals*

### **Protection of wild animals listed in Annex IV(a) to the Habitats Directive**

**39.**—(1) Subject to regulations 40 and 49, a person is guilty of an offence if he—

- (a) deliberately captures, injures, or kills any wild animal of a European protected species;
- (b) deliberately disturbs wild animals of any such species in such a way as to be likely significantly to affect—
  - (i) the ability of any significant group of animals of that species to survive, breed, or rear or nurture their young; or
  - (ii) the local distribution or abundance of that species;
- (c) deliberately takes or destroys the eggs of such an animal; or
- (d) damages or destroys, or does anything to cause the deterioration of, a breeding site or resting place of such an animal.

(2) Subject to regulations 33(3), 40 and 49, a person is guilty of an offence if he—

- (a) keeps or transports,
  - (b) sells or exchanges, or
  - (c) offers for sale or exchange,
- anything to which this paragraph applies.
- (3) Paragraph (2) applies to—
- (a) any live or dead animal or part of an animal—
    - (i) which has been taken from the wild, and
    - (ii) which is of a species or subspecies listed in Annex IV(a) to the Habitats Directive; and
  - (b) any part of, or anything derived from, such an animal or any such part of an animal.
- (4) Paragraphs (1) and (2) apply regardless of the stage of the life of the animal in question.
- (5) Unless the contrary is shown, in any proceedings for an offence under paragraph (1) the animal in question is to be presumed to have been a wild animal.
- (6) In any proceedings for an offence under paragraph (2), where it is alleged that an animal or a part of an animal was taken from the wild, it is to be presumed, unless the contrary is shown, that that animal or part of an animal was taken from the wild.
- (7) In paragraph (1)(b)(i), “significant” means significant in relation to the objectives of the Habitats Directive.
- (8) In any proceedings in which a person is charged with an offence under sub-paragraph (b) of paragraph (1) by reason of an effect mentioned in paragraph (i) of that sub-paragraph, the court shall have regard to any guidance given by the Joint Nature Conservation Committee as to the criteria for determining whether a group is significant.
- (9) In any proceedings for an offence under paragraph (1), where this paragraph applies the defendant shall not be taken deliberately to have done anything mentioned in sub-paragraph (a), (b) or (c) of that paragraph merely because—
- (a) his actions had the result that he did the thing in question; and
  - (b) he intended those actions and knew that they might have that result.
- (10) Paragraph (9) applies where the defendant shows that—
- (a) the actions in question were for the purpose, and in the course, of sea fishing;
  - (b) he did not intend those actions to have the result in question; and
  - (c) he had taken any steps that could reasonably be taken to ensure compliance with the requirements or conditions of any relevant Community instrument.
- (11) In paragraph (10), “any relevant Community 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 (9) or the risk that it may have a result of that kind; and
  - (b) is adopted by any Community instrument under—
    - (i) Article 37(2) of the EC Treaty; or
    - (ii) Council Regulation (EC) No 2371/2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy(43) or any instrument adopted thereunder.

(12) In determining the amount of any fine to be imposed on a person convicted of an offence under paragraph (1)(d), the court must in particular have regard to whether that person could reasonably have avoided the damage or destruction of the breeding site or resting place concerned.

(13) In this regulation “destroy”, in relation to an egg, includes doing anything to the egg which is calculated to prevent it from hatching.

(14) Regulation 32 shall not apply in relation to anything done by any person which is an offence under this regulation.

### **Defences to the offences in regulation 39**

**40.**—(1) A person is not guilty of the offence under regulation 39(1)(a) of deliberately capturing a wild animal of a European protected species, or an offence under regulation 39(2)(a), if he shows that the act in question—

- (a) was in relation to an animal that had been disabled otherwise than by his unlawful act, and
- (b) was done solely for one or both of the purposes of—
  - (i) tending and releasing it when no longer disabled, or
  - (ii) releasing it after it had been tended.

(2) A person is not guilty of an offence under regulation 39(1)(a) or regulation 39(2)(a) if he shows that the act in question—

- (a) was in relation to an animal that had been seriously disabled otherwise than by his unlawful act and that there was no reasonable chance of its recovering, and
- (b) was done solely for one or both of the purposes of—
  - (i) ending the animal’s life, or
  - (ii) disposing of it (otherwise than by sale or exchange) as soon as practicable after it was dead.

(3) A person is not guilty of the offence under regulation 39(1)(a) of deliberately injuring a wild animal of a European protected species if he shows that this was done solely for the purpose of taking a sample by virtue of regulation 56(2).

(4) A person is not guilty of an offence under regulation 39(2) if he shows that the animal or part of the animal in question, or the animal or part of the animal from which the part or thing in question is derived, was lawfully taken from the wild.

(5) A person is not guilty of an offence under regulation 39(2) if he shows that the animal, or the animal from which the part or thing in question is derived—

- (a) is of a species listed in the second column of Schedule 2 and was from a population occurring in a country or area which is specified in respect of that species in the third column of that Schedule;
- (b) is of the species *Capra aegagrus* (wild goat) and was not from a population occurring naturally in any member State;
- (c) is of the subspecies *Ovis gmelini musimon* (European mouflon) and was not from a population occurring naturally in Corsica or Sardinia; or
- (d) is of the species *Coregonus oxyrhynchus* (houting) and was either from Finland or was not from an anadromous population.

(6) A person is not guilty of an offence under regulation 39(2)(a) if he shows that the act in question was done solely for the purpose of investigating whether one or more of the following offences was being or had been committed—

- (a) an offence under regulation 39, 41 or 51;

- (b) an offence of attempting to commit an offence under regulation 39 or 41; or
- (c) an offence under regulation 64 which relates to an offence under regulation 39 or 41.

(7) For the purposes of any proceedings for an offence under regulation 39(2), the common names given in parenthesis in paragraph (5) shall be disregarded.

(8) For the purposes of paragraph (4), an animal, or part of an animal, is to be treated as having been lawfully taken from the wild if—

- (a) it was taken from the wild in the European territory of a member State, being territory to which the EC Treaty applies, without contravention of the law of that member State and before the implementation date; or
- (b) it was taken from the wild elsewhere.

(9) In this regulation—

“the implementation date” means—

- (a) where the relevant State became a member State before 10th June 1994, 10th June 1994; and
- (b) in any other case, the date on which the relevant State became a member State; and

“relevant State” means the State in whose territory the animal, or part of it, was taken from the wild.

#### **Prohibition of certain methods of capturing or killing wild animals**

**41.**—(1) This regulation applies in relation to the capturing or killing of a wild animal—

- (a) of any of the species listed in Schedule 3; or
- (b) of a European protected species, where the capture or killing is otherwise permitted in accordance with these Regulations.

(2) Subject to regulation 49, a person is guilty of an offence if he uses for the purpose of capturing or killing any such wild animal—

- (a) any of the means listed in paragraph (3) or (4) below;
- (b) any other means of capturing or killing which is indiscriminate and capable of causing the local disappearance of, or serious disturbance to, a population of any of the species of animal to which this regulation applies;
- (c) any form of capturing or killing from a ship whilst it is being propelled by a motor; or
- (d) any form of capturing or killing from an aircraft.

(3) The prohibited means of capturing or killing of mammals are—

- (a) using blind or mutilated animals as live decoys;
- (b) sound recordings;
- (c) electrical or electronic devices capable of killing or stunning;
- (d) artificial light sources;
- (e) mirrors or other dazzling devices;
- (f) devices for illuminating targets;
- (g) sighting devices for night shooting comprising an electronic image magnifier or image converter;
- (h) explosives;
- (i) nets which are non-selective according to their principle or their conditions of use;
- (j) traps which are non-selective according to their principle or their conditions of use;



- (k) bows or crossbows;
  - (l) poisons and poisoned or anaesthetic bait;
  - (m) gassing or smoking out; and
  - (n) semi-automatic or automatic weapons with a magazine capable of holding more than two rounds of ammunition.
- (4) The prohibited means of capturing or killing fish are—
- (a) poison; and
  - (b) explosives.

### **Penalties**

- 42.** A person guilty of an offence under regulation 39 or 41 is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
  - (b) on conviction on indictment, to a fine.

### *Protection of plants*

### **Offences relating to wild plants listed in Annex IV(b) to the Habitats Directive**

**43.—**(1) Subject to paragraphs (4) and (5) and regulation 49, a person is guilty of an offence if he—

- (a) keeps or transports;
  - (b) sells or exchanges; or
  - (c) offers for sale or exchange,
- anything to which this paragraph applies.
- (2) Paragraph (1) applies to—
- (a) any live or dead plant, or part of a plant—
    - (i) which has been taken in the wild, and
    - (ii) which is of a species or subspecies listed in Annex II(b) (other than any bryophyte), or listed in Annex IV(b), to the Habitats Directive; and
  - (b) any part of, or anything derived from, such a plant or such a part of a plant.
- (3) Paragraph (1) applies regardless of the stage of the biological cycle of the plant in question.
- (4) A person is not guilty of an offence under paragraph (1) if he shows that the plant or part of the plant in question, or the plant or part of the plant from which the part or thing in question is derived, was lawfully taken in the wild.
- (5) A person is not guilty of an offence under paragraph (1)(a) if he shows that the act in question was done solely for the purpose of investigating whether one or more of the following offences is being or has been committed—
- (a) an offence under this regulation or regulation 51;
  - (b) an offence of attempting to commit an offence under this regulation; or
  - (c) an offence under regulation 64 which relates to an offence under this regulation.
- (6) For the purposes of paragraph (4) a plant, or part of a plant, shall be treated as having been lawfully taken in the wild if—

- (a) it was taken in the wild in the European territory of a member State, being territory to which the EC Treaty applies, without contravention of the law of that member State and before the implementation date; or
  - (b) it was taken in the wild elsewhere.
- (7) In any proceedings for an offence under this regulation, where it is alleged that a plant, or part of a plant was taken in the wild, it is to be presumed, unless the contrary is shown, that that plant or part of a plant was taken in the wild.
- (8) A person guilty of an offence under this regulation is liable—
- (a) on summary conviction to a fine not exceeding the statutory maximum; or
  - (b) on conviction on indictment to a fine.
- (9) In this regulation—
- “the implementation date”—
- (a) where the relevant State became a member State before 10th June 1994, means 10th June 1994; and
  - (b) in any other case, means the date on which the relevant State became a member State; and
- “relevant State” means the State in whose territory the plant, or part of it, was taken in the wild.

## PART 4

### ADDITIONAL PROTECTION OF HABITATS AND WILD ANIMALS AND PLANTS

#### *Duties relating to surveillance and monitoring*

##### **Surveillance of conservation status of habitats and species**

**44.**—(1) In relation to the offshore marine area, the Secretary of State must make arrangements for the surveillance of the conservation status of natural habitats of Community interest and species of wild flora and fauna of Community interest, and in particular priority natural habitat types and priority species.

- (2) The Secretary of State must from time to time—
- (a) consult the devolved administrations about the arrangements which he has made under paragraph (1);
  - (b) provide the devolved administrations with such information as he considers appropriate that has been derived from the surveillance arranged by him under paragraph (1); and
  - (c) review the arrangements he has made under paragraph (1) and, if he thinks it appropriate, revise those arrangements.

##### **Protection of certain animals and plants from exploitation**

**45.**—(1) If the Secretary of State considers it necessary, in the light of information derived from surveillance arranged under regulation 44(1) or otherwise arranged for the purposes of Article 11 of the Habitats Directive, he must ensure that measures are taken for the purpose in paragraph (2).

- (2) The purpose referred to in paragraph (1) is to ensure that—
- (a) the taking in the wild of specimens of a species listed in Annex V to the Habitats Directive, and

(b) the exploitation of any such specimens in the waters comprised in the offshore marine area, are compatible with that species being maintained at a favourable conservation status.

(3) Where the Secretary of State considers that measures are necessary under paragraph (1), he must make arrangements for surveillance for the purpose of establishing whether the taking in the wild of specimens of the species concerned, and the exploitation of specimens of that species, are compatible with the maintenance of the species at a favourable conservation status.

(4) In so far as the Scottish Ministers have any function which may be exercised for the purpose mentioned in paragraph (2), paragraph (1) applies to the Scottish Ministers as it applies to the Secretary of State.

(5) The obligation of the Secretary of State under paragraph (1) shall be treated as satisfied in so far as it has been met by the Scottish Ministers.

(6) In so far as any Northern Ireland department has any function which may be exercised for the purpose mentioned in paragraph (2), paragraph (1) applies to that department as it applies to the Secretary of State.

(7) The obligation of the Secretary of State under paragraph (1) shall be treated as satisfied in so far as it has been met by any Northern Ireland department.

(8) Before the Secretary of State exercises any relevant function for the purpose of complying with paragraph (1), he must first consult—

- (a) the Scottish Ministers, in the case of a relevant function exercisable for the purpose referred to in paragraph (9)(a); or
- (b) the Department of the Environment in Northern Ireland, in the case of a relevant function exercisable for the purpose referred to in paragraph (9)(b).

(9) In this regulation, “relevant function” means any function of the Secretary of State exercisable for the purpose of—

- (a) securing any result which may instead be secured by the exercise of any function of the Scottish Ministers; or
- (b) securing any result which may instead be secured by the exercise of any function of any Northern Ireland department.

### **Monitoring incidental capture and killing**

**46.**—(1) The Secretary of State must make arrangements to establish a system for monitoring—

- (a) the capture of animals of any species listed in Annex IV(a) to the Habitats Directive, and
- (b) the killing of any such animals,

which (in either case) is incidental to any activity that takes place in the waters comprised in the offshore marine area.

(2) The Secretary of State must, from time to time—

- (a) consult the devolved administrations about the arrangements he has made under paragraph (1);
- (b) provide the devolved administrations with such information as he considers appropriate derived from the monitoring arranged by him under paragraph (1); and
- (c) review the arrangements he has made under paragraph (1) and, if he thinks it appropriate, revise those arrangements.

**Protection from incidental capture and killing**

47.—(1) If the Secretary of State considers it necessary in the light of information derived from monitoring arranged under regulation 46(1) or otherwise arranged for the purposes of Article 12(4) of the Habitats Directive, he must make arrangements for further research, or ensure that conservation measures are taken, for the purpose specified in paragraph (2).

(2) The purpose referred to in paragraph (1) is to ensure that the capture or killing (as the case may be) of animals of a species listed in Annex IV(a) to the Habitats Directive which is incidental to any activity that takes place in the waters comprised in the offshore marine area does not have a significant negative impact on that species.

(3) In so far as the Scottish Ministers have any function which may be exercised for the purpose mentioned in paragraph (2), the obligation mentioned in paragraph (1) to ensure that conservation measures are taken applies to the Scottish Ministers as it applies to the Secretary of State.

(4) The obligation of the Secretary of State under paragraph (1) shall be treated as satisfied in so far as it has been met by the Scottish Ministers.

(5) In so far as any Northern Ireland department has any function which may be exercised for the purpose mentioned in paragraph (2), the obligation mentioned in paragraph (1) to ensure that conservation measures are taken applies to that department as it applies to the Secretary of State.

(6) The obligation of the Secretary of State under paragraph (1) shall be treated as satisfied in so far as it has been met by any Northern Ireland department.

(7) Before the Secretary of State exercises any relevant function for the purpose of complying with paragraph (1), he must first consult—

- (a) the Scottish Ministers, in the case of a relevant function exercisable for the purpose referred to in paragraph (8)(a); or
- (b) the Department of the Environment in Northern Ireland, in the case of a relevant function exercisable for the purpose referred to in paragraph (8)(b).

(8) In this regulation, “relevant function” means any function of the Secretary of State exercisable for the purpose of—

- (a) securing any result which may instead be secured by the exercise of any function of the Scottish Ministers; or
- (b) securing any result which may instead be secured by the exercise of any function of any Northern Ireland department.

*Introduction of new species***Introduction of new species**

48.—(1) Subject to regulation 49(11)—

- (a) a person on an offshore marine installation commits an offence if he deliberately introduces into any relevant part of the waters in any area designated under section 1(7) of the Continental Shelf Act 1964(44) any live animal or plant of a kind having a natural range that does not include those waters; and
- (b) a person in, or on board a ship in, any relevant part of the waters comprised in the offshore marine area commits an offence if, other than in accordance with paragraph (3), he deliberately introduces into any part of those waters any live animal or plant of a kind having a natural range that does not include those waters.

(44) 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.

(2) For the purposes of paragraph (1), “relevant part” means any part where the introduction would give rise to a risk of prejudice to natural habitats within their natural range or a risk of prejudice to wild native flora or fauna (whether in the place of introduction or elsewhere).

(3) An introduction is in accordance with this paragraph if—

(a) it resulted from a discharge of water carried as ballast and the discharge was necessary for the purpose of protecting the safety of any person or ship; and

(b) all reasonably practicable steps were taken—

(i) to avoid its occurring in an area where it would give rise to a risk of prejudice to natural habitats within their natural range or a risk of prejudice to wild native flora or fauna (whether in the place of introduction or elsewhere); and

(ii) to minimise any risk of such prejudice.

(4) In any proceedings for an offence under paragraph (1)(b), a court must have regard to any guidance issued by the Secretary of State for the purposes of this paragraph about steps which may be taken to avoid committing an offence under paragraph (1)(b).

(5) In any proceedings for an offence under paragraph (1)(b), it is for the defendant to show that the introduction in question was in accordance with paragraph (3).

(6) A person guilty of an offence under this regulation is liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum; or

(b) on conviction on indictment, to a fine.

(7) This regulation does not apply to any person on board a third country ship.

## PART 5

### LICENCES

#### Power to grant licences

49.—(1) Regulations 34, 36 and 37 do not apply to anything done—

(a) in the interests of preserving public health, public safety or air safety,

(b) for the purpose of preventing serious damage to fisheries,

(c) for the purpose of protecting flora or fauna,

(d) for scientific or educational purposes, or

(e) for the purposes of the re-population of an area with, or the re-introduction into an area of, wild birds (including any breeding necessary for those purposes),

if it is done under and in accordance with the terms of a licence granted by the Secretary of State under this paragraph.

(2) The Secretary of State must not grant a licence for any purpose mentioned in paragraph (1) unless he is satisfied that, as regards that purpose, there is no other satisfactory solution.

(3) The Secretary of State may grant a licence to permit the capture, keeping or other judicious use of certain wild birds notwithstanding that the licence is not for a purpose within paragraph (1).

(4) The Secretary of State must not grant a licence under paragraph (3) unless he is satisfied that—

(a) there is no other satisfactory solution than granting the licence; and

(b) the grant of the licence would be consistent with the restrictions in Article 9(1)(c) of the Wild Birds Directive (namely “under strictly supervised conditions and on a selective basis” and in respect of a small number of birds).

(5) Regulations 34, 36 and 37 do not apply to anything done under and in accordance with the terms of a licence granted by the Secretary of State under paragraph (3).

(6) Regulations 39, 41 and 43 do not apply to anything done—

- (a) in the interests of public health or public safety or for other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment,
- (b) for the purpose of preventing serious damage to fisheries,
- (c) for the purpose of preventing serious damage to property,
- (d) in the interest of protecting wild flora or fauna or conserving natural habitats,
- (e) for the purpose of preventing the spread of disease,
- (f) for scientific or educational purposes, or
- (g) for the purposes of the re-population of an area with, or the re-introduction into an area of, wild animals or wild plants (including any breeding or artificial propagation necessary for those purposes),

if it is done under and in accordance with the terms of a licence granted by the Secretary of State under this paragraph.

(7) The Secretary of State must not grant a licence under paragraph (6) unless he is satisfied—

- (a) that there is no satisfactory alternative; and
- (b) that the action authorised will not be detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range.

(8) The Secretary of State may grant a licence to permit the taking or keeping of certain specimens of any of the species or subspecies listed in Annex II(b) (other than any bryophyte) or Annex IV to the Habitats Directive notwithstanding that the licence is not for a purpose within paragraph (6).

(9) The Secretary of State must not grant a licence under paragraph (8) unless he is satisfied—

- (a) that the grant of the licence would be consistent with the restrictions in Article 16(1)(e) of the Habitats Directive (namely “under strictly supervised conditions, on a selective basis and to a limited extent” and “in limited numbers”);
- (b) that there is no satisfactory alternative; and
- (c) that the action authorised will not be detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range.

(10) Regulations 39, 41 and 43 do not apply to anything done under and in accordance with the terms of a licence granted by the Secretary of State under paragraph (8).

(11) Regulation 48 does not apply to anything done under and in accordance with the terms of a licence granted by the Secretary of State under this paragraph.

(12) The Secretary of State must not grant a licence under paragraph (11) unless he is satisfied that the action authorised by the licence will not prejudice natural habitats within their natural range or wild native fauna or flora.

(13) The Secretary of State must not grant a licence for any purpose under this regulation unless he has been advised by the Joint Nature Conservation Committee as to the circumstances in which, in its opinion, licences should be granted for the purpose in question.

(14) The Secretary of State may charge for a licence under this regulation such reasonable sum as he may determine.

### **Licences: supplementary provisions**

**50.**—(1) Subject to the provisions of this regulation, a licence under regulation 49—

- (a) may be, to any degree, general or specific;
  - (b) may be granted either to persons of a class or to a particular person; and
  - (c) may be subject to compliance with any specified conditions.
- (2) For the purposes of such a licence the definition of a class of persons may be framed by reference to their being authorised by any other person, or by reference to any other circumstances whatever.
- (3) A licence under regulation 49(1) or (3) must specify—
- (a) the species of wild birds in respect of which, the circumstances in which, and the conditions subject to which, any action authorised by the licence may be taken; and
  - (b) the methods, means or arrangements which are authorised or required for the taking of the action.
- (4) A licence under regulation 49(6) which authorises any person to kill wild animals must specify the area within which and the means or methods by which the wild animals may be killed.
- (5) A licence under regulation 49(8) may only be granted to such persons as are named in the licence.
- (6) A licence under regulation 49(8) must specify—
- (a) the species of animal or plant specimens of which may be taken or kept;
  - (b) the maximum number of specimens which may be taken or kept or which particular specimens may be taken or kept;
  - (c) the conditions subject to which the action authorised by the licence may be taken and in particular—
    - (i) the methods, means or arrangements by which the specimens may be taken or kept;
    - (ii) when or over what period the action authorised by the licence may be taken; and
    - (iii) where it authorises any person to take specimens, the area from which they may be taken.
- (7) A licence under regulation 49 may be modified or revoked at any time by the Secretary of State, but otherwise it is valid for the period stated in the licence.

### **False statements made for obtaining licence**

- 51.**—(1) A person is guilty of an offence if, for the purposes of obtaining (whether for himself or another) the grant of a licence under regulation 49—
- (a) he makes a statement or representation, or furnishes a document or information, which he knows to be false in a material particular; or
  - (b) he recklessly makes a statement or representation, or furnishes a document or information, which is false in a material particular.
- (2) A person guilty of an offence under this regulation is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
  - (b) on conviction on indictment, to a fine.

## PART 6

### ENFORCEMENT AND SUPPLEMENTARY PROVISION RELATING TO CRIMINAL OFFENCES

#### *Enforcement*

#### **Wildlife officers**

**52.**—(1) The Secretary of State may authorise any person to be a wildlife officer.

(2) A competent authority may authorise any person to be a wildlife officer, subject to and in accordance with the agreement of the Secretary of State.

(3) An authorisation under paragraph (1) or (2) must be in writing and may be subject to any conditions or limitations specified in it.

(4) Payments may be made by way of remuneration, allowances, expenses or otherwise—

(a) by the Secretary of State to any person authorised under paragraph (1);

(b) by a competent authority to any person authorised by it under paragraph (2).

(5) An agreement under paragraph (2) may be subject to conditions or limitations and may make provision for payment by the Secretary of State to reimburse the competent authority for the expenses it incurs in connection with and for the purposes of the agreement.

#### **Powers of boarding, entry and inspection**

**53.**—(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 evidence that he is a wildlife officer, board and inspect the ship or offshore marine installation in question.

(2) Paragraph (1) applies to any ship, wherever it may be—

(i) which is registered in the United Kingdom under Part 2 of the Merchant Shipping Act 1995<sup>(45)</sup>;

(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) any offshore marine installation.

(3) A wildlife officer may at all reasonable hours, and (if required to do so) upon producing evidence that he is a wildlife officer, 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, he is satisfied—

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<sup>(45)</sup> 1995 c.21. Section 15 has been amended by S.I. 2002/794.



- (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<sup>(46)</sup> (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<sup>(47)</sup> (which make provisions 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 “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.

(8) In this regulation “the United Kingdom” means the United Kingdom (including its internal waters) and the territorial sea adjacent to the United Kingdom.

### **Additional powers**

54. Regulations 55 to 57 apply where a wildlife officer has boarded any ship or offshore marine installation or entered any premises by virtue of regulation 53.

### **Powers to make inquiries and examine things**

55.—(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 which appears to him to be necessary for facilitating his examination of anything.

### **Powers relating to specimens**

56.—(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 has a specimen in his possession or control to make it available for inspection by him.

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<sup>(46)</sup> 1984 c.60. Section 15 was amended by sections 113, 114 and 174 of, and Part 2 of Schedule 17 to, the Serious Organised Crime and Police Act 2005 (c.15), and by S.I. 2005/3496. Section 16 was amended by section 2 of the Criminal Justice Act 2003 (c.44) and sections 113 and 114 of the Serious Organised Crime and Police Act 2005, and by S.I. 2005/3496.

<sup>(47)</sup> S.I. 1989/1341 (N.I. 12).

(2) A wildlife officer may, subject to paragraph (3), take a sample from any specimen he finds on the ship or offshore marine installation or at the premises or which is made available to him 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**

**57.**—(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 which is in his 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 he believes is evidence of an offence under these Regulations.

### **Further powers in relation to ships**

**58.**—(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, he 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) If a wildlife officer detains any ship, he 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**

**59.**—(1) A wildlife officer may take with him, to assist him in performing his functions—

(a) any other person; and

(b) any equipment or materials.

(2) A person assisting a wildlife officer may perform any of that officer's functions but only under his supervision.

#### **Power to use reasonable force**

**60.** A wildlife officer, or a person assisting him by virtue of regulation 59, may use reasonable force, if necessary, in the performance of his functions.

#### **Liability of wildlife officers**

**61.** A wildlife officer, or a person assisting him by virtue of regulation 59, is not to be personally liable in any civil or criminal proceedings for anything done in the purported exercise of his 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**

**62.—**(1) A person is guilty of an offence if he—

- (a) intentionally obstructs a wildlife officer, or a person assisting him by virtue of regulation 59, in the exercise of his functions conferred under these Regulations;
- (b) assaults a wildlife officer, or a person assisting him by virtue of regulation 59, in the exercise of his functions conferred under these Regulations;
- (c) fails without reasonable excuse to comply with a requirement under regulation 55(2), 56(1), 57(1) or 58 reasonably made by a wildlife officer or by a person assisting him by virtue of regulation 59;
- (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 him by virtue of regulation 59, makes a statement which he knows to be false in a material particular.

(2) A person guilty of an offence under this regulation is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment, to a fine.

#### *Supplementary provision relating to criminal offences*

#### **Jurisdiction of courts**

**63.** 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**

**64.—**(1) Subject to paragraph (2), a person who, for the purpose of committing an offence under Part 3, has in his possession anything capable of being used for committing the offence is guilty of an offence and punishable in like 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, &c.**

**65.**—(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 his part,

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 his functions of management as if he were a director 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 of his part,

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**

**66.** Section 3 of the Territorial Waters Jurisdiction Act 1878(48) (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.

## **PART 7**

### **MISCELLANEOUS**

#### **Research**

**67.**—(1) The Secretary of State must take such steps to encourage research and scientific work relating to the offshore marine area as he considers necessary, having regard to the objectives in Article 2, and the obligation in Article 11, of the Habitats Directive.

(2) The Secretary of State must supply such information relating to the offshore marine area as he considers appropriate to member States and to the Commission to further the proper co-ordination of research carried out by member States or by any Community institution for the purposes of the Habitats Directive.

(3) In deciding what steps to take under paragraph (1), the Secretary of State must have particular regard to the need for research and other scientific work in order to implement Article 4 of the Habitats Directive.

### **Nature conservation education**

**68.** The Joint Nature Conservation Committee must such take steps as it considers appropriate to promote public awareness of, and to disseminate information on—

- (a) the need to protect species of wild flora and fauna found in the offshore marine area; and
- (b) the need to conserve the habitats of such flora and fauna and natural habitats found in the offshore marine area.

### **Re-introduction of species**

**69.**—(1) If the Secretary of State considers that re-introducing a species to which this regulation applies into any part of the waters comprised in the offshore marine area might contribute to the conservation of that species, he—

- (a) must make arrangements for a study to be carried out to consider the desirability of doing so; and
- (b) may, if he considers it appropriate, carry out or cause to be carried out an investigation in accordance with paragraph (5) for the purpose of ascertaining whether the re-introduction of the species would contribute effectively to re-establishing the species at a favourable conservation status.

(2) Paragraph (3) applies if the study under paragraph (1)(a) concludes that any such re-introduction would be desirable—

- (a) whether in the light of an investigation carried out under paragraph (1)(b); or
- (b) where no such investigation has been carried out, subject to such an investigation being carried out and reaching a conclusion in the affirmative.

(3) Where this paragraph applies, and subject to paragraph (4), the Secretary of State may make arrangements to re-introduce the species into such waters after—

- (a) carrying out such an investigation; and
- (b) consulting such persons as he considers may have an interest in the re-introduction.

(4) The Secretary of State must not proceed with the re-introduction unless the conclusion of the investigation carried out under paragraph (1)(b) is in the affirmative.

(5) Any investigation under paragraph (1)(b) must—

- (a) consider whether the species concerned has been re-introduced in the territory of other member States or elsewhere; and
- (b) take account of any evidence relating to any such re-introductions which is relevant for the purposes of the investigation.

(6) This regulation applies to such species in Annex IV of the Habitats Directive as are native to the offshore marine area.

### **Advisory role of the JNCC**

**70.**—(1) The Joint Nature Conservation Committee may—

- (a) provide advice and assistance, or make representations, to any competent authority on any nature conservation matter which is connected with the discharge of the competent authority's functions under these Regulations; and

- (b) undertake, commission or support (whether by financial means or otherwise) such research and scientific work as the Committee considers is required for the purposes of providing advice or assistance or making representations under sub-paragraph (a).
- (2) In this regulation and regulation 71 “research” includes inquiries and investigations.

### **Advice on appropriate assessments**

71.—(1) Natural England may provide advice and may make representations to any competent authority in relation to—

- (a) any question as to whether that authority is obliged to carry out an appropriate assessment upon which it must consult Natural England under these Regulations; and
- (b) any appropriate assessment upon which that authority must consult Natural England under these Regulations.

(2) The Countryside Council for Wales may provide advice or make representations to any competent authority in relation to—

- (a) any question as to whether that authority is obliged to carry out an appropriate assessment upon which it must consult the Countryside Council for Wales under these Regulations; and
- (b) any appropriate assessment upon which that authority must consult the Countryside Council for Wales under these Regulations.

(3) Scottish Natural Heritage may provide advice and may make representations to any competent authority in relation to—

- (a) any question as to whether that authority is obliged to carry out an appropriate assessment upon which it must consult Scottish Natural Heritage under these Regulations; and
- (b) any appropriate assessment upon which that authority must consult Scottish Natural Heritage under these Regulations.

(4) Natural England, the Countryside Council for Wales and Scottish Natural Heritage may each undertake, commission or support (whether by financial means or otherwise) such research and scientific work as they think is required for the purposes of providing advice or making representations under this regulation.

### **Reports to the Commission**

72.—(1) In relation to the offshore marine area, the functions of sending to the Commission—

- (a) a report pursuant to Article 16(2) of the Habitats Directive (reports on derogations applied under Article 16(1) of the Habitats Directive), and
- (b) a report pursuant to Article 17(1) of the Habitats Directive (reports on the implementation of measures taken under the Habitats Directive),

are functions of the Secretary of State.

(2) A report of the kind mentioned in paragraph (1)(a) must be prepared—

- (a) for the period beginning with the date of the commencement of these Regulations and ending on 31st December 2008; and
- (b) for every two-year period thereafter.

(3) A report of the kind mentioned in paragraph (1)(b) must be prepared—

- (a) for the period beginning with the date of the commencement of these Regulations and ending on 31<sup>st</sup> December 2012; and
- (b) for every six-year period thereafter.

(4) The Secretary of State must make such arrangements as he considers appropriate for a copy of any report provided to the Commission under paragraph (1)(b) to be made available for inspection by members of the public.

### **Form of communications**

**73.**—(1) Subject to paragraph (2), where—

- (a) a person is required to give notice to any person of any matter,
- (b) a person may make representations on a matter to the Secretary of State, or
- (c) a request must be submitted to the Secretary of State,

the notice, representations or request (together with any accompanying information or documents) must be in writing.

(2) A notice, representations or a request (and any accompanying information or documents) may be given or sent by means of an electronic communication if the intended recipient consents.

(3) In this regulation and in regulation 74, “electronic communication” has the meaning given in section 15(1) of the Electronic Communications Act 2000<sup>(49)</sup>.

### **Notices**

**74.**—(1) Any notice required under these Regulations may be given to a person by—

- (a) leaving it at his proper address;
- (b) sending it by post to him at that address; or
- (c) where an address for receipt by electronic communication has been given by that person, sending it by means of electronic communication to that person at that address.

(2) Any such notice may—

- (a) in the case of a body corporate (other than a limited liability partnership) be given to the secretary or clerk of that body;
- (b) in the case of a limited liability partnership, be given to a member;
- (c) in the case of a partnership (other than a limited liability partnership), be given to a partner or person having control or management of the partnership business.

(3) For the purpose of this regulation and of section 7 of the Interpretation Act 1978<sup>(50)</sup> (reference to service by post) in its application to this regulation, the proper address of any person to whom any such notice is to be given is his last known address, except that—

- (a) in the case of a body corporate (other than a limited liability partnership) or its secretary or clerk, it is the address of the registered or principal office of that body;
- (b) in the case of a limited liability partnership or a member of a limited liability partnership, it is the registered or principal office of that partnership; and
- (c) in the case of a partnership (other than a limited liability partnership) or person having control of the partnership business, it is the principal office of that partnership.

(4) For the purposes of paragraph (3) the principal office of a company registered outside the United Kingdom or of a partnership carrying on business outside the United Kingdom is its principal office within the United Kingdom.

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<sup>(49)</sup> 2000 c.7. The definition of “electronic communication” in section 15(1) was amended by section 406(1) of, and paragraph 158 of Schedule 17 to, the Communications Act 2003 (c.21).

<sup>(50)</sup> 1978 c.30.

(5) If the person to be given any such notice has specified an address in the United Kingdom other than his proper address within the meaning of paragraph (3) as the one at which he or another person on his behalf will accept notices of the same description as that notice, that address is also to be treated for the purposes of this regulation and section 7 of the Interpretation Act 1978 as his proper address.

(6) Where a notice is given by means of an electronic communication, it is deemed to be given by properly addressing and transmitting the electronic communication.

(7) Where a notice given by means of electronic communication is received by the recipient outside that person's normal office hours, it will be taken to have been received on the next working day.

(8) In this regulation "working day" means a day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is bank holiday within the meaning of the Banking and Financial Dealings Act 1971<sup>(51)</sup>.

### **Amendments to the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001**

75. The Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001<sup>(52)</sup> are amended as follows—

- (a) in regulation 2 (interpretation), in the definition of "relevant site"—
  - (i) at the end of paragraph (d), insert "or";
  - (ii) at the end of paragraph (e), omit ", or";
  - (iii) omit paragraph (f); and
  - (iv) omit the words from "A site shall cease to qualify as a site under paragraph (f) above" to the end;
- (b) omit regulation 5(4);
- (c) in regulation 6(1), for "regulation 5" substitute "regulation 5(3)";
- (d) omit regulations 10 to 18; and
- (e) in regulation 19 (offences)—
  - (i) for paragraph (1) substitute the following paragraph—
    - "(1) A person is guilty of an offence if, without reasonable excuse, he fails to comply with a direction given in accordance with regulation 7 above.";
  - (ii) in paragraph (2) for "paragraph (1)(a)" substitute "paragraph (1)"; and
  - (iii) omit paragraph (3).

*Ben Bradshaw*  
Minister of State  
Department for Environment, Food and Rural  
Affairs

24th June 2007

<sup>(51)</sup> 1971 c.80.

<sup>(52)</sup> S.I. 2001/1754, amended by S.I. 2007/77.



## SCHEDULE 1

Regulation 2(1)

## EUROPEAN PROTECTED SPECIES

<i>Common name</i>	<i>Scientific Name</i>
Dolphins, porpoises and whales (all species)	Cetacea
Sturgeon, Common	Acipenser sturio
Turtles, Marine	Caretta caretta
	Chelonia mydas
	Dermochelys coriacea
	Eretmochelys imbricata
	Lepidochelys kempii

NOTE. Common names are given in the first column of this Schedule by way of guidance only; in the event of any dispute or proceedings, the common name shall not be taken into account.

## SCHEDULE 2

Regulation 40(5)(a)

## EXCLUDED POPULATIONS OF CERTAIN SPECIES

<i>Common Name</i>	<i>Scientific Name</i>	<i>Excluded countries and areas</i>
Beaver, Eurasian	Castor fiber	Estonia, Finland, Latvia, Lithuania, Poland, and Sweden
Hamster, European (or Black bellied)	Cricetus cricetus	Hungary
Wolf, Grey	Canis lupus	Bulgaria, Estonia, Greece north of the 39th parallel, Latvia, Lithuania, Poland, Slovakia, Spain north of the River Duero, and the reindeer management area in Finland as defined in paragraph 2 of Finnish Act No. 848/90 of 14th September 1990 on reindeer management(53)

NOTE. Common names are given in the first column of this Schedule by way of guidance only; in the event of any dispute or proceedings, the common name shall not be taken into account.

(53) A copy of this Finnish Act can be obtained from the Wildlife Species Conservation Division, Defra, Temple Quay House, 2 The Square, Temple Quay, Bristol BS1 6EB.

**Status:** This is the original version (as it was originally made).

<i>Common Name</i>	<i>Scientific Name</i>	<i>Excluded countries and areas</i>
Lynx, Eurasian	Lynx lynx	Estonia
Viper, Seoane's	Vipera seoanni	Spain

NOTE. Common names are given in the first column of this Schedule by way of guidance only; in the event of any dispute or proceedings, the common name shall not be taken into account.

### SCHEDULE 3

Regulation 41(1)

#### ANIMALS WHICH MAY NOT BE TAKEN OR KILLED IN CERTAIN WAYS

<i>Common name</i>	<i>Scientific name</i>
Seals (all species)	Phocidae
Shad, Alis	Alosa alosa
Shad, Twaite	Alosa fallax
Sturgeon (all species except the common sturgeon)	Acipenseridae (except Acipenser sturio)

NOTE. Common names are given in the first column of this Schedule by way of guidance only; in the event of any dispute or proceedings, the common name shall not be taken into account.

### EXPLANATORY NOTE

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

These Regulations make provision for implementing Council Directive [79/409/EEC](#) on the conservation of wild birds (O.J. No. L103, 25.4.79, p.1.) and Council Directive [92/43/EEC](#) on the conservation of natural habitats and of wild fauna and flora (O.J. No. L206, 22.7.92, p.7) in relation to marine areas where the United Kingdom has jurisdiction beyond its territorial sea. That is to say, the Regulations make provision in relation to the offshore marine area, offshore marine installations and certain ships and aircraft. The “offshore marine area” is defined in regulation 2(1).

Part 1 contains introductory provisions. Regulation [6](#) imposes a duty on competent authorities exercising functions relevant to marine conservation to do so in such a way as to secure compliance with the requirements of the Directives.

Part 2 makes provision for the conservation of natural habitats and habitats of species. Regulation [5](#) identifies the competent authorities for the purposes of these Regulations. Regulations [717](#) make provision for the selection, registration and notification of sites in the offshore marine area to be protected under the Habitats and Wild Birds Directives (“European offshore marine sites”, which term is defined in regulation 15). Regulations [1821](#) make provision about the management of

European offshore marine sites, including provision enabling management schemes to be made for these sites. Regulation 22 makes provision requiring competent authorities to establish conservation measures in respect of special areas of conservation in the offshore marine area that have been designated under regulation 11. Regulation 23 makes provision requiring competent authorities to exercise their functions to secure that steps are taken to avoid the disturbance of species and deterioration of habitat in respect of the offshore marine sites specified in regulation 23(3) and (4). Regulations 2530 require (amongst other things) the effect of plans and projects in the offshore marine area (or on offshore marine installations) that are likely to have a significant effect on a European offshore marine site or a European site (as defined in regulation 24) to be considered before the plan or project is authorised. Subject to certain exceptions, the authorisation of such plans and projects is prevented where the integrity of the site would be adversely affected. Regulations 27 and 28 also require certain authorisations granted before a site became a European offshore marine site or European site to be reviewed and in certain circumstances revoked where the integrity of the site would be adversely affected. Regulation 32 creates new offences in relation to offshore marine sites, as regards the intentional disturbance of animals for the protection of which the site has been designated or listed; the intentional disturbance of wild birds in a classified site; and the intentional or reckless damage or destruction of habitats.

Part 3 creates offences for the protection of wild birds, animals and plants, which in some instances are subject to defences. In particular, regulations 34 and 39 make it an offence deliberately to kill or take, respectively, wild birds or their eggs, and animals belonging to the species listed in Schedule 1. Protection is also afforded to birds' nests, and to the breeding sites and resting places of the species of animals specified in Schedule 1. Regulations 36 and 41 create offences prohibiting the use of certain methods of killing and taking wild birds and animals (respectively). Regulations 37, 39(2) and 43 make it an offence, subject to certain exceptions, to trade in or keep wild birds and certain species of wild animals and plants.

Part 4 requires the Secretary of State to make arrangements for surveillance and monitoring of species and habitats in the offshore marine area and to take further action for the protection of species, in the light of that surveillance or monitoring. In certain cases Scottish Ministers and Northern Ireland departments must also take measures to protect species under this Part. Regulation 48 makes it an offence deliberately to introduce a non-native animal or plant.

Part 5 makes provision for the licensing of activities which would otherwise be offences under Part 3 and regulation 48 (in Part 4).

Part 6 gives to the Secretary of State and competent authorities power to appoint or make arrangements for the appointment of persons ("wildlife officers") to investigate offences under the Regulations. Powers to search and enter and gather evidence are provided to wildlife officers. Part 6 also makes supplementary provision relating to offences under the Regulations.

Part 7 deals with a number of miscellaneous matters including education, research and reporting to the European Commission on the implementation of the Habitats Directive. Under Articles 16 and 17 of the Habitats Directive respectively, member States must provide reports to the Commission on derogations granted under the Directive and on its implementation. Regulation 72 of these Regulations ensures that there is an authority responsible for sending those reports, namely the Secretary of State. Regulation 75 makes amendments to the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001.

A transposition note setting out how the Regulations transpose the two Directives mentioned above has been prepared. A full regulatory impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector has also been prepared. Both of these documents are available from the Wildlife Habitats and Biodiversity Division, Defra, Temple Quay, Bristol, BS1 6EB. In addition, copies of both of these documents have been placed in the libraries of both Houses of Parliament.

**Status:** *This is the original version (as it was originally made).*