

**EXPLANATORY MEMORANDUM TO**  
**THE CONSERVATION (NATURAL HABITATS, &c.) (AMENDMENT) (ENGLAND**  
**AND WALES) REGULATIONS 2009**

**2009 No. 6**

**THE OFFSHORE MARINE CONSERVATION (NATURAL HABITATS, &c.)**  
**(AMENDMENT) REGULATIONS 2009**

**2009 No. 7**

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
  - 2.1 The Conservation (Natural Habitats, &c.) (Amendment) (England and Wales) Regulations 2009 (S.I. 2009/6) (“the England and Wales Amendment Regulations”) amend the Conservation (Natural Habitats, &c.) Regulations 1994 (S.I. 1994/2716) (the “Habitats Regulations”), which transpose Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (“the Habitats Directive”).
  - 2.2 The Offshore Marine Conservation (Natural Habitats, &c) (Amendment) Regulations 2009 (S.I. 2009/7) (the “Offshore Amendment Regulations”) amend the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007 (S.I. 2007/1842) (“the “Offshore Marine Regulations”), which transpose the Habitats Directive and Council Directive 79/409/EEC on the conservation of wild birds (the “Wild Birds Directive”) in relation to marine areas for which the United Kingdom has jurisdiction beyond its territorial sea – broadly from 12 nautical miles to 200 nautical miles from the United Kingdom’s coastal baseline. The amendments relate only to the transposition of the Habitats Directive, and the transposition of the Wild Birds Directive is unaltered.
  - 2.3 Annex I contains:
    - a transposition note for the England and Wales Amendment Regulations, setting out the provisions of the Habitats Directive in respect of which those Regulations make changes to the transposition of the Directive effected by the Habitats Regulations; and
    - the transposition note for the Offshore Marine Regulations, with revisions to take account of the changes made by the Offshore Amendment Regulations.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
  - 3.1 None.
4. **Legislative Context**

4.1 The Habitats Regulations are the principal means by which the Habitats Directive is transposed for Great Britain and its territorial seas. Similar Regulations, the Conservation (Natural Habitats, &c.) Regulations (Northern Ireland) 1995 (SR(NI) 1995/380), transpose the Habitats Directive in relation to Northern Ireland.

4.2 The Offshore Marine Regulations were made, and the Habitats Regulations were amended by S.I. 2007/1843, to comply with an ECJ judgment against the United Kingdom, *C-6/04 Commission v. United Kingdom*, concerning the failure of the United Kingdom to fulfil its obligations under Articles 6(2), 6(3), 6(4), 11, 12(1), 12(2), 12(4), 13(1), 14(2), 15 and 16 of the Habitats Directive, as well as the whole directive beyond the United Kingdom's territorial waters.

4.3 The England and Wales Amendment Regulations and the Offshore Amendment Regulations amend provisions relating to the protection of species to better implement the requirements of Articles 12(1) and 16(1) of the Habitats Directive, and make more detailed provision for the surveillance and monitoring of natural habitats and species of Community interest pursuant to Articles 11 and 12(4).

4.4 The Scottish Ministers and the Department of the Environment for Northern Ireland are making regulations, similar to the England and Wales Amendment Regulations, for Scotland and Northern Ireland respectively.

4.5 Agreement to make the England and Wales Amendment Regulations and the Offshore Amendment Regulations was given by the Ministerial Committee on National Security, International Relations and Development (EU) on 13th November 2008.

## **5. Territorial Extent and Application**

5.1 The England and Wales Amendment Regulations extend only to England and Wales, although the Habitats Regulations, which they amend, also extend to Scotland. Scottish Ministers are making similar amendments to the Habitats Regulations for Scotland. In terms of territorial application, the England and Wales Amendment Regulations and the Habitats Regulations apply to terrestrial areas, internal waters and the territorial sea (i.e. out to 12 nautical miles).

5.2 The Offshore Amendment Regulations apply to the United Kingdom's offshore marine area, which means any part of the seabed and subsoil situated in any area designated under section 1(7) of the Continental Shelf Act 1964 (effectively the United Kingdom sector of the continental shelf) and 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).

## **6. European Convention on Human Rights**

6.1 As the instruments are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

## **7. Policy background**

- ***What is being done and why***

7.1 The objective of the Habitats Directive is to protect biodiversity through conservation of natural habitats and species of wild fauna and flora. The Directive lays down rules for the protection, management and exploitation of habitats and species. The Offshore Marine Regulations fulfil these objectives in the United Kingdom's offshore marine area (broadly, beyond 12 nautical miles from the coastal baseline and out to 200 nautical miles) by ensuring that activities beyond territorial waters are carried out in a manner that is consistent with the Directive. The Habitats Regulations fulfil these objectives in respect of terrestrial areas, internal waters and the territorial sea.

7.2 In the light of discussions with the European Commission following the making of the Offshore Marine Regulations and the amendment of the Habitats Regulations in 2007, it has been decided to amend those instruments further in order to ensure that the United Kingdom has fully complied with the ECJ's judgment in Case C-6/04 and to secure the closure of those infraction proceedings.

7.3 The amendments include, in particular, the insertion of more detailed provisions for the surveillance of natural habitats and species of Community interest, and the monitoring of incidental capture and killing of European protected species. Those provisions are amended to include specific requirements for nature conservation bodies to assess the needs for such surveillance and monitoring and advise the Secretary of State and Welsh Ministers, and for the Secretary of State and Welsh Ministers to ensure that the necessary surveillance and monitoring is carried out. They also indicate who may carry out such surveillance and monitoring.

7.4 Additionally, provisions relating to the protection of species are amended in several respects. In particular-

- modifications are made to the wording of offences of disturbing protected species of animals;
- powers are inserted to publish guidance about the application of certain species protection offences in relation to particular species of animals or particular activities, and a requirement has been introduced for the courts to take account of any such guidance in proceedings for those offences;
- defences to species protection offences are made subject to the proviso that they shall not apply if it is shown that either of the two conditions set out in Article 16(1) of the Directive are not satisfied, i.e. that there is no satisfactory alternative and that the action is not detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range; and
- special provisions about the application of species protection offences in relation to sea fishing activities are revoked in the Habitats Regulations.

- ***Consolidation***

7.5 The purpose of the amendments made by the present instruments is to ensure that the Habitats Regulations and Offshore Marine Regulations fully comply with the judgment in Case C-6/04. Defra wished to implement these amendments as quickly as possible, and therefore the remit of the amendments was not extended to include an

element of consolidation as this would have added to the complexity of the exercise and led to delays.

7.6 It is intended that once the above Regulations are made, a review and consolidation of the UK's transposition of the Habitats Directive will be planned.

7.7 In order that we may quantify the potential size of the task and resources required, we will review and analyse the scope for consolidation, including further harmonisation between the Habitats Regulations and Offshore Marine Regulations and interface with habitats related provisions in other legislation.

7.8 This scoping study is due to start in March 2009 and is planned to take three months. Defra will then consider the best way forward. The current timetable envisages Regulations being made in October 2010.

## **8. Consultation outcome**

8.1 In preparing both sets of Amendment Regulations, Defra has consulted other Government departments, the devolved administrations in Wales, Scotland and Northern Ireland, and delivery bodies such as the Joint Nature Conservation Committee, Natural England, the Countryside Council for Wales and the Forestry Commission.

8.2 Stakeholders and the general public have not been consulted as the amendments do not introduce significant changes to the practical implementation of the Habitats Directive. A full public consultation was carried out before the Habitats Regulations were amended and the Offshore Marine Regulations were made in 2007.

## **9. Guidance**

9.1 A simplified guide to the changes to the legislation will be sent to key stakeholders and practical guidance developed by key stakeholders and experts will be available on the internet to enable future updates if necessary. Changes will be publicised widely through the media using key stakeholder publications.

## **10. Impact**

10.1 No impact on business, charities or voluntary bodies is foreseen.

10.2 Some further investment or re-targeting of resources by Government family organisations is likely to be necessary to ensure surveillance and monitoring obligations are adequately met. Costs will vary across the UK administrations and cannot be determined at this stage. However, the obligations in the Directive to carry out surveillance and monitoring already applied before the amendments made by these instruments.

10.3 Impact Assessments have not been prepared for these instruments.

## **11. Regulating small business**

11.1 The legislation applies to small business. The impact on small firms is expected to be beneficial in light of additional clarity provided by the amendments and associated guidance.

## **12. Monitoring & review**

12.1 The cost and benefits of these amendments will be reviewed as part of the proposed Habitats Directive transposition review and consolidation exercise, currently scheduled to take place between March 2009 and October 2010. The proposed review would consider whether the UK's transposition of the Directive is fit for purpose, identifying outstanding transposition issues not covered by earlier amendments and seeking to remove further infraction risk. A planned element of this exercise will be a post delivery review in October 2011.

## **13. Contact**

13.1 Ashley Smith at the Department for Environment, Food and Rural Affairs Tel: 0117 372 8335 or e-mail: [Ashley.Smith@defra.gsi.gov.uk](mailto:Ashley.Smith@defra.gsi.gov.uk) can answer queries regarding the Offshore Amendment Regulations.

13.2 Alison Elliott at the Department for Environment, Food and Rural Affairs Tel: 0117 372 8817 or e-mail: [Alison.Elliott@defra.gsi.gov.uk](mailto:Alison.Elliott@defra.gsi.gov.uk) can answer queries regarding the England and Wales Amendment Regulations.

## **ANNEX 1**

### **Transposition Note**

Relating to Council Directive (92/43/EEC) on the conservation of natural habitats and wild fauna and flora (“the Habitats Directive”)

#### **The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2009**

Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Fauna and Flora (“the Habitats Directive”) provides a framework for the conservation and management of habitats listed in Annex I of the Directive and the species listed in Annexes II, IV and V.

In Great Britain, the Directive is principally implemented by the Conservation (Natural Habitats, &c.) Regulations 1994 (as amended) (“the Habitats Regulations”).<sup>1</sup> In January 2004, the European Commission made an application to the European Court of Justice (ECJ) alleging a number of failings in the UK’s transposition of the Habitats Directive. The ECJ subsequently ruled against the UK for failing to correctly and completely implement the Habitats Directive in a number of areas (Case C-6/04)<sup>2</sup>. In a separate decision against the UK (Case C-131/05)<sup>3</sup>, the ECJ ruled that Articles 12(2) and 13(1)(b) of the Habitats Directive were not correctly transposed.

The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007 (“the 2007 Amendment Regulations”) made changes to the Habitats Regulations, mostly extending to England and Wales, to meet these judgments. Scottish Ministers separately made similar amendments to the Habitats Regulations as they applied in Scotland, and Northern Ireland and Gibraltar made similar amendments to the corresponding legislation in their territories.

The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2009 (“the 2009 Amendment Regulations”) make further amendments, extending to England and Wales, in order to better transpose the Directive in relation to some of the points on which the ECJ ruled against the UK in Case C-6/04. Again, Scottish Ministers are separately making similar amendments to the Habitats Regulations as they apply in Scotland, and Northern Ireland and Gibraltar are making similar amendments to the corresponding legislation in their territories.

These Regulations do not go beyond what is necessary to implement the Directive.

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<sup>1</sup> Similar regulations, the Conservation (Natural Habitats, &c.) Regulations (Northern Ireland) 1995 (SR (NI)1995/380), transpose the Habitats Directive in relation to Northern Ireland

<sup>2</sup> <http://europa.eu.int/eur-lex/lex/LexUriServ/LexUriServ.do?uri=CELEX:62004J0006:EN:HTML>

<sup>3</sup> <http://curia.europa.eu/jurisp/cgi-bin/gettext.pl?lang=en&num=79948882C19050131&doc=T&ouvert=T&seance=ARRET>

**Council Directive 92/43/EEC on the Conservation Of Natural Habitats and of Wild Fauna and Flora**

<b>Article</b>	<b>Purpose of Provision</b>	<b>Implementation</b>	<b>Responsibility</b>
11	To better transpose the surveillance obligations.	<p>In paragraphs 68 and 69 of judgment C-6/04, the ECJ found that UK domestic law failed to contain any statutory duty requiring the national authorities to undertake surveillance of the conservation status of natural habitats and species, thereby guaranteeing that surveillance is undertaken systematically and on a permanent basis. As a result, it ruled that Article 11 of the Habitats Directive had not been completely, clearly and precisely transposed into United Kingdom law.</p> <p>New regulation 37A of the Habitats Regulations (inserted by regulation 5(12) of the 2007 Amendment Regulations) transposed Article 11 by imposing, a duty on the Secretary of State and the Welsh Ministers to make arrangements for surveillance of the conservation status of natural habitat types of Community interest and species of Community interest.</p> <p>Regulation 5 of the 2009 Amendment Regulations amends regulation 37A to make more detailed provision about the exercise of that duty, including clarification of the roles and responsibilities of Natural England and the Countryside Council for Wales.</p>	Secretary of State and Natural England (in England). Welsh Ministers and Countryside Council for Wales (in Wales).
12	To better transpose the requirement in Article 12(1) to have a system of strict protection of the animal species listed in Annex IV(a) of the Directive (known as European protected species) in their natural range.	Regulation 39(1) of the Habitats Regulations provides the necessary protection through the creation of a number of criminal offences relating to European protected species of animals. Regulation 7 of the 2009 Amendment Regulations amends the offence in regulation 39(1)(b) of deliberately disturbing such animals. It also inserts provision in regulation 39(12) and (13) for the publication of guidance about the application of the offences in regulation 39(1)(b) and (d) in relation to particular species of animals or particular activities,	Secretary of State and Natural England (in England). Welsh Ministers and Countryside Council for Wales (in Wales).

		and requires a court to take account of such guidance in any proceedings for an offence under those provisions.	
12(4)	To better transpose the obligation to monitor the incidental capture and killing of certain animal species.	<p>In paragraph 89 of the C-6/04 judgment, the ECJ noted that the UK's transposing legislation contained no provision requiring the establishment of a monitoring system, as required in Article 12(4), in respect of the incidental capture and killing of animal species listed on Annex IV to the Directive.</p> <p>The 2007 Amendment Regulations inserted regulations 41A and 41B in the Habitats Regulations, which implemented Article 12(4) by imposing a duty on the Secretary of State and Welsh Ministers to make arrangements to monitor the incidental capture and killing of animals of the species listed in Annex IV(a) of the Habitats Directive and to take conservation measures in the light of that monitoring.</p> <p>Regulation 9 of the 2009 Amendment Regulations amends regulation 41A to make more detailed provision about the exercise of that duty, including clarification of the roles and responsibilities of Natural England and the Countryside Council for Wales.</p> <p>Regulation 10 of the 2009 Amendment Regulations amends regulation 41B to clarify the duty on the Secretary of State and Welsh Ministers to take further research or conservation measures as required to ensure that incidental capture and killing does not have a significant negative impact on European protected species.</p>	Secretary of State and Natural England (in England). Welsh Ministers and Countryside Council for Wales (in Wales).
14	<p>To amend the transposition of the requirement to take conservation measures arising from the surveillance obligations contained in Article 11</p> <p>Where member States consider it necessary, in the</p>	Regulation 6 of the 2009 Amendment Regulations amends regulation 37B of the Habitats Regulations (as inserted by the 2007 Amendment Regulations), which implements Article 14, by requiring the Secretary of State and Welsh Ministers, where necessary in the light of surveillance carried out pursuant to Article 11, to make arrangements for further research to establish whether taking and exploitation of	Secretary of State and Welsh Ministers



	<p>light of surveillance under Article 11, they are required to take measures to ensure that taking plants and animals of Community interest (Annex V listed species) is compatible with them being maintained at a favourable conservation status.</p>	<p>wild Annex V species is compatible with them being maintained at favourable conservation status and to ensure that measures are taken to ensure this is the case.</p>	
16(1)	<p>To transpose, in relation to the defences to the species offences in regulation 39, the conditions which by virtue of Article 16(1) must apply to derogations from the provisions of Article 12, i.e. that there is no satisfactory alternative and the derogation is not detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range.</p>	<p>Regulation 40 of the Habitats Regulations contains defences to the species offences in regulation 39. In paragraphs 106-107 of its judgment in Case C-6/04, the ECJ held that those defences are derogations from Article 12, and must incorporate the two conditions in Article 16(1). Regulation 8 of the 2009 Amendment Regulations amends regulation 40 to provide that the defences do not apply where it is shown that the defendant's action did not satisfy those two conditions.</p>	

## Transposition Note

Relating to Council Directive (92/43/EEC) on the conservation of natural habitats and wild fauna and flora (“the Habitats Directive”)

### The Offshore Marine Conservation (Natural Habitats, &c.) (Amendment) Regulations 2009

Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Fauna and Flora (“the Habitats Directive”) provides a framework for the conservation and management of habitats listed in Annex I of the Directive and the species listed in Annexes II and IV.

The Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007<sup>4</sup> transposed the Habitats Directive and the Wild Birds Directive<sup>5</sup> in relation to the United Kingdom’s jurisdiction over its continental shelf and the sea out to 200 nautical miles (excluding the territorial sea).

The Offshore Marine Conservation (Natural Habitats, &c.) (Amendment) Regulations 2009 (“the 2009 Amendment Regulations”) amend the 2007 Regulations to better transpose Articles 6(2), 11, 12(1) and (4) and 16(1) of the Habitats Directive. They do not go beyond what is necessary to implement the Habitats Directive, and they do not alter the existing transposition of the Wild Birds Directive.

The table below is that incorporated into the transposition note for the 2007 Regulations, amended to reflect the changes made by the 2009 Amendment Regulations.

<b>Council Directive (92/43/EEC) on the conservation of natural habitats and of wild fauna and flora</b>			
<b>Articles</b>	<b>Objectives</b>	<b>Implementation</b>	<b>Responsibility</b>
1	Definitions are provided for the purposes of the Directive.	Regulation 2(3) provides for expressions used in these Regulations to have the same meaning as those in the Directive.	
3(2)	Member States are required to contribute to the creation of the Natura 2000 network and, to that end, to designate special areas of conservation, in accordance with Article 4.	Regulation 11 provides for the designation of special areas of conservation in the offshore marine area. See also implementation of Article 4.	Secretary of State
4(1)	Each member State is required to propose a list	Regulation 7(1) requires the Secretary of State to transmit a list of such sites in	Secretary of State

<sup>4</sup> S.I. 2007/1842.

<sup>5</sup> Council Directive 79/409/EEC on the conservation of wild birds.

	<p>of those sites it considers are eligible for selection as sites of Community importance. The list should indicate which Annex I natural habitat types and which Annex II species the sites host and be accompanied by certain information relating to each site.</p> <p>An additional obligation requires member states to propose adaptations to the list in the light of surveillance carried out pursuant to Article 11.</p>	<p>the offshore marine area to the Commission. Regulations 7(2) to (4) prescribe the criteria for site selection, whilst regulations 7(5) and (6) set out the information which the list must contain and the format that must be used in supplying such information to the Commission.</p> <p>Regulation 9(1) makes provision for the Secretary of State to propose modifications of the list of sites which has been transmitted to the Commission in the light of such surveillance.</p>	
4(4)	<p>Once a site has been adopted by the Commission as a site of Community importance, the member State in question is required to designate it as a special area of conservation as soon as possible and within six years at the most. Member States must, in addition, establish priorities for designated sites relating, for example, to the threats of degradation or destruction they face.</p>	<p>Regulation 11(1) requires the Secretary of State to designate sites as special areas of conservation in accordance with the timeframe in the Directive. In addition, an obligation is imposed on him by regulation 11(2) to establish priorities for special areas of conservation.</p>	Secretary of State
4(5)	<p>As soon as a site is adopted as a site of Community importance by the Commission, it is to be made subject to the site protection provisions in Articles 6(2) to 6(4).</p>	<p>Regulations 15 and 24 include in the definitions of “European offshore marine site” and “European site”, respectively, the type of site referred to in Article 4(5). Such sites will therefore be protected under regulations 25 to 31.</p> <p>In addition, regulation 23 ensures that competent authorities exercise their functions in a way that protects these sites, and regulation 32 creates offences in respect of such sites (see transposition of Article 6 of the Habitats</p>	Competent authorities (see definition in regulation 5)

		Directive and Article 4 of the Wild Birds Directive, in the below table, for further details).	
5	<p>The Commission may find that a site (hosting a priority natural habitat type or priority species) should have been included in the list of sites submitted by a member State. In these circumstances, a bilateral consultation procedure may be initiated between the member State and the Commission for the purpose of comparing the scientific data used by each. If, on expiry of a consultation period not exceeding 6 months, the dispute remains unresolved, the Commission must forward to the Council a proposal relating to the selection of the site as a site of Community importance. The Council must take a decision within 3 months of the date of the referral.</p> <p>Whilst such a site is under consideration by the member State and the Commission, or pending a decision by the Council, it must be protected under Article 6(2).</p>	<p>Regulations 10, 15 and 24 make provision for the type of site referred to in Article 5(1).</p> <p>Regulation 23 makes provision applying Article 6(2) to such sites (amongst others).</p> <p>Regulation 23 requires competent authorities, when exercising their functions, in so far as their functions may be so exercised, to secure that appropriate steps are taken to avoid, in any site under consideration via Article 5(1): (a) the disturbance of any priority species, in so far as such disturbance could be significant in relation to the objectives of the Directive, and (b) the deterioration of the habitat of any such species, or the deterioration of any priority natural habitat type.</p>	Competent authorities
6(1)	Member States are required to establish, for special areas of conservation, the necessary conservation measures involving, if need be, appropriate management plans and appropriate statutory,	Regulation 18 imposes a duty on the Joint Nature Conservation Committee to establish conservation objectives for such sites and to notify these to such competent authorities as it considers appropriate. The JNCC must also advise such competent authorities as it considers appropriate of any operations which in its opinion may adversely	Joint Nature Conservation Committee

	<p>administrative or contractual measures which correspond to the ecological requirements of the natural habitat types in Annex I and the Annex II species present on the sites.</p>	<p>affect the integrity of a site.</p> <p>Regulation 19 provides that competent authorities may establish a management scheme for a site and sets out the requirements for such a scheme. Where a management scheme relates to a site which has been designated as a special area of conservation it will set out how, for the purpose of securing compliance with Article 6(1) of the Habitats Directive, the authorities propose to exercise their functions in order to maintain or restore at a favourable conservation status (a) the Annex I natural habitat types which are found at the site, and (b) the Annex II species which are found at the site.</p> <p>Regulation 20 imposes a duty on competent authorities which have established a management scheme to take reasonable steps to exercise their functions in accordance with the scheme.</p> <p>Regulation 21 provides for consultation on the co-ordinated management of European offshore marine sites and other member States' special areas of conservation and special protection areas, where such sites and areas adjoin one another.</p> <p>Regulation 22 requires competent authorities,(in so far as their functions may be so exercised) to exercise such of their functions as they consider appropriate for the purpose of giving effect to Article 6(1) by taking conservation measures. These measures must correspond to the ecological requirements of the Annex I natural habitat types present on the site and the Annex II species which are present on the site. In considering what measures may be necessary, competent authorities must have regard, amongst other things, to any management scheme which has been established for the site.</p>	<p>Competent authorities</p> <p>Competent authorities</p> <p>Secretary of State</p> <p>Competent authorities</p>
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6(2)	<p>Member States are required to take appropriate steps to avoid, in special areas of conservation, the deterioration of natural habitats and the habitats of species as well as the disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of the Directive.</p> <p>Also see the entries relating to Articles 4(5), 5 and 7.</p>	<p>Regulation 23 provides that in so far as a competent authority's functions may be so exercised, that they are exercised so to secure that appropriate steps are taken to avoid the disturbance of species specified in regulation 23(3) or the deterioration of habitat or habitat types specified in regulation 23(4).</p> <p>Regulation 23 applies to (a) special areas of conservation in the offshore marine area (as required by Article 6(2) itself), (b) sites in the offshore marine area that have been placed on the list referred to in the third paragraph of Article 4(2) (as required by Article 4(5)), (c) sites in the offshore marine area in respect of which consultation has been initiated under Article 5(1), during the consultation period or until such time as the Council makes a decision under Article 5(3) in relation to the site (as required by Article 5(4)), and (d) special protection areas in the offshore marine area (as required by Article 7).</p> <p>Regulation 27 makes provision for competent authorities to review, and thereafter affirm, modify or revoke, existing decisions or consents in respect of plans or projects that could affect a European offshore marine site. For the purposes of the review the competent authority must make an appropriate assessment of the implications for the site in view of its conservation objectives.</p> <p>In respect of certain categories of offshore marine site, regulation 32 makes it an offence (subject to certain exceptions) to intentionally or recklessly damage or destroy the habitat found in such sites or to intentionally disturb animals of certain species (at a level of disturbance set out in the Regulations) whilst such animals are in such sites.</p>	<p>Competent authorities</p> <p>Competent authorities</p> <p>Competent authorities</p>

6(3)	<p>Member States are required to ensure that certain plans or projects likely to have a significant effect on a special area of conservation are subject to an appropriate assessment. This assessment considers the implications of a plan or project in view of a site's conservation objectives. Subject to Article 6(4), competent authorities may not agree to a plan or project unless it is ascertained that the plan or project will not have an adverse effect on the integrity of the site concerned.</p>	<p>Regulation 25 ensures that appropriate assessments are carried out for new plans or projects in the offshore marine area where they are likely to have a significant effect on a European site (i.e. a protected site in a terrestrial area or in inshore waters) or a European offshore marine site.</p> <p>Subject to regulation 26, regulation 25(4) ensures that a plan or project cannot be agreed to where, in light of the conclusions of the appropriate assessment, it is not possible to conclude that the plan or project will not adversely affect the integrity of the site concerned.</p>	<p>Competent authorities</p> <p>Competent authorities</p>
6(4)	<p>Article 6(4) allows a plan or project to be carried out despite a negative assessment under Article 6(3). However, this is only where there is no alternative solution, where the plan or project must be carried out for imperative reasons of overriding public interest, and, where compensatory measures are taken to ensure that the overall coherence of Natura 2000 is protected.</p>	<p>Regulation 26 allows for plans or projects to be agreed to by a competent authority for imperative reasons of overriding public interest and where there is no satisfactory alternative. It contains detailed provisions to deal with the devolution arrangements in Scotland.</p> <p>Regulation 30 requires compensatory measures to be secured when a plan or project has been permitted to proceed in such circumstances.</p>	<p>Competent authorities</p> <p>Secretary of State, Scottish Ministers and Northern Ireland Ministers or Departments</p>
7	<p>Obligations under Articles 6(2), 6(3) and 6(4) of the Directive shall replace obligations under Article 4(4) of the Wild Birds Directive in respect of special protection areas classified under the Wild Birds Directive (see below table for details of the transposition of the Wild Birds Directive).</p>	<p>Regulations 23 and 27, as described above in respect of Article 6(2), apply to special protection areas classified under the Wild Birds Directive. Further protection is provided under regulation 32(6), which creates an offence relating to special protection areas for birds. This meets the obligations under Article 7 of the Habitats Directive to apply Article 6(2) of the Habitats Directive to special protection areas for birds.</p>	<p>Competent authorities</p>

		<p>The definition of “European offshore marine site” in regulation 15(c) covers sites classified as special protection areas. Consequently, protection is provided to these sites under regulation 25, as described above in respect of Article 6(3). This meets the obligations under Article 7 of the Habitats Directive to apply Article 6(3) of the Habitats Directive to special protection areas for birds.</p> <p>Regulations 26 and 30, as described above in respect of Article 6(4), apply to sites classified as special protection areas. This meets the obligations under Article 7 of the Habitats Directive to apply Article 6(4) of the Habitats Directive to special protection areas for birds.</p>	<p>Competent authorities</p> <p>Competent authorities</p>
11	Member States are required to undertake surveillance of the conservation status of habitats and species of wild fauna and flora of Community interest with particular regard to priority habitat types and priority species.	Regulation 44, as amended by the 2009 Amendment Regulations, requires the Secretary of State to make arrangements for the surveillance required by Article 11, and clarifies the role of the Joint Nature Conservation Committee in relation to surveillance. It also ensures that information relating to such surveillance is shared with devolved administrations. This ensures that a co-ordinated approach is taken to surveillance measures across the UK.	Secretary of State and Joint Nature Conservation Committee
12(1)	Member States must establish a system of strict protection for those animal species listed in Annex IV(a) to the Directive in their natural range.	Regulation 39(1) provides the necessary protection through the creation of a number of criminal offences which relate to Annex IV(a) species whose natural range includes the offshore marine area. These species are listed in Schedule 1 to the Regulations and are known as European protected species (of animals). It is an offence to deliberately capture, injure, kill, or disturb (in a way set out in the Regulations) any of these animals, to deliberately take or destroy their eggs, or to damage, destroy or do anything to cause the deterioration of a breeding site or resting place of such an animal.	



		Regulation 39(7) and (8), as substituted by the 2009 Amendment Regulations, make provision for the publication of guidance about the application of the offences in regulation 39(1)(b) and (d) in relation to particular species of animals or particular activities, and require a court to take account of such guidance in any proceedings for an offence under those provisions.	Secretary of State and Joint Nature Conservation Committee
12(2)	<p>Member States are required to prohibit the keeping, transport and sale or exchange and offering for sale or exchange of specimens of all the animal species listed in Annex IV(a) to the Directive.</p> <p>The requirement does not apply in relation to specimens legally taken from the wild before the Directive is implemented.</p>	<p>Regulation 39(2) makes it an offence to keep, transport, sell or exchange, or offer for sale or exchange any live or dead wild animal of any the species or subspecies listed in Annex IV(a) (or any part of or anything derived from such an animal).</p> <p>Paragraphs (4) and (8) of regulation 40 provide a defence to deal with the exception regarding specimens taken before the implementation of the Directive.</p>	
12(4)	<p>Member States are required to establish a system to monitor the incidental capture and killing of animals of the species listed in Annex IV(a).</p> <p>Member States are also required to take further research or conservation measures as required to ensure that incidental</p>	<p>Regulation 46, as amended by the 2009 Amendment Regulations, requires the Secretary of State to make arrangements to establish a system for monitoring the capture or killing of Annex IV(a) animal species in the offshore marine area, and clarifies the role of the Joint Nature Conservation Committee in relation to such monitoring. From time to time the Secretary of State must (a) consult the devolved administrations about monitoring arrangements, (b) provide devolved administrations with information from the monitoring and (c) review the monitoring arrangements, and revise them as appropriate.</p> <p>Regulation 47 requires the Secretary of State to make arrangements for further research or to ensure that conservation measures are taken with respect to the incidental capture or killing of Annex</p>	<p>Secretary of State and Joint Nature Conservation Committee</p> <p>Secretary of State</p>

	capture and killing does not have a significant negative impact on the species concerned.	IV(a) animal species in circumstances where necessary in the light of monitoring under regulation 46 or otherwise for the purposes of Article 12(4).	
13(1)(b)	<p>Member States are required to establish a system of strict protection for wild plants of the species listed in Annex IV(b) to the Habitats Directive.</p> <p>The system must prohibit the keeping, transportation, sale, exchange and offering for sale or exchange of the protected species.</p> <p>The requirement does not apply to specimens taken in the wild before the Directive was implemented.</p>	<p>Regulation 43(1) makes it an offence to keep, transport, sell or exchange, or offer for sale or exchange any live or dead wild plant of any the species or subspecies listed in Annex II(b) or Annex IV(b) (or any part of or anything derived from such a plant).</p> <p>Paragraphs (4) and (6) of regulation 43 provide a defence relating to the exception in Article 13(1)(b) for specimens taken before the Directive was implemented.</p>	
14	In light of surveillance carried out under Article 11, Member States are required to take measures they deem necessary to ensure that the taking in the wild, and exploitation, of plants and animals of species listed in Annex V to the Directive is compatible with them being maintained at a favourable conservation status.	<p>Regulation 45 imposes a duty on the Secretary of State to take measures, where considered necessary, in the light of surveillance carried out pursuant to regulation 44 or otherwise carried out for the purposes of Article 11, to ensure that the taking and exploitation in the wild of specimens of Annex V species is compatible with them being maintained at favourable conservation status,</p> <p>Where the Secretary of State considers that measures are necessary, he must make arrangements for surveillance to establish whether the taking in the wild or exploitation of specimens of the species concerned are compatible with its maintenance at favourable conservation status.</p>	<p>Secretary of State</p> <p>Secretary of State</p>
15	Member States are to prohibit the use of certain means or forms of taking	Regulation 41 makes it an offence to use for the purpose of capturing or killing European protected species of	

	<p>or killing of wild animals of the species listed in Annexes IV(a) and V to the Directive. Member States also have to prohibit the use of all indiscriminate means capable of causing local disappearance of, or serious disturbance to, populations of species listed in Annexes IV(a) to V to the Directive.</p>	<p>animals (i.e. Annex IV(a) species) and animals listed in Schedule 3 to the Regulations (Annex V animal species), any of the means that are specified in regulations 41(2)(c) and (d) (3) and (4).</p> <p>In addition, in regulation 41(2)(b), it generally prohibits the use of indiscriminate means of killing or capturing that are capable of causing the local disappearance of, or serious disturbance to, a population of European Protected Species of animals or animals listed in Schedule 3 to the Regulations.</p>	
16(1)	<p>This Article allows for derogations to be made against the protection provided for under Articles 12, 13, 14 and 15. This is on the basis that there is no satisfactory alternative, the derogation is made for one of the purposes specified in Article 16, and provided that the derogation is not detrimental to the maintenance of favourable conservation status of the species concerned.</p>	<p>Paragraphs (6), (8) and (10) of regulation 49 allow for the granting of licences legalising what would otherwise be offences under regulations 39, 41 and 43. No licence can be granted unless this is consistent with the conditions set out for making a derogation under Article 16 – regulations 49(7) and (9).</p> <p>Paragraphs (1), (2), (3) and (6) of regulation 40 contain defences to the offences under regulation 39, which constitute derogations pursuant to Article 16. Paragraphs (6A) and (6B) of regulation 40, as inserted by the 2009 Amendment Regulations, provide that those defences do not apply where it is shown that the defendant's action did not satisfy the conditions in Article 16(1).</p>	Secretary of State
16(2)	<p>Member States are required to report to the Commission every 2 years on derogations under Article 16.1.</p>	<p>Regulation 72 makes provision for the Secretary of State to send derogation reports to the Commission every two years.</p>	Secretary of State
17	<p>Every six years member States are required to send progress reports to the Commission on the implementation of the Habitats Directive.</p>	<p>Regulation 72 makes provision for the Secretary of State to send reports on the implementation of measures under the Directive to the Commission for every six year period.</p>	Secretary of State

18	<p>Member States and the Commission are required to encourage necessary research and scientific work having regard to the Directive’s objectives set out in Article 2 and the surveillance obligations in Article 11. There is a requirement for such research and work to be exchanged for the purpose of ensuring co-ordination of research at the member State and Community level.</p>	<p>Regulation 67 requires the Secretary of State to take such steps to encourage research and scientific work as he considers necessary, having regard to the objectives in Article 2 of the Directive.</p> <p>There is an obligation in regulation 67(2) for this research and scientific work to be exchanged, as appropriate, as required by Article 18.</p>	<p>Secretary of State</p> <p>Secretary of State</p>
22(a)	<p>Member States are required to study the desirability of re-introducing native Annex IV species where this may contribute to their conservation. Such a species can only be re-introduced if an investigation has been carried out establishing that such re-introduction would contribute effectively to re-establishing the species at a favourable conservation status. The investigation must include a public consultation and take account of other member States’ experience.</p>	<p>Regulation 69 requires the Secretary of State to make arrangements for a study into the desirability of re-introducing native Annex IV species where he considers that such re-introduction might contribute to that species’ conservation. It also contains provisions setting out the pre-conditions for re-introduction, as required by Article 22(a).</p>	<p>Secretary of State</p>
22(b)	<p>Member States are required to ensure that the deliberate introduction of non-native species is regulated so that it doesn’t prejudice natural habitats or species in their natural range.</p>	<p>Regulation 48 makes it an offence to introduce into any relevant part of the waters in the offshore marine area any live animal or plant whose natural range does not include the offshore area. A ‘relevant part of the waters’ is a 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 and fauna.</p>	

		<p>This offence does not apply where:</p> <ul style="list-style-type: none"> <li>- introduction is needed to carry out ballast water operations to secure the safety of a person or ship; and</li> <li>- all reasonably practicable steps were taken to avoid discharging the water in an area which will have a negative impact on our native flora or fauna and to minimise any such negative impact.</li> </ul>	
22(c)	<p>Member States are required to promote education and general information on the need to protect wild species of wild fauna and flora and to conserve their habitats and natural habitats.</p>	<p>Regulation 68 makes provision for the Joint Nature Conservation Committee to take such steps as it considers appropriate to promote public awareness of, and disseminate information on, the need to protect species and conserve habitats found in the offshore marine area.</p>	<p>Joint Nature Conservation Committee</p>