
EXPLANATORY NOTE

(This note is not part of the Regulations)

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

The amendments made to the 2007 Regulations by this instrument alter the transposition of the Habitats Directive, but do not affect the transposition of the Wild Birds Directive.

Regulations 3 and 4 amend the terms of offences of disturbing protected species in regulations 32(4) and (5) and 39(1)(b) of the 2007 Regulations. The offences in regulation 32(4) and (5) apply to the disturbance of animals of a species for which a site has been designated as a special area of conservation or listed by the European Commission as a site of Community importance, while the animals are within that site. The offence in regulation 39(1)(b) applies to the deliberate disturbance of animals of a European protected species whether or not they are in a protected site. Regulation 4 also makes provision for the publication of guidance as to the application of the offences in regulation 39(1)(b) and (d) in relation to particular species of animals or particular activities, and requires the court to take account of any such guidance in proceedings for an offence under those provisions.

Regulation 5 amends regulation 40 of the 2007 Regulations, which contains defences to the offences relating to European protected species in regulation 39, by providing that the defences in paragraphs (1), (2), (3) and (6) of regulation 39 do not apply if the prosecution shows that there was a satisfactory alternative to the defendant’s action, or that the action was detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range.

Regulations 6 and 7 amend regulations 44 and 45 of the 2007 Regulations to specify in greater detail the arrangements to be made for surveillance of the conservation status of natural habitat types of Community interest and species of Community interest, and to clarify the duty to take action in the light of that surveillance. Similarly, regulations 8 and 9 amend regulations 46 and 47 of the 2007 Regulations to specify in greater details the arrangements to be made for monitoring the incidental capture and killing of animals of the species listed in Annex IV(a) to the Habitats Directive, and to clarify the duty to take conservation measures in the light of that monitoring.

A transposition note setting out how the 2007 Regulations, as amended by this instrument, transpose the provisions of the Habitats Directive is available from the Wildlife, Habitats and Biodiversity Division, Defra, Temple Quay, Bristol BS1 6EB, and is annexed to the Explanatory Memorandum which is available alongside this instrument on the OPSI website. A full impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

Textual Amendments

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

Changes to legislation:

There are currently no known outstanding effects for the The Offshore Marine Conservation (Natural Habitats, &c.) (Amendment) Regulations 2009 (revoked).