
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations consolidate the Conservation (Natural Habitats, &c.) Regulations 1994⁽¹⁾ (“the 1994 Regulations”). They also implement aspects of the Marine and Coastal Access Act 2009⁽²⁾ (“the Marine Act”).

These Regulations extend to England and Wales (including the adjacent territorial sea). They also extend to Scotland (including the adjacent territorial sea) to a limited degree. They revoke the 1994 Regulations except (generally) as they extend to Scotland. In addition, in respect of reserved matters, these Regulations replace the 1994 Regulations as they extend to Scotland.

These Regulations transpose Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora⁽³⁾ (“the Habitats Directive”).

Part 1 – Introductory and general provisions

Regulation 9 provides that public bodies must exercise their nature conservation functions so as to comply with the Habitats Directive.

Part 2 – Conservation of natural habitats and habitats of species

Regulations 10 to 15 make provision for the selection, designation, registration and notification of sites to be protected under the Habitats Directive (“European sites”). Regulations 16 to 18 make provision for management agreements for European sites. Regulations 19 to 34 make provision in respect of European sites for (i) control of damaging operations, (ii) special nature conservation orders and restoration orders, (iii) byelaws and (iv) compulsory purchase. Regulations 35 to 38 make provision for the protection of European marine sites.

Part 3 – Protection of species

Part 3 provides for the protection of certain wild animals and plants. In particular, regulation 41 makes it an offence, subject to exceptions, deliberately to capture, kill or disturb those animals or to trade in them. Regulation 45 makes it an offence, subject to exceptions, to pick, collect, cut or destroy those plants or to trade in them. (These offences correspond to offences in the 1994 Regulations).

Part 4 – Additional protection of habitats and wild animals and plants

Regulation 48 imposes a duty on the Secretary of State and Welsh Ministers to make arrangements for the surveillance of the conservation status of natural habitats and species protected under the Habitats Directive. Regulation 50 requires them to make arrangements to establish a system to monitor the incidental capture and killing of animals listed in Annex IV(a) to the Habitats Directive.

Regulation 52 makes it an offence deliberately to introduce from a ship into the sea new species that are not native to Great Britain. (This corresponds to an offence in the 1994 Regulations).

(1) S.I. 1994/2716.

(2) 2009 c. 23.

(3) OJ No L 206, 22.7.1992, p. 7, last amended by Council Directive 2006/105/EC (OJ No L 363, 20.12.2006, p. 368).

Part 5 – Licences

Part 5 provides for the licensing of certain activities relating to animals and plants. The offences under Part 3 do not apply to anything done in accordance with a licence. Regulation 56(2)(a)(i) transfers certain licensing functions from Natural England to the Marine Management Organisation in respect of the territorial sea seaward of mean low water mark.

Part 6 – Assessment of plans and projects

Regulations 60 to 67 require the effect on a European site to be considered before the granting of consents or authorisations of a kind specified in regulations 68 to 101, including the grant of planning permission, consents under the Electricity Act 1989, authorisations under the Pipe-lines Act 1962, orders under the Transport and Works Act 1992, environmental permits, abstraction licences and marine works. Regulation 61 provides that a competent authority may not authorise a plan or project that may adversely affect the integrity of a European site, subject to the exceptions set out in regulation 62 (considerations of overriding public interest).

Chapter 8 of Part 6 sets out similar requirements in relation to land-use plans and national policy statements.

Part 7 – Enforcement

Part 7 sets out the enforcement powers of wildlife inspectors and constables. It also sets out certain further offences, including the offence of intentionally obstructing a wildlife inspector (regulation 119). (Again, these offences correspond to offences in the 1994 Regulations).

Part 8 – Final provisions

Regulation 132 and paragraph 5 of Schedule 6 amend the Marine Act. Paragraph 5(5) extends the powers conferred by that Act on marine enforcement officers in respect of the 1994 Regulations to offences under regulations 57, 58 and 116 of these Regulations.

An impact assessment prepared during the passage of the Marine Act can be found on the Department for Environment, Food and Rural Affairs' website at www.defra.gov.uk. An impact assessment has not been produced for this instrument as no impact on business or the private or voluntary sector is foreseen.