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## STATUTORY INSTRUMENTS

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# 2017 No. 1012

## The Conservation of Habitats and Species Regulations 2017

### PART 1

#### Introductory and General Provisions

##### Citation and commencement

1.—(1) These Regulations may be cited as the Conservation of Habitats and Species Regulations 2017.

(2) These Regulations come into force on 30th November 2017.

##### Extent

2.—(1) Except as provided in this regulation, these Regulations extend to England and Wales only.

(2) The following provisions also extend to Scotland—

- (a) regulation 3(8) (meaning of adjacent sea);
- (b) regulations 9 and 10 (duties relating to compliance with the Directive and wild bird habitat, respectively), in so far as those regulations apply in relation to the exercise of a function which relates to a reserved matter (within the meaning of Schedule 5 to the Scotland Act 1998 (reserved matters) <sup>M1</sup>);
- (c) regulation 41(4) (national policy statement under Planning Act 2008 <sup>M2</sup>);
- (d) Chapter 1 of Part 6 (assessment of plans and projects: general provisions), in so far as that Chapter applies in relation to plans and projects—
  - (i) which do not relate to a matter specified in Chapters 2 to 9 of that Part, and
  - (ii) which relate to a reserved matter (within the meaning of Schedule 5 to the Scotland Act 1998);
- (e) in regulation 70 (grant of planning permission)—
  - (i) paragraph (1)(e)(ii) and (iii) (deemed grant of planning permission under section 57(2) and (2A) of the Town and Country Planning (Scotland) Act 1997 <sup>M3</sup> and section 5(1) of the Pipe-lines Act 1962 <sup>M4</sup>);
  - (ii) paragraph 1(f) (variation of permission deemed to be granted under section 57(2) of the Town and Country Planning (Scotland) Act 1997), in so far as that paragraph relates to a direction under section 57(2ZA) of the Town and Country Planning (Scotland) Act 1997 (development with government authorisation) <sup>M5</sup>; and
  - (iii) paragraph (2) in so far as that paragraph relates to sub-paragraph (1)(e)(ii) or (iii), or (1)(f) of that regulation;
- (f) in regulation 71 (planning permission: duty to review), in paragraph (4)—

*Status: Point in time view as at 06/11/2019.*

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- (i) sub-paragraph (b);
  - (ii) sub-paragraph (d) in so far as that sub-paragraph relates to a direction under section 57(2) of the Town and Country Planning (Scotland) Act 1997;
  - (iii) sub-paragraph (e) in so far as that sub-paragraph relates to a direction under section 57(2ZA) of the Town and Country Planning (Scotland) Act 1997;
- and paragraph (3) in so far as it relates to directions specified in those sub-paragraphs;
- (g) regulations 84, 85 and 86(2) (development consent under Planning Act 2008);
  - (h) Chapter 4 of Part 6 (electricity);
  - (i) Chapter 5 of Part 6 (pipe-lines);
  - (j) regulation 103 (marine works) in so far as it applies to the granting of a licence under Part 2 of the Food and Environment Protection Act 1985 <sup>M6</sup>;
  - (k) regulation 110 (national policy statements under Planning Act 2008), and regulations 105, 107 and 109 in so far as they apply in relation to a national policy statement by virtue of regulation 110;
  - (l) regulation 112 (marine policy statement), in so far as it applies in relation to the exercise of any power by the Secretary of State, and regulations 105, 107 and 109 in so far as they apply to marine policy statements by virtue of regulation 112; and
  - (m) in Part 1 of Schedule 6 (consequential amendments to primary legislation)—
    - (i) sub-paragraphs (2) and (4) of paragraph 8 (amendment of section 123 of the Marine Act); and
    - (ii) sub-paragraph (1) of paragraph 8 in so far as it relates to sub-paragraph (2) and (4); and regulation 139 in so far as it relates to those provisions.
- (3) The following provisions also extend to Scotland in so far as they have effect in relation to the provisions specified in paragraph (2)—
- (a) regulations 1 (citation and commencement), 2 (extent), 3 (interpretation), 5 (nature conservation bodies), 7 (competent authorities) and 8 (European sites and European marine sites);
  - (b) Chapter 1 of Part 6 (assessment of plans and projects); and
  - (c) regulations 134, 135(3) and 138 (advisory role of the Joint Nature Conservation Committee, advisory role of Scottish Natural Heritage, notices, respectively).
- (4) The following provisions also extend to Northern Ireland—
- (a) regulations 9 and 10, in so far as those regulations apply in relation to the exercise of a function which relates to an excepted matter (within the meaning given by section 4(1) of the Northern Ireland Act 1998 <sup>M7</sup>);
  - (b) Chapter 1 of Part 6, in so far as that Chapter applies in relation to plans and projects—
    - (i) which do not relate to a matter specified in Chapters 2 to 9 of that Part; and
    - (ii) which relate to an excepted matter (within the meaning given by section 4(1) of the Northern Ireland Act 1998);
  - (c) regulation 103, in so far as it applies in relation to a marine licence under Part 4 of the Marine Act in respect of anything done in the course of carrying on an activity which relates to a matter which is an excepted matter by virtue of paragraph 4 of Schedule 2 to the Northern Ireland Act 1998 (defence of the realm etc.);

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- (d) regulation 112, in so far as it applies in relation to the exercise of any power by the Secretary of State, and regulations 105, 107 and 109 in so far as they apply to marine policy statements by virtue of regulation 112; and
- (e) in Part 1 of Schedule 6—
- (i) sub-paragraphs (2) and (4) of paragraph 8;
  - (ii) sub-paragraph (1) of paragraph 8 in so far as it relates to sub-paragraphs (2) and (4); and regulation 139 in so far as it relates to those provisions.
- (5) This regulation and regulations 1, 3, 5, 7, 8, 134 and 138 also extend to Northern Ireland in so far as they have effect in relation to the provisions specified in paragraph (4).
- (6) Chapter 1 of Part 6 also extends to Northern Ireland in so far as it has effect for the purposes of regulation 103, to the extent that that regulation extends to Northern Ireland by virtue of paragraph (4) (c).
- (7) The amendment of any enactment by regulation 139 and Part 2 of Schedule 6 (consequential amendments to secondary legislation) has the same extent as the enactment amended.
- (8) The revocation of any enactment by regulation 140 and Schedule 7 (revocations) has the same extent as the enactment revoked.

#### Marginal Citations

- M1** 1998 c. 46. Schedule 5 was amended by the [Scotland Act 2012 \(c. 11\)](#), [section 10](#); the [Energy Act 2013 \(c. 32\)](#), [Schedule 12](#), paragraph 72; the [Scotland Act 2016 \(c. 11\)](#), [sections 40, 45, 47](#) and 50(1), (6) and (7); and by [S.I. 2000/3252](#), 2002/1629, 2004/3329, 2014/1559 and 2015/1379.
- M2** 2008 c. 29.
- M3** 1997 c. 8. Section 57(2) was substituted by the [Growth and Infrastructure Act 2013 \(c. 27\)](#), [section 21\(5\)](#).
- M4** 1962 c. 58. Section 5(1) was amended by [S.I. 1999/742](#).
- M5** [Section 57\(2ZA\)](#) was inserted by the [Growth and Infrastructure Act 2013](#), section 21(5).
- M6** 1985 c. 48. Part 2 was amended by the [Environment Protection Act 1990 \(c. 43\)](#), [sections 146](#) and 147; the [Petroleum Act 1998 \(c. 17\)](#), [Schedule 4](#), paragraph 20; the [Food Standards Act 1999 \(c. 28\)](#), [Schedule 3](#), paragraph 16; the [Energy Act 2008 \(c. 32\)](#), [Schedule 1](#), paragraph 2; the [Marine Act](#), Schedule 8, paragraphs 2, 5 and 6; by [S.I. 1999/1756](#); and by [SSI 2011/202](#). It is prospectively amended by the [Digital Economy Act 2017 \(c. 30\)](#), [Schedule 3](#), paragraphs 22 and 23, from a date to be appointed. By virtue of the amendments made by the [Marine Act](#), Part 2 of the [Food and Environment Protection Act 1985](#) only applies to the Scottish inshore region.
- M7** 1998 c. 47.

#### Interpretation

##### 3.—(1) In these Regulations—

“the 1949 Act” means the [National Parks and Access to the Countryside Act 1949](#) <sup>M8</sup>;

“the 2010 Regulations” means the [Conservation of Habitats and Species Regulations 2010](#) <sup>M9</sup>;

“the Offshore Marine Conservation Regulations” means the [Conservation of Offshore Marine Habitats and Species Regulations 2017](#) <sup>M10</sup>;

“the appropriate authority” means the Secretary of State in relation to England and the Welsh Ministers in relation to Wales (but see modifications of the meaning of that term in regulations 9(4) and 10(12)(a), and modifications of references to that term in regulations 69(1) (b), (3)(c), (5) and (8)(b), 97(6), 110(3)(b) and 112(3)(c)), and any person exercising any function of the Secretary of State or the Welsh Ministers;

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“competent authority” is to be construed in accordance with regulation 7 (competent authorities);

“conservation” has the meaning given by Article 1(a) of the Habitats Directive (definitions);

“conservation status” and “favourable conservation status” have the meanings given by paragraphs (e) (in relation to habitats) and (i) (in relation to species) of Article 1 of the Habitats Directive;

“destroy”, in relation to an egg, includes doing anything to the egg which is calculated to prevent it from hatching, and “destruction” is to be construed accordingly;

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

“the Directives” means the Habitats Directive and the new Wild Birds Directive;

“enactment” includes a local enactment and an enactment contained in subordinate legislation, and “subordinate legislation” has the same meaning as in the Interpretation Act 1978<sup>M11</sup>;

“English inshore region” means the area of sea within the seaward limits of the territorial sea adjacent to England;

“European marine site” has the meaning given by regulation 8(3) (European sites and European marine sites);

“European offshore marine site” means a European offshore marine site within the meaning of regulation 18 of the Offshore Marine Conservation Regulations (meaning of European offshore marine site);

“European site” has the meaning given by regulation 8;

“functions” includes powers and duties;

“the Habitats Directive” means Council Directive [92/43/EEC](#) on the conservation of natural habitats and of wild fauna and flora<sup>M12</sup>;

“land” includes land covered by water;

“local planning authority” means, except as otherwise provided, any authority having any function as a local planning authority or mineral planning authority under the TCPA 1990;

“management agreement” means an agreement made, or having effect as if made, under regulation 20 (management agreements);

“the Marine Act” means the Marine and Coastal Access Act 2009<sup>M13</sup>;

“marine area” means (subject to regulations 9(5) and 10(12)(b)) the English inshore region and the Welsh inshore region;

“Natura 2000” means the European network of special areas of conservation, and special protection areas under the old Wild Birds Directive or the new Wild Birds Directive, provided for by Article 3(1) of the Habitats Directive (network of special areas of conservation: Natura 2000);

“natural habitats” has the meaning given by Article 1(b) of the Habitats Directive;

“nature conservation body” and “appropriate nature conservation body” have the meaning given by regulation 5 (nature conservation bodies);

“the new Wild Birds Directive” means Directive [2009/147/EC](#) of the European Parliament and of the Council on the conservation of wild birds<sup>M14</sup>;

“Northern Ireland inshore region” means the area of sea within the seaward limits of the territorial sea adjacent to Northern Ireland;

“officer”—

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- (a) 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, and
- (b) in relation to an unincorporated body, means any member of its governing body or a chief executive, manager or other similar officer of the body;

“the old Wild Birds Directive” means Council Directive [79/409/EEC](#) on the conservation of wild birds <sup>M15</sup>;

“priority natural habitat types” has the meaning given by Article 1(d) of the Habitats Directive;

“priority species” has the meaning given by Article 1(h) of the Habitats Directive;

“relevant authorities”, in relation to marine areas and European marine sites, is to be construed in accordance with regulation 6 (relevant authorities in relation to marine areas and European marine sites);

“relevant licensing body” has the meaning given by regulation 58 (relevant licensing body);

“research” includes inquiries and investigations;

“sample” means a sample of blood, tissue or other biological material;

“Scottish inshore region” means the area of sea within the seaward limits of the territorial sea adjacent to Scotland;

“sea” includes—

- (a) any area submerged at mean high water spring tide, and
- (b) the waters of every estuary, river or channel, so far as the tide flows at mean high water spring tide,

and any reference to an area of sea includes the bed and subsoil of the sea within that area;

“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;

“site” has the meaning given by Article 1(j) of the Habitats Directive;

“site of Community importance” has the meaning given by Article 1(k) of the Habitats Directive;

“special area of conservation” has the meaning given by Article 1(l) of the Habitats Directive;

“specimen”—

- (a) for the purposes of Part 7 (enforcement), means any animal or plant, or any part of, or anything derived from, an animal or plant; and
- (b) for all other purposes has the meaning given by Article 1(m) of the Habitats Directive;

“statutory undertaker” means a person who is, or is deemed to be, a statutory undertaker for the purposes of any provision of Part 11 of the TCPA 1990 (statutory undertakers);

“the TCPA 1990” means the Town and Country Planning Act 1990 <sup>M16</sup>;

“the WCA 1981” means the Wildlife and Countryside Act 1981 <sup>M17</sup>;

“Welsh inshore region” means the area of sea within the seaward limits of the territorial sea adjacent to Wales;

“wild bird” means a bird which is—

- (a) a member of a species referred to in Article 1 of the new Wild Birds Directive (scope of the Directive); and
- (b) wild.

(2) The area of sea referred to in sub-paragraph (a) of the definition of “sea” in paragraph (1) includes waters in any area—

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- (a) which is closed, whether permanently or intermittently, by a lock or other artificial means against the regular action of the tide, but
  - (b) into and from which seawater is caused or permitted to flow, whether continuously or from time to time.
- (3) Terms not defined in paragraph (1) which are used in these Regulations and also in the Habitats Directive have the meaning they bear in that Directive.
- (4) In these Regulations, any reference to an Annex to the Habitats Directive is a reference to that Annex to that Directive as amended from time to time.
- (5) Subject to regulation 86(1) (which relates to the construction of provisions of Chapter 2 of Part 6 as one with the TCPA 1990), these Regulations apply to the Isles of Scilly as if the Isles were a county and the Council of the Isles were a county council.
- (6) Except as provided by paragraph (7), for the purposes of these Regulations—
- (a) any reference to England includes the English inshore region;
  - (b) any reference to Wales includes the Welsh inshore region;
  - (c) any reference to Scotland includes the Scottish inshore region;
  - (d) any reference to Great Britain includes the English inshore region, the Welsh inshore region and the Scottish inshore region;
  - (e) any reference to Northern Ireland includes the Northern Ireland inshore region; and
  - (f) any reference to the United Kingdom includes its internal waters and the English inshore region, the Welsh inshore region, the Scottish inshore region and the Northern Ireland inshore region.
- (7) Paragraph (6) does not apply for the purposes of—
- (a) in paragraph (1), the definitions of “English inshore region”, “Welsh inshore region”, “Scottish inshore region” and “Northern Ireland inshore region”;
  - (b) paragraph (8); or
  - (c) sub-paragraph (b) of the definition of “offshore marine area” in regulation 4(2).
- (8) For the purposes of these Regulations—
- (a) the territorial sea adjacent to England is so much of the territorial sea adjacent to the United Kingdom as is not the territorial sea adjacent to Wales, the territorial sea adjacent to Scotland or the territorial sea adjacent to Northern Ireland;
  - (b) “the territorial sea adjacent to Wales” is to be construed in accordance with article 6 of and Schedule 3 to the National Assembly for Wales (Transfer of Functions) Order 1999 <sup>M18</sup>;
  - (c) “the territorial sea adjacent to Scotland” is to be construed in accordance with article 3 of and Schedule 1 to the Scottish Adjacent Waters Boundaries Order 1999 <sup>M19</sup>; and
  - (d) “the territorial sea adjacent to Northern Ireland” is to be construed in accordance with article 2 of the Adjacent Waters Boundaries (Northern Ireland) Order 2002 <sup>M20</sup>.
- (9) Nothing in these Regulations is to be construed as excluding the application of the provisions of Part 1 of the WCA 1981 (wildlife) in relation to animals or plants also protected under Part 3, 4 or 5 of these Regulations.

#### **Marginal Citations**

**M8** 1949 c. 97.

**M9** S.I. 2010/490, as amended by S.I. 2011/603, 625, 2012/630, 2012/635, 637, 1927, 2013/755 (W. 90), 2015/377, 2020 and 2016/1154.

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- M10** [S.I. 2017/1013](#).
- M11** [1978 c. 30](#). See section 21 of that Act for the meaning of “subordinate legislation”.
- M12** OJ No. L 206, 22.7.1992, p.7, as last amended by Council Directive 2013/17/EU (OJ No. L 158, 10.6.2013, p.193).
- M13** [2009 c. 23](#).
- M14** OJ No. L 20, 26.1.2010, p.7, as last amended by Council Directive 2013/17/EU (OJ No L 158, 10.6.2013, p.193).
- M15** OJ No. L 103, 25.4.1979, p.1; the old Wild Birds Directive was repealed by the new Wild Birds Directive.
- M16** [1990 c. 8](#).
- M17** [1981 c. 69](#).
- M18** [S.I. 1999/672](#), to which there are amendments not relevant to these Regulations. These provisions continue to have effect as if made under section 158(3) of the [Government of Wales Act 2006 \(c. 32\)](#), by virtue of paragraph 26(3) of Schedule 11 to that Act.
- M19** [S.I. 1999/1126](#).
- M20** [S.I. 2002/791](#).

#### Plans or projects relating to offshore marine area or offshore marine installations

4.—(1) Nothing in these Regulations requires an appropriate assessment of any plan or project so far as that plan or project is to be carried out on, in or in relation to any part of the sea in the offshore marine area, or on or in relation to an offshore marine installation.

(2) In paragraph (1)—

“offshore marine area” means—

- (a) any part of the seabed and subsoil situated in any area designated under section 1(7) of the Continental Shelf Act 1964 (exploration and exploitation of continental shelf)<sup>M21</sup>; and
- (b) any part of the waters within British fishery limits<sup>M22</sup> (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 (exploitation of areas outside the territorial sea for energy production)<sup>M23</sup>.

#### Marginal Citations

- M21** [1964 c. 29](#). Section 1(7) was amended by the [Oil and Gas \(Enterprise\) Act 1982 \(c. 23\)](#), [Schedule 3, paragraph 1](#); and the [Energy Act 2011 \(c. 16\)](#), [section 103](#). Areas have been designated under section 1(7) by [S.I. 1987/1265](#) and [2013/3162](#).
- M22** As defined by section 1 of the [Fishery Limits Act 1976 \(c. 86\)](#).
- M23** [2004 c. 20](#). Section 84(4) was amended by the Marine Act, [Schedule 4\(1\), paragraph 4\(2\)](#). Areas have been designated under section 84(4) by [S.I. 2004/2668](#) and [S.I. 2013/3161](#) (which revoked [S.I. 2004/2668](#)).

#### Nature conservation bodies

5.—(1) Except as provided by paragraphs (2) to (4), in these Regulations—

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- (a) “nature conservation body” means Natural England or the Natural Resources Body for Wales; and
- (b) “the appropriate nature conservation body” means—
  - (i) Natural England, in relation to England; or
  - (ii) the Natural Resources Body for Wales, in relation to Wales.
- (2) In regulations 50 and 52, “nature conservation body” means Natural England, the Natural Resources Body for Wales or the Joint Nature Conservation Committee <sup>M24</sup>.
- (3) In a provision of Part 6 which extends to England and Wales only, “the appropriate nature conservation body” means—
  - (a) in relation to an effect on a European offshore marine site, the Joint Nature Conservation Committee; and
  - (b) otherwise—
    - (i) in relation to England, Natural England; and
    - (ii) in relation to Wales, the Natural Resources Body for Wales.
- (4) In a provision of Part 6 which extends to Scotland or Northern Ireland, “the appropriate nature conservation body” means—
  - (a) in relation to an effect on a European offshore marine site, the Joint Nature Conservation Committee; and
  - (b) otherwise—
    - (i) in relation to England, Natural England;
    - (ii) in relation to Wales, the Natural Resources Body for Wales;
    - (iii) in relation to Scotland, Scottish Natural Heritage; and
    - (iv) in relation to Northern Ireland, the Department of Agriculture, Environment and Rural Affairs.

#### Marginal Citations

**M24** The Joint Nature Conservation Committee was established by the [Environment Protection Act 1990](#) (c. 43), [section 128\(4\)](#), and reconstituted by the [Natural Environment and Rural Communities Act 2006](#) (c. 16), [section 31](#) and Schedule 4.

#### Relevant authorities in relation to marine areas and European marine sites

**6.** For the purposes of these Regulations, the relevant authorities, in relation to a marine area or European marine site, are such of the following as have functions in relation to land or waters within or adjacent to that area or site—

- (a) a nature conservation body;
- (b) a county council, county borough council, district council or London borough council;
- (c) the Environment Agency;
- (d) the Marine Management Organisation;
- (e) a water undertaker or sewerage undertaker, or an internal drainage board;
- (f) a navigation authority within the meaning of the Water Resources Act 1991 <sup>M25</sup>;
- (g) a harbour authority within the meaning of the Harbours Act 1964 <sup>M26</sup>;
- (h) a lighthouse authority;



- (i) an inshore fisheries and conservation authority established under Part 6 of the Marine Act (management of inshore fisheries);
- (j) the River Tweed Commission <sup>M27</sup>; and
- (k) a National Park authority.

#### Marginal Citations

**M25** 1991 c. 57. See the definition of “navigation authority” in section 221(1).

**M26** 1964 c. 40. See the definition of “harbour authority” in section 57(1).

**M27** The River Tweed Commission was constituted by the [Scotland Act 1998 \(River Tweed\) Order 2006 \(S.I. 2006/2913\)](#).

#### Competent authorities

- 7.—(1) For the purposes of these Regulations, “competent authority” includes—
- (a) any Minister of the Crown (as defined in the Ministers of the Crown Act 1975 <sup>M28</sup>), government department, statutory undertaker, public body of any description or person holding a public office;
  - (b) the Welsh Ministers; and
  - (c) any person exercising any function of a person mentioned in sub-paragraph (a) or (b).
- (2) In the following provisions (and as provided in regulation 69(3)(a)), “competent authority” includes the Scottish Ministers—
- (a) regulation 70(2), in so far as that paragraph relates to a deemed grant of planning permission under—
    - (i) section 57(2), (2A) and (2ZA) of the Town and Country Planning (Scotland) Act 1997 <sup>M29</sup>, to which regulation 70(1)(e)(ii) and (f) relate; or
    - (ii) section 5(1) of the Pipe-lines Act 1962 <sup>M30</sup>, to which regulation 70(1)(e)(iii) relates;
  - (b) Chapters 4 and 5 of Part 6.
- (3) In paragraph (1)—
- “public body” includes—
- (a) the Broads Authority <sup>M31</sup>;
  - (b) a joint planning board within the meaning of section 2 of the TCPA 1990 (joint planning boards) <sup>M32</sup>;
  - (c) a joint committee appointed under section 102(1)(b) of the Local Government Act 1972 (appointment of committees) <sup>M33</sup>;
  - (d) a National Park authority; or
  - (e) a local authority, which in this regulation means—
    - (i) in relation to England, a county council, a district council, a parish council, a London borough council, the Common Council of the City of London, the sub-treasurer of the Inner Temple or the under treasurer of the Middle Temple;
    - (ii) in relation to Wales, a county council, a county borough council or a community council;
- “public office” means—
- (a) an office under the Crown,

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- (b) an office created or continued in existence by a public general Act or by legislation passed by the National Assembly for Wales, or
- (c) an office the remuneration in respect of which is paid out of money provided by Parliament or the National Assembly for Wales.

#### Marginal Citations

- M28** 1975 c. 26.
- M29** 1997 c. 8. Section 57(2) was substituted, and section 57(2ZA) was inserted, by the [Growth and Infrastructure Act 2013 \(c. 27\)](#), [section 21\(5\)](#).
- M30** 1962 c. 58. Section 5(1) was amended by S.I. 1999/742.
- M31** The Broads Authority was established by section 1 of the [Norfolk and Suffolk Broads Act 1988 \(c. 4\)](#).
- M32** [Section 2](#) was amended by the [Local Government \(Wales\) Act 1994 \(c. 19\)](#), [section 19\(1\)](#) and (4) and Schedule 18; and by the [Environment Act 1995 \(c. 25\)](#), [Schedule 10](#), paragraph 32.
- M33** 1972 c. 70. Section 102(1) was amended by the [Health and Social Services and Social Security Adjudications Act 1983 \(c. 41\)](#), [Schedule 9](#), paragraph 16; and the [Children Act 1989 \(c. 41\)](#), [Schedule 13](#), paragraph 31. It is prospectively amended by the [Local Government and Housing Act 1989 \(c. 42\)](#), [Schedule 11](#), paragraph 25(a), from a date to be appointed.

#### European sites and European marine sites

- 8.—(1) Subject to paragraph (2), in these Regulations a “European site” means—
- (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 (list of sites of Community importance);
  - (c) a site hosting a priority natural habitat type or priority species protected in accordance with Article 5(4) of the Habitats Directive (a site in respect of which consultation has been initiated under Article 5(1) of that Directive, during the consultation period or pending a decision of the Council under Article 5(3));
  - (d) an area classified pursuant to Article 4(1) or (2) of the old Wild Birds Directive or the new Wild Birds Directive (classification of special protection areas); or
  - (e) a site which has been proposed to the European Commission under regulation 12, 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 not to place the site on that list.
- (2) In these Regulations, a reference to a European site—
- (a) in Part 6, is a reference to a European site in the United Kingdom; and
  - (b) in any other provision of these Regulations, except where otherwise indicated, is a reference to a European site in England or Wales.
- (3) In these Regulations a “European marine site” means a European site so far as consisting of marine areas.

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## Duties relating to compliance with the Directives

9.—(1) The appropriate authority, the nature conservation bodies and, in relation to the marine area, a competent authority must exercise their functions which are relevant to nature conservation, including marine conservation, so as to secure compliance with the requirements of the Directives.

(2) Paragraph (1) applies, in particular, to functions under these Regulations and functions under the following enactments—

- (a) the Dockyard Ports Regulation Act 1865 <sup>M34</sup>;
- (b) section 2(2) of the Military Lands Act 1900 (provision as to byelaws relating to the sea, tidal water or shore) <sup>M35</sup>;
- (c) Part 3 of the 1949 Act (nature conservation);
- (d) the Harbours Act 1964;
- (e) section 15 of the Countryside Act 1968 (areas of special scientific interest) <sup>M36</sup>;
- (f) Part 2 of the Control of Pollution Act 1974 (pollution of water) <sup>M37</sup>;
- (g) Part 1 (wildlife) and sections 28 to 28S and 31 to 35A of the WCA 1981 (which relate to sites of special scientific interest) <sup>M38</sup>;
- (h) the Water Resources Act 1991;
- (i) the Land Drainage Act 1991 <sup>M39</sup>;
- (j) the Sea Fisheries Acts within the meaning of section 1 of the Sea Fisheries (Wildlife Conservation) Act 1992 (conservation in the exercise of sea fisheries functions) <sup>M40</sup>;
- (k) the Natural Environment and Rural Communities Act 2006 <sup>M41</sup>;
- (l) the Planning Act 2008;
- (m) the Marine Act, in particular any functions under Parts 3, 4, 5 and 6 of that Act (marine planning, marine licensing, nature conservation and management of inshore fisheries, respectively); and
- (n) the Natural Resources Body for Wales (Establishment) Order 2012 <sup>M42</sup>, where the functions are exercised for purposes related to nature conservation.

(3) Without prejudice to the preceding provisions, a competent authority, in exercising any of its functions, must have regard to the requirements of the Directives so far as they may be affected by the exercise of those functions.

(4) The reference in paragraph (1) to the appropriate authority—

- (a) to the extent that that paragraph applies in relation to Scotland, includes the Secretary of State exercising functions in relation to Scotland; and
- (b) to the extent that that paragraph applies in relation to Northern Ireland, includes the Secretary of State exercising functions in relation to Northern Ireland.

(5) In paragraph (1), “marine area” includes—

- (a) the Northern Ireland inshore region; and
- (b) the Scottish inshore region.

### Marginal Citations

**M34** 1865 c. 125.

**M35** 1900 c. 56. Section 2(2) was amended by the [Armed Forces Act 2011 \(c. 18\)](#), [section 24\(1\)](#); and by S.R. & O. 1924/1370. The functions of the Commissioners of Woods are now exercisable by the

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Crown Estate Commissioners: SR & O 1924/1370; the [Crown Estate Act 1956 \(c. 73\)](#), [section 1\(1\)](#); and the [Crown Estate Act 1961 \(c. 55\)](#), [section 1\(1\)](#).

**M36** 1968 c. 41. Section 15 was amended by the WCA 1981, section 72(8); the [Environmental Protection Act 1990 \(c. 43\)](#), [Schedule 9](#), paragraph 4(2) and Schedule 16, Part 6; the [Countryside and Rights of Way Act 2000 \(c. 37\)](#), [section 75\(3\)](#); the [Abolition of Feudal Tenure etc. \(Scotland\) Act 2000 \(asp 5\)](#), [Schedule 12](#), paragraph 29(1) and (2); the [Natural Environment and Rural Communities Act 2006 \(c. 16\)](#), [Schedule 11](#), paragraph 48; the [Environment \(Wales\) Act 2016 \(anaw 3\)](#), [Schedule 2](#), paragraph 2(1) and (3); and [S.I. 2013/755 \(W. 90\)](#).

**M37** 1974 c. 40.

**M38** Section 28 was substituted, and sections 28A to 28C and 28D to 28R were inserted, by the [Countryside and Rights of Way Act 2000](#) (“the 2000 Act”), [Schedule 9](#), paragraph 1 and [Schedule 10](#), paragraph 1. Sections 28, 31 and 34 were repealed as regards Scotland by the [Nature Conservation \(Scotland\) Act 2004 \(asp 6\)](#), [Schedule 7](#), paragraph 4, and sections 28A to 28S do not extend to Scotland. Sections 28 to 28C and 28D to 28R were amended by the [Natural Environment and Rural Communities Act 2006](#) (“the 2006 Act”), [Schedule 11](#), paragraph 79. Sections 28, 28A, 28B and 28C were amended by the [Marine Act](#), [Schedule 13](#), paragraphs 2, 3, 5 and 6. Sections 28CA and 28CB were inserted by the [Marine Act](#), [Schedule 13](#), paragraphs 7 and 8. Section 28D was amended by the 2006 Act, section 56; and the [Marine Act](#), [Schedule 13](#), paragraph 9. Section 28E was amended by the 2006 Act, [Schedule 11](#), paragraph 80; and the [Environment \(Wales\) Act 2016](#), [Schedule 2](#), paragraph 3(2). Section 28F was amended by the [Planning \(Wales\) Act 2015 \(anaw 4\)](#), [Schedule 5](#), paragraph 5. Section 28G was amended by the 2006 Act, [Schedule 11](#), paragraph 81. Section 28J was amended by the [Environment \(Wales\) Act 2016](#), [Schedule 2](#), paragraph 3(3). Section 28L was amended by the [Planning \(Wales\) Act 2015](#), [Schedule 5](#), paragraph 6. Section 28P was amended by the 2006 Act, section 55; and [S.I. 2015/664](#). Section 28S was inserted by the 2006 Act, section 58(1). Section 31 was amended by the [Criminal Justice Act 1982 \(c. 48\)](#), [sections 37](#) and 46; the 2000 Act, [Schedule 9](#), paragraph 3; the [Constitutional Reform Act 2005 \(c. 4\)](#), [Schedule 9](#), paragraph 37; and the 2006 Act, section 55(5) and [Schedule 11](#), paragraph 79. Section 32 was amended by the [Agriculture Act 1986 \(c. 49\)](#), [section 20\(1\) to \(3\)](#); the 2000 Act, [Schedule 9](#), paragraph 4 and [Schedule 16](#), Part 3; the 2006 Act, [Schedule 11](#), paragraph 79; the [Environment \(Wales\) Act 2016 \(anaw 3\)](#), [Schedule 2](#), paragraph 3(4); and [S.I. 2011/1043](#). Section 33 was amended by the 2006 Act, [Schedule 11](#), paragraph 82. Section 34 was amended by the [Local Government Act 1985 \(c. 51\)](#), [Schedule 3](#), paragraph 7; the [Planning \(Consequential Provisions\) Act 1990 \(c. 11\)](#), [Schedule 2](#), paragraph 54(1); the [Local Government \(Wales\) Act 1994 \(c. 19\)](#), [Schedule 16](#), paragraph 65(3); the 2000 Act, section 78; the 2006 Act, [Schedule 11](#), paragraph 83; and [S.I. 2015/664](#). Section 34A was inserted by the 2006 Act, [Schedule 11](#), paragraph 84, and was amended by [S.I. 2013/755 \(W. 90\)](#). Section 35 was amended by the 2006 Act, [Schedule 11](#), paragraph 85; and the [Marine Act](#), [Schedule 13](#), paragraph 10. Section 35A was inserted by the [Marine Act](#), [Schedule 13](#), paragraph 11.

**M39** 1991 c. 59.

**M40** 1992 c. 36. Section 1 was amended by the [Marine Act](#), section 11 and [Schedule 22](#), Part 4; and by [S.I. 1999/1820](#).

**M41** 2006 c. 16.

**M42** [S.I. 2012/1903 \(W. 230\)](#), to which there are amendments not relevant to these Regulations.

## Duties in relation to wild bird habitat

**10.**—(1) Without prejudice to regulation 9(1), the appropriate authority, the nature conservation bodies and, in relation to the marine area, a competent authority must take such steps in the exercise of their functions as they consider appropriate to secure the objective in paragraph (3), so far as lies within their powers.

(2) Except in relation to the marine area, the Environment Agency, the Forestry Commissioners<sup>M43</sup>, local authorities, the Broads Authority and National Park authorities must take such steps in

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the exercise of their functions as they consider appropriate to contribute to the achievement of the objective in paragraph (3).

(3) The objective is the preservation, maintenance and re-establishment of a sufficient diversity and area of habitat for wild birds in the United Kingdom, including by means of the upkeep, management and creation of such habitat, as appropriate, having regard to the requirements of Article 2 of the new Wild Birds Directive (measures to maintain the population of bird species).

(4) Paragraph (1) applies, in particular, to—

- (a) functions under these Regulations;
- (b) functions under the following enactments—
  - (i) sections 17, 18, 20 and 21(6) of the 1949 Act (nature reserves) <sup>M44</sup>;
  - (ii) section 7 of the Natural Environment and Rural Communities Act 2006 (management agreements);
  - (iii) Parts 3, 4, 5 and 6 of the Marine Act (marine planning, marine licensing, nature conservation and management of inshore fisheries, respectively);
- (c) any function exercisable in relation to town and country planning.

(5) Paragraph (2) applies, in particular, to—

- (a) functions under these Regulations;
- (b) functions under the following enactments—
  - (i) sections 21 and 90 of the 1949 Act (nature reserves and local authority byelaws, respectively) <sup>M45</sup>;
  - (ii) sections 3 and 10 of the Forestry Act 1967 (management of forestry land, and applications for felling licence and decision of Commissioners thereon, respectively) <sup>M46</sup>;
  - (iii) sections 3 and 6 of the Norfolk and Suffolk Broads Act 1988 (the Broads Plan and byelaws, respectively) <sup>M47</sup>;
  - (iv) section 66 of the Environment Act 1995 (National Park Management Plans) <sup>M48</sup>;
  - (v) sections 38 and 39 of the Flood and Water Management Act 2010 (which relate to incidental flooding or coastal erosion) <sup>M49</sup>;
- (c) any function exercisable in relation to town and country planning.

(6) In section 123(3)(a) of the Marine Act (creation of network of conservation sites), as it applies in relation to the marine area <sup>M50</sup>, the reference to “the conservation or improvement of the marine environment” includes the objective in paragraph (3), and accordingly the duty in section 124 of the Marine Act (report) applies in relation to that objective.

(7) In considering which measures may be appropriate for the purpose of securing or contributing to the objective in paragraph (3), appropriate account must be taken of economic and recreational requirements.

(8) So far as lies within its powers, a competent authority in exercising any function in or in relation to the United Kingdom must use all reasonable endeavours to avoid any pollution or deterioration of habitats of wild birds (except habitats beyond the outer limits of the area to which the new Wild Birds Directive applies).

(9) The appropriate authority must take any steps it considers necessary to facilitate or co-ordinate arrangements to secure the taking of steps under paragraphs (1) and (2) by the bodies mentioned in those paragraphs.

(10) After consultation with the appropriate nature conservation body, the appropriate authority must give guidance to the Environment Agency, the Forestry Commissioners, the Natural Resources

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Body for Wales, local authorities, the Broads Authority, National Park authorities and any other competent authority it considers appropriate—

- (a) to facilitate the determination by those bodies of the extent to which the diversity and area of habitat for wild birds is sufficient; and
- (b) on the steps that it may be appropriate to take under paragraph (1) or (2).

(11) In exercising a function to which paragraph (1) or (2) applies, a body to which guidance has been given under paragraph (10) must have regard to that guidance.

(12) In this regulation—

- (a) references in paragraphs (1), (9) and (10) to the appropriate authority—
  - (i) to the extent that this regulation applies in relation to Scotland, include the Secretary of State exercising functions in relation to Scotland; and
  - (ii) to the extent that this regulation applies in relation to Northern Ireland, include the Secretary of State exercising functions in relation to Northern Ireland;
- (b) in paragraphs (1) and (2), “marine area” includes—
  - (i) the Northern Ireland inshore region; and
  - (ii) the Scottish inshore region; and
- (c) “local authority” has the same meaning as in regulation 7.

#### Marginal Citations

- M43** See section 1(1) of the [Forestry Act 1967 \(c. 10\)](#).
- M44** Sections 17, 18, 20 and 21(6) were amended by the [Natural Environment and Rural Communities Act 2006 \(c. 16\)](#) (“the 2006 Act”), Schedule 11, paragraphs 15 to 17. Section 18 was amended by the [Arbitration Act 1996 \(c. 23\)](#), [Schedule 4](#). Section 20 was amended by the [Telecommunications Act 1984 \(c. 12\)](#), [Schedule 4](#), paragraph 28; the [Water Act 1989 \(c. 15\)](#), [Schedule 25](#), paragraph 13; and the [Communications Act 2003 \(c. 21\)](#), of Schedule 17, paragraph 20.
- M45** Section 21 was amended by the [Local Government Act 1972 \(c. 70\)](#), [Schedule 30](#); the [Local Government \(Scotland\) Act 1973 \(c. 65\)](#), [Schedule 27](#), paragraph 100 and Schedule 29; the [Local Government and Planning \(Scotland\) Act 1982 \(c. 43\)](#), section 10; the 2006 Act, Schedule 11, paragraphs 15 and 19; the [Environment \(Wales\) Act 2016 \(anaw 3\)](#), [Schedule 2](#), paragraph 1(4); and [S.I. 2013/755 \(W. 90\)](#). Section 90 was amended by the [Countryside Act 1968 \(c. 41\)](#), [Schedule 5](#); the [Local Government Act 1972](#), Schedule 17, paragraph 39; the [Environmental Protection Act 1990 \(c. 43\)](#), [Schedule 8](#), paragraph 1(14); the 2006 Act, Schedule 11, paragraph 10(l); and [S.I. 2013/755 \(W. 90\)](#).
- M46** [1967 c. 10](#). Sections 3 and 10 were amended by [S.I. 1999/1747](#) and [2013/755 \(W. 90\)](#). Section 3 was amended by [S.I. 2017/524](#). Section 10 was amended by the [Nature Conservation \(Scotland\) Act 2004 \(asp 6\)](#), [Schedule 7](#), paragraph 2.
- M47** [1988 c. 4](#). Section 6 was amended by the 2006 Act, Schedule 11, paragraph 112(a).
- M48** [1995 c. 25](#). Section 66 was amended by the 2006 Act, Schedule 11, paragraph 143; the [Planning \(Wales\) Act 2015 \(anaw 4\)](#), [Schedule 2](#), paragraph 20; the [Environment \(Wales\) Act 2016](#), Schedule 2, paragraph 6; and by [S.I. 2013/755 \(W. 90\)](#).
- M49** [2010 c. 29](#). Sections 38 and 39 were amended by [S.I. 2013/755 \(W. 90\)](#).
- M50** [Section 123\(3\)\(a\)](#) applies in relation to the “UK marine area”, which is defined in section 42 of the [Marine Act](#) in terms which include the area comprised in the marine area as defined in these Regulations.

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### **Review by appropriate nature conservation body**

- 11.—**(1) The appropriate nature conservation body must, from time to time—
- (a) review the extent to which the objective in regulation 10(3) has been met, other than in relation to the marine area;
  - (b) set out the conclusions of the review in a report, including any recommendations for further action; and
  - (c) send the report to the appropriate authority.
- (2) In carrying out the review, the nature conservation bodies must, so far as is reasonable, take account of any measures taken which contribute to the achievement of that objective, whether or not taken pursuant to a requirement imposed by any enactment.
- (3) The nature conservation bodies may act together to fulfil the duty under paragraph (1).

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