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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**

**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>(1)</sup>, local authorities, the Broads Authority and National Park authorities must take such steps in 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>(2)</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>(3)</sup>;

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<sup>(1)</sup> See section 1(1) of the Forestry Act 1967 (c. 10).

<sup>(2)</sup> 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.

<sup>(3)</sup> 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),

- (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) **(4)**;
- (iii) sections 3 and 6 of the Norfolk and Suffolk Broads Act 1988 (the Broads Plan and byelaws, respectively) **(5)**;
- (iv) section 66 of the Environment Act 1995 (National Park Management Plans) **(6)**;
- (v) sections 38 and 39 of the Flood and Water Management Act 2010 (which relate to incidental flooding or coastal erosion) **(7)**;

(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 **(8)**, 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 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

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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(1); and [S.I. 2013/755 \(W. 90\)](#).

- (4) [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.
- (5) [1988 c. 4](#). Section 6 was amended by the 2006 Act, Schedule 11, paragraph 112(a).
- (6) [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 \(W. 90\)](#).
- (7) [2010 c. 29](#). Sections 38 and 39 were amended by [S.I. 2013/755 \(W. 90\)](#).
- (8) 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.

- (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.