

2012 No. 1927

WILDLIFE

COUNTRYSIDE

MARINE MANAGEMENT

**The Conservation of Habitats and Species (Amendment)
Regulations 2012**

Made - - - - - *20th July 2012*

Laid before Parliament *25th July 2012*

Laid before the National Assembly for Wales *25th July 2012*

Coming into force - - - *16th August 2012*

The Secretary of State is designated^(a) for the purposes of section 2(2) of the European Communities Act 1972^(b) in relation to the environment, and the Welsh Ministers are designated^(c) for those purposes in relation to the conservation of natural habitats and of wild fauna and flora.

In exercise of the powers conferred on them by section 2(2) of the European Communities Act 1972, the Secretary of State and the Welsh Ministers make these Regulations, the Welsh Ministers in relation to Wales, to the extent that they are designated to do so, and the Secretary of State in relation to every other aspect.

Title, commencement, interpretation and extent

1.—(1) These Regulations may be cited as the Conservation of Habitats and Species (Amendment) Regulations 2012 and come into force on 16th August 2012.

(2) In these Regulations, “the 2010 Regulations” means the Conservation of Habitats and Species Regulations 2010^(d).

(3) Except as provided in paragraphs (4) and (5), these Regulations extend to England and Wales only.

(a) S.I. 2008/301.

(b) 1972 c.68. Section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c.51), section 27(1)(a), and the European Union (Amendment) Act 2008 (c.7), Part 1 of the Schedule.

(c) S.I. 2002/248, amended by S.I. 2006/3329. The designation is subject to the exceptions set out in Schedule 2 to that Order. That Order continues to have effect, and the functions conferred on the National Assembly for Wales by means of that Order are now exercisable by the Welsh Ministers, by virtue of section 162 of, and paragraphs 28(1) and 30 of Schedule 11 to, the Government of Wales Act 2006 (c.32).

(d) S.I. 2010/490, amended by S.I. 2011/603 and 625 and 2012/637.

(4) This regulation and regulations 2 to 7, regulation 8 in so far as it relates to regulations 9 and 9A of the 2010 Regulations, and regulations 19 to 21 also extend to Scotland and Northern Ireland.

(5) Regulations 3(4) and 24 extend to Scotland only.

Amendment of the 2010 Regulations

2. The 2010 Regulations are amended in accordance with regulations 3 to 24.

Amendment of regulation 2

3.—(1) Regulation 2(a) (extent) is amended as follows.

(2) In paragraph (2)—

(a) for sub-paragraph (b) substitute—

“(b) regulations 9 (duties relating to compliance with the Directives) and 9A (duties in relation to wild bird habitat), 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(b) (reserved matters));”;

(b) after sub-paragraph (c) insert—

“(ca) 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);”.

(3) For paragraph (4) substitute—

“(4) The following provisions also extend to Northern Ireland—

(a) regulations 9 and 9A, 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(c));

(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 100, 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.);

(d) regulation 107A, in so far as it applies in relation to the exercise of any power by the Secretary of State, and regulations 102, 103 and 105 in so far as they apply to marine policy statements by virtue of regulation 107A; and

(e) in Schedule 6—

(i) sub-paragraphs (3) and (5) of paragraph 5, and sub-paragraph (1) of paragraph 5 in so far as it relates to those sub-paragraphs, and

(ii) paragraph 7,

and regulation 132 in so far as it relates to those provisions.

(a) Regulation 2 was amended by S.I. 2011/625.

(b) 1998 c.46.

(c) 1998 c.47.

(4A) This regulation and regulations 1, 3, 5, 7, 8, 128 and 131 also extend to Northern Ireland in so far as they have effect in relation to the provisions specified in paragraph (4).

(4B) Chapter 1 of Part 6 also extends to Northern Ireland in so far as it has effect in relation to the provision specified in paragraph (4)(c).”.

(4) Omit paragraph (5).

Amendment of regulation 3

4.—(1) Regulation 3 (interpretation) is amended as follows.

(2) In paragraph (1)—

(a) for the definition of “the appropriate authority” substitute—

““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 9A(12)(a), and modifications of references to that term in regulations 67(1)(b), (3)(c), (5) and (8)(b), 94(6), 106(3)(b) and 107A(3)(c)), and any person exercising any function of the Secretary of State or the Welsh Ministers;”;

(b) after the definition of “the devolved administrations” insert—

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

(c) in the definition of “marine area”, for “regulation 9(8)” substitute “regulations 9(5) and 9A(12)(b)”;

(d) after the definition of “the new Wild Birds Directive” insert—

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

(e) in the definition of “the WCA 1981”, at the end omit “and”;

(f) in the definition of “Welsh inshore region”, for “Wales.” substitute “Wales;”;

(g) after the definition of “Welsh inshore region” insert—

““wild bird” means a bird which is—

(a) a member of a species referred to in Article 1 of the new Wild Birds Directive, and

(b) wild.”.

(3) In paragraph (6)—

(a) at the end of sub-paragraph (c), omit “and”;

(b) in sub-paragraph (d), for “Scottish inshore region.” substitute “Scottish inshore region;”;

and

(c) after sub-paragraph (d) add—

“(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.”.

(4) In paragraph (7)—

(a) in sub-paragraph (a), for ““Welsh inshore region” and “Scottish inshore region”” substitute ““Welsh inshore region”, “Scottish inshore region” and “Northern Ireland inshore region””;

(b) at the end of sub-paragraph (a), omit “or”; and

(c) for sub-paragraph (b) substitute—

“(b) paragraph (8); or

(c) regulation 4(2)(a)(ii).”.

(5) In paragraph (8)—

- (a) for sub-paragraph (a) substitute—
 - “(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) in sub-paragraph (b)—
 - (i) for ““the sea adjacent to Wales”” substitute ““the territorial sea adjacent to Wales””, and
 - (ii) at the end, omit “and”;
- (c) in sub-paragraph (c)—
 - (i) for ““the sea adjacent to Scotland”” substitute ““the territorial sea adjacent to Scotland””, and
 - (ii) at the end, for “Order 1999.” substitute “Order 1999; and”; and
- (d) after sub-paragraph (c) add—
 - “(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(a) .”.

Amendment of regulation 5

5. In regulation 5 (nature conservation bodies)—

- (a) in paragraph (1), for “paragraphs (2) and (3)” substitute “paragraphs (2) to (4)”; and
- (b) for paragraphs (2) and (3) substitute—
 - “(2) In regulations 48 (surveillance of conservation status of habitats and species) and 50 (monitoring of incidental capture and killing), “nature conservation body” means Natural England, the Countryside Council for Wales or the Joint Nature Conservation Committee**(b)** .
 - (3) In a provision of Part 6 (assessment of plans and projects) which extends to England and Wales only, “the appropriate nature conservation body” means—
 - (a) Natural England, in relation to England, or
 - (b) the Countryside Council for Wales, in relation to Wales,
 except in relation to an effect on a European offshore marine site, in which case it means the Joint Nature Conservation Committee.
 - (4) In a provision of Part 6 which extends to Scotland or Northern Ireland, “the appropriate nature conservation body” means—
 - (a) Natural England, in relation to England,
 - (b) the Countryside Council for Wales, in relation to Wales,
 - (c) Scottish Natural Heritage, in relation to Scotland, or
 - (d) the Department of the Environment in Northern Ireland, in relation to Northern Ireland,
 except in relation to an effect on a European offshore marine site, in which case it means the Joint Nature Conservation Committee.”.

Amendment of regulation 7

6. In regulation 7 (competent authorities), in paragraph (3)(a), after “includes” insert “the Broads Authority and”.

(a) S.I. 2002/791.

(b) The Joint Nature Conservation Committee was established by the Environmental 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.

Amendment of regulation 8

7. In regulation 8 (European sites and European marine sites), in paragraph (2)(a), for “Great Britain” substitute “the United Kingdom”.

Substitution of regulation 9

8. For regulation 9 (exercise of functions in accordance with the Habitats Directive) substitute—

“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 the following enactments—

the Dockyard Ports Regulation Act 1865(a),

subsection (2) of section 2 of the Military Lands Act 1900(b) (provision as to byelaws relating to the sea, tidal water or shore),

Part 3 of the 1949 Act (nature conservation),

the Harbours Act 1964(c),

section 15 of the Countryside Act 1968(d) (areas of special scientific interest),

Part 2 of the Control of Pollution Act 1974(e) (pollution of water),

Part 1 (wildlife) and sections 28 to 28S(f) and 31 to 35A(g) of the WCA 1981 (which relate to sites of special scientific interest),

(a) 1865 c.125.

(b) 1900 c.56; section 2(2) was amended by SR & O 1924/1370, the Crown Estate Act 1961 (c.55), section 1, and S.I. 1964/488.

(c) 1964 c.40.

(d) 1968 c.41; section 15 was amended by the WCA 1981, section 72(8) and Part 1 of Schedule 17; the Environmental Protection Act 1990 (c.43), paragraph 4(2) of Schedule 9 and Part 6 of Schedule 16; the Countryside and Rights of Way Act 2000 (c.37), section 75(3); the Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5), paragraph 29(1) and (2) of Schedule 12; and the Natural Environment and Rural Communities Act 2006 (c.16), paragraph 48 of Schedule 11 and Schedule 12.

(e) 1974 c.40.

(f) Section 28 was substituted, and sections 28A to 28C and 28D to 28R were inserted, by the Countryside and Rights of Way Act 2000 (c.37), paragraph 1 of Schedule 9; sections 28 to 28C and 28D to 28R were amended by the Natural Environment and Rural Communities Act 2006 (c.16) (“the 2006 Act”), paragraph 79 of Schedule 11; section 28 was amended by the Marine Act, paragraph 2 of Schedule 13; section 28A was amended by the Marine Act, paragraph 3 of Schedule 13; section 28B was amended by the Marine Act, paragraph 5 of Schedule 13; section 28C was amended by the Marine Act, paragraph 6 of Schedule 13; sections 28CA and 28CB were inserted by the Marine Act, paragraphs 7 and 8 of Schedule 13; section 28D was amended by the 2006 Act, section 56, and the Marine Act, paragraph 9 of Schedule 13; section 28E was amended by the 2006 Act, paragraph 80 of Schedule 11; section 28G was amended by the 2006 Act, paragraph 81 of Schedule 11 and Schedule 12; section 28P was amended by the 2006 Act, section 55; and section 28S was inserted by the 2006 Act, section 58(1).

(g) Sections 31 to 34 were repealed as regards Scotland by the Nature Conservation (Scotland) Act 2004 (asp 6), paragraph 4 of Schedule 7; section 31 was amended by the Criminal Justice Act 1982 (c.48), sections 37 and 46, by the Countryside and Rights of Way Act 2000 (c.37) (“the 2000 Act”), paragraph 3 of Schedule 9, by the Constitutional Reform Act 2005 (c.4), paragraph 37 of Schedule 9, and by the Natural Environment and Rural Communities Act 2006 (c.16) (“the 2006 Act”), section 55(5) and paragraph 79 of Schedule 11; section 32 was amended by the Agriculture Act 1986 (c.49), section 20(1), (2) and (3), by the 2000 Act, paragraph 4 of Schedule 9 and Part 3 of Schedule 16, and by the 2006 Act, paragraph 79 of Schedule 11; section 33 was amended by the 2006 Act, paragraph 82 of Schedule 11; section 34 was amended by the Local Government Act 1985 (c.51), paragraph 7 of Schedule 3, by the Planning (Consequential Provisions) Act 1990 (c.11), paragraph 54(1) of Schedule 2, by the Local Government (Wales) Act 1994 (c.19), paragraph 65(3) of Schedule 16, by the 2000 Act, section 78, and by the 2006 Act, paragraph 83 of Schedule 11 and Schedule 12; section 34A was inserted by the 2006 Act, paragraph 84 of Schedule 11; section 35 was amended by the 2006 Act, paragraph 85 of Schedule 11, and the Marine Act, paragraph 10 of Schedule 13; and section 35A was inserted by the Marine Act, paragraph 11 of Schedule 13.

sections 131, 132 and 134 of the Environmental Protection Act 1990(a) (which relate to nature conservation functions of the Countryside Council for Wales),
the Water Resources Act 1991(b),
the Land Drainage Act 1991(c),
the Sea Fisheries Acts within the meaning of section 1 of the Sea Fisheries (Wildlife Conservation) Act 1992(d) (conservation in the exercise of sea fisheries functions),
the Natural Environment and Rural Communities Act 2006(e),
the Planning Act 2008(f),
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
these Regulations.

(3) Without prejudice to the preceding provisions, a competent authority, in exercising any of their 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.

Duties in relation to wild bird habitat

9A.—(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(g), local authorities, the Broads Authority(h) 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.

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

- (a) functions under the following enactments—

(a) 1990 c.43; section 131 was amended by the Natural Environment and Rural Communities Act 2006 (c.16) (“the 2006 Act”), paragraph 120 of Schedule 11; section 132 was amended by the 2006 Act, paragraph 121 of Schedule 11 and Schedule 12, and the Marine Act, section 313(1) and (3); and section 134 was amended by the 2006 Act, paragraph 123 of Schedule 11 and Schedule 12, and the Marine Act, section 313(1) and (4).

(b) 1991 c.57.

(c) 1991 c.59.

(d) 1992 c.36; section 1 was amended by S.I. 1999/1820 and the Marine Act, section 11 and Part 4 of Schedule 22.

(e) 2006 c.16.

(f) 2008 c.29.

(g) See section 1(1) of the Forestry Act 1967 (c.10).

(h) The Broads Authority was established by section 1 of the Norfolk and Suffolk Broads Act 1988 (c.4).

sections 17, 18, 20 and 21(6)(a) of the 1949 Act (which relate to nature reserves), section 7 (management agreements) of the Natural Environment and Rural Communities Act 2006(b),

Parts 3, 4, 5 and 6 (marine planning, marine licensing, nature conservation and management of inshore fisheries, respectively) of the Marine Act, and these Regulations; and

(b) any function exercisable in relation to town and country planning.

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

(a) functions under the following enactments—

sections 21(c) and 90(d) of the 1949 Act (which relate to nature reserves and local authority byelaws, respectively),

sections 3 (management of forestry land) and 10 (application for felling licence and decision of Commissioners thereon) of the Forestry Act 1967(e),

sections 3 and 6 of the Norfolk and Suffolk Broads Act 1988(f) (the Broads Plan and byelaws, respectively);

section 66 of the Environment Act 1995(g) (National Park Management Plans);

sections 38 and 39 of the Flood and Water Management Act 2010(h) (which relate to incidental flooding or coastal erosion), and

these Regulations; and

(b) any function exercisable in relation to town and country planning.

(6) In subsection (3)(a) of section 123 of the Marine Act (creation of network of conservation sites), as it applies in relation to the marine area(i), 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 their 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).

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- (a) Section 17 was amended by the Natural Environment and Rural Communities Act 2006 (c.16) (“the 2006 Act”), paragraphs 15 and 16 of Schedule 11; section 18 was amended by the Arbitration Act 1996 (c.23), Schedule 4, and the 2006 Act, paragraphs 15 and 17 of Schedule 11; section 20 was amended by the Telecommunications Act 1984 (c.12), paragraph 28 of Schedule 4, the Water Act 1989 (c.15), paragraph 13 of Schedule 25, the Communications Act 2003 (c.21), paragraph 20 of Schedule 17, and the 2006 Act, paragraph 15 of Schedule 11; and section 21(6) was amended by the 2006 Act, paragraph 15 of Schedule 11.
- (b) 2006 c.16.
- (c) Section 21 was amended by the Local Government Act 1972 (c.70), Schedule 30, the Local Government (Scotland) Act 1973 (c.65), Schedule 29, and the Natural Environment and Rural Communities Act 2006, paragraphs 15 and 19 of Schedule 11.
- (d) Section 90 was amended by the Countryside Act 1968 (c.41), Schedule 5; the Local Government Act 1972 (c.70), paragraph 39 of Schedule 17 and Schedule 30; the Environmental Protection Act 1990 (c.43), paragraph 1(14) of Schedule 8; and the Natural Environment and Rural Communities Act 2006, paragraph 10(l) of Schedule 11.
- (e) 1967 c.10. Sections 3 and 10 were amended by S.I. 1999/1747; section 10 was also amended by the Nature Conservation (Scotland) Act 2004 (asp 6), paragraph 2 of Schedule 7.
- (f) 1988 c.4; section 6 was amended by the Natural Environment and Rural Communities Act 2006, paragraph 112(a) of Schedule 11.
- (g) 1995 c.25; section 66 was amended by the Natural Environment and Rural Communities Act 2006, paragraph 143 of Schedule 11.
- (h) 2010 c.29.
- (i) Section 123(3)(a) applies in relation to the “UK marine area”, defined in section 42 of the Marine Act in terms which include the area comprised in the marine area.

(9) The appropriate authority must take any steps they consider 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, local authorities, the Broads Authority, National Park authorities and any other competent authority they consider 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.

Review by appropriate nature conservation body

9B.—(1) The appropriate nature conservation body must, from time to time—

- (a) review the extent to which the objective in regulation 9A(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).”.

Amendment of regulation 12A

9. In regulation 12A(a) (classification of sites as special protection areas), for paragraph (6) substitute—

“(6) In this regulation “the United Kingdom’s territory” means the United Kingdom and the offshore marine area (as defined in regulation 4(2)(a)).”.

Amendment of regulation 18

10. In regulation 18 (certain payments under management agreements), in paragraph (1)(a), for “paragraph (1)(a) of regulation 20 (restriction on carrying out operations specified in notification)”

(a) Regulation 12A was inserted by S.I. 2011/625.

substitute “section 28E(1)(a)(a) of the WCA 1981 (duties in relation to sites of special scientific interest)”.

Amendment of regulation 19

11. In regulation 19 (notification of potentially damaging operations)—
- (a) in paragraph (1), for “regulations 20 to 22” substitute “regulation 21”;
 - (b) in paragraph (2)—
 - (i) for “Habitats Directive” substitute “Directives”, and
 - (ii) for “amend” substitute “vary”; and
 - (c) omit paragraphs (3) and (4).

Revocation of regulation 20

12. Regulation 20 (restriction on carrying out operations specified in notification) is revoked.

Amendment of regulation 21

13. In regulation 21 (assessment of implications for European sites), in paragraph (1), for “an application for consent under regulation 20(2)(a)” substitute “a notice of a proposal under section 28E(1)(a) of the WCA 1981”.

Revocation of regulation 22

14. Regulation 22 (notification of appropriate authority in case of risk) is revoked.

Substitution of regulation 23

15. For regulation 23 substitute—

“Sites of special scientific interest which become European sites: duty to review

23.—(1) This regulation applies where a consent for an operation has been given under section 28E(3)(a) of the WCA 1981 (or having effect as if given under that section(b)) in relation to land included in a site of special scientific interest which, after the date of that consent, becomes land within a European site.

(2) The appropriate nature conservation body must, as soon as reasonably practicable, review the consent and affirm, modify or withdraw it.

(3) Regulation 21 applies for the purposes of paragraph (2), with the following modifications—

- (a) as if the reference in regulation 21(1) to a notice of a proposal under section 28E(1)(a) of the WCA 1981 were a reference to a consent under section 28E(3)(a) of that Act; and
- (b) as if the reference to giving consent in regulation 21(2) were a reference to affirming that the consent should remain in force.”.

Amendment of regulation 36

16. In regulation 36 (management scheme for European marine site), in paragraph (1), for “Habitats Directive” substitute “Directives”.

(a) Section 28E was inserted by the Countryside and Rights of Way Act 2000 (c.37), paragraph 1 of Schedule 9, and amended by the Natural Environment and Rural Communities Act 2006 (c.16), paragraphs 79 and 80 of Schedule 11.
(b) See paragraph 8(1)(b) of Schedule 11 to the Countryside and Rights of Way Act 2000 (c.37).

Amendment of regulation 38

17. In regulation 38 (European marine sites: byelaws and orders), omit paragraph (5).

Amendment of regulation 58

18. In regulation 58 (offence of breaching licence condition), for paragraph (1) substitute—

“(1) It is an offence for a person to contravene or fail to comply with a licence condition.”.

Amendment of regulation 60

19. In regulation 60 (application of provisions of Chapter 1 of Part 6), for paragraph (1) substitute—

“(1) The requirements of the assessment provisions and the review provisions apply—

- (a) subject to and in accordance with the provisions of Chapters 2 to 7, in relation to the matters specified in those provisions; and
- (b) subject to regulation 61(7)(c), in relation to all other plans and projects not relating to matters specified in Chapters 2 to 9.”.

Amendment of regulation 61

20. In regulation 61 (assessment of implications for European sites and European offshore marine sites)—

(a) for paragraph (7) substitute—

“(7) This regulation does not apply in relation to—

- (a) a site which is a European site by reason of regulation 8(1)(c);
- (b) a site which is a European offshore marine site by reason of regulation 15(c) of the 2007 Regulations; or
- (c) a plan or project to which any of the following apply—
 - (i) the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001(a) (in so far as this regulation is not disapplied by regulation 4 (plans or projects relating to offshore marine area or offshore marine installations) in relation to plans or projects to which those Regulations apply),
 - (ii) the Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006(b),
 - (iii) the Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007(c), or
 - (iv) the Merchant Shipping (Ship-to-Ship Transfers) Regulations 2010(d).”;
- (b) in paragraph (8), for “Great Britain” substitute “the United Kingdom”.

Amendment of regulation 67

21. In regulation 67(e) (modifications of regulations 61 to 66 in certain cases)—

- (a) in paragraph (7)(b), for ““marine works” has” substitute ““marine works” and “harbour works” have”; and
- (b) after paragraph (7) add—

(a) S.I. 2001/1754, amended by S.I. 2007/77 and 1842 and 2010/1513.
(b) S.I. 2006/2522, amended by S.I. 2009/1307 and 3264, 2010/1159 and 2011/1824.
(c) S.I. 2007/2933 (W.253).
(d) S.I. 2010/1228, amended by S.I. 2011/974 and 2183 and 2012/742.
(e) Regulation 67 was amended by S.I. 2011/625.

“(8) Where a general provision applies in relation to a plan or project which does not relate to a matter specified in Chapters 2 to 9, to the extent that that general provision applies in relation to Scotland or Northern Ireland, that provision applies with the following modifications—

- (a) any reference to the Welsh Ministers is omitted; and
- (b) for any reference to the appropriate authority, substitute a reference to the Secretary of State.”.

Insertion of regulation 129A

22. After regulation 129 insert—

“Research

129A.—(1) The appropriate authority must take such steps to encourage research and scientific work as they consider necessary—

- (a) having regard to the objectives in Article 2, and the obligation in Article 11, of the Habitats Directive; and
- (b) for the purpose of the protection or management, and in relation to the use, of any population of wild birds.

(2) The appropriate authority must supply such information as they consider appropriate to the European Commission and, in the case of information supplied for the purposes of the Habitats Directive, to member States, to further the proper co-ordination of research carried out by member States or by the European Commission for the purposes of the Directives.

(3) In deciding what steps to take under paragraph (1), the appropriate authority must have particular regard to the need for research and scientific work—

- (a) on the subjects listed in Annex V to the new Wild Birds Directive; or
- (b) which may be required to implement Articles 4 and 10 of the Habitats Directive.”.

Addition of regulation 135

23. After regulation 134 add—

“Review

135.—(1) In relation to England, the Secretary of State must from time to time—

- (a) carry out a review of these Regulations;
- (b) set out the conclusions of the review in a report; and
- (c) publish the report.

(2) In carrying out the review the Secretary of State must, so far as is reasonable, have regard to how the Directives are implemented in other member States.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by the regulatory system established by these Regulations;
- (b) assess the extent to which those objectives are achieved; and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) The first report under this regulation must be published before the end of the period of five years beginning with 16th August 2012.

(5) Reports under this regulation are afterwards to be published at intervals not exceeding five years.”.

Amendment of Schedule 6

24. In Schedule 6 (amendments of legislation), omit paragraph 6 (amendment of the 1994 Regulations).

Transitional provision

25. Any notice given before 16th August 2012 under, or having effect as if given under(a), regulation 20(1)(a) of the 2010 Regulations as in force immediately before that date, has effect as if given under section 28E(1)(a) of the Wildlife and Countryside Act 1981(b).

Amendment of the National Parks and Access to the Countryside Act 1949

26. In section 15 of the National Parks and Access to the Countryside Act 1949(c) (meaning of “nature reserve”), after subsection (2) insert—

“(2A) In subsection (2)(b) the reference to preserving flora or fauna includes enabling or facilitating its recovery or increase.”.

20th July 2012

Richard Benyon
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

10th July 2012

John Griffiths
Minister for Environment and Sustainable Development
One of the Welsh Ministers

EXPLANATORY NOTE

(This note is not part of these Regulations)

These Regulations amend the Conservation of Habitats and Species Regulations 2010 (S.I. 2010/490(d)) (“the 2010 Regulations”), which make provision transposing Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (“the Habitats Directive”)(e) and certain aspects of Directive 2009/147/EC on the conservation of wild birds (“the Birds Directive”)(f).

These Regulations extend to England and Wales. They also extend to Scotland and Northern Ireland to a limited degree.

Regulation 7 provides that Part 6 of the 2010 Regulations has effect in relation to plans and projects affecting European sites in the United Kingdom, and regulation 19 provides that the

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- (a) See regulation 23(1) of the 2010 Regulations (as in effect immediately before the date of commencement of these Regulations).
- (b) 1981 c.69. Section 28E was inserted by the Countryside and Rights of Way Act 2000 (c.37), paragraph 1 of Schedule 9, and amended by the Natural Environment and Rural Communities Act 2006 (c.16), paragraphs 79 and 80 of Schedule 11.
- (c) 1949 c.97. Section 15 was substituted by the Natural Environment and Rural Communities Act 2006 (c.16), paragraph 12 of Schedule 11.
- (d) Amended by S.I. 2011/603 and 625 and 2012/637.
- (e) 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).
- (f) OJ No L 20, 26.1.2010, p.7.

assessment and review provisions of that Part apply in relation to plans and projects not specifically mentioned in that Part.

Regulation 8 substitutes regulation 9 of the 2010 Regulations, to provide that public bodies must exercise their conservation functions so as to comply with the Habitats Directive and the Birds Directive.

Regulation 8 also inserts regulation 9A, which imposes new duties on public bodies in relation to wild bird habitat, and regulation 9B, which requires nature conservation bodies to review and report on whether the obligations under regulation 9A have been met.

Regulations 10 to 15 simplify the provisions applying to cases where land which is a site of special scientific interest under the Wildlife and Countryside Act 1981 (c.69) is also a European site under the 2010 Regulations.

Regulation 16 provides that management schemes may be established for European marine sites in order to secure compliance with the requirements of the Birds Directive as well as the Habitats Directive.

Regulation 17 removes a restriction on the making of byelaws or orders for the protection of European marine sites.

Regulation 22 inserts regulation 129A of the 2010 Regulations, concerning research and scientific work for the purposes of the Habitats Directive and the Birds Directive.

Regulation 23 requires the Secretary of State to review the operation and effect of the 2010 Regulations and publish a report within five years after these Regulations come into force and within every five years after that.

A transposition note and full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector are available from the International Protected Areas team, Department for Environment, Food and Rural Affairs, Temple Quay House, 2 The Square, Bristol BS1 6EB, and are published with the Explanatory Memorandum alongside the instrument on www.legislation.gov.uk.