STATUTORY INSTRUMENTS

2017 No. 1013

WILDLIFE

The Conservation of Offshore Marine Habitats and Species Regulations 2017

Made - - - -	*30th October 2017*
Laid before Parliament	*31st October 2017*
Coming into force - -	*30th November 2017*

The Secretary of State is designated [F1] for the purposes of section 2(2) of the European Communities Act 1972 [F2] in relation to the environment.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Secretary of State that it is expedient for any reference in these Regulations to an Annex to the Habitats Directive or to the Wild Birds Directive (as defined in these Regulations) to be construed as a reference to that Annex as amended from time to time.

The Secretary of State makes these Regulations in exercise of the powers conferred by section 2(2) [F3] of, and paragraph 1A [F4] of Schedule 2 to, the European Communities Act 1972.

F1 S.I. 2008/301.

F2 1972 c. 68. Section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c. 51), **Part 3**, section 27(1); and the European Union (Amendment) Act 2008 (c. 7), **Part 1** of the Schedule.

F3 In so far as these Regulations deal with matters that are within the devolved competence of Scottish Ministers, the power of the Secretary of State to make regulations in relation to those matters in or as regards Scotland is preserved by section 57(1) of the Scotland Act 1998 (c. 46).

F4 Paragraph 1A was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (c. 51).

PART 1

INTRODUCTORY PROVISIONS

Citation and commencement

1. These Regulations may be cited as the Conservation of Offshore Marine Habitats and Species Regulations 2017 and come into force on 30th November 2017.

Interpretation

2.—(1) In these Regulations—

"the 1994 Regulations" means the Conservation (Natural Habitats, &c.) Regulations 1994 [F5];

"the 2017 Regulations" means the Conservation of Habitats and Species Regulations 2017 [F6];

[[F7]"the United Kingdom territory" means "the United Kingdom (including its internal waters), the territorial sea adjacent and the offshore marine area;**]**

"a British aircraft" means an aircraft registered in the United Kingdom;

"British fishery limits" has the meaning given by the Fishery Limits Act 1976 [F8];

"competent authority" has the meaning given in regulation 5;

"competent authority in Scotland" means a competent authority whose functions are exercisable solely in or as regards Scotland or the Scottish offshore region;

"competent authority in Wales" means a competent authority whose functions are exercisable solely in relation to Wales or the Welsh offshore region;

"DAERA" means Department of Agriculture, Environment and Rural Affairs;

"devolved administrations" means the Scottish Ministers, the Welsh Ministers and, in Northern Ireland, the DAERA;

"Energy Act licence" means a licence which is granted (or is to be granted) under Part 1 of the Energy Act 2008 [F9];

"European offshore marine site" has the meaning given by regulation 18;

"European protected species" means the species of animals listed in Schedule 1;

"European site" has the meaning given by regulation 27;

"functions" includes powers and duties;

"the Habitats Directive" means Council Directive 92/43/EEC[F10] on the conservation of natural habitats and of wild fauna and flora, and any reference to an Annex to that Directive is a reference to that Annex as amended from time to time **[**[F11]under regulation 144 of the 2017 Regulations**]**;

"installation abandonment measures" means any measures taken in connection with the abandonment of—

(a) an offshore installation within the meaning of Part 4 of the Petroleum Act 1998 [F12], or submarine pipeline within the meaning of that Part; or

(b) a carbon storage installation, within the meaning of section 30 of the Energy Act 2008 [F13];

whether or not the measures are taken in pursuance of an abandonment programme, and for this purpose "an abandonment programme" means—

(a) an abandonment programme under Part 4 of the Petroleum Act 1998; and

(b) an abandonment programme under that Part, as it applies by virtue of section 30 of the Energy Act 2008;

"the Joint Committee" means the Joint Nature Conservation Committee [F14];

"management scheme" means—

(a) for the purposes of regulation 22(3)(c), a scheme established under regulation 34 of the 1994 Regulations, regulation 29 of the Conservation (Natural Habitats, &c.) Regulations (Northern Ireland) 1995 [F15] or regulation 38 of the 2017 Regulations; and

(b) for all other purposes, a scheme established under regulation 22(1);

[F16“the national site network” means the network of sites in the United Kingdom’s territory consisting of such sites as—

(a) immediately before exit day formed part of Natura 2000; or

(b) at any time on or after exit day are European sites or European marine sites for the purposes of any of the retained transposing regulations;**]**

“Natura 2000” means the European network of special areas of conservation, and special protection areas under the Wild Birds Directive, provided for by Article 3(1) of the Habitats Directive **[**F17(but see paragraphs (3) and (4))**]**;

“Northern Ireland department” has the same meaning as in the Northern Ireland Act 1998 F18;

“the 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 F19; and

(b) any part of the waters within British fishery limits (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 F20;

“Petroleum Act approval” means an approval of an abandonment programme under section 32 of the Petroleum Act 1998 F21;

“Petroleum Act authorisation” means an authorisation granted pursuant to section 14 of the Petroleum Act 1998 relating to the construction or use of a pipe-line;

“Petroleum Act licence” means a licence which is granted under or has effect as if granted under the Petroleum Act 1998, or a licence which is to be granted under that Act;

“Petroleum or Energy Act consent” means—

(a) a consent granted pursuant to a Petroleum Act licence or an Energy Act licence, including any consent required pursuant to the Offshore Petroleum Productions and Pipe-lines (Assessment of Environmental Effects) Regulations 1999 F22**[**F23or the Offshore Oil and Gas Exploration, Production, Unloading and Storage (Environmental Impact Assessment) Regulations 2020**]**; or

(b) a consent granted pursuant to regulation 4(1) of the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001 F24;

“premises” includes land, buildings, movable structures, ships and vehicles;

“the register” means the register of European offshore marine sites provided for by regulation 19;

[F25“the relevant administration”, except where otherwise specified, means—

(a) in relation to a site within the Scottish offshore region, the Scottish Ministers;

(b) in relation to a site within the Welsh offshore region, the Welsh Ministers; and

(c) in relation to any other site, the Secretary of State;**]**

[F25“the retained transposing regulations”, means—

(a) the Conservation (Natural Habitats, &c.) Regulations 1994;

(b) the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995;

(c) the 2017 Regulations; and

(d) these Regulations;**]**

"Scotland" has the same meaning as in the Scotland Act 1998 [F26];

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

"Scottish offshore region" means so much of the offshore marine area as—

(a) consists of waters within the Scottish zone and the sea bed and subsoil subjacent to those waters;

(b) areas which lie outside the Scottish zone but which are nearer to any point on the baselines from which the breadth of the territorial sea adjacent to Scotland is measured than to any point on the baselines in any other part of the United Kingdom;

"Scottish zone" has the same meaning as in the Scotland Act 1998 [F27];

"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;

"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 Town and Country Planning Act 1990 [F28], Part 10 of the Town and Country Planning (Scotland) Act 1997 [F29] or the Planning Act (Northern Ireland) 2011 [F30];

"territorial sea" means the territorial sea of the United Kingdom;

"third country ship" means a ship which—

(a) is flying the flag of, or is registered in, any State or territory **[**[F31]other than the United Kingdom**]**; and

(b) is not registered in **[**[F32]the United Kingdom**]**;

"Wales" has the same meaning as in the Government of Wales Act 2006 [F33];

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

"the Welsh offshore region" means so much of the offshore marine area as consists of waters within the Welsh Zone and the sea bed and subsoil subjacent to those waters;

"the Welsh Zone" has the same meaning as in the Government of Wales Act 2006 [F34];

"wild bird" means a bird which—

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

(b) is wild;

"the Wild Birds Directive" means Directive 2009/147/EC of the European Parliament and of the Council on the conservation of wild birds [F35] and any reference to an Annex to that Directive is a reference to the Annex as amended from time to time **[**[F36]under regulation 144 of the 2017 Regulations for the purposes specified in paragraph (1) of that regulation**]**;

"wildlife officer" means a person authorised under regulation 58;

"within devolved competence"—

(a) in relation to Scotland is to be construed in accordance with section 54 of the Scotland Act 1998; and

(b) in relation to Wales is to be construed in accordance with section 108 of the Government of Wales Act 2006, or (upon its coming into force) section 108A of that Act [F37].

(2) Unless the context suggests otherwise,—

(a) expressions used in these Regulations and in the Habitats Directive have the same meaning as in that Directive; and

(b) expressions used in these Regulations and in the Wild Birds Directive (but not in the Habitats Directive) have the same meaning as in the Wild Birds Directive.

[[F38](3) For the purposes of these Regulations, and any guidance issued by the Secretary of State, the devolved administrations or the Joint Committee relating to the application of these Regulations, on or after exit day, references to "Natura 2000" (other than in this regulation) are to be construed as references to the national site network.

(4) Paragraph (3) does not affect the interpretation of these Regulations as they had effect, or any guidance as it applied, before exit day.

(5) The Habitats Directive is to be construed for the purposes of these Regulations as if—

(a) any reference to "the European territory of Member States to which the Treaty applies" included a reference to the United Kingdom;

(b) any reference to "Member State" or "Member States" included a reference to the United Kingdom;

(c) any reference to "of Community interest", included, in relation to the United Kingdom, a reference to "of national interest";

(d) in Article 1(d) and (h), the reference to "the Community" were a reference to "the European Union or the United Kingdom"; and

(e) in Article 1(1), the reference to "a site of Community importance designated by the Member States" included, in relation to the United Kingdom, a reference to a site of national importance designated under any of the retained transposing regulations.

(6) The Wild Birds Directive is to be construed for the purposes of these Regulations as if any reference to "the European territory of the Member States to which the Treaty applies" included a reference to the United Kingdom.**]**

F5 S.I. 1994/2716, to which relevant amendments have been made by the Environment Act 1995 (c. 25), **paragraph 233** of Schedule 22, the Land Reform (Scotland) Act 2003 (asp 2), **paragraphs 14** and 16 of Schedule 2; and by S.I. 1996/525, 1996/973, 1997/3055, 1999/1820, 2000/192, 2000/1973 and 2007/1843 and S.S.I. 2000/323 and 2004/475.

F6 S.I. 2017/1012.

F7 Words in reg. 2(1) inserted (31.12.2020) by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **33(2)(a)**; 2020 c. 1, Sch. 5 para. 1(1)

F8 1976 c. 86.

F9 2008 c. 32.

F10 OJ No. L206, 22.7.92, p.7, as last amended by Council Directive 2013/17/EU (OJ No. L 158, 10.6.2013, p.193), and see OJ No. L 80, 21.3.2007, p.15, for the corrigendum amending the original title.

F11 Words in reg. 2(1) inserted (31.12.2020) by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **33(2)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

F12 1998 c. 17.

F13 The definition of "carbon storage installation" in section 30(5) was amended by S.I. 2011/2453.

F14 The Joint Committee was continued in existence by section 31 of the Natural Environment and Rural Communities Act 2006 (c. 16) and reconstituted in accordance with Schedule 4 to that Act.

F15 S.R. (N.I.) 1995 No. 380.