

EXPLANATORY MEMORANDUM TO
THE CONSERVATION OF OFFSHORE MARINE HABITATS AND SPECIES
REGULATIONS 2017

2017 No. 1013

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 The Conservation of Offshore Marine Habitats and Species Regulations 2017 (the “2017 Regulations”) consolidate and update the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007 (the “2007 Regulations”).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The Joint Committee will wish to note that the 2017 Regulations consolidate all the various amendments made to the 2007 Regulations. The 2007 Regulations have been amended 12 times since they were introduced. The Conservation of Habitats and Species Regulations 2010 are also being consolidated by a separate Statutory Instrument (see paragraph 4.1).
- 3.2 The 2017 Regulations also introduce amendments which give Welsh Ministers responsibilities for marine conservation in the Welsh offshore region (see paragraphs 7.3 to 7.5).
- 3.3 It should be noted that there have been two reviews of the implementation of the 2007 Regulations which have concluded that they remain fit for purpose. The EU conducted a fitness check of the Nature Directives and in June 2017 launched an Action Plan to address the shortcomings in implementation.¹ A further review of the regulations would be a complex and time consuming exercise which could only be undertaken when resources are available and would be best considered following our exit from the European Union.

Other matters of interest to the House of Commons

- 3.4 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

¹ <https://www.gov.uk/government/publications/report-of-the-habitats-and-wild-birds-directives-implementation-review>
<https://www.gov.uk/government/publications/progress-of-the-habitats-directive-implementation-review>
http://ec.europa.eu/environment/nature/legislation/fitness_check/action_plan/communication_en.pdf

4. Legislative Context

- 4.1 The 2007 Regulations are the principal means by which the Habitats Directive (92/43/EEC) and the Wild Birds Directive (2009/147/EC) are transposed in the UK offshore marine area (see paragraph 5.12 below, broadly, beyond 12 nautical miles from the coastal baseline and out to 200 nautical miles). The Conservation of Habitats and Species Regulations 2010 are the principal means through which the Habitats and Wild Birds Directives are transposed in the UK inshore area (broadly, the coastal baseline to 12 nautical miles). The Conservation of Habitats and Species Regulations 2010 extend and apply to England and Wales. They also extend and apply to Scotland and Northern Ireland regarding reserved and excepted matters respectively. The Habitats Directive continues to also be implemented, as regards devolved matters, in Scotland by the Conservation (Natural Habitats, &c.) Regulations 1994 and in Northern Ireland by the Conservation (Natural Habitats, etc.) (Northern Ireland) 1995.
- 4.2 A statutory instrument is also being made to consolidate the Conservation of Habitats and Species Regulations 2010. Those regulations, themselves a consolidation of the Conservation (Natural Habitats, &c.) Regulations 1994, have now been amended ten times since enactment. A separate Explanatory Memorandum has been prepared for that instrument.
- 4.3 The Transposition Note to the 2017 Regulations sets out the transposition of the Habitats and Wild Birds Directives in the UK offshore marine area.
- 4.4 The 2017 Regulations consolidate the 2007 Regulations (see paragraph 7.7 below).
- 4.5 The 2017 Regulations also make amendments to the 2007 Regulations in relation to the transfer of certain executive powers to the Welsh Ministers in the Welsh offshore region (see paragraphs 7.3 to 7.5). These amendments are made pursuant to the recommendations of the Silk Commission (the Commission on Devolution in Wales).
- 4.6 The main amendments in the 2017 Regulations relate to the making of provisions for Welsh Ministers to carry out certain functions (which are currently functions of the Secretary of State) in offshore waters adjacent to Wales. This will give Welsh Ministers similar powers in Welsh offshore waters to those currently exercised by Scottish Ministers in Scottish offshore waters. These functions include:
- (a) The selection, notification and designation of special areas of conservation as required by the Habitats Directive.
 - (b) The selection, notification and classification of special protection areas as required by the Wild Birds Directive.
 - (c) The management and conservation of European offshore marine sites (special areas of conservation and special protection areas), including powers to issue guidance to which competent authorities in Wales must have regard.
 - (d) The granting of licences for certain activities that would otherwise constitute an offence in the Welsh offshore region in relation to European protected species.
- 4.7 Although the above functions are being given to the Welsh Ministers, the Secretary of State will retain certain powers in the Welsh offshore region (see paragraph 7.6 below).

5. Extent and Territorial Application

- 5.1 This instrument extends to all of the UK offshore marine area.

5.2 The 2017 Regulations apply to the United Kingdom’s offshore marine area, which means any part of the seabed and subsoil situated in any area designated under section 1(7) of the Continental Shelf Act 1964 (effectively the United Kingdom sector of the continental shelf) and 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).

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation no statement is required.

7. Policy background

What is being done and why

7.1 The objective of the Habitats Directive is to protect biodiversity through conservation of natural habitats and species of wild fauna and flora. The objective of the Wild Birds Directive is to conserve wild bird populations. Both lay down rules for the protection, management and exploitation of such species. The 2017 Regulations fulfil these objectives in the United Kingdom’s offshore marine area by ensuring that activities beyond territorial waters are carried out in a manner that is consistent with each Directive.

7.2 Apart from the United Kingdom’s legal obligations to protect European marine species and habitats under the Directives, the Government is committed to a vision of *‘clean, healthy, safe and productive and biologically diverse oceans and seas’*.

7.3 The 2017 Regulations also transfer certain executive powers to the Welsh Ministers in the Welsh offshore region (broadly, the parts of the UK offshore marine area adjacent to Wales). The Welsh Government already have executive responsibilities for marine conservation, including in relation to both Marine Conservation Zones and European Marine Sites, in the Welsh inshore area. The 2017 Regulations give Welsh Ministers executive responsibilities for marine conservation relating to European Marine Sites in the Welsh offshore region. (The Wales Act 2017 gives Welsh Ministers executive responsibilities for marine conservation relating to Marine Conservation Zones, and marine licensing, in the Welsh offshore region (sections 47 and 46, respectively, not yet in force)). The proposed changes would allow the Welsh Ministers, who are currently the marine planning authority for both the Welsh inshore and offshore areas and the marine licensing authority for the Welsh inshore under the Marine and Coastal Act 2009, to plan for and manage the whole Welsh seas more coherently.

7.4 Recommendation 18 of the “Empowerment and Responsibility: Legislative Powers to Strengthen Wales” report² (Silk II) (published in March 2014) provided that: “The existing executive responsibilities for marine conservation and licensing in the Welsh inshore area should be extended to the Welsh offshore area.” In the same report at paragraph 8.5.1 the evidence quoted from the Welsh Government was that: “The Welsh Ministers already have executive responsibilities for marine conservation, including marine protected sites, and marine licensing in the Welsh inshore area. These responsibilities should be extended to the Welsh offshore area. This would allow the Welsh Ministers, who are the marine planning authority under the Marine

² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/310571/CDW-Wales_Report-final_Full_WEB_310114.pdf

and Coastal Act 2009 for both the Welsh inshore and offshore areas, to plan for and manage the whole of Welsh seas more coherently, including fisheries in the offshore for which the Welsh Ministers are already responsible”.

- 7.5 The UK Government agreed with that recommendation. The UK Government’s St David’s Day devolution package published in the “Powers for a Purpose: Towards a lasting devolution settlement for Wales”³ report in February 2015 included at paragraph 2.4.21 that: “The UK Government agrees that Welsh Ministers’ existing responsibilities for marine conservation and licensing in the Welsh inshore area should be extended to the offshore area. Welsh Ministers are the marine planning authority for both the Welsh inshore and offshore areas and this change would ensure that they are responsible for marine planning, marine conservation and fisheries in the same maritime area”.
- 7.6 The Secretary of State will still retain certain powers and functions in the Welsh offshore region in relation to European Marine Sites, such as the responsibility of granting licences for anything done in the course of carrying out activities which fall within the scope of regulation 55(16)(a) to (h).

Consolidation

- 7.7 It is generally good practice to consolidate regulations after they have been amended three times. The 2007 Regulations have been amended 12 times since they were introduced. Consolidation would make the regulations easier to follow.

8. Consultation outcome

- 8.1 No formal public consultation was undertaken as these Regulations do not introduce new policy or regulatory burden. These 2017 Regulations consolidate changes to the 2007 Regulations and introduce changes in executive responsibility for Welsh offshore waters which have already been subject to public scrutiny.
- 8.2 Informal consultation took place with Her Majesty’s Treasury, Department for Communities and Local Government, Ministry of Defence, Department for Transport, Department for Business, Energy & Industrial Strategy and Defra policy teams with an interest in these regulations. No significant issues were raised.
- 8.3 We have discussed consolidation informally with the Scottish Government, the Welsh Government and the Northern Ireland Executive. None of the administrations raised any issues and are content with the consolidation action.
- 8.4 Stakeholders covering a range of commercial and conservation interests such as the Seabed User and Developer Group, The Crown Estate, National Federation of Fishermen’s Organisations, The Marine Management Organisations, The Association of Inshore Fisheries and Conservation Authorities, The Joint Nature Conservation Committee and Wildlife and Countryside Link have been advised of our intentions. No substantive concerns or issues were raised with some welcoming the intention to consolidate the 2007 Regulations.

³https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/408587/47683_CM9020_ENGLISH.pdf

9. Guidance

- 9.1 Considerable guidance already exists on how to apply the requirements of the 2007 Regulations. No substantive changes to this will be required as there are no changes to policies and procedures. The Joint Nature Conservation Committee plays a key role in the offshore marine area and will provide ongoing guidance and advice to marine stakeholders on conservation matters relating to these regulations.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies over and above that which arises from the 2007 Regulations (as amended).
- 10.2 There is no impact on the public sector.
- 10.3 An Impact Assessment has not been prepared for this instrument. The 2017 Regulations contain no substantive changes to existing policies and procedures. Thus there will be no impact on business, charities or voluntary bodies that does not already arise via the 2007 Regulations (as amended). There may be some minor impact on Government Departments and Agencies which provide guidance on the regulations, and costs may arise from the need to update websites, forms and other documents. This will be well under the threshold needed to trigger an Impact Assessment.

11. Regulating small business

- 11.1 The 2017 Regulations apply to activities that are undertaken by small businesses but has no significant impact over and above that which arises from the 2007 Regulations (as amended).

12. Monitoring & review

- 12.1 The 2007 Regulations are subject to regular review. Defra undertook a domestic review of the Regulations in 2012 and the recommendations resulting from it were successfully implemented, as reported here:
- <https://www.gov.uk/government/publications/report-of-the-habitats-and-wild-birds-directives-implementation-review>
- <https://www.gov.uk/government/publications/progress-of-the-habitats-directive-implementation-review>

13. Contact

- 13.1 Niall Malone or Emma Veryan at the Department for Environment, Food and Rural Affairs Telephone: 020-802-66831 or 020-802-66510 or email: niall.malone@defra.gsi.gov.uk or emma.veryan@defra.gsi.gov.uk can answer any queries regarding the instrument.