
STATUTORY INSTRUMENTS

2007 No. 1842

**The Offshore Marine Conservation
(Natural Habitats, &c.) Regulations 2007**

PART 1

INTRODUCTORY PROVISIONS

Citation and commencement

1. These Regulations may be cited as the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007 and come into force on 21st August 2007.

Interpretation

2.—(1) —In these Regulations—

(a) subject to sub-paragraph (b)—

(i) “the Habitats Directive” means Council Directive [92/43/EEC](#)(1) on the conservation of natural habitats and of wild fauna and flora(2); and

(ii) “the Wild Birds Directive” means Council Directive [79/409/EEC](#)(3) on the conservation of wild birds(4); and

(b) references to any Annex to the Habitats Directive or any Annex to the Wild Birds Directive are references to that Annex as amended from time to time.

(2) In these Regulations—

“the 1994 Regulations” means the Conservation (Natural Habitats, &c.) Regulations 1994(5);

“a British aircraft” means an aircraft registered in the United Kingdom;

“British fishery limits” has the meaning given by the Fishery Limits Act 1976(6);

“competent authority” is to be construed in accordance with regulation [5](#);

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

“the EC Treaty” means the Treaty establishing the European Community(7);

(1) O.J. No. L206, 22.7.92, p 7.

(2) The Habitats Directive was last amended by Council Directive [2006/105/EC](#) of 20 November 2006 adapting Directives [79/409/EEC](#), [92/43/EEC](#), [97/68/EC](#), [2001/80/EC](#) and [2001/81/EC](#) in the field of environment, by reason of the accession of Bulgaria and Romania (O.J. No. L363, 20.12.2006, p. 368; and see O.J. L80, 21.3.2007, p. 15, for the Corrigendum amending the original title).

(3) O.J. No. L103, 25.4.79, p.1.

(4) The Wild Birds Directive was last amended by Council Directive [2006/105/EC](#) (referred to above).

(5) [S.I. 1994/2716](#), to which relevant amendments have been made by the Environment Act [1995 \(c.25\)](#), the Countryside and Rights of Way Act [2000 \(c.37\)](#), the Land Reform (Scotland) Act [2003 \(asp 2\)](#), [S.I. 1996/525](#), [1996/973](#), [1997/3055](#), [1999/1820](#), [2000/192](#), [2000/1973](#) and [2007/1843](#) and [S.I. 2000/323](#), and [2004/475](#).

(6) [1976 c.86](#).

(7) A consolidated version can be found at O.J. No. C321E, 29.12.06.

“European offshore marine site” has the meaning given by regulation [15](#);

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

“European site” has the meaning given by regulation [24](#);

“functions” includes powers and duties;

“management scheme” means—

(a) for the purposes of regulation 19(3)(c), a scheme established under regulation 34 of the 1994 Regulations or regulation 29 of the Conservation (Natural Habitats, &c.) Regulations (Northern Ireland) 1995⁽⁸⁾;

(b) for all other purposes, a scheme established under regulation [19](#)(1);

“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;

“Northern Ireland department” has the same meaning as in the Northern Ireland Act 1998⁽⁹⁾;

“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⁽¹⁰⁾; 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⁽¹¹⁾;

“Petroleum Act approval” means an approval of an abandonment programme under section 32 of the Petroleum Act 1998⁽¹²⁾;

“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 consent” means—

(a) a consent granted pursuant to a Petroleum Act licence, including any consent required pursuant to the Offshore Petroleum Productions and Pipe-lines (Assessment of Environmental Effects) Regulations 1999⁽¹³⁾; or

(b) a consent granted pursuant to regulation 4(1) of the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001⁽¹⁴⁾;

“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;

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

⁽⁸⁾ S.R. (N.I.) 1995 No 380.

⁽⁹⁾ 1998 c.47.

⁽¹⁰⁾ 1964 c.29. Section 1(7) was amended by the Oil and Gas (Enterprise) Act 1982 (c.23) section 37 and Schedule 3, paragraph 1. Areas have been designated under section 1(7) by [S.I. 1987/1265](#), [2000/3062](#) and [2001/3670](#).

⁽¹¹⁾ 2004 c.20. An area has been designated under section 84(4) by [S.I. 2004/2668](#).

⁽¹²⁾ 1998 c.17.

⁽¹³⁾ S.I. 1999/360, amended by [S.I. 2007/933](#).

⁽¹⁴⁾ [S.I. 2001/1754](#), amended by [S.I. 2007/77](#).

“the register” means the register of European offshore marine sites provided for by regulation 16;

“Scotland” has the same meaning as in the Scotland Act 1998⁽¹⁵⁾;

“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;

“third country ship” means a ship which—

- (a) is flying the flag of, or is registered in, any State or territory (other than Gibraltar) which is not a member State; and
- (b) is not registered in a member State;

“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;

“wildlife officer” means a person authorised by the Secretary of State under regulation 52(1) or by a competent authority under regulation 52(2); and

“within devolved competence” is to be construed in accordance with section 54 of the Scotland Act 1998.

(3) Unless the context otherwise requires—

- (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 that Directive.

Application to the Crown

3.—(1) Subject to paragraph (2), these Regulations bind the Crown.

(2) No contravention by the Crown of any provision of these Regulations shall make the Crown criminally liable, but the High Court or in Scotland the Court of Session may, on the application of any person appearing to the Court to have an interest, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) Notwithstanding paragraph (2), the provisions of these Regulations apply to persons in the public service of the Crown as they apply to any other person.

Rights under international law

4.—(1) This regulation applies in relation to—

- (a) a third country ship;
- (b) a warship which is being used by the government of a State other than the United Kingdom (whether or not it is a third country ship); and
- (c) any other ship which is being used by the government of a State other than the United Kingdom for any non-commercial purpose.

(2) Nothing in these Regulations shall be taken to interfere or require interference with the right of freedom of navigation or other rights under rules of international law.

(3) A wildlife officer must not exercise any of the powers set out in regulations 53 and 58 in relation to a ship to which this regulation applies unless—

(15) 1998 c.46.

- (a) in the case of a third country ship (other than a ship which is being used as mentioned in paragraph (1)(b) or (c)), the United Kingdom is entitled under international law to exercise those powers without the consent of the flag state; or
 - (b) the Commissioners have given authority to exercise the powers.
- (4) The Commissioners must not give their authority under paragraph (3)(b) unless the flag state has consented to the United Kingdom exercising those powers (whether generally or in relation to the ship in question).
- (5) In giving their authority under paragraph (3)(b), the Commissioners must impose such conditions or limitations on the exercise of the powers as are necessary to give effect to any conditions or limitations imposed by the flag state.
- (6) In this regulation—
- “the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs;
 - “flag state”, in relation to a ship, means the State whose flag that ship is flying or entitled to fly.

Meaning of “competent authority”

- 5.—(1) For the purposes of these Regulations the expression “competent authority” means—
- (a) any Minister of the Crown, government department, public or statutory undertaker, or public body of any description or person holding a public office;
 - (b) the Scottish Ministers;
 - (c) the Welsh Ministers;
 - (d) any Northern Ireland department; and
 - (e) any person exercising any function of a person or body referred to in sub-paragraphs (a) to (d).
- (2) In paragraph (1) “public office” means—
- (a) an office under Her Majesty;
 - (b) an office created or continued in existence by a public general Act of Parliament; or
 - (c) an office the remuneration in respect of which is paid out of public funds.

Duty of competent authorities

- 6.—(1) In relation to the offshore marine area, any competent authority having functions relevant to marine conservation must exercise those functions so as to secure compliance with the requirements of the Habitats Directive and the Wild Birds Directive.
- (2) Paragraph (1) applies, in particular, to functions under the following enactments—
- (a) the Whaling Industry (Regulation) Act 1934⁽¹⁶⁾;
 - (b) section 34 of the Coast Protection Act 1949⁽¹⁷⁾ (restriction of works detrimental to navigation);
 - (c) the Sea Fish (Conservation) Act 1967⁽¹⁸⁾;
 - (d) the Prevention of Oil Pollution Act 1971⁽¹⁹⁾;
 - (e) the Fishery Limits Act 1976⁽²⁰⁾;

⁽¹⁶⁾ 1934 c.49.

⁽¹⁷⁾ 1949 c.74. Section 34 was amended by section 36(1) and (2) of the Merchant Shipping Act 1998 (c.12).

⁽¹⁸⁾ 1967 c.84.

⁽¹⁹⁾ 1971 c.60.

⁽²⁰⁾ 1976 c.86.

- (f) the Fisheries Act 1981**(21)**;
- (g) Part 2 of the Food and Environment Protection Act 1985**(22)** (deposits in the sea);
- (h) the Radioactive Substances Act 1993**(23)**;
- (i) sections 128 and 129 of the Merchant Shipping Act 1995**(24)** (prevention of pollution from ships and further provision for prevention of pollution from ships);
- (j) the Pollution Prevention and Control Act 1999**(25)**;
- (k) the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996**(26)**;
- (l) the Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation Convention) Regulations 1998**(27)**;
- (m) the Offshore Installations (Emergency Pollution Control) Regulations 2002**(28)**; and
- (n) these Regulations.

(21) [1981 c.29](#).

(22) [1985 c.48](#).

(23) [1993 c.12](#). An Order in Council under section 11 of the Petroleum Act 1998 ([c.17](#)) may make provision for applying the 1993 Act to offshore installations in areas designated under section 1(7) of the Continental Shelf Act 1964 ([c.29](#)).

(24) [1995 c.21](#). Section 128 was amended by sections 12 and 29 of, and paragraph 3(2) of Schedule 6 and paragraph 3(3) of Schedule 7 to, the Merchant Shipping and Maritime Security Act 1997 ([c.28](#)), and by section 2 of the Merchant Shipping (Pollution) Act 2006 ([c.8](#)).

(25) [1999 c.24](#).

(26) [S.I. 1996/2154](#), amended by [S.I. 1997/1910](#), [1999/1957](#), [2000/483](#), [2004/303](#) and [2005/1916](#).

(27) [S.I. 1998/1056](#).

(28) [S.I. 2002/1861](#).