
STATUTORY INSTRUMENTS

2007 No. 1842

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

PART 2

CONSERVATION OF NATURAL HABITATS AND HABITATS OF SPECIES

European offshore marine sites

List of sites eligible for identification as of Community importance

7.—(1) The Secretary of State must transmit to the Commission a list of those sites in the offshore marine area which he regards as eligible for selection as sites of Community importance.

(2) The Secretary of State must select the sites to be included in the list under paragraph (1) only on the basis of the criteria set out in Annex III (Stage 1) to the Habitats Directive and relevant scientific information.

(3) A site may only be included in the list under paragraph (1) if—

- (a) it hosts a natural habitat type listed in Annex I to the Habitats Directive; or
- (b) it hosts a species listed in Annex II to the Habitats Directive which has a natural range including any part of the offshore marine area.

(4) In respect of an aquatic species which ranges over wide areas, a site is only eligible to be selected under paragraph (2) if it appears to the Secretary of State to constitute a clearly identifiable area which is distinct in providing the physical and biological features essential to that species for life and reproduction.

(5) The list transmitted to the Commission under paragraph (1) must—

- (a) in respect of each site indicate which natural habitat types specified in Annex I and species specified in Annex II to the Habitats Directive the site hosts; and
- (b) be accompanied with information on each site including—
 - (i) a chart of the site;
 - (ii) its name, location and extent; and
 - (iii) the data resulting from application of the criteria specified in Annex III (Stage 1) to the Habitats Directive.

(6) The information specified in paragraph (5)(b) must be provided in such format as is established by the Commission.

Notification of a proposal for a site of Community importance

8.—(1) If the Secretary of State proposes to include a site in the list to be transmitted by him under regulation 7, he must give to the Joint Nature Conservation Committee—

- (a) notice of that proposal; and
- (b) an accompanying statement of his reasons for that proposal.

(2) Where the Joint Nature Conservation Committee is given notice of a proposal under paragraph (1), the Committee must give notice of that proposal and provide a copy of the Secretary of State's statement of his reasons for that proposal to—

- (a) each of the devolved administrations;
- (b) any of the following who in its opinion ought to be notified—
 - (i) competent authorities which exercise functions in relation to the site;
 - (ii) competent authorities which exercise functions in relation to a marine area adjacent to the site; and
 - (iii) persons whose activities are likely to be affected by the inclusion of the site in the list;
- (c) such other persons as in its opinion ought to be notified; and
- (d) such other persons as the Secretary of State directs.

(3) A notice under paragraph (2) must specify the date (being not less than 12 weeks from the date of the giving of the notice) by which representations with respect to the proposal may be made to the Joint Nature Conservation Committee.

(4) The Joint Nature Conservation Committee must provide to the Secretary of State a report describing the representations duly made, if any, that it received about the proposal, or where no such representations have been received, stating that fact.

(5) The Secretary of State must consider the report provided by the Joint Nature Conservation Committee under paragraph (4).

(6) The Secretary of State may issue guidance to the Joint Nature Conservation Committee for the purposes of its functions under this regulation and the Committee must have regard to that guidance in discharging any of those functions.

(7) The Secretary of State may vary or revoke a direction under paragraph (2)(d).

Modification of list of sites

9.—(1) Where the Secretary of State considers it appropriate, in the light of the results of the surveillance referred to in Article 11 of the Habitats Directive or otherwise, he must propose to the Commission modifications of the list of sites which has been transmitted under regulation 7.

(2) Before the Secretary of State proposes to the Commission such a modification, he must, if he considers it appropriate, give to the Joint Nature Conservation Committee—

- (a) notice of his intention to propose that modification; and
- (b) an accompanying statement of his reasons for intending to propose it.

(3) Where the Joint Nature Conservation Committee is given notice under paragraph (2), the Committee must give notice of the proposed modification and provide a copy of the Secretary of State's statement of his reasons for that proposed modification to—

- (a) each of the devolved administrations;
- (b) any of the following who in its opinion ought to be notified—
 - (i) competent authorities which exercise functions in relation to the site;
 - (ii) competent authorities which exercise functions in relation to a marine area adjacent to the site; and
 - (iii) persons whose activities are likely to be affected by the inclusion of the site in the list;
- (c) such other persons as in its opinion ought to be notified; and

(d) such other persons as the Secretary of State directs.

(4) A notice under paragraph (3) must specify the date (being not less than 12 weeks from the date of the giving of the notice) by which representations with respect to the proposed modification may be made to the Joint Nature Conservation Committee.

(5) The Joint Nature Conservation Committee must provide to the Secretary of State a report describing the representations duly made, if any, that it received about the proposal, or where no such representations have been received, stating that fact.

(6) The Secretary of State must consider the report provided by the Joint Nature Conservation Committee under paragraph (5).

(7) The Secretary of State may issue guidance to the Joint Nature Conservation Committee for the purposes of its functions under this regulation and the Committee must have regard to that guidance in discharging any of those functions.

(8) The Secretary of State may vary or revoke a direction under paragraph (3)(d).

Consultation as to inclusion of site omitted from the list

10.—(1) This regulation applies where consultation is initiated by the Commission in accordance with Article 5(1) of the Habitats Directive with respect to a site in the offshore marine area hosting a priority natural habitat type or priority species, and—

- (a) the Secretary of State and the Commission agree, within the six-month period mentioned in Article 5(2) of the Habitats Directive, that the site should be selected as a site of Community importance, or
- (b) the Council, acting on a proposal from the Commission in pursuance of Article 5(2) of the Habitats Directive, decides that the site should be so selected.

(2) Where this regulation applies, the site is to be treated for the purposes of these Regulations as having been placed on the list referred to in the third sub-paragraph of Article 4(2) of the Habitats Directive as from the date of the agreement referred to in paragraph (1)(a) or the decision referred to in paragraph (1)(b).

Designation of special areas of conservation

11.—(1) Once a site located in the offshore marine area has been adopted by the Commission as a site of Community importance in accordance with the third sub-paragraph of Article 4(2) of the Habitats Directive, the Secretary of State must designate that site as a special area of conservation as soon as possible and within six years of such adoption at the most.

(2) The Secretary of State must establish priorities for any site which he designates under paragraph (1), in the light of—

- (a) the importance of the site—
 - (i) for the maintenance or restoration at a favourable conservation status of natural habitat types specified in Annex I to the Habitats Directive or species specified in Annex II to that Directive, and
 - (ii) for the coherence of Natura 2000; and
- (b) the threats of degradation or destruction to which the site is exposed.

Classification of sites as special protection areas

12.—(1) The Secretary of State must classify as special protection areas such sites in the offshore marine area as he considers necessary to ensure that the objective specified in paragraph (2) is attained.

(2) The objective referred to in paragraph (1) is that those sites across the United Kingdom's territory which are most suitable in number and size for—

- (a) the conservation of the species listed in Annex I to the Wild Birds Directive which naturally occur in that territory, and
- (b) the conservation of regularly occurring migratory species of birds not listed in Annex I which naturally occur in that territory,

are classified as special protection areas.

(3) The Secretary of State must make his decision as to the sites to be classified under paragraph (1) only on the basis of relevant scientific information and—

- (a) in the case of a site to be classified for the purpose mentioned in paragraph (2)(a), on the basis of the criteria set out in Article 4(1) of the Wild Birds Directive; and
- (b) in the case of a site to be classified for the purpose mentioned in paragraph (2)(b), on the basis of the criteria set out in Article 4(2) of the Wild Birds Directive.

(4) Where a site is classified under paragraph (1), the Secretary of State must provide information on that site to the Commission including—

- (a) a chart of the site;
- (b) its name, location and extent; and
- (c) the data resulting from application of the criteria set out in Article 4(1) or Article 4(2) of the Wild Birds Directive.

(5) The information specified in paragraph (4) must be provided in such format as is established by the Commission.

(6) In this regulation “the United Kingdom's territory” means the United Kingdom (including its internal waters), the territorial sea adjacent to the United Kingdom, and the offshore marine area.

Notification of a proposal to classify a special protection area

13.—(1) If the Secretary of State proposes to classify a site as a special protection area under regulation 12, he must give to the Joint Nature Conservation Committee—

- (a) notice of that proposal; and
- (b) an accompanying statement of his reasons for that proposal.

(2) Where the Joint Nature Conservation Committee is given notice of a proposal under paragraph (1), the Committee must give notice of that proposal and provide a copy of the Secretary of State's statement of his reasons for that proposal to—

- (a) each of the devolved administrations;
- (b) any of the following who in its opinion ought to be notified—
 - (i) competent authorities which exercise functions in relation to the site;
 - (ii) competent authorities which exercise functions in relation to a marine area adjacent to the site; and
 - (iii) persons whose activities are likely to be affected by the classification of the site;
- (c) such other persons as in its opinion ought to be notified; and
- (d) such other persons as the Secretary of State directs.

(3) A notice under paragraph (2) must specify the date (being not less than 12 weeks from the date of the giving of the notice) by which representations with respect to the proposal may be made to the Joint Nature Conservation Committee.

(4) The Joint Nature Conservation Committee must provide to the Secretary of State a report describing the representations duly made, if any, that it received about the proposal, or where no such representations have been received, stating that fact.

(5) The Secretary of State must consider the report provided by the Joint Nature Conservation Committee under paragraph (4).

(6) The Secretary of State may issue guidance to the Joint Nature Conservation Committee for the purposes of its functions under this regulation and the Committee must have regard to that guidance in discharging any of those functions.

(7) The Secretary of State may vary or revoke a direction under paragraph (2)(d).

Hearings

14.—(1) The Secretary of State may give any person the opportunity of appearing before and being heard by, or of providing written representations to, a person appointed by him—

- (a) for the purpose of deciding whether to include a site in the list to be transmitted under regulation 7;
- (b) for the purpose of deciding whether to propose to the Commission a modification under regulation 9 to the list of sites transmitted under regulation 7; or
- (c) for the purpose of deciding whether to classify a site as a special protection area under regulation 12.

(2) Any person given the opportunity under paragraph (1) of appearing before and being heard by a person appointed by the Secretary of State may—

- (a) be represented by another person;
- (b) call persons to give evidence; and
- (c) put questions to any person who gives evidence at the hearing, including any person who gives expert evidence.

(3) The Secretary of State must consider any report of a person appointed by him under paragraph (1).

Meaning of “European offshore marine site” in these Regulations

15. In these Regulations a “European offshore marine site” means any of the following located in the offshore marine area—

- (a) a special area of conservation;
- (b) a site of Community importance which has been placed on the list referred to in the third sub-paragraph of Article 4(2) of the Habitats Directive;
- (c) a site hosting a priority natural habitat type or priority species in respect of which consultation has been initiated under Article 5(1) of the Habitats Directive, during the consultation period or pending a decision of the Council under Article 5(3);
- (d) a site classified as a special protection area under regulation 12; and
- (e) a site which has been proposed to the Commission by the Secretary of State as a site eligible for designation as a special area of conservation for the purposes of meeting the United Kingdom’s obligations under Article 4(1) of the Habitats Directive until such time as—
 - (i) the site is placed on the list of sites of Community importance referred to in the third sub-paragraph of Article 4(2) of the Habitats Directive; or
 - (ii) agreement is reached or a decision is taken pursuant to Article 4(2) of that Directive that the site is not to be placed on that list.

Duty to compile and maintain a register of European offshore marine sites

16.—(1) The Secretary of State must compile and maintain, in such form as he thinks fit, a register of European offshore marine sites.

(2) The Secretary of State must include in the register the following sites located in the offshore marine area—

- (a) special areas of conservation, as soon as they are designated by him;
- (b) sites of Community importance, as soon as they are placed on the list referred to in the third sub-paragraph of Article 4(2) of the Habitats Directive, until such time as they are designated as special areas of conservation;
- (c) any site hosting a priority natural habitat type or priority species in respect of which consultation has been initiated under Article 5(1) of the Habitats Directive, during the consultation period or pending a Council decision under Article 5(3);
- (d) special protection areas as soon as they are classified as such by him; and
- (e) any site which has been proposed to the Commission by the Secretary of State as a site eligible for designation as a special area of conservation for the purposes of meeting the United Kingdom's obligations under Article 4(1) of the Habitats Directive until such time as is mentioned in regulation 15(e).

(3) The register must—

- (a) in relation to each site included in it, provide the site's co-ordinates and a chart delineating its boundaries;
- (b) in relation to a site which is a special area of conservation, specify the natural habitat types listed in Annex I to the Habitats Directive and the species listed in Annex II to that Directive for which the site was designated as a special area of conservation;
- (c) in relation to a site which has been placed on the list referred to in the third sub-paragraph of Article 4(2) of the Habitats Directive, specify the natural habitat types listed in Annex I to the Habitats Directive and the species listed in Annex II to that Directive for which the site was placed on that list;
- (d) in relation to a site in respect of which consultation has been initiated under Article 5(1) of the Habitats Directive, specify the priority natural habitat type and priority species which the Secretary of State considers the site hosts;
- (e) in relation to a site which is a special protection area, specify the bird species for which the site was so classified; and
- (f) in relation to a site which is of the type mentioned in paragraph (2)(e), specify the natural habitat types listed in Annex I to the Habitats Directive and the species listed in Annex II to that Directive for which the site was proposed by the Secretary of State to the Commission.

(4) The Secretary of State may amend any entry in the register.

(5) The Secretary of State must remove the relevant entry—

- (a) if a special area of conservation is declassified by the Commission pursuant to Article 9 of the Habitats Directive; or
- (b) if a site otherwise ceases to fall within any of the categories listed in paragraph (2).

(6) The Secretary of State must keep a copy of the register entries available for public inspection at all reasonable hours and free of charge.

Notification of changes to the register

17.—(1) After including a site in the register, amending an entry in the register or removing an entry from the register, the Secretary of State must give notice of having done so to—

- (a) the Joint Nature Conservation Committee;
- (b) the devolved administrations;
- (c) any of the following which in his opinion ought to be notified—
 - (i) competent authorities which exercise functions in relation to the site which is affected; and
 - (ii) competent authorities which exercise functions in relation to a marine area adjacent to the site which is affected;
- (d) any international organisations who in his opinion ought to be notified; and
- (e) such other persons as in his opinion ought to be notified.

(2) Where a site adjoins the territory of another member State, the Secretary of State must, after including such a site in the register, amending an entry relating to such a site in the register, or removing an entry relating to such a site from the register, give notice of having done so to such authorities of that State as he considers appropriate.

(3) Where the Secretary of State gives notice under paragraph (1) or (2) in respect of the inclusion of a site in the register or the amendment of an entry in the register, the notice must be accompanied by a copy of—

- (a) in the case of a notice of the inclusion of a site in the register, the register entry;
- (b) in the case of a notice of the amendment of an entry in the register, the amended entry.