

STATUTORY INSTRUMENTS

2009 No. 2438

**WILDLIFE
COUNTRYSIDE**

**The Conservation (Natural Habitats, &c.)
(Amendment) (No. 2) Regulations 2009**

Made - - - - 7th September 2009
Laid before Parliament 9th September 2009
Coming into force - - 1st October 2009

The Secretary of State is designated ^{M1} for the purposes of making Regulations under section 2(2) of the European Communities Act 1972 ^{M2} in relation to the environment.

The Secretary of State makes these Regulations in exercise of the powers conferred by that section.

Marginal Citations

- M1** [S.I. 2008/301](#).
M2 [1972 c. 68](#).

PART 1

Introductory provisions

Title, commencement and extent

^{F1}1.

- F1** Regulations revoked in part (1.4.2010) by [The Conservation of Habitats and Species Regulations 2010](#) (S.I. 2010/490), reg. 1(2), [Sch. 7 Pt. 1](#) (with reg. 125)

Interpretation

^{F1}2.

Changes to legislation: There are currently no known outstanding effects for the The Conservation (Natural Habitats, &c.) (Amendment) (No. 2) Regulations 2009. (See end of Document for details)

F1 Regulations revoked in part (1.4.2010) by [The Conservation of Habitats and Species Regulations 2010 \(S.I. 2010/490\)](#), [reg. 1\(2\)](#), [Sch. 7 Pt. 1](#) (with [reg. 125](#))

Amendments to the 1994 Regulations

F13.

F1 Regulations revoked in part (1.4.2010) by [The Conservation of Habitats and Species Regulations 2010 \(S.I. 2010/490\)](#), [reg. 1\(2\)](#), [Sch. 7 Pt. 1](#) (with [reg. 125](#))

PART 2

Amendments relating to the grant of development consents

Amendments to Part 1 of the 1994 Regulations

F14.

F1 Regulations revoked in part (1.4.2010) by [The Conservation of Habitats and Species Regulations 2010 \(S.I. 2010/490\)](#), [reg. 1\(2\)](#), [Sch. 7 Pt. 1](#) (with [reg. 125](#))

Amendments to Part 2 of the 1994 Regulations

F15.

F1 Regulations revoked in part (1.4.2010) by [The Conservation of Habitats and Species Regulations 2010 \(S.I. 2010/490\)](#), [reg. 1\(2\)](#), [Sch. 7 Pt. 1](#) (with [reg. 125](#))

Amendments to Part 4 of the 1994 Regulations

6.—^{F1}(1)

[^{F2}(2) For regulation 68 substitute—

“Interpretation

68.—(1) Regulations 54 to 67 shall be construed—

- (a) in England and Wales, as one with the Town and Country Planning Act 1990; and
- (b) in Scotland, as one with the Town and Country Planning (Scotland) Act 1997 ^{M3}.

(2) In regulations 67A and 67B, the terms “the Commission”, “the Council”, “development”, “development consent” and “the Panel” shall have the meanings given by the Planning Act 2008.”.]

F1 Regulations revoked in part (1.4.2010) by [The Conservation of Habitats and Species Regulations 2010 \(S.I. 2010/490\)](#), [reg. 1\(2\)](#), [Sch. 7 Pt. 1](#) (with [reg. 125](#))

F2 Reg. 6(2) revoked in part (E.W.) (1.4.2010) by [The Conservation of Habitats and Species Regulations 2010 \(S.I. 2010/490\)](#), [reg. 1\(2\)](#), [Sch. 7 Pt. 2](#) (with [reg. 125](#))

Marginal Citations

M3 1997 c. 8.

Amendments to Part 4A (England and Wales) of the 1994 Regulations

^{F17}.

F1 Regulations revoked in part (1.4.2010) by [The Conservation of Habitats and Species Regulations 2010 \(S.I. 2010/490\)](#), reg. 1(2), [Sch. 7 Pt. 1](#) (with reg. 125)

Amendments to Part 4A (Scotland) of the 1994 Regulations

^{F18}.

F1 Regulations revoked in part (1.4.2010) by [The Conservation of Habitats and Species Regulations 2010 \(S.I. 2010/490\)](#), reg. 1(2), [Sch. 7 Pt. 1](#) (with reg. 125)

PART 3

Marine works

Amendments to Part 4 of the 1994 Regulations

^{F19}.

F1 Regulations revoked in part (1.4.2010) by [The Conservation of Habitats and Species Regulations 2010 \(S.I. 2010/490\)](#), reg. 1(2), [Sch. 7 Pt. 1](#) (with reg. 125)

PART 4

Special nature conservation orders

Amendments to Part 2 of the 1994 Regulations

^{F110}.

F1 Regulations revoked in part (1.4.2010) by [The Conservation of Habitats and Species Regulations 2010 \(S.I. 2010/490\)](#), reg. 1(2), [Sch. 7 Pt. 1](#) (with reg. 125)

Amendments to Part 5 of the 1994 Regulations

^{F111}.

F1 Regulations revoked in part (1.4.2010) by [The Conservation of Habitats and Species Regulations 2010 \(S.I. 2010/490\)](#), reg. 1(2), [Sch. 7 Pt. 1](#) (with reg. 125)

Changes to legislation: There are currently no known outstanding effects for the The Conservation (Natural Habitats, &c.) (Amendment) (No. 2) Regulations 2009. (See end of Document for details)

Transitional provision

F112.

<p>F1 Regulations revoked in part (1.4.2010) by The Conservation of Habitats and Species Regulations 2010 (S.I. 2010/490), reg. 1(2), Sch. 7 Pt. 1 (with reg. 125)</p>
--

Department for Environment, Food and Rural
Affairs

Huw Irranca-Davies
Parliamentary under Secretary of State,

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Conservation (Natural Habitats, &c.) Regulations 1994 (“the 1994 Regulations”), which make provision implementing Council Directive 92/43/EEC on the conservation of natural habitats and of wild flora and fauna (“the Habitats Directive”) (OJ No. L206, 22.07.92, p.7).

^{M4}Part 2 makes provision for the adaptation of the planning regime introduced under the Planning Act 2008 for nationally significant infrastructure projects, for the protection of any site protected under the Habitats Directive (a “European site”). In particular, the amendments made by regulation 6 (which extends to Great Britain) will require the effect on a European site to be considered before the grant of development consent. Subject to certain exceptions, a development consent cannot be granted where the integrity of the European site would be adversely affected. New regulation 67B (which extends to Great Britain) requires development consent granted before the date on which a site becomes a European site to be reviewed and in certain circumstances revoked where the integrity of the site would be adversely affected. Regulations 7 and 8 (which respectively extend to England and Wales only and Scotland only) require the competent authority to consider the effect of a National Policy Statement on European sites, before the statement is designated.

^{M5M6}Part 3 (which extends to England and Wales only) makes equivalent provision for the requirement to consider the effect on a European site and for review as respects marine works, including licences under Part 2 of the Food and Environment Protection Act 1985, consents under section 34 of the Coast Protection Act 1949 and approvals for works involved in the construction or modification of a harbour.

Part 4 (which extends to England and Wales only) amends the provisions concerning special nature conservation orders under the Habitats Regulations, to extend the power to control activities causing harm to a European site. Regulation 10 extends this power so that it is no longer limited to controlling land-based activities taking place within the European site and now extends to controlling any activities which are likely to harm a European site, whether those activities take place on the site or not and on land or not.

New regulation 23(1) prevents a person who has received a notice from the Secretary of State from carrying out any operation specified in the special nature conservation order unless certain conditions are met. The offence under regulation 23(3) can now only be committed by a person to whom a notice has been given under regulation 23(1) (as amended).

An impact assessment has not been prepared in relation to the amendments in Part 2 of these Regulations. An impact assessment relating to the Planning Bill (introduced in Parliament on 27th November 2007) can be found on the Department for Communities and Local Government website. Part 2 has no additional impact on business, charities or the public sector.

A transposition note setting out how the amendments transpose the provisions of the Habitats Directive and a full impact assessment of the effect that Parts 3 and 4 of this instrument will have on the costs of business and the voluntary sector is available from the Wildlife, Habitats and Biodiversity Division, Defra, Temple Quay, Bristol BS1 6EB and is annexed to the Explanatory Memorandum which is available along the instrument on the OPSI website.

Changes to legislation:

There are currently no known outstanding effects for the The Conservation (Natural Habitats, &c.) (Amendment) (No. 2) Regulations 2009.