

**2011 No. 625**

**WILDLIFE**

**MARINE MANAGEMENT**

**The Conservation of Habitats and Species (Amendment)  
Regulations 2011**

|                               |                       |
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| <i>Made</i> - - - -           | <i>2nd March 2011</i> |
| <i>Laid before Parliament</i> | <i>8th March 2011</i> |
| <i>Coming into force</i> - -  | <i>6th April 2011</i> |

The Secretary of State is designated<sup>(a)</sup> for the purposes of making Regulations under section 2(2) of the European Communities Act 1972<sup>(b)</sup> in relation to the environment. The Secretary of State makes these Regulations in exercise of the powers conferred by that section.

**Title, commencement, interpretation and extent**

1.—(1) These Regulations may be cited as the Conservation of Habitats and Species (Amendment) Regulations 2011 and come into force on 6th April 2011.

(2) In these Regulations, “the 2010 Regulations” means the Conservation of Habitats and Species Regulations 2010<sup>(c)</sup>.

(3) Except as provided in paragraphs (4) and (5), these Regulations extend to England and Wales only.

(4) This regulation and regulations 2, 3, 6, 8 and, so far as it inserts regulation 107A of the 2010 Regulations, regulation 9 also extend to Scotland.

(5) This regulation and regulations 2 and 3 also extend to Northern Ireland.

**Amendments to the 2010 Regulations**

2. The 2010 Regulations are amended as follows.

**Amendments to regulation 2**

3. In regulation 2 (extent)—

(a) in paragraph (2)—

(i) after sub-paragraph (h), insert—

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(a) S.I. 2008/301.  
(b) 1972 c. 68.  
(c) S.I. 2010/490.

- “(ha) regulation 100 (marine works) in so far as it applies to the granting of a licence under Part 2 of the Food and Environment Protection Act 1985(a);”;
- (ii) in sub-paragraph (i), omit the final “and”; and
- (iii) after sub-paragraph (i), insert—
  - “(ia) regulation 107A, in so far as it applies in relation to the exercise of any power by the Secretary of State, and regulations 102, 103 and 105 in so far as they apply to marine policy statements by virtue of regulation 107A;”;
- (b) in paragraph (3)(a), after “regulations” insert “1 (citation and commencement) and 2 (extent)”; and
- (c) in paragraph (4), for the words “and regulation 132 in so far as it relates to those provisions” substitute “and this regulation and regulations 1 (citation and commencement) and 132 (amendments of legislation) in so far as they have effect in relation to the provisions specified in sub-paragraphs (a) to (c).”.

### **Classification of sites as special protection areas**

4. After regulation 12 (consultation as to inclusion of site omitted from the list) insert—

#### **“Classification of sites as special protection areas**

**12A.**—(1) The appropriate authority must classify as special protection areas such sites in England and Wales as the authority considers necessary to ensure that the objective in paragraph (2) is met.

(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 1 to the new Wild Birds Directive which naturally occur in that territory, and
- (b) the conservation of regularly occurring migratory species of birds not listed in Annex 1 which naturally occur in that territory,

are classified as special protection areas.

(3) The appropriate authority must make a decision as to the sites to be classified for the purpose mentioned in 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 new 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 new Wild Birds Directive.

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

- (a) a map or 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 new Wild Birds Directive.

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

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(a) 1985 c. 48. Part 2 is amended by the Marine and Coastal Access Act 2009 (c. 23), s.112(1) and Schedule 8, paragraphs 2 and 5. These amendments are to be commenced from a date to be appointed by an order made under section 324(3) of the Marine and Coastal Access Act 2009. By virtue of these amendments, Part 2 of the Food and Environment Protection Act 1985 only applies to the Scottish inshore region. See section 322(1) for the definition of the “Scottish inshore region”.

(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**

**12B.**—(1) If the appropriate authority proposes to classify a site as a special protection area under regulation 12A, the authority must give to the appropriate nature conservation body—

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

(2) Where the appropriate nature conservation body is given notice of a proposal under paragraph (1), the body must give notice of that proposal and provide a copy of the appropriate authority’s statement of reasons for that proposal to—

- (a) 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 an area adjacent to the site; and
  - (iii) every owner and occupier of the site;
- (b) such other persons as in its opinion ought to be notified; and
- (c) such other persons as the appropriate authority 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 appropriate nature conservation body.

(4) The appropriate nature conservation body must provide to the appropriate authority 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 appropriate authority must consider the report provided under paragraph (4).

(6) The appropriate authority may issue guidance to the appropriate nature conservation body for the purposes of its functions under this regulation, and the appropriate nature conservation body must have regard to that guidance in discharging any of those functions.

(7) The appropriate authority may vary or revoke a direction under paragraph (2)(c).”.

### **Amendments to regulation 35**

**5.** In regulation 35 (marking of site and advice by nature conservation bodies)—

- (a) in paragraph (1), for “install” substitute “deposit or remove”; and
- (b) for paragraph (2) substitute—

“(2) This power is exercisable subject to the obtaining of any necessary marine licence under Part 4 of the Marine Act or any approval required to be obtained from the appropriate authority<sup>(a)</sup> under article 26(2) of the Marine Licensing (Exempted Activities) Order 2011<sup>(b)</sup> or article 25(2) of the Marine Licensing (Exempted Activities) (Wales) Order 2011<sup>(c)</sup>.”.

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(a) For the purposes of regulation 35, the “appropriate authority” is defined in regulation 3(1) of these Regulations as the Secretary of State in relation to England and the Welsh Ministers in relation to Wales. The person responsible for granting approval under article 26(2) of the Marine Licensing (Exempted Activities) Order 2011 or article 25(2) of the Marine Licensing (Exempted Activities) (Wales) Order 2011 is the Secretary of State and Welsh Ministers respectively. (See definition of “licensing authority” in those regulations).

(b) S.I. 2011/409.

(c) S.I. 2011/559 (W.81).

### **Amendments to regulation 59**

6. In regulation 59 (interpretation of Part 6)—
- (a) in paragraph (a), omit the final “and”; and
  - (b) after paragraph (b) insert—
    - “(c) any reference to—
      - (i) the giving or granting of any consent, permission or other authorisation (except in the heading to any regulation or in any reference to any such heading), or
      - (ii) directing that planning permission is deemed to be granted,is to be taken, in relation to any authorisation which is capable of being varied or modified, to include a reference to the variation or modification of such a consent, permission or authorisation; and
  - (d) the reference in regulation 61(1) to deciding to undertake a plan or project is to be taken to include a reference to deciding to vary any plan or project undertaken or to be undertaken by the competent authority.”.

### **Amendments to regulation 67**

7. In regulation 67 (modifications of regulations 61 to 66 in certain cases)—
- (a) for paragraph (6)(b)(iii) substitute—
    - “(iii) an authorisation of harbour works which are, or are to be, carried out in relation to a fishery harbour in Wales under legislation of a kind mentioned in regulation 100(6)(c);”;
  - (b) in paragraph (6)(c), at the end, for “.” substitute “; or”; and
  - (c) after paragraph (6)(c) insert—
    - “(d) harbour works which—
      - (i) are, or are to be, carried out in relation to a fishery harbour in Wales, and
      - (ii) are authorised by, and are, or are to be, carried out in accordance with, any legislation of a kind mentioned in regulation 100(6)(c).”.

### **Amendments to regulation 100**

8. In regulation 100 (marine works), for paragraphs (5) and (6) substitute—
- “(5) In this regulation, “marine works” means—
    - (a) any activity or proposed activity requiring —
      - (i) a marine licence under Part 4 of the Marine Act;
      - (ii) a licence under Part 2 of the Food and Environment Protection Act 1985(a) (deposits in the sea);
      - (iii) an authorisation under the Aquatic Animal Health (England and Wales) Regulations 2009(b); or
      - (iv) an approval or consent for harbour works under legislation falling within paragraph (6); or
    - (b) harbour works authorised by, and carried out in accordance with, any legislation falling within paragraph (6).

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(a) 1985 c. 48. Part 2 was amended by the Marine and Coastal Access Act 2009 (c. 23), s.112(1) and paragraphs 2,5 and 6 of Schedule 8. By virtue of these amendments, Part 2 of the Food and Environment Protection Act 1985 only applies to the Scottish inshore region. See section 322(1) for the definition of the “Scottish inshore region”.

(b) S.I. 2009/463.

- (6) The legislation referred to in paragraph (5)(a)(iv) and (b) is—
- (a) a local Act;
  - (b) such an Act read together with a notice given and published under section 9 of the Harbours Transfer Act 1862(a) (power to Admiralty to retain authority over ports, etc. where dockyards, etc. are situated); or
  - (c) an order made under section 14 (powers, on application of harbour authorities, or others, to make orders for securing harbour efficiency etc.) or 16 (powers, on application of intending undertakers, or others, to make orders conferring powers for improvement, construction, etc., of harbours) of the Harbours Act 1964(b).
- (7) In paragraph (5)(a)(iv) and (b), “harbour works” means—
- (a) works involved in the construction of a harbour;
  - (b) works involving the making of modifications to an existing harbour;
  - (c) any dredging operation undertaken by or on behalf of a harbour authority within the meaning of the Harbours Act 1964(c); and
  - (d) works involving the deposit of spoil from any such dredging operation.”.

## Marine planning

9. After regulation 107 insert—

### “CHAPTER 9

#### Marine policy statement and marine plans

#### Marine policy statement

**107A.**—(1) Chapter 8 applies—

- (a) in relation to a marine policy statement under Chapter 1 of Part 3 (marine planning) of the Marine Act as it applies in relation to a land use plan, and
- (b) in relation to a policy authority when exercising powers under Part 3 of that Act as it applies in relation to a plan-making authority,

with the modifications specified in paragraphs (2) and (3).

(2) Any reference in Chapter 8 to giving effect to a land use plan, in relation to a marine policy statement, is to be taken to be a reference to the adoption and publication of a marine policy statement in accordance with Schedule 5 to the Marine Act or any amendment of a marine policy statement under section 47 of that Act.

(3) Where Chapter 8 applies by virtue of paragraph (1)—

- (a) in regulation 102(2), after “the appropriate nature conservation body” insert “and the Joint Nature Conservation Committee”;
- (b) regulations 102(5), 103(4) to (7) and 104 do not apply; and
- (c) in regulation 105, for the reference to the appropriate authority substitute a reference to the policy authority.

(4) In this regulation “policy authority” means the Secretary of State or the Welsh Ministers.

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(a) 1862 c. 69. Section 9 was amended by SR & O 1921/1804.  
 (b) 1964 c. 40; sections 14 and 16 were amended by the Transport Act 1981 (c. 56), paragraphs 3 and 14 of Schedule 6 and Schedule 12; the Criminal Justice Act 1982 (c. 48), sections 37 and 46; the Transport and Works Act 1992 (c. 42), paragraphs 1 and 2 of Schedule 3; S.I. 2006/1177; the Planning Act 2008 (c. 29), paragraphs 8, 9 and 10 of Schedule 2; and S.I. 2006/1177. Section 14 was additionally amended by SI 2009/1941. Section 16 was additionally amended by the Marine and Coastal Access Act 2009 (c. 23), paragraphs 1 and 2 of Schedule 21.  
 (c) See the definition of “harbour authority” in section 57(1).

## Marine plan

**107B.**—(1) Chapter 8 applies—

- (a) in relation to a marine plan as it applies in relation to a land use plan, and
- (b) in relation to a marine plan authority when exercising powers under Part 3 of the Marine Act as it applies in relation to a plan-making authority,

with the modifications specified in paragraphs (2) and (3).

(2) Any reference in Chapter 8 to giving effect to a land use plan, in relation to a marine plan, is to be taken to be a reference to the adoption and publication of a marine plan in accordance with Schedule 6 to the Marine Act or any amendment of a marine plan under section 52 of that Act.

(3) Where Chapter 8 applies by virtue of paragraph (1), regulations 102(5), 103(4) to (7) and 104 do not apply.

(4) In this regulation—

- (a) “marine plan” means a marine plan under Chapter 2 of Part 3 of the Marine Act; and
- (b) “marine plan authority” has the meaning given by Part 3 of the Marine Act.”.

*Richard Benyon*

Parliamentary Under Secretary of State

Department for Environment, Food and Rural Affairs

2nd March 2011

## EXPLANATORY NOTE

*(This note is not part of these Regulations)*

These Regulations amend the Conservation of Habitats and Species Regulations 2010 (“the 2010 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”)(**a**). These Regulations also transpose certain aspects of Directive 2009/147/EC on the conservation of wild birds (“the Birds Directive”)(**b**).

These Regulations generally extend to England and Wales only. Regulations 1 to 3, 6, 8 and, so far as it inserts regulation 107A of the 2010 Regulations, regulation 9 also extend to Scotland so far as necessary. Regulations 1 to 3 also extend to Northern Ireland.

Regulation 4 imposes a duty on the Secretary of State and Welsh Ministers to classify sites as special protection areas, to be protected under the Birds Directive.

Regulation 6 clarifies that the requirements of Part 6 of the 2010 Regulations apply in relation to the variation or modification of any authorisation, as well as in relation to the original grant of such an authorisation.

Regulation 8 amends regulation 100 of the 2010 Regulations (marine works) so that it applies in relation to revised categories of marine works. Regulation 100 of the 2010 Regulations requires the likely effect on any site protected under the Habitats Directive (“protected site”) to be considered before the grant of a relevant consent for marine works. It also requires relevant consents for marine works granted before the date on which a site becomes a protected site to be reviewed and, in certain circumstances, revoked where the integrity of the site would be adversely affected by the activity permitted by the consent. A relevant consent now includes the grant of a marine licence under Part 4 of the Marine and Coastal Access Act 2009 (c.23) and an

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(a) OJ No L206, 22.7.1992, p.7, last amended by Council Directive 2006/105/EC (OJ No L 363, 20.12.2006, p.368).

(b) OJ No L 20, 26.1.2010, p.7.

authorisation under the Aquatic Animal Health (England and Wales) Regulations 2009 (S.I. 2009/463).

Regulation 9 requires the likely effect on protected sites to be considered before the adoption and publication of a marine policy statement or a marine plan.

A transposition note and full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Marine Stewardship Team, Department for Environment, Food and Rural Affairs, Nobel House, 17 Smith Square, London SW1P 3JR and is annexed to the Explanatory Memorandum which is available alongside the instrument on [www.legislation.gov.uk](http://www.legislation.gov.uk).

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