

2007 No. 1843

WILDLIFE

COUNTRYSIDE

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

Made - - - - - *22nd June 2007*

Laid before Parliament *3rd July 2007*

Coming into force in accordance with regulation 2

The Secretary of State is a Minister designated(a) for the purposes of making Regulations under section 2(2) of the European Communities Act 1972(b) in relation to measures relating to the conservation of natural habitats and of fauna and flora.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972.

It appears to the Secretary of State that it is expedient for any reference to an Annex to Council Directive 92/43/EEC on the conservation of natural habitats and of wild flora and fauna(c) or to Council Directive 79/409/EEC on the conservation of wild birds(d) to be construed as a reference to that Annex as amended from time to time.

In the exercise of powers conferred upon him by section 2(2)(e) of, and paragraph 1A(f) of Schedule 2 to, the European Communities Act 1972 and by section 307(3) and (5) of the Criminal Justice Act 2003(g), he makes the following Regulations:

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- (a) European Communities (Designation) (No. 4) Order 1992 (S.I. 1992/2870).
(b) 1972 c.68.
(c) Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora 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).
(d) Council Directive 79/409/EEC on the conservation of wild birds 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).
(e) In so far as these Regulations deal with matters that are within the devolved competence of Scottish Ministers (by virtue of section 53 of the Scotland Act 1998 (c.46)), the power of the Secretary of State to make regulations in relation to those matters in or as regards Scotland is preserved by section 57(1) of the Scotland Act 1998 .
(f) Paragraph 1A was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (c.51).
(g) 2003 c.44.

Citation

1. These Regulations may be cited as the Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007.

Commencement

- 2.—(1) Subject to paragraph (2), these Regulations come into force on 21st August 2007.
(2) Paragraph (21) of regulation 5 comes into force on 21st November 2007.

Extent

3.—(1) Except as provided for in this regulation, these Regulations extend to England and Wales only.

(2) Regulations 1, 2 and 4 and this regulation also extend to Scotland so far as necessary.

(3) In regulation 5, paragraphs (2)(a), (2)(d) (except in respect of the definitions “premises” and “sample”), (3) (in respect of the insertion of paragraph (2B) only), (6), (22), (23)(a), (c) and (d), (24)(b), (25) to (27), (29)(c) and (d), (30), (33) to (35), (37) to (39), (41), (42), (44), (45) and (61) also extend to Scotland.

(4) Paragraphs (28), (29)(b), (32), (40), (47), (49) and (51) to (54) of regulation 5 extend to Scotland only.

(5) Regulations 6 and 7 also extend to any place (except Scotland) to which the enactments they amend extend.

Interpretation

4. In these Regulations, “the 1994 Regulations” means the Conservation (Natural Habitats, &c.) Regulations 1994(a).

Amendments of the 1994 Regulations

5.—(1) The 1994 Regulations are amended as follows.

(2) In regulation 2(b) (interpretation and application), in paragraph (1)—

(a) before the definition of “agriculture Minister” insert the following definition—

“ “the 2007 Regulations” means the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007(c);”;

(b) in the definition of “agriculture Minister” omit the words “the Minister of Agriculture, Fisheries and Food or”;

(c) for the definition of “the Habitats Directive”(d) substitute—

“ “the Habitats Directive” has the meaning given by paragraph (2A);”;

(d) in the appropriate places insert the following definitions—

(a) S.I. 1994/2716. The 1994 Regulations make provision for the purpose of implementing, for Great Britain, Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora. In relation to Wales, the functions of the Secretary of State under the 1994 Regulations were transferred to the National Assembly for Wales (with the exception of those under regulations 71 to 78) by article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). By virtue of paragraphs 30 and 32 of Schedule 11 to the Government of Wales Act 2006 (c. 32), the relevant functions were transferred from the National Assembly for Wales to the Welsh Ministers. In relation to Scotland, the functions of the Secretary of State under the 1994 Regulations were, so far as they are exercisable within devolved competence, transferred to the Scottish Ministers by section 53 of the Scotland Act 1998. Relevant amendments to the 1994 Regulations are noted in footnotes below.

(b) The definition of “the Habitats Directive” in regulation 2(1) of the 1994 Regulations was previously amended by regulation 2(2) of the Conservation (Natural Habitats, &c.) (Amendment) Regulations 1997 (S.I. 1997/3055).

(c) S.I. 2007/1842.

(d) Council Directive 92/43/EEC (OJ No. L206, 22.7.92, p.7).

- “British fishery limits” has the meaning given by the Fishery Limits Act 1976(a);”;
- “the EC Treaty” means the Treaty establishing the European Community(b);”;
- “European offshore marine site” means a European offshore marine site within the meaning of regulation 15 (meaning of European offshore marine site) of the 2007 Regulations;”;
- “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(c); 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(d);”;
- “premises” includes land (including buildings), movable structures, vehicles, vessels, aircraft and other means of transport;”;
- “sample” means a sample of blood, tissue or other biological material;”;
- (e) for the definition of “the Wild Birds Directive”(e) substitute—
- “the Wild Birds Directive” has the meaning given by paragraph (2A);”.
- (3) After paragraph (2) of regulation 2 (interpretation and application) insert—
- “(2A) In these Regulations—
- (a) subject to sub-paragraph (b)—
 - (i) “the Habitats Directive” means Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora(f); and
 - (ii) “the Wild Birds Directive” means Council Directive 79/409/EEC on the conservation of wild birds(g);
 - (b) any reference to any Annex to the Habitats Directive is a reference to that Annex as amended from time to time.
- (2B) Any reference to a numbered provision of these Regulations is—
- (a) in relation to England and Wales, to the provision of that number which has effect in England and Wales; and
 - (b) in relation to Scotland, to the provision of that number which has effect in Scotland.”.

(4) In paragraph (5)(b) of regulation 2 (interpretation and application), omit the words from “or, for any purpose” to the end.

(a) 1976 c.86.

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

(c) 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. 2000/3062 and 2001/3670.

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

(e) Council Directive 79/409/EEC (OJ No. L103, 25.4.1979, p.1).

(f) Council Directive 92/43/EEC (OJ No. L206, 22.7.92, p.7). The 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).

(g) Council Directive 79/409/EEC (OJ No. L103, 25.4.1979, p.1). The Directive was last amended by Council Directive 2006/105/EC (referred to above).

(5) In paragraph (2) of regulation 3 (implementation of Directive), omit the words “, the Minister of Agriculture, Fisheries and Food”.

(6) For regulation 4 (nature conservation bodies) substitute the following regulation—

“Nature Conservation bodies

4.—(1) Subject to paragraph (2), in these Regulations “nature conservation body” means Natural England, the Countryside Council for Wales or Scottish Natural Heritage; and references to “the appropriate nature conservation body”, in relation to England, Wales or Scotland shall be construed accordingly.

(2) In Parts IV and IVA of these Regulations, “nature conservation body” also includes the Joint Nature Conservation Committee, and references to “the appropriate nature conservation body” in relation to a European offshore marine site shall be construed as meaning the Joint Nature Conservation Committee.”.

(7) In regulation 5 (relevant authorities in relation to marine areas and European marine sites)—

(a) at the end of sub-paragraph (h) for the full stop substitute “; and”; and

(b) after sub-paragraph (h), add the following sub-paragraph—

“(i) a National Park authority.”.

(8) For regulation 9 (consultation as to inclusion of site omitted from the list) substitute the following regulation—

“Consultation as to inclusion of site omitted from the list

9. If consultation is initiated by the Commission in accordance with Article 5(1) of the Habitats Directive with respect to a site in Great Britain 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,

for the purposes of these Regulations the site is to be treated 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 (a) or the decision referred to in paragraph (b).”.

(9) In regulation 10(a) (meaning of “European site” in the 1994 Regulations)—

(a) in paragraph (1), for sub-paragraph (e) substitute the following sub-paragraph—

“(e) a site in Great Britain which has been proposed to the Commission by a devolved administration or 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 not to place the site on that list.”; and

(b) after paragraph (2) add the following paragraph—

“(3) In this regulation, “a devolved administration” means the Welsh Ministers or the Scottish Ministers.”.

(a) Regulation 10(1)(e) was inserted by regulation 2 of the Conservation (Natural Habitats, &c.) (Amendment) (England) Regulations 2000 (S.I. 2000/192).

(10) In regulation 11(a) (duty to compile and maintain register of European sites), in paragraph (2), for sub-paragraph (e) substitute the following sub-paragraph—

“(e) any site in England or Wales which has been proposed to the Commission by the Welsh Ministers or 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 paragraph (i) or (ii) of regulation 10(1)(e) applies.”.

(11) In regulation 35 (direction to establish or amend management scheme), for paragraph (5) substitute the following paragraph—

“(5) In this regulation “the relevant Minister” means the Secretary of State.”.

(12) After regulation 37 (nature conservation in planning contexts) insert the following regulations—

“Surveillance of conservation status of habitats and species

37A.—(1) The Secretary of State (in relation to England) and the Welsh Ministers (in relation to Wales) shall make arrangements for the surveillance of the conservation status of natural habitats of Community interest and species of Community interest, and in particular priority natural habitat types and priority species.

(2) The Secretary of State shall, from time to time—

- (a) consult the devolved administrations about the arrangements he has made under paragraph (1);
- (b) provide the devolved administrations with such information as he considers appropriate that has been derived from the surveillance arranged by him under paragraph (1); and
- (c) review the arrangements he has made under paragraph (1) and, if he thinks it appropriate, revise those arrangements.

(3) The Welsh Ministers shall, from to time—

- (a) consult the Secretary of State and the other devolved administrations about the arrangements they have made under paragraph (1);
- (b) provide the Secretary of State and the other devolved administrations with such information as they consider appropriate that has been derived from the surveillance arranged by them under paragraph (1); and
- (c) review the arrangements they have made under paragraph (1) and, if they think it appropriate, revise those arrangements.

(4) In this regulation “the devolved administrations” means the Welsh Ministers, the Department of the Environment in Northern Ireland and the Scottish Ministers.

Protection of certain animals and plants from exploitation

37B.—(1) If the Secretary of State considers it necessary, in the light of information derived from surveillance arranged under regulation 37A or otherwise arranged for the purpose of Article 11 of the Habitats Directive, he shall ensure that measures are taken (in England) for the purpose mentioned in paragraph (2).

(2) The purpose referred to in paragraph (1) is to ensure that—

- (a) the taking in the wild in England of specimens of a species listed in Annex V to the Habitats Directive, and
- (b) the exploitation of such specimens in England,

(a) Regulation 11(2)(e) was inserted by regulation 2 of the Conservation (Natural Habitats, &c.) (Amendment) (England) Regulations 2000 (S.I. 2000/192).

are compatible with the maintenance of that species at a favourable conservation status.

(3) Where the Secretary of State considers that measures are necessary under paragraph (1) he shall make arrangements (in England) for surveillance for the purpose of establishing whether the taking in the wild of specimens of the species concerned, and the exploitation of specimens of that species, are compatible with the maintenance of that species at a favourable conservation status.

(4) If the Welsh Ministers consider it necessary, in the light of information derived from surveillance arranged under regulation 37A or otherwise arranged for the purpose of Article 11 of the Habitats Directive, they shall ensure that measures are taken (in Wales) for the purpose mentioned in paragraph (5).

(5) The purpose referred to in paragraph (4) is to ensure that—

- (a) the taking in the wild in Wales of specimens of a species listed in Annex V to the Habitats Directive, and
- (b) the exploitation of such specimens in Wales,

are compatible with the maintenance of that species at a favourable conservation status.

(6) Where the Welsh Ministers consider that measures are necessary under paragraph (4) they shall make arrangements (in Wales) for surveillance for the purpose of establishing whether the taking in the wild of specimens of the species concerned, and the exploitation of specimens of that species, are compatible with the maintenance of that species at a favourable conservation status.

Introduction of new species from ships

37C.—(1) Subject to regulation 37D, it is an offence for any person on board a ship in any relevant part of the coastal sea deliberately to introduce into those waters, other than in accordance with paragraph (3), any live animal or plant of a kind having a natural range that does not include any area in Great Britain.

(2) For the purposes of paragraph (1), “relevant part” means any part where the introduction would give rise to a risk of prejudice to natural habitats within their natural range or a risk of prejudice to wild native flora or fauna (whether in the place of introduction or elsewhere).

(3) An introduction is in accordance with this paragraph if—

- (a) it resulted from a discharge of water carried as ballast and the discharge was necessary for the purpose of protecting the safety of any person or ship; and
- (b) all reasonably practicable steps were taken—
 - (i) to avoid its occurring in an area where it would give rise to a risk of prejudice to natural habitats within their natural range or a risk of prejudice to wild native flora or fauna (whether in the place of introduction or elsewhere); and
 - (ii) to minimise any risk of such prejudice.

(4) In any proceedings for an offence under this regulation, it is for the defendant to show that the introduction in question was in accordance with paragraph (3).

(5) The Secretary of State (in relation to England) and the Welsh Ministers (in relation to Wales) may issue guidance about steps which may be taken to avoid committing an offence under this regulation.

(6) In any proceedings for an offence under this regulation—

- (a) where the offence is alleged to have been committed in England, a court shall have regard to any guidance issued by the Secretary of State under paragraph (5); and
- (b) where the offence is alleged to have been committed in Wales, a court shall have regard to any guidance issued by the Welsh Ministers under paragraph (5).

(7) A person guilty of an offence under this regulation is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment, to a fine.

(8) Regulations 101 and 102(1) apply in relation to an offence under this regulation as if the references in those regulations to an offence under Part III of these Regulations included a reference to an offence under this regulation.

(9) Section 14 of the Wildlife and Countryside Act 1981(a) shall not apply in relation to any act which is an offence under this regulation.

(10) In this regulation—

“the coastal sea” means any part of the sea within the seawards limits of the territorial waters of the United Kingdom adjacent to England or Wales;

“sea” includes any area submerged at mean high water springs and also includes, so far as the tide flows at mean high water springs, an estuary or arm of the sea and the waters of any channel, creek, bay or river; and

“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.

Licensing the introduction of new species

37D.—(1) Regulation 37C does not apply to—

- (a) anything done in England which is done under and in accordance with the terms of a licence granted by the Secretary of State; or
- (b) anything done in Wales which is done under and in accordance with the terms of a licence granted by the Welsh Ministers.

(2) The Secretary of State and the Welsh Ministers must not grant a licence under this regulation unless they are satisfied that the action authorised by the licence will not prejudice natural habitats within their natural range or wild native flora and fauna.

(3) A licence under this regulation—

- (a) may be, to any degree, general or specific;
- (b) may be subject to compliance with any specified conditions;
- (c) may be granted either to persons of a class or to a particular person;
- (d) may be modified or revoked at any time by the Secretary of State (if it was granted by him) or by the Welsh Ministers (if it was granted by them); and
- (e) is valid for the period stated in the licence.

(4) For the purposes of a licence under this regulation the definition of a class of persons may be framed by reference to any circumstances whatever including, in particular, their being authorised by any other person.

(5) The Secretary of State and the Welsh Ministers may charge for a licence under this regulation such reasonable sum as they may determine.

False statements made for obtaining a licence under regulation 37D

37E.—(1) A person commits an offence if, for the purposes of obtaining, whether for himself or another, the grant of a licence under regulation 37D, he—

- (a) makes a statement or representation, or furnishes a document or information, which he knows to be false in a material particular, or

(a) 1981 c. 69. Section 14(5) and (6) of the Wildlife and Countryside Act 1981 were repealed by section 102 of, and Part IV of Schedule 16 to, the Countryside and Rights of Way Act 2000 (c.37).

(b) recklessly makes a statement or representation, or furnishes a document or information, which is false in a material particular.

(2) A person guilty of an offence under this regulation is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale, or to both.

(3) Regulations 101 and 102 of these Regulations apply in relation to an offence under this regulation as if the references in those regulations to an offence under Part III of these Regulations included an offence under this regulation.”.

(13) For regulation 39 (protection of wild animals of European protected species) substitute the following regulation—

“Protection of certain wild animals

39.—(1) A person commits an offence if he—

- (a) deliberately captures, injures or kills any wild animal of a European protected species;
- (b) deliberately disturbs wild animals of any such species in such a way as to be likely significantly to affect—
 - (i) the ability of any significant group of animals of that species to survive, breed, or rear or nurture their young; or
 - (ii) the local distribution or abundance of that species;
- (c) deliberately takes or destroys the eggs of such an animal; or
- (d) damages or destroys a breeding site or resting place of such an animal.

(2) It is an offence for any person—

- (a) to have in his possession or control;
- (b) to transport;
- (c) to sell or exchange; or
- (d) to offer for sale or exchange,

anything to which this paragraph applies.

(3) Paragraph (2) applies to—

- (a) any live or dead animal or part of an animal—
 - (i) which has been taken from the wild; and
 - (ii) which is of a species or subspecies listed in Annex IV(a) to the Habitats Directive; and
- (b) any part of, or anything derived from, such an animal or any such part of an animal.

(4) Paragraphs (1) and (2) apply regardless of the stage of the life of the animal in question.

(5) Subject to paragraph (6), a person shall not be guilty of an offence under paragraph (2) if he shows that the animal or part of the animal in question, or the animal or part of the animal from which the part or the thing in question is derived, was lawfully taken from the wild.

(6) The defence in paragraph (5) does not apply—

- (a) in respect of the offences in paragraph (2)(a) and (b) if—
 - (i) the animal in question is an animal of a European protected species or of the species *Gortyna borelii lunata* (Fisher’s estuarine moth), *Lacerta vivipara pannonica* (viviparous lizard) or *Lycaena dispar* (the large copper butterfly), or the part or thing in question is derived from such an animal; and

- (iii) the animal, part or thing in question was in the defendant's possession, or transported by the defendant, for the purpose of sale or exchange; or
 - (b) in respect of the offences in paragraph (2)(c) and (d), if the animal is an animal of any of the species referred to in sub-paragraph (a), or the part or thing in question is derived from such an animal.
- (7) For the purposes of paragraph (5) an animal, or part of an animal, shall be treated as having been lawfully taken from the wild if—
- (a) it was taken from the wild in the European territory of a member State, being territory to which the EC Treaty applies, without contravention of the law of that member State and before the implementation date; or
 - (b) it was taken from the wild elsewhere.
- (8) A person shall not be guilty of an offence under paragraph (2) if he shows that the animal, or the animal from which the part or thing in question is derived—
- (a) is of a species listed in the second column of Schedule 2A and was from a population occurring in a country or area which is specified in respect of that species in the third column of that Schedule;
 - (b) is of the species *Capra aegagrus* (wild goat) and was not from a naturally occurring population;
 - (c) is of the subspecies *Ovis gmelini musimon* (European mouflon) and was not from a naturally occurring population in Corsica or Sardinia; or
 - (d) is of the species *Coregonus oxyrhynchus* (houting) and either was from Finland or was not from an anadromous population.
- (9) Unless the contrary is shown, in any proceedings for an offence under paragraph (1) the animal in question is to be presumed to have been a wild animal.
- (10) In any proceedings for an offence under paragraph (2), where it is alleged that an animal or a part of an animal was taken from the wild, it is to be presumed, unless the contrary is shown, that that animal or part of an animal was taken from the wild.
- (11) A person guilty of an offence under this regulation is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale, or to both.
- (12) In paragraph (1)(b)(i), “significant” means significant in relation to the objectives of the Habitats Directive.
- (13) In any proceedings in which a person is charged with an offence under sub-paragraph (b) of paragraph (1) by reason of an effect mentioned in paragraph (i) of that sub-paragraph, the court shall have regard to any guidance given by the appropriate nature conservation body as to the criteria for determining whether a group is significant.
- (14) In any proceedings for an offence under paragraph (1), where this paragraph applies the defendant shall not be taken deliberately to have done anything mentioned in sub-paragraph (a), (b) or (c) of that paragraph merely because—
- (a) his actions had the result that he did the thing in question; and
 - (b) he intended those actions and knew that they might have that result.
- (15) Paragraph (14) applies where the defendant shows that—
- (a) the actions in question were for the purpose, and in the course, of sea fishing;
 - (b) he did not intend those actions to have the result in question; and
 - (c) he had taken any steps that could reasonably be taken to ensure compliance with the requirements or conditions of any relevant Community instrument.
- (16) In paragraph (15), “any relevant Community instrument” means any instrument relating to sea fishing which—

- (a) regulates such fishing for the purpose (whether or not the sole purpose) of minimising the extent to which it has a result of the kind referred to in paragraph (14) or the risk that it may have a result of that kind; and
- (b) is adopted by any Community instrument under—
 - (i) Article 37(2) of the EC Treaty; or
 - (ii) Council Regulation (EC) No 2371/2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy^(a) or any instrument adopted thereunder.

(17) In deciding upon the sentence for a person convicted of an offence under paragraph (1)(d), the court shall in particular have regard to whether that person could reasonably have avoided the damage to or destruction of the breeding site or resting place concerned.

(18) For the purposes of any proceedings for an offence under paragraph (2), the common names given in parentheses in paragraphs (6) and (8) shall be disregarded.

(19) In this regulation—

“the implementation date” means—

- (a) where the relevant State became a member State before 10th June 1994, the 10th June 1994; and
 - (b) in any other case, the date on which the relevant State became a member State; and
- “relevant State” means the State in whose territory the animal, or part of it, was taken from the wild.”.

(14) For regulation 40(b) (exceptions from regulation 39) substitute the following regulation—

“Further defence to the offences in regulation 39

40.—(1) A person shall not be guilty of the offence under regulation 39(1) of deliberately capturing a wild animal of a European protected species, or an offence under regulation 39(2)(a) or regulation 39(2)(b), if he shows that the act in question—

- (a) was in relation to an animal that had been disabled otherwise than by his unlawful act, and
- (b) was done solely for one or both of the purposes of—
 - (i) tending it and releasing it when no longer disabled; or
 - (ii) releasing it after it had been tended.

(2) A person shall not be guilty of an offence under regulation 39(1)(a), regulation 39(2)(a) or regulation 39(2)(b) if he shows that the act in question—

- (a) was in relation to an animal that had been seriously disabled otherwise than by his unlawful act and that there was no reasonable chance of its recovering; and
- (b) was done solely for one or both of the purposes of—
 - (i) ending the animal’s life; or
 - (ii) disposing of it (otherwise than by sale or exchange) as soon as practicable after it was dead.

(3) A person shall not be guilty of the offence under regulation 39(1) of deliberately injuring a wild animal of a European protected species if he shows that this was done solely—

- (a) for the purpose of taking a sample by virtue of—
 - (i) section 18C, 18E or 19XA of the 1981 Act^(a);

^(a) O.J. No. L358, 31.12.02, p. 59.

^(b) Regulation 40(7) was amended by article 3 of, and paragraph 18(3) of the Schedule to, the Local Government Reorganisation (Wales) (Consequential Amendments) Order 1996 (S.I. 1996/525).

- (ii) regulation 101A or 101E of these Regulations;
 - (iii) regulation 9(3) or (5) of the 1997 Regulations; or
 - (iv) regulation 56(2) of the 2007 Regulations; or
- (b) for the purpose of taking a sample to be used in evidence in any criminal proceedings in respect of the following offences (wherever the offence was committed)—
- (i) an offence under section 9, 11 or 17 of the 1981 Act or an offence under section 18 of that Act which relates to an offence under section 9 or 11(b);
 - (ii) an offence under regulation 39, 41 or 46 of these Regulations or an offence under regulation 100 of these Regulations which relates to an offence under regulation 39 or 41(c);
 - (iii) an offence under the 1997 Regulations or an offence of attempting to commit such an offence; or
 - (iv) an offence under regulation 39, 41 or 51 of the 2007 Regulations, an offence of attempting to commit an offence under regulation 39 or 41 of those Regulations, or an offence under regulation 64 of those Regulations which relates to an offence under regulation 39 or 41 of those Regulations.
- (4) A person shall not be guilty of an offence under regulation 39(2)(a) or (b) if he shows that the act in question was done solely for one or more of the purposes of—
- (a) investigating whether any of the following offences is being or has been committed (wherever the offence was committed)—
 - (i) an offence under section 9, 11 or 17 of the 1981 Act or an offence under section 18 of that Act which relates to an offence under section 9 or 11;
 - (ii) an offence under regulation 39, 41, or 46 of these Regulations or an offence under regulation 100 of these Regulations which relates to an offence under regulation 39 or 41;
 - (iii) an offence under the 1997 Regulations or an offence of attempting to commit such an offence; or
 - (iv) an offence under regulation 39, 41 or 51 of the 2007 Regulations, an offence of attempting to commit an offence under regulation 39 or 41 of those Regulations, or an offence under regulation 64 of those Regulations which relates to an offence under regulation 39 or 41 of those Regulations;
 - (b) bringing, conducting, or giving evidence in, any criminal proceedings in respect of any such offence; or
 - (c) giving effect to an order under—
 - (i) section 21(6) of the 1981 Act;
 - (ii) regulation 103 of these Regulations; or
 - (iii) regulation 11 of the 1997 Regulations.
- (5) In this regulation—

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- (a) Sections 18C, 18E and 19XA were inserted into the 1981 Act by section 52 of, and paragraphs 1 and 3 of Schedule 5 to, the Natural Environment and Rural Communities Act 2006 (c.14).
 - (b) Section 9(4) of the 1981 Act was amended by section 81(1) of, and paragraph 5(a) of Schedule 12 to, the Countryside and Rights of Way Act 2000 (c.37). Section 9(4A) was inserted by section 81(1) of, and paragraph 5(b) of Schedule 12 to, the Countryside and Rights of Way Act 2000. Section 11(1) of the 1981 Act was amended by section 2(2) of the Wildlife and Countryside (Amendment) Act 1991 (c.39). Section 11(1) was also amended by section 50 of, and paragraphs 1 and 10(1) to (5) of Schedule 6 to, the Nature Conservation (Scotland) Act 2004. Section 11(2) was amended by section 2(3) of the Wildlife and Countryside (Amendment) Act 1991 and by section 50 of, and paragraphs 1 and 10(5) and (6) of Schedule 6 to, the Nature Conservation (Scotland) Act 2004. Section 11(3) was substituted and subsections (3A) to (3E) were inserted by section 50 of, and paragraphs 1 and 10(1) and (6) of Schedule 6 to, the Nature Conservation (Scotland) Act 2004. Finally, section 17 was amended by section 102 of, and Part IV of Schedule 16, to the Countryside and Rights of Way Act 2000.
 - (c) Regulation 39 was substituted in relation to Scotland by regulation 10 of the Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2007 (S.S.I. 2007/80). Regulation 41 was amended in relation to Scotland by regulation 12 of the same Regulations.

“the 1981 Act” means the Wildlife and Countryside Act 1981(a); and

“the 1997 Regulations” means the Control of Trade in Endangered Species (Enforcement) Regulations 1997(b).”.

(15) In regulation 41 (prohibition of certain methods of taking or killing wild animals)—

- (a) in paragraph (1) substitute “capturing” for “taking” in both cases;
- (b) in paragraph (2) substitute “capturing” for “taking” in both cases;
- (c) omit “or” at the end of paragraph (2)(a);
- (d) in paragraph (2)(b) for “below.” substitute “below, or”;
- (e) after paragraph (2)(b) add the following sub-paragraph—
 - “(c) any other means of capturing or killing which is indiscriminate and capable of causing the local disappearance of, or serious disturbance to, a population of any species of animal listed in Schedule 3 to these Regulations or any European protected species of animal.”;
- (f) in paragraph (3) substitute “capturing” for “taking”;
- (g) in paragraph (4) substitute “capturing” for “taking”; and
- (h) in paragraph (6)—
 - (i) after “summary conviction” insert “to imprisonment for a term not exceeding six months or”; and
 - (ii) after “standard scale” insert “, or to both”.

(16) After regulation 41 (prohibition of certain methods of taking or killing wild animals) insert the following regulations—

“Monitoring of incidental capture and killing

41A.—(1) The Secretary of State shall make arrangements to establish a system to monitor—

- (a) the incidental capture of animals of the species listed in Annex IV(a) to the Habitats Directive, and
- (b) the incidental killing of such animals,

which (in either case) takes place in England.

(2) The Secretary of State shall from time to time—

- (a) consult the devolved administrations about the arrangements he has made under paragraph (1);
- (b) provide the devolved administrations with such information as he considers appropriate derived from the monitoring arranged by him under paragraph (1); and
- (c) review the arrangements he has made under paragraph (1) and, if he thinks it appropriate, revise those arrangements.

(3) The Welsh Ministers shall make arrangements to establish a system to monitor—

- (a) the incidental capture of animals of the species listed in Annex IV(a) to the Habitats Directive, and
- (b) the incidental killing of such animals,

which (in either case) takes place in Wales.

(4) The Welsh Ministers shall from time to time—

(a) 1981 c.69.

(b) S.I. 1997/1372. Regulation 8, which contains offences relating to the purchase and sale etc of specimens of certain species of animals and plants, was substituted by regulation 3 of the Control in Trade in Endangered Species (Enforcement) (Amendment) Regulations 2005 (S.I. 2005/1674).

- (a) consult the Secretary of State and the other devolved administrations about the arrangements it has made under paragraph (3);
- (b) provide the Secretary of State and the other devolved administrations with such information as it considers appropriate derived from the monitoring arranged by it under paragraph (3); and
- (c) review the arrangements it has made under paragraph (3) and, if it thinks it appropriate, revise those arrangements.

(5) In this regulation “the devolved administrations” means the Welsh Ministers, the Department of the Environment in Northern Ireland and the Scottish Ministers.

Protection from incidental capture and killing

41B.—(1) If the Secretary of State considers it necessary, in the light of information derived from monitoring arranged under regulation 41A or otherwise arranged for the purpose of Article 12(4) of the Habitats Directive, he shall (in England) make arrangements for further research for, or ensure that conservation measures are taken for, the purpose specified in paragraph (2).

(2) The purpose referred to in paragraph (1) is to ensure that any incidental capture or incidental killing of animals of a species listed in Annex IV(a) to the Habitats Directive which takes place in England does not have a significant negative impact on that species.

(3) If the Welsh Ministers consider it necessary, in the light of information derived from monitoring arranged under regulation 41A or otherwise arranged for the purpose of Article 12(4) of the Habitats Directive, they shall (in Wales) make arrangements for further research for, or ensure that conservation measures are taken for, the purpose specified in paragraph (4).

(4) The purpose referred to in paragraph (3) is to ensure that any incidental capture or incidental killing of animals of a species listed in Annex IV(a) to the Habitats Directive which takes place in Wales does not have a significant negative impact on that species.”.

(17) For regulation 43 (protection of wild plants of European protected species) substitute the following regulation—

“Protection of certain wild plants

43.—(1) It is an offence deliberately to pick, collect, cut, uproot or destroy a wild plant of a European protected species.

(2) It is an offence for any person—

- (a) to have in his possession or control,
- (b) to transport,
- (c) to sell or exchange, or
- (d) to offer for sale or exchange,

anything to which this paragraph applies.

(3) Paragraph (2) applies—

- (a) to any live or dead plant, or part of a plant—
 - (i) which has been taken in the wild; and
 - (ii) which is of a species or subspecies listed in Annex II(b) (other than any bryophyte) or Annex IV(b) to the Habitats Directive; and
- (b) to any part of, or anything derived from, such a plant or such a part of a plant.

(4) Paragraphs (1) and (2) apply regardless of the stage of the biological cycle of the plant in question.

(5) A person shall not be guilty of the offence under paragraph (1) of picking or cutting a wild plant of a European protected species if this was done solely—

- (a) for the purpose of taking a sample by virtue of—
 - (i) section 18C, 18E or 19XA of the 1981 Act^(a);
 - (ii) regulation 101A or 101E of these Regulations;
 - (iii) regulation 9(3) or (5) of the 1997 Regulations; or
 - (iv) regulation 56(2) of the 2007 Regulations; or
- (b) for the purpose of taking a sample to be used in evidence in any criminal proceedings in respect of any of the following offences (wherever the offence was committed)—
 - (i) an offence under section 13 or 17 of the 1981 Act or an offence under section 18 of that Act which relates to an offence under section 13;
 - (ii) an offence under regulation 43 or regulation 46 of these Regulations or an offence under regulation 100 of these Regulations which relates to an offence under regulation 43^(b);
 - (iii) an offence under the 1997 Regulations or an offence of attempting to commit such an offence; or
 - (iv) an offence under regulation 43 or 51 of the 2007 Regulations, an offence of attempting to commit an offence under regulation 43 of those Regulations, or an offence under regulation 64 of those Regulations which relates to an offence under regulation 43 of those Regulations.

(6) A person shall not be guilty of an offence under paragraph (2)(a) or (b), if he shows that the act in question was done solely for one or more of the purposes of—

- (a) investigating whether any of the following offences is being or has been committed (wherever the offence was committed)—
 - (i) an offence under section 13 or 17 of the 1981 Act or an offence under section 18 of that Act which relates to an offence under section 13;
 - (ii) an offence under regulation 43 or regulation 46 of these Regulations or an offence under regulation 100 of these Regulations which relates to an offence under regulation 43;
 - (iii) an offence under the 1997 Regulations or an offence of attempting to commit such an offence; or
 - (iv) an offence under regulation 43 or 51 of the 2007 Regulations, an offence of attempting to commit an offence under regulation 43 of those Regulations, or an offence under regulation 64 of those Regulations which relates to an offence under regulation 43 of those Regulations; or
- (b) bringing, conducting, or giving evidence in, any criminal proceedings in respect of any such offence; or
- (c) giving effect to an order under—
 - (i) section 21(6) of the 1981 Act;
 - (ii) regulation 103 of these Regulations; or
 - (iii) regulation 11 of the 1997 Regulations.

(7) Subject to paragraph (8), a person shall not be guilty of an offence under paragraph (2) if he shows that the plant or part of the plant in question, or the plant or part of the plant from which the part or thing in question is derived, was lawfully taken in the wild.

(a) Sections 18C, 18E and 19XA were inserted into the 1981 Act by section 52 of, and paragraphs 1 and 3 of Schedule 5 to, the Natural Environment and Rural Communities Act 2006 (c.16).
(b) Regulation 43 was substituted in relation to Scotland by regulation 14 of the Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2007 (S.S.I. 2007/80).

- (8) The defence in paragraph (7) does not apply—
- (a) in the case of the offences in paragraph (2)(a) and (b), if—
 - (i) the plant in question is of a European protected species, or the part or thing in question is derived from such a plant; and
 - (ii) the plant, part or thing in question was in the defendant’s possession or control, or transported by the defendant, for the purpose of sale or exchange; or
 - (b) in the case of the offences in paragraph (2)(c) and (d), if the plant in question is of a European protected species, or the part or thing in question is derived from such a plant.
- (9) For the purposes of paragraph (7) a plant, or part of a plant, shall be treated as having been lawfully taken in the wild if—
- (a) it was taken in the wild in the European territory of a member State, being territory to which the EC Treaty applies, without contravention of the law of that member State and before the implementation date; or
 - (b) it was taken in the wild elsewhere.
- (10) Unless the contrary is shown, in any proceedings for an offence under paragraph (1) the plant in question shall be presumed to have been a wild plant.
- (11) In any proceedings for an offence under paragraph (2), where it is alleged that a plant or a part of a plant was taken in the wild, it is to be presumed, unless the contrary is shown, that that plant or part of a plant was taken in the wild.
- (12) A person guilty of an offence under this regulation is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale, or to both.
- (13) In this regulation—
- “the 1981 Act” means the Wildlife and Countryside Act 1981(a);
 - “the 1997 Regulations” means the Control of Trade in Endangered Species (Enforcement) Regulations 1997(b);
 - “the implementation date”—
- (a) where the relevant State became a member State before 10th June 1994, means 10th June 1994; and
 - (b) in any other case, means the date on which the relevant State became a member State; and
- “relevant State” means the State in whose territory the plant, or part of it, was taken in the wild.”.
- (18) In regulation 44 (grant of licences for certain purposes)—
- (a) after paragraph (2), insert the following paragraphs—
 - “(2A) Subject to paragraph (2B), the appropriate authority may grant a licence to permit the taking or the possession or control of certain specimens of any of the species or subspecies listed in Annex II(b) (other than any bryophyte) or Annex IV to the Habitats Directive notwithstanding that the licence is for a purpose not falling within paragraph (2).
 - (2B) The appropriate authority may only grant a licence under paragraph (2A) if it is satisfied that the grant of the licence would be consistent with the restrictions in Article 16(1)(e) of the Habitats Directive (namely “under strictly supervised conditions, on a selective basis and to a limited extent” and “in limited numbers”).

(a) 1981 c.69.

(b) Regulation 8, which contains offences relating to the purchase and sale etc of specimens of certain species of animals and plants, was substituted by regulation 3 of the Control in Trade in Endangered Species (Enforcement) (Amendment) Regulations 2005 (S.I. 2005/1674).

(2C) Regulations 39, 41 and 43 do not apply to anything done under and in accordance with the terms of a licence granted by the appropriate authority under paragraph (2A).”;

- (b) omit “and” at the end of paragraph (4)(a);
- (c) at the end of paragraph (4)(b) for the full stop substitute “; and”; and
- (d) after paragraph (4)(b) add the following sub-paragraph—

“(c) in the case of a licence granted under paragraph (2A), the Secretary of State (in relation to England) or the Welsh Ministers (in relation to Wales).”.

(19) In regulation 45 (licences: supplementary provisions)—

- (a) in paragraph (1) for “A licence” substitute “Subject to the provisions of this regulation, a licence”;
- (b) after paragraph (1) insert the following paragraph—

“(1A) A licence under regulation 44(2A) may only be granted to such persons as are named in the licence.”; and
- (c) after paragraph (4) insert the following paragraph—

“(4A) A licence granted under regulation 44(2A) shall specify—

- (a) the species or subspecies of animal or plant to which the licence relates;
- (b) the maximum number of specimens which the person authorised by the licence may take or have in his possession or under his control, or which particular specimens that person may take or have in his possession or under his control;
- (c) the conditions subject to which the action authorised by the licence may be taken and in particular—
 - (i) the methods, means or arrangements by which specimens may be taken or be in the possession or control of the person authorised by the licence;
 - (ii) when or over what period the action authorised by the licence may be taken; and
 - (iii) where the licence authorises any person to take specimens, the area from which they may be taken.”.

(20) In regulation 46 (false statements made for obtaining licence), in paragraph (2),—

- (a) after “summary conviction” insert “to imprisonment for a term not exceeding six months or”;
- (b) for “4” substitute “5”; and
- (c) after “standard scale” insert “, or to both”.

(21) After regulation 46 (false statements made for obtaining licence) insert the following regulation—

“Offence of breaching licence condition

46A.—(1) It is an offence for any person authorised by virtue of a licence to which this paragraph applies to contravene or fail to comply with any condition which the licence requires him to comply with.

(2) Paragraph (1) applies to a licence granted under regulation 44 on or after 21st August 2007.

(3) A person shall not be guilty of an offence under paragraph (1) if he shows that—

- (a) he took all reasonable precautions and exercised all due diligence to avoid commission of the offence; or
- (b) the commission of the offence was otherwise due to matters beyond his control.

(4) A person guilty of an offence under paragraph (1) is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale, or to both.”.

- (22) In regulation 47 (application of provisions of this Part)—
- (a) in paragraph (1)(a), after “European sites” insert “in Great Britain and European offshore marine sites”;
 - (b) in paragraph (2)(b), after “European site” insert “in Great Britain or European offshore marine site”; and
 - (c) after paragraph (2), add—
 - “(3) Nothing in these Regulations requires an appropriate assessment of any plan or project to be carried out on or in any part of the waters or on or in any part of the seabed or subsoil comprising the offshore marine area, or on or in relation to an offshore marine installation.”.
- (23) In regulation 48 (assessment of implications for European site)—
- (a) in paragraph (1)(a), after “Great Britain” insert “or a European offshore marine site”;
 - (b) at the end of paragraph (2) insert—
 - “or to enable them to determine whether an appropriate assessment is required”;
 - (c) in paragraph (5), after “European site” insert “or European offshore marine site (as the case may be)”;
 - (d) for paragraph (7), substitute—
 - “(7) This regulation does not apply in relation to a site which is—
 - (a) a European site by reason of regulation 10(1)(c); or
 - (b) a European offshore marine site by reason of regulation 15(c) of the 2007 Regulations.”; and
 - (e) after paragraph (7), add the following paragraph—
 - “(8) Where a plan or project requires an appropriate assessment both under this regulation and under the 2007 Regulations, the assessment required by this regulation need not identify those effects of the plan or project that are specifically attributable to that part of it that is to be carried out in Great Britain, provided that an assessment made for the purpose of this regulation and the 2007 Regulations assesses the effects of the plan or project as a whole.”.
- (24) In regulation 49 (considerations of overriding public interest)—
- (a) In paragraph (2), for sub-paragraph (b) substitute the following sub-paragraph—
 - “(b) any other reasons which the competent authority, having due regard to the opinion of the European Commission, considers to be imperative reasons of overriding public interest”; and
 - (b) in paragraph (5) for “a European site” substitute “the site concerned”.
- (25) In regulation 50 (review of existing decisions and consents, &c), in paragraph (1), after “European site” insert “or a European offshore marine site”.
- (26) In regulation 52 (co-ordination where more than one competent authority involved), in sub-paragraphs (a) and (b) of paragraph (3), after “European site” insert “or a European offshore marine site”.
- (27) In regulation 53 (compensatory measures), in paragraph (a), after “European site” insert “or European offshore marine site”.
- (28) In regulation 53A(a) (control of operations requiring consent)—
- (a) in paragraph (1) for “European site” substitute “European sites in Great Britain and European offshore marine sites”; and
 - (b) in paragraph (2), after “European site” insert “or European offshore marine site”.

(a) Regulation 53A was inserted by regulations 3 and 16(b) of the Conservation (Natural Habitats. &c) Amendment (Scotland) Regulations 2004 (S.S.I. 2004/475).

(29) In regulation 54 (grant of planning permission)—

- (a) in paragraph (1) for “European site” substitute “European sites in Great Britain and European offshore marine sites”;
- (b) in paragraph (2) for “European site” substitute “European sites in Great Britain and European offshore marine sites”;
- (c) in paragraph (3), after “European site” insert “or European offshore marine site”; and
- (d) in paragraph (4), after “European site” insert “or European offshore marine site”.

(30) In regulation 56(3) (planning permission: consideration on review), after “European site” insert “or European offshore marine site”.

(31) In regulation 57(6) (effect of orders made on review: England and Wales), after “European site” insert “or European offshore marine site”.

(32) In regulation 58(6) (effect of orders made on review: Scotland), after “European site” insert “or European offshore marine site”.

(33) In regulation 60 (general development orders), in paragraph (1)(a), after “Great Britain” insert “or a European offshore marine site”.

(34) In regulation 62 (general development orders: approval of local planning authority), in paragraph (6)—

- (a) after “In any other case” insert “in which the application has been sent to the appropriate nature conservation body,”; and
- (b) after “European site” insert “or European offshore marine site”.

(35) In regulation 64 (special development orders)—

- (a) in paragraph (2), for “this regulation” substitute “paragraph (1)”;
- (b) after paragraph (2) insert the following paragraph—

“(3) A special development order made on or after 21st August 2007 may not grant planning permission for development which is likely to have a significant effect on a European offshore marine site (either alone or in combination with other plans or projects).”.

(36) After regulation 64 (special development orders) insert the following regulation—

“Local development orders

64A. A local development order made on or after 21st August 2007 may not grant planning permission for development which—

- (a) is likely to have a significant effect on a European site in Great Britain or a European offshore marine site (either alone or in combination with other plans or projects), and
- (b) is not directly connected with or necessary to the management of the site.”.

(37) After regulation 65 (simplified planning zones) insert the following regulation—

“Simplified planning zones and European offshore marine sites

65A. The adoption or approval of a simplified planning zone scheme on or after 21st August 2007 shall not have effect to grant planning permission for development which is likely to have a significant effect on a European offshore marine site (either alone or in combination with other plans or projects).”.

(38) After regulation 66 (enterprise zones) insert the following regulation—

“Enterprise zones and European offshore marine sites

66A. An order designating an enterprise zone, or the approval of a modified scheme, if made or given on or after 21st August 2007, shall not have effect to grant planning

permission for development which is likely to have a significant effect on a European offshore marine site (either alone or in combination with other plans or projects).”.

(39) In regulation 69 (construction or improvement of highways or roads)—

- (a) in paragraph (1) for “European site” substitute “European sites in Great Britain and European offshore marine sites”; and
- (b) in paragraph (2) after “European site” insert “or European offshore marine site”.

(40) In regulation 69A(1)(a) (core and other paths) for “European site” substitute “European sites in Great Britain and European offshore marine sites”.

(41) In regulation 71 (consents under Electricity Act 1989: application of general requirements)—

- (a) in paragraph (1)—
 - (i) for “European site” substitute “European sites in Great Britain and European offshore marine sites”;
 - (ii) in sub-paragraph (a), after “generating station” insert “in Great Britain”;
- (b) in paragraph (2), after “European site” insert “or European offshore marine site”;
- (c) in paragraph (3)(a)—
 - (i) after “European site” insert “in Great Britain”; and
 - (ii) omit “or” where it occurs for the second time;
- (d) in paragraph (3)(b), omit “or”;
- (e) at the end of paragraph (3)(c), for the full stop substitute “, or”;
- (f) after paragraph (3)(c), add the following sub-paragraph—
 - “(d) the works to which the consent relates have been completed before the site became a European offshore marine site.”;
- (g) in paragraph (4), after “European site” insert “or European offshore marine site”; and
- (h) after paragraph (5), add the following paragraph—
 - “(6) In this regulation and in regulations 72, 73 and 74, references to the Electricity Act 1989(b) are to that Act as it had effect on 1st April 2006.”.

(42) In regulation 75 (authorisations under the Pipe-lines Act 1962: application of general requirements)—

- (a) in paragraph (1) for “European site” substitute “European sites in Great Britain and European offshore marine sites”;
- (b) in paragraph (2) after “European site” insert “or European offshore marine site”;
- (c) in paragraph (3)(a)—
 - (i) after “European site” insert “in Great Britain”; and
 - (ii) omit “or” where it occurs for the second time;
- (d) in paragraph (3)(b), omit “or”;
- (e) at the end of paragraph (3)(c), for the full stop substitute “, or”;
- (f) after paragraph (3)(c), add the following sub-paragraph—
 - “(d) the works to which the consent relates have been completed before the site became a European offshore marine site.”; and
- (g) in paragraph (4) after “European site” insert “or European offshore marine site”.

(43) In regulation 79 (orders under the Transport and Works Act 1992: application of general requirements)—

(a) Regulation 69A was inserted by section 99 of, and paragraphs 14 and 16 of Schedule 2 to, the Land Reform (Scotland) Act 2003 (asp 2).
(b) 1989 c.29.

- (a) in paragraph (1), for “European site” substitute “European sites in Great Britain and European offshore marine sites”;
 - (b) in paragraph (2), after “European site” insert “or European offshore marine site”;
 - (c) in paragraph (3), after “European site” insert “or a European offshore marine site”; and
 - (d) in paragraph (4), after “European site” insert “or European offshore marine site”.
- (44) In regulation 83 (authorisations under Part I of the Environmental Protection Act 1990)—
- (a) omit paragraphs (1) and (2);
 - (b) in paragraph (3), for “such authorisation as is mentioned in paragraph (1)” substitute “authorisation under Part I of the Environmental Protection Act 1990”; and
 - (c) in paragraph (5) omit “agreeing to a plan or project, or”.
- (45) In regulation 84 (licences under Part II of the Environmental Protection Act 1990)—
- (a) in paragraph (1)—
 - (i) for “European site” substitute “European sites in Great Britain and European offshore marine sites”,
 - (ii) at the end of sub-paragraph (a) add “, and”,
 - (iii) at the end of sub-paragraph (b) omit “, and”, and
 - (iv) omit sub-paragraph (c);
 - (b) in paragraph (2) after “European site” insert “or European offshore marine site”; and
 - (c) in paragraph (4) after “European site” insert “or European offshore marine site”.
- (46) In regulation 84A(a) (permits under the Pollution Prevention and Control (England and Wales) Regulations 2000) as it has effect in England and Wales—
- (a) in paragraph (1), for “European site” substitute “European sites in Great Britain and European offshore marine sites”;
 - (b) in paragraph (2), after “European site” insert “or European offshore marine site”; and
 - (c) in paragraph (4), after “European site” insert “or European offshore marine site”.
- (47) In regulation 84A(b) (permits under the Pollution Prevention and Control (Scotland) Regulations 2000) as it has effect in Scotland—
- (a) in paragraph (1), for “European site” substitute “European sites in Great Britain and European offshore marine sites”;
 - (b) in paragraph (2), after “European site” insert “or European offshore marine site”; and
 - (c) in paragraph (4), after “European site” insert “or European offshore marine site”.
- (48) After regulation 84A (permits under the Pollution Prevention and Control (England and Wales) Regulations 2000) insert the following regulation—

“Abstraction and works authorised under water legislation

84B.—(1) Regulations 48 and 49 (requirement to consider effect on European sites in Great Britain and European offshore marine sites) apply in relation to the granting of an authorisation by virtue of—

- (a) the granting of a licence under Chapter 2 of Part 2 of the WRA (abstraction and impounding);
- (b) the making of an order under section 27A(c) of the WRA (variation of small quantity threshold);

(a) Regulation 84A (as it has effect in England and Wales) was inserted by regulation 39, and paragraph 37 of Part 2 of Schedule 10 to, the Pollution Prevention and Control (England and Wales) Regulations 2000 (S.I. 2000/1973).

(b) Regulation 84A (as it has effect in Scotland) was inserted by regulation 36 of, and paragraph 12 of Part 2 of Schedule 10 to, the Pollution Prevention and Control (Scotland) Regulations 2000 (S.S.I. 2000/323).

(c) Section 27A of the WRA was inserted by section 6 of the Water Act 2003 (c..37).

- (c) the making of regulations under section 33A(a) of the WRA (power to provide for further exemptions), where those regulations relate to—
 - (i) a prescribed geographical area;
 - (ii) a prescribed source of supply (in the case of an exemption from the restriction on abstraction or the other restrictions imposed by section 24(b) of the WRA); or
 - (iii) prescribed inland waters (in the case of an exemption from the restriction on impounding works);
- (d) any consent given under paragraph (2);
- (e) the making of an order under section 73(c) of the WRA (power to make ordinary and emergency drought orders) which has the effect of authorising—
 - (i) an abstraction or additional abstraction; or
 - (ii) a discharge or additional discharge;
- (f) the granting of a permit under section 79A(d) of that Act (drought permits);
- (g) any consent given under section 166(e) of the WIA (consents for certain discharges under section 165) or section 164(f) of the WRA (consents for certain discharges under section 163); or
- (h) the making of an order under section 167 of the WIA (compulsory works orders) or section 168(g) of the WRA (compulsory works orders).

(2) An exemption conferred by regulations under section 33A of the WRA, other than regulations referred to in paragraph (1)(c), shall not apply in relation to any particular abstraction or impounding works unless the Agency has given consent in writing to the abstraction or impounding works being carried out.

(3) Where, in relation to any plan or project authorised by any means referred to in subparagraphs (a) to (h) of paragraph (1), the competent authority consider that any adverse effects of the plan or project on the integrity of a European site or European offshore marine site would be avoided if the authorisation were subject to conditions, they may grant the authorisation, or cause it to be granted, subject to those conditions.

(4) Where, by virtue of paragraph (1)(g), regulations 48 and 49 apply in relation to the granting of an authorisation by virtue of a consent under section 166 of the WIA or section 164 of the WRA, the section in question shall have effect as if in each case—

- (a) in subsection (3), the words “and, subject to that subsection, where an application for any consent is required to be determined within the period specified in paragraph (a) above and is not so determined, the consent applied for shall be deemed to have been given unconditionally.” were omitted; and
- (b) in paragraph (a) of that subsection, for the words “the period of seven days” there were substituted the words “the period of fourteen days”.

(5) Regulations 50 (requirement to review existing decisions and consents, etc) and 51 (consideration on review) apply to any authorisation mentioned in paragraph (1)(a), (b), (c), (d) or (h).

(a) Section 33A of the WRA was inserted by section 9 of the Water Act 2003 (c.37).
 (b) Section 24 of the WRA was amended by section 120 of, and paragraph 128 of Schedule 22 to, the Environment Act 1995 (c.25) and by section 60 of the Water Act 2003 (c.37).
 (c) Section 73 was amended by section 120 of, and paragraphs 128 and 139(2) and (3) of Schedule 22 to, the Environment Act 1995 (c.25).
 (d) Section 79A was inserted by section 120 of, and paragraph 140 of Schedule 22 to, the Environment Act 1995 (c.25), and amended by sections 64(3) and 101(2) of, and Schedule 9 to, the Water Act 2003 (c.37).
 (e) Section 166 of the WIA was amended by section 120 of, and paragraph 118 of Schedule 22 to, the Environment Act 1995 (c.25).
 (f) Section 164 of the WRA was amended by section 120 of, and paragraph 128 of Schedule 22 to, the Environment Act 1995 (c.25).
 (g) Section 168 of the WRA was amended by section 120 of, and paragraph 128 of Schedule 22, to the Environment Act 1995 (c.25).

(6) Where on the review of any such authorisation the competent authority consider that any adverse effects on the integrity of a European site or European offshore marine site of the carrying out or, as the case may be, the continuation of the activities authorised by it would be avoided by a variation of the authorisation, they may vary it, or cause it to be varied, accordingly.

(7) In this regulation—

“the Agency” means the Environment Agency;

“the WIA” means the Water Industry Act 1991(a); and

“the WRA” means the Water Resources Act 1991(b).”.

(49) In regulation 84B(c) (abstraction and works authorised under water legislation) as it has effect in Scotland—

(a) in paragraph (2), after “European site” insert “or European offshore marine site”; and

(b) in paragraph (4), after “European site” insert “or European offshore marine site”.

(50) In regulation 85 (discharge consents under water pollution legislation)—

(a) in paragraph (1)—

(i) for “European site” substitute “European sites in Great Britain and European offshore marine sites;

(ii) in sub-paragraph (a), for “, or” substitute a full stop; and

(iii) omit sub-paragraph (b);

(b) in paragraph (2), after “European site” insert “or European offshore marine site”; and

(c) for paragraph (4), after “European site” insert “or European offshore marine site”.

(51) In regulation 85B(d) (assessment of implications for European site) as it has effect in Scotland—

(a) in paragraph (1)(a), after “Great Britain” insert “or a European offshore marine site”;

(b) in paragraph (4), after “European site” insert “or the European offshore marine site (as the case may be)”; and

(c) for paragraph (6) substitute—

“(6) This regulation does not apply in relation to a site which is—

(a) a European site by reason of regulation 10(1)(c); or

(b) a European offshore marine site by reason of regulation 15(c) of the 2007 Regulations.”.

(52) In regulation 85C(e) (considerations of overriding public interest) as it has effect in Scotland—

(a) in paragraph (1), after “European site” insert “or the European offshore marine site (as the case may be)”; and

(b) in paragraph (5), for “a European site” substitute “the site concerned”.

(53) In regulation 85D(f) (co-ordination for land use plan prepared by more than one planning authority) as it has effect in Scotland, in sub-paragraphs (a) and (b) of paragraph (3), after “European site”, insert “or a European offshore marine site”.

(a) 1991 c.56.

(b) 1991 c.57.

(c) Regulation 84B (as it has effect in Scotland) was inserted by regulation 20 of the Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2007 (S.S.I. 2007/80).

(d) Regulation 85B (as it has effect in Scotland) was inserted by regulation 22 of and Schedule 1 to the Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2007 (S.S.I. 2007/80).

(e) Regulation 85C (as it has effect in Scotland) was inserted by regulation 22 of and Schedule 1 to the Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2007 (S.S.I. 2007/80).

(f) Regulation 85D (as it has effect in Scotland) was inserted by regulation 22 of and Schedule 1 to the Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2007 (S.S.I. 2007/80).

(54) In regulation 85E(a) as it has effect in Scotland, after “European site” insert “or a European offshore marine site”.

(55) After Part IV (adaptation of planning and other controls), insert Part IVA as set out in Schedule 1.

(56) In regulation 89 (payments under certain agreements offered by authorities), in paragraph (2)(a), omit the words “the Minister of Agriculture, Fisheries and Food and”.

(57) In regulation 101 (enforcement)—

(a) in paragraph (2)—

(i) after “is committing” insert “or has committed”; and

(ii) for “enter any land other than a dwelling-house” substitute “enter any premises other than a dwelling”;

(b) after paragraph (2) insert the following paragraph—

“(2A) A constable may, for the purpose of assisting him in exercising the powers conferred by paragraphs (1)(b) and (c) when he has entered any premises under paragraph (2), take with him—

(a) any other person; and

(b) any equipment or materials.”; and

(c) in paragraph (3)—

(i) for “regulation 39, 41, or 43” substitute “Part III of these Regulations”; and

(ii) omit “(with or without other persons)”.

(58) After regulation 101(b) (enforcement) insert the following regulations—

“Constables’ powers in connection with samples

101A.—(1) A constable who suspects with reasonable cause that a specimen found by him in the exercise of powers conferred by regulation 101 is one in respect of which an offence under Part III of these Regulations is being or has been committed may require a sample to be taken from the specimen.

(2) A constable who suspects with reasonable cause that an offence under Part III of these Regulations is being or has been committed in respect of any specimen (“the relevant specimen”) may require any person to make available for the taking of a sample any other specimen in that person’s possession or control which—

(a) is alleged to be, or

(b) the constable suspects with reasonable cause to be,

a specimen a sample from which will tend to establish the identity or ancestry of the relevant specimen.

(3) Where a sample from a live animal or plant is to be taken pursuant to a requirement under this regulation, any person who has possession or control of the animal or plant must give the person taking the sample such assistance as he may reasonably require for that purpose.

(4) This regulation is subject to regulation 101G (restrictions on taking samples).

(5) In this regulation and regulations 101B, 101E and 101G “specimen” means any animal or plant, or any part of, or anything derived from, an animal or plant.

(a) Regulation 85E (as it has effect in Scotland) was inserted by regulation 22 of and Schedule 1 to the Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2007 (S.S.I. 2007/80).

(b) Regulation 101(2) was amended by article 9 of the Serious Organised Crime and Police Act 2005 (Powers of Arrest) (Consequential Amendments) Order 2005 (S.I. 2005/3389).

Offences in connection with constables' powers to take samples

101B.—(1) A person commits an offence if, without reasonable excuse, he fails—

- (a) to make available any specimen in accordance with a requirement under regulation 101A(2); or
- (b) to give any assistance reasonably required under regulation 101A(3).

(2) A person guilty of an offence under paragraph (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Wildlife inspectors

101C.—(1) In regulations 101D to 101I “wildlife inspector” means a person authorised in writing under this regulation by—

- (a) the Secretary of State (in relation to England); or
- (b) the Welsh Ministers (in relation to Wales).

(2) An authorisation under paragraph (1) is subject to any conditions or limitations specified in it.

Powers of wildlife inspectors to enter premises

101D.—(1) A wildlife inspector may, at any reasonable time, enter and inspect any premises other than a dwelling—

- (a) for the purpose of ascertaining whether an offence under regulation 39, 41, 43 or 46A is being or has been committed; or
- (b) for the purpose of verifying any statement or representation made, or document or information supplied, by an occupier of the premises in connection with an application for, or the holding of, a licence granted under regulation 44.

(2) The power in paragraph (1) to enter and inspect premises includes power to board and inspect a ship within the coastal sea, subject to paragraphs (3) to (6).

(3) Paragraph (4) 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.

(4) A wildlife inspector must not, in the exercise of the power in paragraph (1), board or inspect a ship to which this paragraph applies unless—

- (a) in the case of a third country ship (other than a ship which is being used as mentioned in paragraph (3)(b) or (c)), the United Kingdom is entitled under international law to exercise that power without the consent of the flag state; or
- (b) the Commissioners have given authority to exercise that power.

(5) The Commissioners must not give their authority under paragraph (4)(b) unless the flag state has consented to the United Kingdom exercising that power (whether generally or in relation to the ship in question).

(6) In giving their authority under paragraph (4)(b), the Commissioners must impose such conditions or limitations on the exercise of the power as may be necessary to give effect to any conditions or limitations imposed by the flag state.

(7) A wildlife inspector shall, if required to do so, produce evidence of his authority before entering any premises under this regulation.

(8) A wildlife inspector entering premises under this regulation may take with him a veterinary surgeon if he has reasonable grounds for believing that such a person will be needed for the exercise of powers under regulation 101E.

(9) In this regulation—

“coastal sea” and “ship” have the same meanings as in regulation 37C;

“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 is entitled to fly;

“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.

Wildlife inspectors’ powers for examining specimens and taking samples

101E.—(1) The powers conferred by this regulation are exercisable where a wildlife inspector has entered premises for a purpose mentioned in regulation 101D(1)(a) or (b).

(2) The inspector, or veterinary surgeon accompanying him, may—

- (a) for any such purpose, examine any specimen; and
- (b) subject to paragraph (3) and regulation 101G, take a sample from it.

(3) No sample may be taken under paragraph (2) from a live animal or plant except for the purpose of establishing its ancestry or identity.

(4) The inspector may require an occupier of the premises to give such assistance as is reasonable in the circumstances for the purpose of—

- (a) making an examination under paragraph (2)(a); or
- (b) taking a sample under paragraph (2)(b).

(5) The inspector may take and remove from the premises a specimen which is not a live animal or plant, if there are reasonable grounds for believing that it is evidence of an offence under regulation 39, 41, 43 or 46A.

Offences in connection with wildlife inspectors’ enforcement powers

101F.—(1) A person commits an offence if he—

- (a) intentionally obstructs a wildlife inspector acting in the exercise of powers conferred by regulation 101D or regulation 101E(2) or (5); or
- (b) fails without reasonable excuse to give any assistance reasonably required under regulation 101E(4).

(2) A person commits an offence if, with intent to deceive, he falsely pretends to be a wildlife inspector.

(3) A person guilty of an offence under paragraph (1) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) A person guilty of an offence under paragraph (2) shall be liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or to both; or
- (b) on conviction on indictment, to imprisonment not exceeding two years or to a fine, or to both.

Restrictions on taking samples from live specimens

101G.—(1) No sample may be taken by virtue of regulation 101A or 101E from a live animal except by a veterinary surgeon.

(2) No sample may be taken by virtue of regulation 101A or 101E from a live animal or plant unless the person taking it is satisfied on reasonable grounds that taking it will not cause lasting harm to the specimen.

Codes of practice

101H.—(1) The Secretary of State (in relation to England) and the Welsh Ministers (in relation to Wales) may—

- (a) issue a code of practice in connection with any of the provisions of regulations 101B to 101G; and
- (b) revise or replace such a code.

(2) In discharging any function under regulations 101B to 101G—

- (a) a wildlife inspector authorised by the Secretary of State must have regard to any relevant provision of a code issued by the Secretary of State;
- (b) a wildlife inspector authorised by the Welsh Ministers must have regard to any relevant provision of a code issued by them.

(3) But a wildlife inspector's failure to have regard to any provision of a code does not make him liable to criminal or civil proceedings.

(4) A code—

- (a) is admissible in evidence in any proceedings; and
- (b) must be taken into account by any court in any case in which it appears to the court to be relevant.

Advice and assistance from nature conservation bodies

101I. Natural England (in relation to England) and the Countryside Council for Wales (in relation to Wales) may advise or assist any constable or wildlife inspector in, or in connection with, enforcement action in relation to offences under Part III of these Regulations.”.

(59) In regulation 102 (proceedings for offences: venue, time limits), in paragraph (2), after “Summary proceedings for”—

- (a) insert “any such offence”; and
- (b) omit sub-paragraphs (a) and (b).

(60) After regulation 106 (offences by bodies corporate, &c) insert the following regulation—

“Application of criminal offences to the Crown

106A.—(1) No contravention by the Crown of any provision made by these Regulations makes the Crown criminally liable, but the High Court may, on the application of any person appearing to the Court to have an interest, declare unlawful an act or omission of the Crown which constitutes such a contravention.

(2) Notwithstanding paragraph (1), the provisions of these Regulations apply to persons in the public service of the Crown as they apply to any other person.”.

(61) After regulation 108 (service of notices) add the following regulations—

“Advisory role of the JNCC

109.—(1) The Joint Nature Conservation Committee may provide advice or make representations to any competent authority in relation to—

- (a) any question as to whether that authority is obliged to carry out an appropriate assessment in relation to a European offshore marine site under these Regulations;
- (b) any appropriate assessment on which that authority is obliged to consult the Committee under these Regulations;
- (c) any application made pursuant to regulation 62 of these Regulations and sent to the Committee by that authority pursuant to regulation 62(4); and
- (d) any decision of the Secretary of State in respect of which notice has been served on it by him under regulation 72(2)(b), 76(2)(b) or 80(2)(b) of these Regulations.

(2) The Joint Nature Conservation Committee may undertake, commission or support (whether by financial means or otherwise) such research and scientific work as it considers is required for the purposes of providing advice or making representations under this regulation.

(3) In this regulation and regulation 110 of these Regulations, “research” includes inquiries and investigations.

Advisory role of Natural England, the Countryside Council for Wales and Scottish Natural Heritage

110.—(1) Natural England may—

- (a) provide advice and assistance, or make representations, to any competent authority on any matter which relates to England and is connected with the discharge of the competent authority’s functions under these Regulations; and
- (b) undertake, commission or support (whether by financial means or otherwise) such research and scientific work as it considers is required for the purposes of providing advice or assistance or making representations under sub-paragraph (a).

(2) The Countryside Council for Wales may—

- (a) provide advice and assistance, or make representations, to any competent authority on any matter which relates to Wales and is connected with the discharge of the competent authority’s functions under these Regulations; and
- (b) undertake, commission or support (whether by financial means or otherwise) such research and scientific work as it considers is required for the purposes of providing advice or assistance or making representations under sub-paragraph (a).

(3) Scottish Natural Heritage may—

- (a) provide advice and assistance, or make representations, to any competent authority on any matter which relates to Scotland and is connected with the discharge of the competent authority’s functions under these Regulations; and
- (b) undertake, commission or support (whether by financial means or otherwise) such research and scientific work as it considers is required for the purposes of providing advice or assistance or making representations under sub-paragraph (a).”

(62) After Schedule 2 (European protected species of animals), insert Schedule 2A set out in Schedule 2 to these Regulations.

Amendment of the Conservation of Seals Act 1970

6. In section 10 (power to grant licences) of the Conservation of Seals Act 1970(a)—

(a) after subsection (4) insert the following subsection—

“(4A) A licence under this section does not authorise the use of any method of killing or taking seals which is inconsistent with regulation 41 of the Conservation (Natural Habitats, &c.) Regulations 1994 or any other enactment for the time being in force for the purpose of giving effect to Article 15 of the Habitats Directive (as read subject to any derogation permitted by Article 16 of that Directive).”; and

(b) after subsection (5) add the following subsection—

“(6) In subsection (4A), the Habitats Directive means the Directive of the Council of the European Communities dated 21st May 1992 (No. 92/43/EEC) on the conservation of natural habitats and of wild flora and fauna.”.

Amendment of the Wildlife and Countryside Act 1981

7.—(1) The Wildlife and Countryside Act 1981(b) is amended as follows.

(2) In section 1 (protection of wild birds, their nests and eggs)—

(a) in subsection (3A)—

(i) in paragraph (c), for the words “Council Directive 79/409/EEC on the conservation of wild birds” substitute “the Wild Birds Directive”, and

(ii) in paragraph (d), for the words “the Council Directive referred to in paragraph (c)” substitute “the Wild Birds Directive”; and

(b) in subsection (6A), for the words “the Directive of the Council of the European Communities dated 2nd April 1979 (No 1979/409/EEC) on the conservation of wild birds” substitute “the Wild Birds Directive”.

(3) In section 6 (sale etc of live or dead wild birds, eggs etc), in subsection (5A), for the words “the Directive of the Council of the European Communities dated 2nd April 1979 (No 1979/409/EEC) on the conservation of wild birds” substitute “the Wild Birds Directive”.

(4) In section 9(c) (protection of certain wild animals), for subsection (4) substitute the following subsection—

“(4) Subject to the provisions of this Part, a person is guilty of an offence if intentionally or recklessly—

(a) he damages or destroys any structure or place which any wild animal specified in Schedule 5 uses for shelter or protection;

(b) he disturbs any such animal while it is occupying a structure or place which it uses for shelter or protection; or

(c) he obstructs access to any structure or place which any such animal uses for shelter or protection.”.

(a) 1970 c.30. Section 10 has been amended by section 1(1)(b) and (7) of, and paragraph 10 of Schedule 1 to, the Nature Conservancy Act 1973 (c.54); sections 12 and 73 of, and paragraph 7 of Schedule 7 and Schedule 17 to, the Wildlife and Countryside Act 1981 (c.69); section 132 of, and paragraph 5 of Schedule 9 to, the Environmental Protection Act 1990 (c. 43); sections 76(1) and 102 of, and paragraph 4 of Part 2 of Schedule 10 to, and Part 3 of Schedule 16 to the Countryside and Rights of Way Act 2000 (c.37); section 57 of, and paragraph 3(a) of Schedule 7 to, the Nature Conservation (Scotland) Act 2004 (asp 6); and section 105(1) of, and paragraph 57(1), (2) and (3) of Part 1 of Schedule 11 to, the Natural Environment and Rural Communities Act 2006 (c.14).

(b) 1981 c.69. There are amendments to the Wildlife and Countryside Act 1981 (c.69) that are not relevant for the purposes of these Regulations, though relevant amendment are noted in footnotes below.

(c) Section 9(4) of the Wildlife and Countryside Act 1981 (c.69) was amended by section 81(1) of, and paragraph 5(a) of Schedule 12 to, the Countryside and Rights of Way Act 2000 (c.37). Section 9(4A) was inserted into the Wildlife and Countryside Act 1981 (c. 69) by section 81(1) of, and paragraph 5(b) of Schedule 12 to, the Countryside and Rights of Way Act 2000 (c.37).

(5) In section 16 (power to grant licences), in subsection (9A), for the words “the Directive of the Council of the European Communities dated 2nd April 1979 (No 1979/409/EEC) on the conservation of wild birds” substitute “the Wild Birds Directive”.

(6) In section 27 (interpretation of Part I), before the definition of “wild plant” insert the following definition—

““the Wild Birds Directive” means Council Directive 79/409/EEC on the conservation of wild birds(a);”.

(7) In Schedule 5(b) (animals which are protected)—

- (a) after each of “Butterfly, Large Blue”, “Cat, Wild”, “Dormouse”, “Lizard, Sand”, “Otter, Common”, “Snake, Smooth”, “Sturgeon”, and “Toad, Natterjack”, insert “(in respect of section 9(4)(b) and (c) and (5) only)”;
- (b) after “Bats, Horseshoe (all species)” insert “but in respect of section 9(4)(b) and (c) and (5) only”;
- (c) after “Bats, Typical (all species)” insert “but in respect of section 9(4)(b) and (c) and (5) only”;
- (d) for “Newt, Great Crested (otherwise known as Warty newt)” substitute “Newt, Great Crested or Warty (in respect of section 9(4)(b) and (c) and (5) only)”;
- (e) omit “Turtles, Marine (all species)” and “Dermochelyidae and Cheloniidae”;
- (f) after “Whales (all species)” insert “but in respect of section 9(4A) and (5) only”;
- (g) omit any entries relating to dolphins or porpoises; and
- (h) add at the appropriate place the following entries—

“Dolphins (all species but in respect of section 9(4A) and (5) only)”	Cetacea”
“Porpoises (all species but in respect of section 9(5) only)”	Cetacea”
“Turtle, Flatback”	Natator depressus”
“Turtle, Green Sea (in respect of section 9(4)(b) and (c) and (5) only)”	Chelonia mydas”
“Turtle, Hawksbill (in respect of section 9(4)(b) and (c) and (5) only)”	Eretmochelys imbricate”
“Turtle, Kemp’s Ridley Sea (in respect of section 9(4)(b) and (c) and (5) only)”	Lepidochelys kempii”
“Turtle, Leatherback Sea (in respect of section 9(4)(b) and (c) and (5) only)”	Dermochelys coriacea”
“Turtle, Loggerhead Sea (in respect of section 9(4)(b) and (c) and (5) only)”	Caretta caretta”
“Turtle, Olive Ridley”	Lepidochelys olivacea”.

(8) In Schedule 8(c) (plants which are protected)—

- (a) after “Dock, Shore” insert “(in respect of section 13(2) only)”;
- (b) after “Fern, Killarney” insert “(in respect of section 13(2) only)”;
- (c) after “Gentian, Early” insert “(in respect of section 13(2) only)”;

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- (a) Council Directive 79/409/EEC (OJ No. L103, 25.4.1979, p.1). The 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).
 - (b) The entries relating to the wild cat, dolphins (all species), the dormouse, porpoises (all species) and marine turtles (all species) were inserted by article 2 of the Wildlife and Countryside Act 1981 (Variation of Schedules) Order 1988, S.I. 1988/288. The entry relating to the sturgeon was inserted by article 2 of the Wildlife and Countryside Act 1981 (Variation of Schedules 5 and 8) Order 1992 (S.I. 1992/2350).
 - (c) The entry relating to the creeping marshwort was inserted by article 3 of the Wildlife and Countryside Act 1981 (Variation of Schedules) Order 1988 (S.I. 1988/288). The entries relating to the shore dock, the early gentian, the slender naiad, the floating water plantain and the marsh saxifrage were inserted by article 3 of the Wildlife and Countryside Act 1981 (Variation of Schedules 5 and 8) Order 1992 (S.I. 1992/2350).

- (d) after “Lady’s-slipper” insert “(in respect of section 13(2) only)”;
- (e) after “Marshwort, Creeping” insert “(in respect of section 13(2) only)”;
- (f) after “Naiad, Slender” insert “(in respect of section 13(2) only)”;
- (g) after “Orchid, Fen” insert “(in respect of section 13(2) only)”;
- (h) after “Plantain, Floating Water” insert “(in respect of section 13(2) only)”;
- (i) after “Saxifrage, Marsh” insert “(in respect of section 13(2) only)”.

Amendment of the Countryside and Rights of Way Act 2000

8. Omit sub-paragraph (a) of paragraph 5 of Schedule 12 to the Countryside and Rights of Way Act 2000(a).

Transitional provisions

9.—(1) In relation to any offence alleged to have been committed under regulation 39(2)(a) of the 1994 Regulations before 21st November 2007, it shall be a defence for any person to show—

- (a) that an application for a licence under regulation 44 of the 1994 Regulations had been made by him (or on his behalf) to the appropriate authority before that date to authorise the possession or control of the animal, part of an animal or other thing in question;
- (b) that the application had not been refused by the appropriate authority to whom the application had been made; and
- (c) that—
 - (i) the animal in question, or the animal from which the part or the thing in question is derived, had not been taken or killed, or had been lawfully taken or killed, before 21st August 2007; or
 - (ii) the animal, part of an animal or other thing in question had been lawfully sold (whether to him or to any other person) before 21st August 2007.

(2) In relation to any offence alleged to have been committed under regulation 43(2)(a) of the 1994 Regulations before 21st November 2007, it shall be a defence for any person to show—

- (a) that an application for a licence under regulation 44 of the 1994 Regulations had been made by him (or on his behalf) to the appropriate authority before that date to authorise the possession or control of the plant, part of a plant or other thing in question; and
- (b) that the application had not been refused by the appropriate authority to whom the application had been made; and
- (c) that the plant, part of a plant or other thing in question had been lawfully sold (whether to him or to any other person) before 21st August 2007.

(3) In this regulation—

“appropriate authority” means—

- (a) where the offence is alleged to have been committed in England, the Secretary of State or Natural England; or
- (b) where the offence is alleged to have been committed in Wales, the Welsh Ministers or the Countryside Council for Wales; and

“lawfully” means without any contravention of the 1994 Regulations or Part 1 of the Wildlife and Countryside Act 1981.

(a) 2000 c.37.

22nd June 2007

Barry Gardiner
Parliamentary Under Secretary of State,
Department for Environment, Food and Rural Affairs

SCHEDULE 1

Regulation 5(55)

Part IVA of the 1994 Regulations

“PART IVA

APPROPRIATE ASSESSMENTS FOR LAND USE PLANS FOR ENGLAND AND WALES

Interpretation

85A.—(1) This Part extends to England and Wales only.

(2) In this Part—

“the 1990 Act” means the Town and Country Planning Act 1990**(a)**;

“the 1999 Act” means the Greater London Authority Act 1999**(b)**;

“the 2004 Planning Act” means the Planning and Compulsory Purchase Act 2004**(c)**;

“the 2005 Order” means the Planning and Compulsory Purchase Act 2004 (Commencement No.3 and Consequential, Transitional and Saving Provisions) (Wales) Order 2005**(d)**;

“land use plan” means—

- (a) the regional spatial strategy under Part 1 (regional functions) of the 2004 Planning Act;
- (b) the spatial development strategy under section 334 (the spatial development strategy) of the 1999 Act;
- (c) a local development document as provided for in Part 2 (local development) of the 2004 Planning Act other than a statement of community involvement under section 18 (statement of community involvement) of that Act;
- (d) a local development plan as provided for in Part 6 (Wales) of the 2004 Planning Act;

(a) 1990 c.8.

(b) 1999 c.29.

(c) 2004 c.5.

(d) S.I. 2005/1229 (W.87) (C.56) has been amended. See, the Planning and Compulsory Purchase Act 2004 (Commencement No. 4 and Consequential, Transitional and Savings Provisions) (Wales) Order 2005 (S.I. 2005/2722) (W.193) (C.110) and the Planning and Compulsory Purchase Act 2004 (Commencement No.4 and Consequential, Transitional and Savings Provisions) (Wales) (Amendment) Order 2006 (S.I. 2006/842) (W.77).

- (e) the Wales Spatial Plan under section 60 (Wales Spatial Plan) of the 2004 Planning Act;
- (f) an alteration or replacement of a structure plan, unitary development plan, local plan, minerals local plan, or waste local plan under Part 2 (development plans) of the 1990 Act^(a) to the extent permitted by Schedule 8 (transitional provisions) to the 2004 Planning Act; or
- (g) a unitary development plan as provided for in Part 2 of the 1990 Act to the extent permitted by section 122(3) (regulations and orders) of the 2004 Planning Act and article 4 of the 2005 Order;

“plan-making authority” means—

- (a) a regional planning body recognised by the Secretary of State under section 2(1) (regional planning bodies) of the 2004 Planning Act;
- (b) the Mayor of London when exercising powers under section 341(1) or (2) (alteration or replacement) of the 1999 Act;
- (c) an authority which, by virtue of Part 1 (planning authorities) of the 1990 Act or an order under section 29(2) (joint committees) of the 2004 Planning Act, is a local planning authority;
- (d) the Secretary of State when exercising powers under—
 - (i) section 21 (intervention by Secretary of State) or section 27 (Secretary of State’s default power) of the 2004 Planning Act; or
 - (ii) section 19(1) (approval of a unitary development plan by the Secretary of State), section 35A(4) (calling in of proposal for approval by the Secretary of State) or section 45(1) (approval of proposals by the Secretary of State) of the 1990 Act^(b) to the extent permitted by Schedule 8 to the 2004 Planning Act; or
- (e) the Welsh Ministers when exercising powers under—
 - (i) section 60(3), section 65 (intervention by Assembly) or section 71(4) (Assembly’s default power) of the 2004 Planning Act; or
 - (ii) under section 19(1) of the 1990 Act to the extent permitted by section 122(3) of the 2004 Planning Act and article 4 of the 2005 Order.

(3) References in this Part to giving effect to a land use plan are to—

- (a) the publication, under section 9(6) (RSS: further procedure) of the 2004 Planning Act, of a revision of a regional spatial strategy;
- (b) the approval, under section 21(9) or section 27(4) of the 2004 Planning Act, of a local development document;
- (c) the adoption, under section 23 (adoption of local development documents) of the 2004 Planning Act, of a local development document other than a statement of community involvement under section 18 (statement of community involvement) of that Act;
- (d) the publication, under section 341 (alteration or replacement) of the 1999 Act, of alterations of the spatial development strategy or a new spatial development strategy to replace it;

(a) Sections 32 to 40 in Part 2 of the 1990 Act were substituted by section 27 of, and paragraph 17 of Schedule 4 to, the Planning and Compulsory Purchase Act 1991 (c.34). Part 2 of the 1990 Act was repealed by section 120 of, and Schedule 9 to, the Planning and Compulsory Purchase Act 2004, subject to transitional provisions in section 119 of, and Schedule 8 to, that Act.

(b) The functions of the Secretary of State under sections 19(1), 35A(4) and 45(1) were, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), article 2; see entry in Schedule 1 for the Town and Country Planning Act 1990. Section 35A was inserted by section 27 of, and paragraphs 1 and 17 of Schedule 4 to, the Planning and Compensation Act 1991 (c.34). By virtue of paragraphs 30 and 32 of Schedule 11 to the Government of Wales Act 2006 (c. 32), the relevant functions were transferred from the National Assembly for Wales to the Welsh Ministers.

- (e) the publication, under section 60 (Wales Spatial Plan) of the 2004 Planning Act, of a revision of the Wales Spatial Plan;
- (f) the adoption, under section 67 (adoption of local development plan) of the 2004 Planning Act, of a local development plan;
- (g) the approval, under section 65(9) or section 71(4) of the 2004 Planning Act, of a local development plan;
- (h) the adoption, under section 35(1) (adoption of proposals), or approval under section 35A(4) of the 1990 Act, of an alteration or replacement of a structure plan to the extent permitted by paragraph 2(2) of Schedule 8 to the 2004 Planning Act;
- (i) the adoption, under section 15(1) (adoption of unitary development plans by local planning authority)(a) and that provision as applied by section 21(2) (alteration or replacement)(b) of the 1990 Act, of an alteration or replacement of a unitary development plan to the extent permitted by paragraph 4(1) of Schedule 8 to the 2004 Planning Act;
- (j) the approval, under section 19(1) and that provision as applied by section 21(2) of the 1990 Act, of an alteration or replacement of a unitary development plan to the extent permitted by paragraph 4(1) of Schedule 8 to the 2004 Planning Act;
- (k) the adoption, under section 43(1) (adoption of proposals)(c) or approval under section 45(1) of the 1990 Act, of an alteration or replacement of a local plan or a minerals local plan or waste local plan to the extent permitted by paragraph 9(1), 10(1) or 14 of Schedule 8 to the 2004 Planning Act;
- (l) the adoption, under section 15(1) of the 1990 Act, of a unitary development plan to the extent permitted by section 122(3) of the 2004 Planning Act and article 4 of the 2005 Order; or
- (m) the approval, under section 19(1) of the 1990 Act, of a unitary development plan to the extent permitted by section 122(3) of the 2004 Planning Act and article 4 of the 2005 Order.

Assessment of implications for European sites and European offshore marine sites

85B.—(1) Where a land use plan—

- (a) is likely to have a significant effect on a European site in Great Britain or a European offshore marine site (either alone or in combination with other plans or projects), and
- (b) is not directly connected with or necessary to the management of the site,

the plan-making authority for that plan shall, before the plan is given effect, make an appropriate assessment of the implications for the site in view of that site's conservation objectives.

(2) The plan-making authority shall for the purposes of the assessment consult the appropriate nature conservation body and have regard to any representations made by that body within such reasonable time as the authority specifies.

(3) They shall also, if they consider it appropriate, take the opinion of the general public, and if they do so, they shall take such steps for that purpose as they consider appropriate.

(4) In the light of the conclusions of the assessment, and subject to regulation 85C (considerations of overriding public interest), the plan-making authority or, in the case of a regional spatial strategy, the Secretary of State shall give effect to the land use plan only

(a) As substituted by section 27 of, and paragraphs 1 and 6 of Schedule 4 to, the Planning and Compensation Act 1991 (c.34).

(b) As amended by sections 27 and 84(6) of, and paragraph 12(2) of Schedule 4 and Schedule 19 to, the Planning and Compensation Act 1991 (c.34).

(c) As amended by section 27 of, and paragraphs 1 and 19(1) of Schedule 4 to, the Planning and Compensation Act 1991 (c.34).

after having ascertained that it will not adversely affect the integrity of the European site or the European offshore marine site (as the case may be).

(5) A plan-making authority shall provide such information as the Secretary of State or the Welsh Ministers may reasonably require for the purposes of the discharge of the obligations of the Secretary of State or the Welsh Ministers under this Part.

(6) This regulation does not apply in relation to a site which is—

- (a) a European site by reason of regulation 10(1)(c); or
- (b) a European offshore marine site by reason of regulation 15(c) of the 2007 Regulations.

Considerations of overriding public interest

85C.—(1) If the plan-making authority is satisfied that, there being no alternative solutions, the land use plan must be given effect for imperative reasons of overriding public interest (which, subject to paragraph (3), may be of a social or economic nature), they may give effect to the land use plan notwithstanding a negative assessment of the implications for the European site or the European offshore marine site (as the case may be).

(2) In relation to a regional spatial strategy under Part 1 (regional functions) of the 2004 Planning Act, paragraph (1) applies to the Secretary of State as it applies to a plan-making authority in the case of any other land use.

(3) Where the site concerned hosts a priority natural habitat type or a priority species, the reasons referred to in paragraph (1) must be either—

- (a) reasons relating to human health, public safety or beneficial consequences of primary importance to the environment, or
- (b) any other imperative reasons of overriding public interest, provided that the competent authority has had due regard to the opinion of the European Commission in satisfying themselves that there are such reasons.

(4) Where a plan-making authority, other than the Secretary of State or the Welsh Ministers, desire to obtain the opinion of the European Commission as to whether reasons are to be considered imperative reasons of overriding public interest, they shall submit a written request to the Secretary of State for a plan relating to England and to the Welsh Ministers for a plan relating to Wales—

- (a) identifying the matter on which an opinion is sought, and
- (b) accompanied by any documents or information which may be required.

(5) The Secretary of State may, if he thinks fit, seek the opinion of the European Commission for—

- (a) a plan relating to England; or
- (b) at the request of the Welsh Ministers, a plan relating to Wales.

(6) The Secretary of State shall send any opinion obtained under paragraph (5) to—

- (a) in the case of a plan relating to England, the plan-making authority, and
- (b) in the case of a plan relating to Wales, the Welsh Ministers.

(7) The Welsh Ministers shall, upon receiving the opinion, transmit it to the plan-making authority.

(8) Where a plan-making authority, other than the Secretary of State or the Welsh Ministers, propose to give effect to a land use plan under this regulation, they shall notify—

- (a) the Secretary of State, if the plan relates to England; or
- (b) the Welsh Ministers, if the plan relates to Wales.

(9) The plan-making authority shall not give effect to the land use plan before the end of the period of 21 days beginning with the day notified by the Secretary of State or the Welsh Ministers as that on which their notification was received, unless—

- (a) the Secretary of State, in relation to a plan relating to England, or
- (b) the Welsh Ministers, in relation to a plan relating to Wales,

notifies them that they may do so.

(10) Without prejudice to any other power, the Secretary of State (in relation to a plan relating to England), or the Welsh Ministers (in relation to a plan relating to Wales), may give directions to the authority in any such case prohibiting them from giving effect to the land use plan, either indefinitely or during such period as may be specified in the direction.

Co-ordination for land use plan prepared by more than one authority

85D.—(1) The following provisions apply where two or more local planning authorities prepare a joint local development document under section 28 (joint local development documents) or a joint local development plan under section 72 (joint local development plans) of the 2004 Planning Act.

(2) Nothing in paragraph (1) of regulation 85B (assessment of implications for European site or European offshore marine site) requires a local planning authority to assess any implications of a joint local development document or plan which would be more appropriately assessed under that provision by another local planning authority.

(3) The Secretary of State (in relation to England) and the Welsh Ministers (in relation to Wales) may issue guidance to local planning authorities for the purposes of regulation 85B(1) as to the circumstances in which an authority may or should adopt the reasoning or conclusions of another authority as to whether a joint local planning document or plan—

- (a) is likely to have a significant effect on a European site or European offshore marine site, or
- (b) will adversely affect the integrity of a European site or European offshore marine site.

(4) The local planning authorities concerned shall have regard to any such guidance.

(5) In determining whether a joint local development document or plan should be adopted under regulation 85C (considerations of overriding public interest), a local planning authority shall seek and have regard to the views of the other local planning authorities concerned.

Compensatory measures

85E. Where in accordance with regulation 85C (considerations of overriding public interest) a land use plan is given effect notwithstanding a negative assessment of the implications for a European site or European offshore marine site, the Secretary of State (where the plan relates to England) and the Welsh Ministers (where the plan relates to Wales) shall secure that any necessary compensatory measures are taken to ensure that the overall coherence of Natura 2000 is protected.”

SCHEDULE 2

Regulation 5(62)

“SCHEDULE 2A

Regulation 39(8)(a)

EXCLUDED POPULATIONS OF CERTAIN SPECIES

<i>Common Name</i>	<i>Scientific Name</i>	<i>Excluded countries and areas</i>
Beaver, Eurasian	Castor fiber	Estonia, Finland, Latvia, Lithuania, Poland, and Sweden
Hamster, Common (or Black	Cricetus cricetus	Hungary

bellied) Wolf, Grey	Canis lupus	Bulgaria, Estonia, Greece north of the 39th parallel, Latvia, Lithuania, Poland, Slovakia, Spain north of the River Duero, and the reindeer management area in Finland as defined in paragraph 2 of Finnish Act No: 848/90 of 14th September 1990 on reindeer management(a)
Lynx, Eurasian Viper, Seoane's	Lynx lynx Vipera seoanni	Estonia Spain

NOTE: The common name or names given in the first column to this Schedule are included by way of guidance only; in the event of any dispute or proceedings, the common name or names must not be taken into account.”

(a) A copy of this Finnish Act can be obtained from the Wildlife Species Conservation Division, Defra, Temple Quay House, 2 The Square, Temple Quay, Bristol BS1 6EB.

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”) (O.J. No. L206, 22.07.92, p.7). These Regulations generally extend only to England and Wales, and, in so far as they amend the 1994 Regulations in relation to England and Wales, corresponding amendments to the 1994 Regulations have been made in respect of Scotland by S.S.I. 2007/80. These Regulations make certain amendments, however, which extend to Scotland as well as to England and Wales; and certain other amendments which only extend to Scotland.

The definitions of “the Habitats Directive” and “the Wild Birds Directive” in regulation 2(1) of the 1994 Regulations are amended. References in the 1994 Regulations to the annexes to the Habitats Directive are now ambulatory.

Regulation 2(1) is also amended to include a definition of “European offshore marine site” and there are related amendments in regulations 5(22) to 5(54) which, amongst other things, insert references to European offshore marine sites and provide for the Joint Nature Conservation Committee to be consulted where such sites are involved. These amendments ensure that Part IV of the 1994 Regulations (and Part IVA as it applies to Scotland) apply in respect of certain plans and projects that are likely to have an adverse effect on a European offshore marine site. The effects of plans and projects that are carried out on or in the offshore marine area or on or in relation to an offshore marine installation are governed by the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007. Regulation 2(1) of the 1994 Regulations is amended to include related definitions.

Regulation 5 of the 1994 Regulations is amended so that National Park authorities become relevant authorities in relation to marine areas and European marine sites.

Regulation 5(8) substitutes a new regulation 9, which specifies the status of a site that has been omitted from the national list and which has subsequently been the subject of an agreement between the Secretary of State and the European Commission, following a consultation process, or the subject of a decision of the Council of the European Communities, in each case pursuant to Article 5 of the Habitats Directive.

Regulation 5(9) amends the definition of “European site” so that the provisions in the 1994 Regulations relating to European sites apply in relation to all sites in Great Britain in the list sent to the European Commission under Article 4(1) of the Habitats Directive (and not just such sites in England). Regulation 5(10) makes an amendment requiring such sites in Wales to be registered under regulation 11 of the 1994 Regulations.

Regulation 5(12) inserts new regulations 37A to 37E into the 1994 Regulations. New regulations 37A and 37B impose, amongst other things, duties on the Secretary of State and the Welsh Ministers to make arrangements for surveillance of the conservation status of natural habitat types of Community interest and species of Community interest and to take action in the light of that surveillance. Similarly, regulation 5(16) inserts new regulations 41A and 41B creating duties to make arrangements to monitor the incidental capture and killing of animals of the species listed in Annex IV(a) to the Habitats Directive and to take conservation measures in the light of that monitoring.

New regulation 37C makes it an offence for any person on board a ship to introduce into territorial waters any live animal or plant that is not native to Great Britain. New regulation 37D provides for licences to be granted in respect of such introductions, and new regulation 37E creates an offence of knowingly or recklessly furnishing false information for the purposes of obtaining such a licence.

Regulation 5(13) replaces regulation 39 of the 1994 Regulations. The principal changes here are as follows:

- (a) it is made an offence deliberately to injure a European protected species of animal, and the offence in regulation 39(1)(b) of deliberately disturbing a European protected species of animal is refined;
- (b) regulation 39(2) of the 1994 Regulations is also amended so that the offences there relate to all of the protected species or subspecies of animal listed in Annex IV(a) to the Habitats Directive (as opposed to native species only); and a similar change is made by regulation 5(17) (which replaces regulation 43) so that all Annex II(b) and IV(b) plants (other than bryophytes) are covered in the offence in regulation 43(2);
- (c) new defences are set out in regulations 39(5), 39(8) and 43(7);
- (d) new regulation 39(17) provides that, in sentencing for the offence of damaging or destroying a breeding site or resting place, a court is to have particular regard to whether the offence could have reasonably been avoided.

Regulation 5(14) substitutes a new regulation 40. The principal changes here are that the pre-existing defences in regulation 40 of the 1994 Regulations (with the exception of those relating to mercy killing and tending injured animals) are removed. New defences are provided relating to action taken for investigating etc offences under Part 3 of the 1994 Regulations and certain other enactments. The new regulation 43 (which is substituted by regulation 5(17)) also contains similar defences to offences relating to plants.

Regulation 5(15) amends regulation 41 of the 1994 Regulations to make it an offence to use any indiscriminate means of capturing or killing an animal of the species protected by regulation 41, which is capable of causing the local disappearance of, or serious disturbance to, such species.

Regulation 5(18) provides a new power to grant licences under regulation 44 of the 1994 Regulations for the taking or keeping of animals or plants of a European protected species under strictly supervised conditions.

Regulation 5(21) creates a new offence of breaching a licence condition.

Regulation 49(2)(b) of the 1994 Regulations is amended by regulation 5(24) to provide that, in the determination of whether there are imperative reasons of overriding public interest justifying a plan or project, the opinion of the European Commission is a matter to which the competent authority must have regard.

Regulation 5(48) inserts new regulation 84B into the 1994 Regulations so that certain authorisations under the Water Industry Act 1991 and the Water Resources Act 1991 are covered by Part IV.

Regulation 5(55) inserts a new Part IVA (appropriate assessments for land use plans) into the 1994 Regulations, containing new regulations 85A to 85E.

New regulation 85A provides that Part IVA extends to England and Wales only and defines “land-use plan” and “plan-making authority”.

A plan-making authority must consider whether their land-use plan is likely to have a significant effect on a European site in Great Britain or a European offshore marine site. If any significant effect is not directly connected with or necessary to the management of the site, an appropriate assessment must be made of the implications for the site in view of that site’s conservation objectives, undertaking any necessary consultation (new regulation 85B).

The plan-making authority is to give effect to the plan only after having ascertained that it will not adversely affect the integrity of the site (new regulation 85B(4)), unless they are satisfied that there are no alternative solutions and there are imperative reasons of overriding public interest as set out in new regulation 85C.

Where a plan-making authority propose to give effect to a plan notwithstanding a negative assessment, they must notify, in England, the Secretary of State or, in Wales, the Welsh Ministers (new regulation 85C(8)). The subsequent procedure is set out in new regulation 85C(9) and (10).

New regulation 85D provides for co-ordination where two or more local planning authorities prepare a joint local development document under section 28 of the Planning and Compulsory Act 2004.

In the event of a plan being given effect despite a negative assessment for reasons of overriding public interest, new regulation 85E requires that any necessary compensatory measures are to be taken to ensure that the overall coherence of Natura 2000 is protected.

Regulations 5(57) to 5(59) make amendments changing how the offences under Part 3 of the 1994 Regulations are to be enforced. For example, the powers of constables are extended to so that samples can be taken. Provision is made for the appointment of wildlife inspectors and they are given powers to investigate offences and whether licence conditions are being met. Finally, the time limit for bringing summary proceedings under regulation 102(1) is extended to cover all Part III offences.

Regulation 5(60) deals with application of criminal offences under Part III of the 1994 Regulations in relation to the Crown.

Regulation 6 amends section 10 of the Conservation of Seals Act 1970 to make it clear that there are other restrictions under the Habitats Directive on methods of killing or taking seals.

Regulations 7(7) and 7(8) respectively amend Schedules 5 and 8 to the Wildlife and Countryside Act 1981 to remove certain species from the protection given by sections 9(1), (2) and 13(1), and part of the protection provided under section 9(4), of that Act. Sections 9(1), (2) and (4) of the Wildlife and Countryside Act 1981 prohibit the killing, injuring and taking, possession and control and (in certain circumstances) disturbance of certain animals and protect their places of shelter and protection. Section 13(1) prohibits the uprooting of protected plants and, in some cases, also picking and destruction.

Regulation 7(6) updates the references to the Wild Birds Directive in the Wildlife and Countryside Act 1981 so that the Act refers to that Directive as last amended on the date these Regulations are made.

A number of other minor or consequential amendments are made, as well as a transitional provision, in regulation 9, relating to offences in regulation 39(2)(a) and 43(2)(a) of the 1994 Regulations.

A full Regulatory Impact Assessment of the effect that this instrument will have on the costs of business and the voluntary sector has been prepared in respect of these Regulations. A transposition note setting out how the amendments transpose the provisions of the Habitats Directive has also been prepared. Copies of both documents are available from the Wildlife Habitats and Biodiversity Division, Defra, Temple Quay, Bristol, BS1 6EB. In addition, copies of these documents have been placed in the libraries of both Houses of Parliament.

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