



PINS NOTE 13/2017

To: All Inspectors, All Examining Inspectors.

Relevancy: Planning casework, NSIP casework & Local Plan examinations in England and Wales

Date of Issue: 29 November 2017

Review Date: 29 April 2018

ONSHORE & OFFSHORE HABITATS REGULATIONS 2017

Action

1. Inspectors should be aware that new onshore and offshore Habitats Regulations will come into force on 30 November 2017. The regulations transpose the Habitats Directive¹ and the Birds Directive² into domestic legislation.
2. For the onshore area of England and Wales (including the coastal baseline to 12 nautical miles³):

The Conservation of Habitats and Species Regulations 2017 consolidate the 2010 regulations⁴ and subsequent amending instruments and make minor modifications to reflect changes in related legislation.

3. Amendments include:

- Removal of references to 'regional strategies'; 'responsible regional authorities'; and 'unitary development plans';
- New provisions relating to Neighbourhood Development Orders;
- Correcting omitted references to regulations, plus other drafting improvements, to Part 6 – Assessment of Plans and Projects;

¹ Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora

² Directive 2009/147/EC on the conservation of wild birds

³ The Regulations also apply to Scotland and Northern Ireland (including the adjacent territorial sea to a limited degree) as regards reserved and excepted matters respectively.

⁴ The Conservation of Habitats and Species Regulations 2010

- Improve the drafting in relation to the provisions for planning permission: duty to review⁵ to make clear that it refers to both local development orders and neighbourhood development plans.
4. For the UK offshore marine area (beyond 12 nautical miles from the coastal baseline and out to 200 nautical miles):

The Conservation of Offshore Marine Habitats and Species Regulations 2017 consolidate the 2007 regulations⁶ and subsequent amending instruments.

5. The main amendments relate to the making of provisions for Welsh Ministers to carry out certain functions (which are currently the functions of the Secretary of State) in offshore water adjacent to Wales. The functions include:
- The selection, notification and designation of special areas of conservation (as required by the Habitats Directive);
 - The selection, notification and classification of special protection areas (as required by the Wild Birds Directive);
 - The management and conservation of European offshore marine sites, including the powers to issue guidance to which competent authorities in Wales must have regard;
 - The granting of licenses for certain activities that would otherwise constitute an offence in the Welsh offshore region in relation to European protected species.

Background

6. The 2010 and 2007 regulations have been amended many times since they were introduced (ten and twelve times respectively). Consolidation should make the regulations easier to follow and should make subsequent operability changes in light of the UK's exit from the EU easier to understand.
7. DEFRA considers that existing guidance on application of the regulations will not require substantive changes as there are no changes to policies or procedures; however references to the regulations will need to be updated. The Joint Nature Conservation Committee will provide ongoing guidance and advice to marine stakeholders on conservation matters relating to the offshore marine area.

Contacts for further information

8. Please contact XXXX if you have any general queries on this Note.

⁵ 2010 Regulations – Reg 69(2)a; 2017 Regulations – Reg 71(2)a

⁶ The Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007

9. Contact the relevant Group Manager for advice on individual cases.
If you have a query involving potentially affected sites or species
and are unclear how to proceed, please seek advice from XXXX