

# Changes to the Habitats Regulations 2017

Applies to: England and Wales

This document explains the changes made to the Conservation of Habitats and Species Regulations 2017 (as amended). In this document we call these the 2017 Regulations. The changes are made by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019. We call these the 2019 Regulations.

The 2017 Regulations are one of the pieces of domestic law that transposed the land and marine aspects of the Habitats Directive (Council Directive 92/43/EEC) and certain elements of the Wild Birds Directive (Directive 2009/147/EC)[1] (known as the Nature Directives).

This document:

- \* covers England and Wales including their inshore waters up to 12 nautical miles (nm)
- \* explains how the amendments to the legislation work

The document does not cover offshore waters beyond 12nm but similar processes are expected to be applied.

Scotland and Northern Ireland have made similar changes to their legislation.

## What has changed

The Secretary of State for the Environment, Food and Rural Affairs and Welsh Ministers have made changes to parts of the 2017 Regulations so that they operate effectively.

Most of these changes involved transferring functions from the European Commission to the appropriate authorities in England and Wales.

All other processes or terms in the 2017 Regulations remain unchanged and existing guidance is still relevant.

The obligations of a competent authority in the 2017 Regulations for the protection of sites or species do not change. A competent authority is a public body, statutory undertaker, minister or department of government, or anyone holding public office.

The main changes to the 2017 Regulations are:

- \* the creation of a national site network within the UK territory comprising the protected sites already designated under the Nature Directives, and any further sites designated under these Regulations

- \* the establishment of management objectives for the national site network (the 'network objectives')
- \* a duty for appropriate authorities to manage and where necessary adapt the national site network as a whole to achieve the network objectives
- \* a amended process for the designation of Special Areas of Conservation (SACs)
- \* arrangements for reporting on the implementation of the Regulations, given that the UK no longer provides reports to the European Commission
- \* arrangements replacing the European Commission's functions with regard to the imperative reasons of overriding public interest (IROPI) test where a plan or project affects a priority habitat or species
- \* arrangements for amending the schedules to the Regulations and the annexes to the Nature Directives that apply to the UK

The 2017 Regulations (Regulation 9(1)), as amended by the 2019 Regulations, require the Secretary of State and Welsh Ministers to secure compliance with the requirements of the Nature Directives. Any new powers in the 2019 Regulations must be exercised in line with the Directives and retained EU case law up to 1 January 2021.

## **Creating a national site network**

SACs and Special Protection Areas (SPAs) in the UK no longer form part of the EU's Natura 2000 ecological network. The 2019 Regulations have created a national site network on land and at sea, including both the inshore and offshore marine areas in the UK. The national site network includes:

- \* existing SACs and SPAs
- \* new SACs and SPAs designated under these Regulations

Any references to Natura 2000 in the 2017 Regulations and in guidance now refers to the new national site network.

, Maintaining a coherent network of protected sites with overarching conservation objectives is still required in order to:

- \* fulfil the commitment made by government to maintain environmental protections,
- \* continue to meet our international legal obligations, such as the Bern Convention, the Oslo and Paris Conventions (OSPAR), Bonn and Ramsar Conventions

### **###Ramsar sites**

Designated Wetlands of International Importance (known as Ramsar sites) do not form part of the national site network. Many Ramsar sites overlap with SACs and SPAs, and may be designated for the same or different species and habitats.

All Ramsar sites remain protected in the same way as SACs and SPAs.

## Setting network objectives

The 2019 Regulations establish management objectives for the national site network. These are called the network objectives.

The UK Government and devolved administrations (in Wales, Northern Ireland and Scotland) will cooperate to manage, and where necessary, adapt the network to contribute towards meeting the network objectives.

Any references in the 2017 Regulations to meeting the 'requirements of the Directives' includes achieving the network objectives.

The appropriate authorities may publish guidance relating to these requirements. The appropriate authorities are the Secretary of State for Environment, Food and Rural Affairs in England and the Welsh Ministers in Wales.

The network objectives are to:

- \* maintain or, where appropriate, restore habitats and species listed in Annexes I and II of the Habitats Directive to a favourable conservation status (FCS)
- \* contribute to ensuring, in their area of distribution, the survival and reproduction of wild birds and securing compliance with the overarching aims of the Wild Birds Directive

The appropriate authorities must also have regard to the:

- \* importance of protected sites
- \* coherence of the national site network
- \* threats of degradation or destruction (including deterioration and disturbance of protected features) on SPAs and SACs

The network objectives contribute to the conservation of UK habitats and species that are also of pan-European importance, and to the achievement of their FCS within the UK.

## Adapting the network

The appropriate authorities must adapt the network where necessary given that the abundance and distribution of habitats and species within the network might evolve over time. They may need to designate new SACs or SPAs to achieve the network objectives. They may also need to amend existing SACs or SPAs. For example:

- \* if their protected features have changed over time, including re-introduced species or a new or increasing population of birds on an existing site has reached internationally important numbers
- \* if the site boundary needs to be moved in response to storm events or natural processes
- \* to include an area which compensates for the loss of other areas within the network as a result of a plan or project proceeding for IROPI reasons

## Declassifying SACs and SPAs

In exceptional circumstances, the appropriate authority can declassify all or part of a SAC or SPA in order to adapt the national site network in response to natural developments. The process for de-classification is the same as the process for designating a site.

The appropriate authority will assess if:

- \* the site continues to meet the criteria for designation
- \* the site's contribution to the achievement of the conservation of natural habitats and species has been irretrievably lost

De-classification may be appropriate where, for example, conservation measures based on best scientific and technical knowledge have been implemented but have not been successful.

De-classification cannot be based on a failure to comply with the obligations set out in the 2017 Regulations, as provided in case law such as the Tre Pini case<sup>1</sup>.

De-classification is unlikely to result from a failure to adopt appropriate conservation measures to conserve, restore or avoid deterioration of the site, or a disturbance of the species for which the site is designated.

If the appropriate authority decides to declassify a site or part of a site, it must make sure the:

- \* coherence of the national site network is maintained
- \* network objectives are achieved in other ways, such as designating new SACs or SPAs

The appropriate authority will also consider the [\[Joint Nature Conservation Committee's \(JNCC\) SAC selection guidelines\]](https://jncc.gov.uk/our-work/special-areas-of-conservation-overview/#sac-selection) (<https://jncc.gov.uk/our-work/special-areas-of-conservation-overview/#sac-selection>).

## How proportionality is applied to network objectives of SACs in the national site network

An appropriate authority is only responsible for managing and adapting the national site network to secure FCS of a feature proportionately to the importance of the UK within the feature's natural range.

The extent to which action in the UK contributes towards securing FCS of a habitat or species varies. This will depend on how important the UK is as part of the overall natural range of that habitat or species.

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<sup>1</sup> C – 301/12 Cascina Tre Pini Ss v Ministero dell'Ambiente e della Tutela del Territorio e del Mare and Others

For certain habitat types and species, the UK has particular responsibility, as a large proportion of them are found in the UK, for example Atlantic oak woods, active blanket bogs and grey seals.

## **Designating SACs**

The European Commission no longer has a role in designating SACs in the UK. The 2019 Regulations establish a single stage designation process, where the appropriate authority is the decision maker.

The selection and designation of SACs is based on the criteria set out in Annex III of the Habitats Directive so far as it applies to the UK.

For new proposed sites, the appropriate authority will:

- \* consider the criteria in the first stage of Annex III of the Habitats Directive
- \* have regard to the advice of the appropriate nature conservation body - Natural England or Natural Resources Wales (NRW).

The JNCC will provide an assessment to ministers on how a proposed SAC meets the criteria in the second stage of Annex III.

New SACs may be identified in both the terrestrial and marine environment.

For wide-ranging aquatic species, designated sites should be an identifiable area that is distinct in providing the physical and biological factors essential to their life and reproduction. This includes marine mammals (seals, bottlenose dolphins and harbour porpoises). This is to emphasise the need for areas designated for wide-ranging aquatic species to be those areas which are of ecological importance to the species.

Core areas where populations of these species regularly and frequently congregate at certain sensitive times are important. For example, specific sites identified where species breed, give birth and feed their young should be selected as SACs, rather than the whole geographic area where they have been recorded or found.

Natural England, JNCC or NRW will publish and carry out a public consultation on any new SAC proposals and provide a report on the results of the consultation to ministers.

An approved SAC will become part of the national site network. The site will be entered into the Register of European sites maintained under Regulation 17. Interested parties will then be notified of the designation.

## **Reporting obligations**

The appropriate authorities retain regular reporting obligations similar to that required under the Habitats and Wild Birds Directives. They must publish:

- \* a report every six years on implementation

\* biennial derogation reports - reports on the licensed activities that are exceptions to the legislation

This ensures transparency for parliamentary and public scrutiny of our environmental performance in respect of the retained EU legislation.

The 2019 Regulations also place a duty on the Secretary of State to publish a composite report drawn from the 6-yearly reports of all the devolved administrations within 2 years of their publication

## **Imperative Reasons of Overriding Public Interest (IROPI)**

A competent authority is expected to ask the appropriate authority for its opinion on whether a plan or project affecting priority habitats or species constitute IROPI for reasons other than human health, public safety or primary environmental benefits.

The appropriate authority must consult with the devolved administrations, JNCC and any other person the appropriate authority considers appropriate in developing its opinion. The appropriate authority will also take account of the broader national interest in developing their IROPI opinion.

The appropriate authority will publish the IROPI opinion they give to the competent authority.

## **Amending annexes and schedules**

If any technical and scientific progress is made, the appropriate authority may amend the schedules to the Regulations, and the list of those habitats and species in the annexes to the EU Directives, which apply to the UK.,

The prohibited methods of capturing and killing wild animals, which are listed in the main body of the Regulations, are transferred into new schedules to allow for future amendments.

It is anticipated that changes will be rare but could, for example, include additions of new species in response to climate change or their successful reintroduction into Great Britain.

Any proposed changes will be subject to public consultation and will be made using statutory instruments.

Changes to Annex IV of the Habitats Directive and Schedules 2 (list of European Protected Species of animal) or 5 (list of European Protected Species of plant) of the Regulations will require an affirmative statutory instrument and be debated by Parliament or Senedd Cymru. This will ensure appropriate scrutiny of the changes and replicates procedures formerly undertaken by the European Commission.

As statutory nature conservation bodies, Natural England, NRW and JNCC will provide technical or scientific advice to the Secretary of State and Welsh Ministers on any proposed amendments.

Ministers in each nation of the UK have similar powers for their own jurisdiction. We will work together across the UK, where it is desirable, to achieve consistency in our approach.

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[1] The Wildlife and Countryside Act 1981 is also amended so that species of wild birds found in or regularly visiting either the UK or the European territory of a Member State will continue to be protected.

[2] C – 301/12 Cascina Tre Pini Ss v Ministero dell’Ambiente e della Tutela del Territorio e del Mare and Others

### **Acronym markdown**

\*[SACs]: Special Areas of Conservation

\*[SPA]: Special Protection Areas

\*[IROPI]: imperative reasons of overriding public interest

\*[Defra]: Department for the Environment, Food and Rural Affairs

\*[NRW]: Natural Resources Wales

\*[FCS]: favourable conservation status

\*[JNCC]: Joint Nature Conservation Committee