

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

Sixth Delegated Legislation Committee

DRAFT CONSERVATION OF HABITATS AND  
SPECIES (AMENDMENT) (EU EXIT)  
REGULATIONS 2019

*Wednesday 6 March 2019*

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**The Committee consisted of the following Members:**

*Chair:* DAVID HANSON

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| † Clark, Colin ( <i>Gordon</i> ) (Con)   | Law, Chris ( <i>Dundee West</i> ) (SNP)                          |
| † Coffey, Dr Thérèse ( <i>Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs</i> ) | McFadden, Mr Pat ( <i>Wolverhampton South East</i> ) (Lab)       |
| Cooper, Rosie ( <i>West Lancashire</i> ) (Lab)   | † Nandy, Lisa ( <i>Wigan</i> ) (Lab)                             |
| † Debbonaire, Thangam ( <i>Bristol West</i> ) (Lab)  | † Seely, Mr Bob ( <i>Isle of Wight</i> ) (Con)                   |
| † Drew, Dr David ( <i>Stroud</i> ) (Lab/Co-op)   | † Stewart, Iain ( <i>Milton Keynes South</i> ) (Con)             |
| † Graham, Richard ( <i>Gloucester</i> ) (Con)  | † Timms, Stephen ( <i>East Ham</i> ) (Lab)                       |
| † Harrison, Trudy ( <i>Copeland</i> ) (Con)  | † Tomlinson, Michael ( <i>Mid Dorset and North Poole</i> ) (Con) |
| † Hart, Simon ( <i>Carmarthen West and South Pembrokeshire</i> ) (Con)   |  |
| † Hayman, Sue ( <i>Workington</i> ) (Lab)  | Ian Bradshaw, <i>Committee Clerk</i>                             |
| † Jenkyns, Andrea ( <i>Morley and Outwood</i> ) (Con)  | † <b>attended the Committee</b>                                  |

## Sixth Delegated Legislation Committee

Wednesday 6 March 2019

[DAVID HANSON *in the Chair*]

### Draft Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019

8.55 am

**The Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs (Dr Thérèse Coffey):** I beg to move,

That the Committee has considered the draft Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019.

It is a pleasure to serve under your chairmanship, Mr Hanson. The draft regulations are among a number of statutory instruments under the affirmative procedure, to be considered as the UK leaves the European Union, and will ensure that legislation that protects biodiversity through the conservation of natural habitats and species of wild fauna and flora, and conserves wild bird populations, will continue to function after exit.

The draft regulations make technical legal amendments to maintain the effectiveness and continuity of legislation that would otherwise be left partially inoperable. The adjustments represent no changes of policy, nor will they have any impact on businesses or the public. The draft statutory instrument is introduced under the correcting powers in the European Union (Withdrawal) Act 2018, and principally makes amendments to the Conservation of Habitats and Species Regulations 2017 and the Conservation of Offshore Marine Habitats and Species Regulations 2017 to address technical operability issues.

The territorial extent of the draft regulations is the United Kingdom, with some exceptions. Part 2 extends to England and Wales. Part 3 extends to England and Wales, but also extends certain provisions in certain circumstances to Scotland and Northern Ireland, in relation to certain specified reserved matters. As the implementation of biodiversity and nature conservation policy is a devolved matter, we have worked closely with the devolved Administrations on the regulations and on their respective instruments. Where the regulations relate to devolved matters they have given consent.

The Scottish Government and the Department of Agriculture, Environment and Rural Affairs in Northern Ireland are making similar changes through their own secondary legislation. The Committee may be aware that we debated the DAERA measure in Committee on Monday, and it was passed by the House of Commons last night. The Scottish measure was debated in the Scottish Parliament's Environment, Climate Change and Land Reform Committee yesterday.

Members of the Committee may be aware that the Royal Society for the Protection of Birds expressed concern that management objectives for the new national network of protected sites established under the regulations with regard to special protection areas were not commensurate with the objectives for the EU Natura 2000

network of sites, which are being replaced under new regulations 16A and 18A. We had some back and forth legal debate between Government lawyers and the RSPB, and to make sure the position was absolutely clear the Secretary of State took the decision to withdraw the provision in question, and re-lay the measure after redrafting. That was to make it absolutely clear that existing protections for species of wild birds and their specially protected areas will continue when we exit the EU. That has been welcomed by the RSPB.

Part 2 of the draft regulations amends the Wildlife and Countryside Act 1981 to ensure that species of wild birds found in or regularly visiting the UK, but not elsewhere in the EU, continue to be protected. Part 3 amends the Conservation of Habitats and Species Regulations 2017 covering England and Wales. Part 4 amends the Conservation of Offshore Marine Habitats and Species Regulations 2017 covering the United Kingdom's offshore marine area. The changes in part 4 largely mirror the changes made in part 3.

**Dr David Drew (Stroud) (Lab/Co-op):** What is the impact if we do not pass the Fisheries Bill and we crash out of the EU? Would that have an impact on this statutory instrument?

**Dr Coffey:** The Government have no intention of crashing out of anywhere. It is important to state that the statutory instrument is not directly related to fishing. I am aware of the issues, because I have signed legislation with regard to fisheries in the past 48 hours, when for a few short days we did not have a Minister. I am delighted that my right hon. Friend the Member for Scarborough and Whitby (Mr Goodwill) is now in post. He was due to attend this Committee, before he was elevated. He has significant fishing interests in his constituency, and he will now be cracking on, I am sure.

Part 5 of the regulations amends the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001 with regard to the functions concerning imperative reasons of overriding public interest—often known as IROPI—and is consistent with changes made to the 2017 regulations.

The majority of changes under this instrument involve various terms in regulations or directives that relate to the EU being amended to be relevant to the UK. For example, the instrument removes references in the EU legislation to the UK as an EU member state. The five main changes mainly involve a transfer of functions from the European Commission to Ministers.

Sites designated in the UK under the nature directives are currently part of the EU's Natura 2000 network. That is the contribution from the UK to what is called the Emerald network, which is run and administered by the Council of Europe, fulfilling the Bern convention. The sites in the UK will now form a national site network and will continue to fulfil the UK's international biodiversity obligations. That was covered for Northern Ireland the other day, and it is being covered separately by the Scottish Parliament for Scotland, so we are dealing with other sites in the rest of the UK, as laid out. At the end of November last year, I wrote to the secretariat of the Bern convention, confirming that the sites would continue to form the UK's contribution to the convention's Emerald network of protected sites.

New regulations 16A and 18A set out ministerial responsibility to manage and, where necessary, adapt the national site network in co-operation with other Ministers. The network's management objectives look to secure compliance with the overarching aims of the habitats and the wild birds directives, which will be in retained EU law.

This instrument transfers to Ministers functions relating to the designation of special areas of conservation that are currently undertaken by the Commission. Ministers will assess any new SAC designation proposals, acting on advice from the appropriate nature conservation body—Natural England in the case of the Government—and the Joint Nature Conservation Committee and using existing criteria. Selection of those sites will continue to be based on the criteria in annex III of the habitats directive.

This instrument, at regulations 25 and 26, transfers to Ministers the role of the Commission to offer an opinion to local decision makers, such as local planning authorities, as to whether IROPI apply where a plan or project may adversely affect priority habitats but there is no feasible alternative. In doing that, Ministers will need to take account of the national interest and consult widely, including with devolved Administrations and the JNCC. I think it is worth sharing with the Committee, as I did on Monday, that there have been no instances of that ever happening in the UK. Nevertheless, the Commission currently has the power to offer an opinion, and we thought it important, for operability, that that be brought over and made a power of Ministers.

A new instrument-making power, in new regulation 145 of the conservation of habitats regulations and new regulation 84B of the offshore marine regulations, allows Ministers to make amendments to the annexes and schedules where those reflect technical and scientific progress. The devolved Administrations will have the same powers. In essence, this is a “keeping pace” approach. Quite regularly, we see certain changes and learn new and different things about a variety of issues in relation to habitats, species and birds, and it is important that we have the power to keep up to date. Any amendment under the provision would need to be supported by expert opinion. Once the statutory instrument is, as I hope, passed, we will set out in guidance the means by which Ministers will seek that expert input, including from our statutory advisers, before deciding on any amendment to the schedules and annexes.

To ensure transparency and accountability of environmental performance, new regulation 9A of the conservation of habitats regulations will require Ministers to report publicly on the implementation of the regulations in their jurisdictions within six years from the date of exit and every six years thereafter. The position is exactly the same now, and the Secretary of State will compile reports into a combined UK report within two years. The requirement for biennial reporting on the use of any permitted exemptions or derogations from the strict protections of habitats and species is maintained. As a contracting party to the Bern convention, from which the habitats directive arises, the UK will remain obliged under article 9 and resolution 8 of the convention to submit those reports to the secretariat.

The draft instrument will ensure that the strict protections that have been in place for many years for our most vulnerable habitats and species will be maintained once we leave the European Union. For that reason, I commend the draft instrument to the Committee.

9.5 am

**Sue Hayman (Workington) (Lab):** It is a pleasure to serve under your chairmanship, Mr Hanson. The Minister helpfully explained that, following concerns from the RSPB, Greener UK and Wildlife and Countryside Link, and from the House of Lords Secondary Legislation Scrutiny Committee, the original SI was withdrawn and re-laid with changes. While some welcome changes have been made, I am concerned that not all the issues raised seem to have been adequately addressed. I therefore have a few questions that I will be grateful if the Minister will address. I will also highlight the severity of the biodiversity crisis and the urgent need for effective action to reverse the catastrophic decline in species that we are seeing.

I stress that the Opposition continue to take a dim view of the Government's conduct of the entire process of EU exit secondary legislation. They have recruited thousands of extra civil servants and lawyers and spent £100 million on consultants, and the result of their work is now being dumped on Parliament in hundreds of SIs, most of which have not been scrutinised or debated at all. We believe, quite frankly, that the citizens of this country deserve better.

On the draft regulations, regulation 8 deals with reporting requirements. Will the Minister set out what the reports will cover and explain the apparent differences in the reporting information required between protected species and habitats and between special areas of conservation and special protection areas? We agree with Greener UK that the draft instrument is wrong to omit the requirement for independent review and recommendations on any further action and/or measures needed. How will simply making reports public and sending them to the Bern convention ensure the timely identification of concerns and the taking of additional measures? Will the Minister look at whether the Joint Nature Conservation Committee, for example, could exercise independent review until the new environmental watchdog is established?

Regulation 13 inserts new regulation 16A into the Conservation of Habitats and Species Regulations 2017. Will the Minister explain whether the use of “proportionate” in the new regulation diverges from the habitats directive, as Greener UK contends, and will therefore permit less stringent management of species with a smaller natural range in the UK? Regulation 30 gives Ministers the power to amend the list of prohibited methods of taking or killing wild animals as necessary, to adapt to technical and scientific progress. What consultation and scrutiny, if any, will such changes be subject to? Will the Minister formally pledge that expert input and advice will be both sought and taken into account, including by the devolved Administrations, before any changes are made?

Greener UK and Wildlife and Countryside Link both point out the potential for confusion in introducing a new term, “national site networks”, into the already crowded vocabulary of protected sites. We already have national sites—sites of special scientific interest—as notified under the Wildlife and Countryside Act 1981, and international sites listed under the Ramsar convention. The draft instrument includes Natura 2000 sites, which the Scottish amending regulations have redefined as “the UK site network” to include terrestrial, marine and offshore European sites. Greener UK and Wildlife and Countryside Link sensibly recommend the term

[Sue Hayman]

“international sites network”, to recognise the status of the sites and to include Ramsar sites. This would avoid any confusion with the current national network of SSSIs and marine conservation zones. Will the Minister consider that?

The explanatory memorandum refers to the Bonn and Bern conventions but omits other relevant international conventions to which the UK is a signatory, such as the United Nations convention on the law of the sea, the convention on biodiversity and the convention for the protection of the marine environment of the north-east Atlantic, or OSPAR. How will the Minister ensure that the need to reference these agreements is clearly understood when the regulations are being considered and applied?

Loss of habitat is one of the main contributors to the decline of bees and other insects across the world, causing great environmental concern. Buglife says that without sufficient action to tackle this fragmentation of our landscapes, between 40% and 70% of pollinator species could become extinct. It is critical to biodiversity and the whole ecosystem food chain that we take urgent action to protect insect habitats.

How will the policy framework established by this SI support steps to reverse the decline of pollinators and insects, as well as the alarming rate of species decline in the UK? Will the Government reverse the severe cuts to Natural England in particular, to enable it to halt and reverse species decline while taking on the additional responsibilities being brought back from the EU by this and other Department for Environment, Food and Rural Affairs SIs?

I hope the Minister will take these concerns very seriously and look again at the matters I have raised. Having said that, we do not intend to vote against the SI on this occasion.

9.10 am

**Dr Drew:** I am very pleased to serve under your chairmanship, Mr Hanson, and delighted to follow my boss. I will make just a couple of additional points, which I hope the Minister can answer. This is about my past, because in a previous incarnation I spent a lot of time with my hon. Friend the Member for Bridgend (Mrs Moon), worrying about the environmental liability directive.

That may not seem pertinent to this bit of legislation, but it was based around the Natura 2000 network. That was at the height of the genetically modified crops issue, and the directive effectively said that if a farmer in one place caused, through emissions in the air or indeed through the watercourse, pollution or some form of deterioration in another site, they were responsible for making good the damage.

This SI is about conservation and habitats, so I ask the Minister: do we intend to continue with the environmental liability directive in a UK context? If not, what are we going to put in its place? It would be interesting to know, because I am not sure whether different bodies will oversee this—perhaps I am not reading this correctly.

As my hon. Friend the Member for Workington has said, Natural England is under enormous pressure at the moment. It may well be that, through the way the EU operates, it has already subsumed a lot of the

responsibilities that the Commission imbued it with, and therefore this is something it will do as a matter of course, but I would be interested to know the structure of accountability. These things matter when they go wrong. When things are working perfectly all right, that is fine, but we all know that these pollution events are not uncommon. Certainly with air pollution, we are in the era of air quality and it is important to know what we will do if these important conservation areas are adversely affected. It will be no good if our current protections are not carried forward; indeed, one would hope they would be enhanced.

**The Chair:** I am grateful to the hon. Gentleman for those last comments, and I am sure the Minister will answer in relation to the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019, which are before us today.

9.13 am

**Dr Coffey:** I will start with the hon. Member for Stroud; he is right to be concerned about the impacts that pollution can have on the natural environment and biodiversity. The environmental damages regulations have already been covered in a separate SI, so that is already coming into UK law. He will be aware that the polluter pays principle is very much included in the principles under which this Government and the law in this country operate. The current protections that are there today will continue.

There will be different bodies to oversee this, because this is a devolved matter, so each of the four nations in the United Kingdom has its own regulator. However, we share between us the JNCC, which covers all four Governments and consequently is another way to provide that cohesiveness across the network. Ultimately, the United Kingdom Government—this Government—are responsible for our obligations to international treaties. That is why we will continue to work collectively with them.

To turn to the questions of the hon. Member for Workington, on reporting, the provisions to provide a composite report, including an evaluation of progress and of the contribution of the national site network, replicate the current legal requirement of the Commission. I have made it clear that the UK Government will pull together a summary and a composite report of the four different reports that will come from England, Scotland, Wales and Northern Ireland.

The regulations require the reports to be published, which will allow transparency. There will also be parliamentary and public scrutiny. It may be the case that the future office of environmental protection wishes to scrutinise the reports as well. That element of transparency will open the door to scrutiny.

As a contracting party to the Bern convention, we will continue to report on conservation status, as I have laid out, including by submitting reports every two years on any exceptions. The role of the Bern secretariat, which I met last year, is to fulfil that. At the moment, I recognise that, in effect, the Commission largely does it on behalf of the Bern secretariat for member states of the European Union.

The hon. Lady asked about whether the measure is proportionate. I assure her that it is not the provision's intention to reduce existing nature conservation protections

in any way. I do not agree with Greener UK's assertion about a legal error. The provision is not about the designation and management of sites, and therefore the permitting of certain activities, but about the overall management of the network across the country in the context of achieving status for species and habitats across their biogeographical area and within their natural range.

The new regulations place a wide duty on Ministers, in co-operation with other UK authorities, to manage and adapt the network and to maintain or, where appropriate, restore threatened and vulnerable habitats and species to favourable conservation status throughout their natural range. We can contribute to achieving that favourable conservation status only in proportion to how far the range of the threatened or vulnerable species and habitats falls within UK jurisdiction. In that respect, the provision reflects the requirement in article 3 of the habitats directive to have a coherent ecological network and to maintain and manage species and habitats, and for future Ministers to have regard to what is being done beyond UK borders to contribute most effectively to maintaining and restoring those features in their natural range.

I was surprised that Greener UK decided that the naming of the national site network was a significant issue. Regulation 4(2)(a) makes it clear that the national site network is made up of former Natura 2000 sites in the UK and any new sites we designate under the regulations. Sites will continue to be selected under the criteria set out in the annexes of the habitats directive and the birds directive, as they are retained in UK law, which makes them distinct from SSSIs.

It would not be appropriate to include Ramsar sites, because they are selected on different criteria. As a matter of policy, they are already protected in the same way as special areas of conservation and special protected areas, so including them would represent a legislative change and effect a change of policy, which is not the intention of any of the statutory instruments introduced under the European Union (Withdrawal) Act 2018.

The "national site network" is a legal term for the purposes of the regulations. It will be open to UK Ministers to agree a distinct name for the network, in a similar way to the Natura 2000 or Emerald networks. We certainly do not need a legal power to do that. The marine protected area network already includes marine conservation zones, which were established under national legislation, and special areas of conservation or special protection areas, with marine components established under the EU directives, without giving rise to confusion.

I want to make it clear that I do not think Greener UK should worry so much about the legal term used in a statutory instrument. We will continue as we are and I hope to announce the latest tranche of marine conservation zones fairly soon. I hope people accept that what has been done under domestic legislation, rather than European legislation, is still part of our contribution to a wide variety of networks.

The hon. Lady talks, quite rightly, about the importance of our international obligations. The explanatory memorandum makes it clear that the UK will continue to meet its international commitments. It specifically refers to the Bern and Bonn conventions, because those are the basis of the habitats directive. The Bern convention deals with that directly. The Bonn convention, which is about migratory species, is also covered in helping to fulfil the habitats directive. We chose two of the most prominent international conventions of which we are already members. We will continue to fulfil our international obligations.

The hon. Lady referred to one of those international obligations—the convention on biodiversity. She is right to be concerned about the decline in natural biodiversity in this country and around the world. I believe that the actions and strategies that we are already developing and consulting on will really help us to reverse that turn. Those include conservation covenants, which we are consulting on at the moment, the nature-based networks, the net gain on biodiversity when we consider development, and the complete reform of what will effectively become the replacement for the common agricultural policy. Those actions and strategies will put the environment at the heart of how we help our farmers—who are, let us be candid, the original friends of the earth—in having that stewardship and rewarding them for it in the future.

I recognise the hon. Lady's concerns, but I hope that while she may not agree with every policy—I understand why the Opposition may not always agree with the Government on every policy—she will recognise the efforts that we are making and our international work with the convention on biodiversity. I was pleased to visit the conference last year in the build-up to 2020. There is a real call to action around the world. I am delighted to say that the United Kingdom is playing and will play its part.

**The Chair:** I am pleased to see the hon. Member for Gloucester arrive just in time to shout "Aye".

*Question put and agreed to.*

9.22 am

*Committee rose.*

