

## UK MINISTERS ACTING IN DEVOLVED AREAS

### **61 - The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019**

*Laid in the UK Parliament: 18 December 2018*

#### **Sifting**

Subject to sifting in UK Parliament?	No
Procedure:	Affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	N/A
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	N/A
Date sifting period ends in UK Parliament	N/A
Written statement under SO 30C:	Paper 15
SICM under SO 30A (because amends primary legislation)	Paper 16

#### **Scrutiny procedure**

Outcome of sifting	N/A
Procedure	Affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

#### **Commentary**

The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 ('the 2019 Regulations') are proposed to be made by the UK Government pursuant to section 8(1), and section 14(1) of, paragraph 1 of Schedule 4 and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018.

The 2019 Regulations (affirmative procedure) makes changes to the three existing instruments which transpose the Habitats and Wild Birds Directives so that they continue to work (are operable) upon the UK's exit from the European Union (EU). The existing instruments are: The Conservation of Habitats and Species Regulations 2017; The Conservation of Offshore Marine Habitats and Species Regulations 2017; and The Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001. This instrument also amends section 27 of the Wildlife and Countryside Act 1981 to ensure existing protections continue.

Legal Advisers make the following comments in relation to the Welsh Government's statement dated 18 December 2018 regarding the effect of these Regulations:

- Other than in the heading, "European Directly Applicable Instruments amended by the 2019 Regulations", the statement incorrectly refers throughout to the 2019 Regulations as being dated 2018. (The Statutory Instrument Consent Memorandum also incorrectly refers throughout to the 2019 Regulations as being dated 2018).
- The statement omits reference to The Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001. These Regulations form part of the three sets of domestic Regulations subject to change by the 2019 Regulations according to the Explanatory Memorandum ('EM'). The territorial application of these Regulations is the United Kingdom. Whilst paragraph 3.3 of the EM states that these and The Conservation of Offshore Marine Habitats and Species Regulations 2017 are not within devolved competence - which may have been a reason why they might be omitted - it is anomalous that the statement does include the latter as secondary legislation amended by the 2019 Regulations.

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect.

Legal Advisers do not consider that any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.

Legal Advisers have not identified any legal reason to seek a consent motion under Standing Order 30A.10 in relation to these Regulations.