

STATUTORY INSTRUMENT CONSENT MEMORANDUM

The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2018

1. This Statutory Instrument Consent Memorandum is laid under Standing Order (“SO”) 30A.2. SO 30A prescribes that a Statutory Instrument Consent Memorandum must be laid and a Statutory Instrument Consent Motion may be tabled before the National Assembly for Wales (“Assembly”) if a UK Statutory Instrument (SI) makes provision in relation to Wales amending primary legislation within the legislative competence of the Assembly.
2. The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2018 (“the 2018 Regulations”) were laid before the Houses of Parliament on 11 December 2018. The Regulations can be found at: <https://beta.parliament.uk/work-packages/3Mb6uXHL>

Summary of the Statutory Instrument and its objective

3. The objective of the 2018 Regulations is to make minor and technical changes to the Conservation of Habitats and Species Regulations 2017; the Conservation of Offshore Marine Habitats and Species 2017; the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001 and the Wildlife and Countryside Act 1981. The changes are necessary to ensure that conservation of habitats and species legislation will continue to be operable in the United Kingdom (UK) after the UK leaves the EU. The instrument addresses deficiencies in the retained EU law arising from the UK’s withdrawal from the EU. The purpose of the 2018 Regulations is to preserve and protect the existing policy regime.
4. In accordance with this objective, the 2018 Regulations amend the Wildlife and Countryside Act 1981 (“The Act”) on an England and Wales basis. The amendments made to the 1981 Act by the 2018 Regulations is to section 27, which defines “wild birds”. Currently “wild bird” is defined in the 1981 in terms of species found in or visiting the European territory of a Member State. On exiting the EU this would mean that species of wild birds found in the UK but not elsewhere in the EU would no longer be protected. To ensure such species of wild birds continue to be protected the definition is amended to add the UK. 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.
5. The intention is for the 2018 Regulations to ensure the continued implementation of habitat and species protections provided for by the Habitats Directive (Council Directive 92/43/EEC) and the Wild Birds Directive (Directive 2009/147/EC of the European Parliament and the Council) and the 1981 Act after exit day. The Directives are implemented in the UK by the Conservation of Habitats and Species Regulations 2017 and the Conservation of Offshore Marine Habitats and Species 2017 (“the

2017 Regulations”). There is no change to policy. The changes ensure the 2018 Regulations and the 1981 Act continue to work after exit day.

Relevant provision to be made by the SI

6. The amendments made to The Act by the 2018 Regulations, are to the following provision:

In section 27 of the Wildlife and Countryside Act 1981⁽¹⁾, as it extends to England and Wales, in the definition of “wild bird”, after “visitor to”, insert “the United Kingdom or”.

7. The changes identified in paragraph 5 relate to a subject matter that is within the legislative competence of the National Assembly for Wales, and which could be the subject of a National Assembly Bill.
8. Section 108A of the Government of Wales Act 2006 enables the Assembly to legislate on any subject except those specifically reserved to the UK Parliament in Schedule 7A to the Act. The Assembly has legislative competence in relation to habitats and species protections.

Why it is appropriate for the SI to make this provision

9. There is no divergence between the Welsh Government and the UK Government on the policy of the correction. Therefore, making separate SIs in Wales and England to correct the reference in question would lead to duplication, and unnecessary complication of the statute book. Consenting to this SI ensures that there is a single legislative framework across England and Wales, which promotes clarity and accessibility during this period of change. In these exceptional circumstances, the Welsh Government considers it appropriate that the UK Government legislates on our behalf in this instance.

Lesley Griffiths AM, Minister for Environment, Energy and Rural Affairs
18 December 2018

(1) 1981 c.69. the definition of “wild bird” in Section 27 was amended in relation to England and Wales by S.I. 2004/1487.