

# SL(5)149 - The Conservation of Habitats and Species Regulations 2017

## Background and Purpose

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These Regulations consolidate and update the Conservation of Habitats and Species Regulations 2010.

These Regulations transpose Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora ("the Habitats Directive") and elements of Directive 2009/147/EC on the conservation of wild birds ("the Birds Directive") in England, Wales and, to a limited extent, Scotland and Northern Ireland.

The objective of the Habitats Directive is to protect biodiversity through the conservation of natural habitats and species of wild fauna and flora. The Habitats Directive lays down rules for the protection, management and exploitation of such habitats and species.

## Procedure

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Negative

## Technical Scrutiny

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One point is identified for reporting under Standing Order 21.2 in respect of these Regulations, in that they are not made in both English and Welsh (Standing Order 21.2(ix)).

These Regulations have been made as a composite instrument, meaning that these Regulations have been: (a) made by both the Welsh Ministers and the Secretary of State, and (b) laid before both the National Assembly for Wales and the UK Parliament. The Welsh Ministers considered it was not reasonably practicable for these Regulations to be made in English and Welsh.

However, where these Regulations make consequential amendments to bilingual legislation, those amendments are in English and Welsh (see, for example, paragraph 22 of Schedule 6). This shows that legislation containing Welsh language text can be (and is occasionally) laid before the UK Parliament.

## Merits Scrutiny

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One point is identified for reporting under Standing Order 21.3 in respect of these Regulations, in that they are of political or legal importance or give rise to issues of public policy likely to be of interest to the Assembly (Standing Order 21.3(ii)).

These Regulations are made under section 2(2) of the European Communities Act 1972. The 1972 Act gives a discretion as to whether the negative procedure or the affirmative procedure should apply to these Regulations. The negative procedure has been chosen, which seems appropriate given the consolidating nature of these Regulations.

## Implications arising from exiting the European Union

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The following analysis is based on the European Union (Withdrawal) Bill ("the Bill") as introduced.

These Regulations form part of "EU-derived domestic legislation" under clause 2 of the Bill, therefore these Regulations will be retained as domestic law and will continue to have effect in Wales on and after



exit day. The Bill gives the Welsh Ministers power to modify these Regulations in order to deal with deficiencies arising from EU withdrawal, subject to certain limitations.

For example, these Regulations make several references to the European Commission (such as requiring the agreement of the European Commission, supplying information to the European Commission and having regard to the opinion of the European Commission). At present, it is unclear how these references will work on and after exit day. Will the references be amended by the Welsh Ministers using their powers under the Bill to address deficiencies in retained EU law? Will these issues be addressed in a withdrawal agreement? Will these issues be addressed in a common United Kingdom environment framework?

With regard to the Habitats Directive and the Birds Directive, these Directives will not automatically form part of domestic law on and after exit day under the Bill. However, where a court or tribunal has recognised, before exit day, that an EU directive confers a right on an individual that the individual can rely on and enforce in law, then that right will form part of domestic law on and after exit day (see clause 4 of the Bill).

## Government Response

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No government response is required.

## Committee Consideration

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The committee considered the instrument at its meeting on 20 November and reports to the Assembly in line with the technical and merits points identified.

