

SCHEDULES

SCHEDULE 9

Section 75(1).

SITES OF SPECIAL SCIENTIFIC INTEREST

1 For section 28 of the 1981 Act (areas of special scientific interest) there is substituted—

“28 Sites of special scientific interest

- (1) Where the Nature Conservancy Council are of the opinion that any area of land is of special interest by reason of any of its flora, fauna, or geological or physiographical features, it shall be the duty of the Council to notify that fact—
 - (a) to the local planning authority in whose area the land is situated;
 - (b) to every owner and occupier of any of that land; and
 - (c) to the Secretary of State.
- (2) The Council shall also publish a notification of that fact in at least one local newspaper circulating in the area in which the land is situated.
- (3) A notification under subsection (1) shall specify the time (not being less than three months from the date of the giving of the notification) within which, and the manner in which, representations or objections with respect to it may be made; and the Council shall consider any representation or objection duly made.
- (4) A notification under subsection (1)(b) shall also specify—
 - (a) the flora, fauna, or geological or physiographical features by reason of which the land is of special interest, and
 - (b) any operations appearing to the Council to be likely to damage that flora or fauna or those features,and shall contain a statement of the Council’s views about the management of the land (including any views the Council may have about the conservation and enhancement of that flora or fauna or those features).
- (5) Where a notification under subsection (1) has been given, the Council may within the period of nine months beginning with the date on which the notification was served on the Secretary of State either—
 - (a) give notice to the persons mentioned in subsection (1) withdrawing the notification; or
 - (b) give notice to those persons confirming the notification (with or without modifications).
- (6) A notification shall cease to have effect—
 - (a) on the giving of notice of its withdrawal under subsection (5)(a) to any of the persons mentioned in subsection (1); or

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- (b) if not withdrawn or confirmed by notice under subsection (5) within the period of nine months referred to there, at the end of that period.
- (7) The Council's power under subsection (5)(b) to confirm a notification under subsection (1) with modifications shall not be exercised so as to add to the operations specified in the notification or extend the area to which it applies.
- (8) As from the time when there is served on the owner or occupier of any land which has been notified under subsection (1)(b) a notice under subsection (5) (b) confirming the notification with modifications, the notification shall have effect in its modified form in relation to so much (if any) of that land as remains subject to it.
- (9) A notification under subsection (1)(b) of land in England and Wales shall be a local land charge.
- (10) For the purposes of this section and sections 28A to 28D, "local planning authority", in relation to land within the Broads, includes the Broads Authority.

28A Variation of notification under section 28

- (1) At any time after notice has been given under section 28(5)(b) confirming a notification (with or without modifications), the Nature Conservancy Council may by notice vary the matters specified or stated in the confirmed notification (whether by adding to them, changing them, or removing matter from them).
- (2) The area of land cannot be varied under this section.
- (3) The Council shall give notice setting out the variation to—
 - (a) the local planning authority in whose area the land is situated,
 - (b) every owner and occupier of any of the land who in the opinion of the Council may be affected by the variation, and
 - (c) the Secretary of State,
 and after service of a notice under paragraph (b) the notification under section 28(1)(b) shall have effect in its varied form.
- (4) Section 28(3) shall apply to such a notice as it applies to a notification under section 28(1).
- (5) Where a notice under subsection (3) has been given, the Council may within the period of nine months beginning with the date the last of the owners and occupiers referred to in subsection (3)(b) was served with the notice either—
 - (a) give notice to the persons mentioned in subsection (3) withdrawing the notice; or
 - (b) give notice to them confirming the notice (with or without modifications).
- (6) A notice under subsection (3) shall cease to have effect—
 - (a) on the giving of notice of its withdrawal under subsection (5)(a) to any of the persons mentioned in subsection (3); or

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- (b) if not withdrawn or confirmed by notice under subsection (5) within the period of nine months referred to in that subsection, at the end of that period.
- (7) As from the time when there is served on the owner or occupier of any land a notice under subsection (5)(b) confirming a notice of variation with modifications, the notification under section 28(1)(b) shall have effect as so varied.
- (8) A local land charge existing by virtue of section 28(9) shall be varied in accordance with a notice under subsection (3) or (5)(b).

28B Notification of additional land

- (1) Where the Nature Conservancy Council are of the opinion that if land adjacent to a site of special scientific interest (“the extra land”) were combined with the site of special scientific interest (“the SSSI”), the combined area of land would be of special interest by reason of any of its flora, fauna, or geological or physiographical features, the Council may decide to notify that fact.
- (2) If they do so decide, the persons whom they must notify are—
 - (a) the local planning authority in whose area the extra land is situated;
 - (b) every owner and occupier of any of that extra land; and
 - (c) the Secretary of State.
- (3) No such notification may be given until after notice has been given under section 28(5)(b) confirming (with or without modifications) the notification under section 28(1) relating to the SSSI.
- (4) Subsections (2) and (3) of section 28 shall apply for the purposes of this section as they apply for the purposes of that section.
- (5) A notification under subsection (2)(b) shall also specify—
 - (a) the area of land constituting the SSSI;
 - (b) what (as at the date of the notification under subsection (2)(b)) is specified or contained in the notification under section 28(1)(b) relating to the SSSI by virtue of section 28(4); and
 - (c) the reasons why the Council is of the opinion referred to in subsection (1).
- (6) In addition, the notification under subsection (2)(b) shall include a statement—
 - (a) saying whether or not anything among the matters specified in the notification by virtue of subsection (5)(c) is particularly relevant to the extra land; and
 - (b) if any such thing is of particular relevance, specifying which.
- (7) Subsections (5) to (7) of section 28 apply in relation to a notification under subsection (2) of this section as they apply in relation to a notification under subsection (1) of that section, as if references to “subsection (1)” in section 28(5) to (7) were references to subsection (2) of this section.

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- (8) As from the time when a notification under subsection (2)(b) is served on the owner or occupier of any land, the notification under section 28(1)(b) shall have effect as if it included the notification under subsection (2)(b).
- (9) As from the time when there is served on the owner or occupier of any land which has been notified under subsection (2)(b) a notice under section 28(5)(b) (as applied by subsection (7) of this section) confirming the notification under subsection (2)(b) with modifications, the notification under section 28(1)(b) (as extended by virtue of subsection (8) of this section) shall have effect in its modified form.
- (10) A local land charge existing by virtue of section 28(9) shall be varied in accordance with a notification under subsection (2) or under section 28(5) (b) as applied by subsection (7) of this section.

28C Enlargement of SSSI

- (1) Where the Nature Conservancy Council are of the opinion that any area of land which includes, but also extends beyond, a site of special scientific interest (“the SSSI”) is of special interest by reason of any of its flora, fauna, or geological or physiographical features, the Council may decide to notify that fact.
- (2) If they do so decide, the persons whom they must notify are—
 - (a) the local planning authority in whose area the land (including the SSSI) is situated;
 - (b) every owner and occupier of any of that land (including the SSSI); and
 - (c) the Secretary of State.
- (3) Subsections (2) to (8) of section 28 apply to a notification under subsection (2) of this section as they apply to a notification under subsection (1) of that section, as if references to “subsection (1)” and “subsection (1)(b)” in section 28(2) to (8) were references to subsection (2) and subsection (2)(b) of this section respectively.
- (4) No notification may be given under subsection (2) until after notice has been given under section 28(5)(b) (or section 28(5)(b) as applied by subsection (3)) confirming (with or without modifications) the notification under section 28(1) (or subsection (2)) relating to the SSSI.
- (5) As from the time when a notification under subsection (2) is served on the owner or occupier of any land included in the SSSI, the notification in relation to that land which had effect immediately before the service of the notification under subsection (2) shall cease to have effect.
- (6) A notification under subsection (2)(b) of land in England and Wales shall be a local land charge; and, to the extent that any such land was the subject of a local land charge by virtue of section 28(9), that local land charge shall be discharged.
- (7) A notice under section 28E(1)(a) and a consent under section 28E(3)(a) given before a notification under subsection (2)(b) continue to have effect.

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- (8) The enlargement of a site of special scientific interest under this section does not affect anything done under section 28J to 28L.
- (9) Any reference to—
- (a) a notification under section 28(1) (or any of its paragraphs) shall be construed as including the corresponding notification under subsection (2);
 - (b) a notification under section 28(5)(b) shall be construed as including a notification under that provision as applied by subsection (3); and
 - (c) a local land charge existing by virtue of section 28(9) shall be treated as including one existing by virtue of subsection (6).

28D Denotification

- (1) Where the Nature Conservancy Council are of the opinion that all or part of a site of special scientific interest is no longer of special interest by reason of any of the matters mentioned in section 28(1), they may decide to notify that fact.
- (2) If they do so decide, the persons whom they must notify are—
- (a) the local planning authority in whose area the land which the Council no longer consider to be of special interest is situated;
 - (b) every owner and occupier of any of that land;
 - (c) the Secretary of State;
 - (d) the Environment Agency; and
 - (e) every relevant undertaker (within the meaning of section 4(1) of the Water Industry Act 1991) and every internal drainage board (within the meaning of section 61C(1) of the Land Drainage Act 1991) whose works, operations or activities may affect the land.
- (3) The Council shall also publish a notification of that fact in at least one local newspaper circulating in the area in which the land referred to in subsection (2)(a) is situated.
- (4) Section 28(3) shall apply to a notification under subsection (2) or (3) as it applies to a notification under section 28(1).
- (5) Where a notification under subsection (2) has been given, the Council may within the period of nine months beginning with the date on which the notification was served on the Secretary of State either—
- (a) give notice to the persons mentioned in subsection (2) withdrawing the notification, or
 - (b) give notice to those persons confirming the notification, or confirming it in relation to an area of land specified in the notice which is smaller than that specified in the notification under subsection (2),
- but if they do neither the notification shall cease to have effect.
- (6) A notification under subsection (2) shall have effect in relation to any land as from the time a notice under subsection (5)(b) is served on its owner or occupier, and from that time a notification under section 28(1)(b) in relation to that land shall cease to have effect.

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- (7) A local land charge existing by virtue of section 28(9) shall be discharged in relation to land which is the subject of a notice under subsection (5)(b).

28E Duties in relation to sites of special scientific interest

- (1) The owner or occupier of any land included in a site of special scientific interest shall not while the notification under section 28(1)(b) remains in force carry out, or cause or permit to be carried out, on that land any operation specified in the notification unless—
- (a) one of them has, after service of the notification, given the Nature Conservancy Council notice of a proposal to carry out the operation specifying its nature and the land on which it is proposed to carry it out; and
 - (b) one of the conditions specified in subsection (3) is fulfilled.
- (2) Subsection (1) does not apply to an owner or occupier being an authority to which section 28G applies acting in the exercise of its functions.
- (3) The conditions are—
- (a) that the operation is carried out with the Council’s written consent;
 - (b) that the operation is carried out in accordance with the terms of an agreement under section 16 of the 1949 Act or section 15 of the 1968 Act;
 - (c) that the operation is carried out in accordance with a management scheme under section 28J or a management notice under section 28K.
- (4) A consent under subsection (3)(a) may be given—
- (a) subject to conditions, and
 - (b) for a limited period,
- as specified in the consent.
- (5) If the Council do not consent, they shall give notice saying so to the person who gave the notice under subsection (1).
- (6) The Council may, by notice given to every owner and occupier of any of the land included in the site of special scientific interest, or the part of it to which the consent relates—
- (a) withdraw the consent; or
 - (b) modify it (or further modify it) in any way.
- (7) The following—
- (a) a consent under subsection (3)(a) granting consent subject to conditions or for a limited period, and
 - (b) a notice under subsection (5) or (6),
- must include a notice of the Council’s reasons for imposing the conditions, for the limitation of the period, for refusing consent, or for withdrawing or modifying the consent, and also a notice of the matters set out in subsection (8).
- (8) The matters referred to in subsection (7) are—
- (a) the rights of appeal under section 28F;

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- (b) the effect of subsection (9); and
 - (c) in the case of a notice under subsection (6), the effect of section 28M.
- (9) A withdrawal or modification of a consent is not to take effect until—
- (a) the expiry of the period for appealing against it; or
 - (b) if an appeal is brought, its withdrawal or final determination.
- (10) The Council shall have power to enforce the provisions of this section.

28F Appeals in connection with consents

- (1) The following persons—
- (a) an owner or occupier who has been refused a consent under section 28E(3)(a),
 - (b) an owner or occupier who has been granted such a consent but who is aggrieved by conditions attached to it, or by the fact that it is for a limited period, or by the length of that period,
 - (c) an owner or occupier who is aggrieved by the modification of a consent;
 - (d) an owner or occupier who is aggrieved by the withdrawal of a consent,
- may by notice appeal to the Secretary of State against the relevant decision.
- (2) If the Nature Conservancy Council neither give consent nor refuse it within the period of four months beginning with the date on which the notice referred to in section 28E(1)(a) was sent, the person who gave that notice may for the purposes of subsection (1) treat the Council as having refused consent (and his appeal is to be determined on that basis).
- (3) Notice of an appeal must reach the Secretary of State—
- (a) except in a case falling within subsection (2), within the period of two months beginning with the date of the notice giving consent or the notice under section 28E(5) or (6), or
 - (b) in a case falling within subsection (2), within the period of two months beginning immediately after the expiry of the four-month period referred to there,
- or, in either case, within such longer period as is agreed in writing between the Council and the appellant.
- (4) Before determining an appeal, the Secretary of State may, if he thinks fit—
- (a) cause the appeal to take, or continue in, the form of a hearing (which may be held wholly or partly in private if the appellant so requests and the person hearing the appeal agrees), or
 - (b) cause a local inquiry to be held,
- and he must act as mentioned in paragraph (a) or (b) if either party to the appeal asks to be heard in connection with the appeal.
- (5) On determining an appeal against a decision, the Secretary of State may—
- (a) affirm the decision,
 - (b) where the decision was a refusal of consent, direct the Council to give consent,

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- (c) where the decision was as to the terms of a consent (whether the original or a modified one), quash all or any of those terms,
 - (d) where the decision was a withdrawal or modification of consent, quash the decision,and where he exercises any of the powers in paragraphs (b), (c) or (d) he may give directions to the Council as to the terms on which they are to give consent.
- (6) The Secretary of State may by regulations made by statutory instrument make provision about appeals under this section, and in particular about—
 - (a) notices of appeal and supporting documentation required, and
 - (b) how appeals are to be brought and considered,and any such regulations may make different provision for different cases and circumstances.
- (7) A statutory instrument containing regulations under subsection (6) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (8) The Secretary of State may appoint any person to exercise on his behalf, with or without payment, his function of determining an appeal under this section or any matter involved in such an appeal.
- (9) Schedule 10A shall have effect with respect to appointments under subsection (8).
- (10) Subsections (2) to (5) of section 250 of the Local Government Act 1972 (local inquiries: evidence and costs) apply in relation to hearings or local inquiries under this section as they apply in relation to local inquiries under that section, but as if the reference there—
 - (a) to the person appointed to hold the inquiry were a reference to the Secretary of State or to the person appointed to conduct the hearing or hold the inquiry under this section; and
 - (b) to the Minister causing an inquiry to be held were to the Secretary of State.
- (11) Section 322A of the Town and Country Planning Act 1990 (orders as to costs where no hearing or inquiry takes place) applies in relation to a hearing or local inquiry under this section as it applies in relation to a hearing or local inquiry referred to in that section.

28G Statutory undertakers, etc.: general duty

- (1) An authority to which this section applies (referred to in this section and in sections 28H and 28I as “a section 28G authority”) shall have the duty set out in subsection (2) in exercising its functions so far as their exercise is likely to affect the flora, fauna or geological or physiographical features by reason of which a site of special scientific interest is of special interest.
- (2) The duty is to take reasonable steps, consistent with the proper exercise of the authority’s functions, to further the conservation and enhancement of the flora, fauna or geological or physiographical features by reason of which the site is of special scientific interest.

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- (3) The following are section 28G authorities—
- (a) a Minister of the Crown (within the meaning of the Ministers of the Crown Act 1975) or a Government department;
 - (b) the National Assembly for Wales;
 - (c) a local authority;
 - (d) a person holding an office—
 - (i) under the Crown,
 - (ii) created or continued in existence by a public general Act of Parliament, or
 - (iii) the remuneration in respect of which is paid out of money provided by Parliament;
 - (e) a statutory undertaker (meaning the persons referred to in section 262(1), (3) and (6) of the Town and Country Planning Act 1990); and
 - (f) any other public body of any description.

28H Statutory undertakers, etc.: duty in relation to carrying out operations

- (1) A section 28G authority shall give notice to the Nature Conservancy Council before carrying out, in the exercise of its functions, operations likely to damage any of the flora, fauna or geological or physiographical features by reason of which a site of special scientific interest is of special interest.
- (2) Subsection (1) applies even if the operations would not take place on land included in a site of special scientific interest.
- (3) In response to the notice referred to in subsection (1), the Council may send a notice—
- (a) saying that they do not assent to the proposed operations, or
 - (b) assenting to them (with or without conditions),
- but if they do not send a notice under paragraph (b) within the period of 28 days beginning with the date of the notice under subsection (1) they shall be treated as having declined to assent.
- (4) If the Council do not assent, or if the authority proposes to carry out the operations otherwise than in accordance with the terms of the Council's assent, the authority—
- (a) shall not carry out the operations unless the condition set out in subsection (5) is satisfied, and
 - (b) shall comply with the requirements set out in subsection (6) when carrying them out.
- (5) The condition is that the authority has, after the expiry of the period of 28 days beginning with the date of the notice under subsection (1), notified the Council of—
- (a) the date on which it proposes to start the operations (which must be after the expiry of the period of 28 days beginning with the date of the notification under this paragraph), and
 - (b) how (if at all) it has taken account of any written advice it received from the Council, before the date of the notification under this paragraph, in response to the notice under subsection (1).

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- (6) The requirements are—
- (a) that the authority carry out the operations in such a way as to give rise to as little damage as is reasonably practicable in all the circumstances to the flora, fauna or geological or physiographical features by reason of which the site is of special interest (taking account, in particular, of any such advice as is referred to in subsection (5)(b)); and
 - (b) that the authority restore the site to its former condition, so far as is reasonably practicable, if any such damage does occur.

28I Statutory undertakers, etc.: duty in relation to authorising operations

- (1) This section applies where the permission of a section 28G authority is needed before operations may be carried out.
- (2) Before permitting the carrying out of operations likely to damage any of the flora, fauna or geological or physiographical features by reason of which a site of special scientific interest is of special interest, a section 28G authority shall give notice of the proposed operations to the Nature Conservancy Council.
- (3) Subsection (2) applies even if the operations would not take place on land included in a site of special scientific interest.
- (4) The authority shall wait until the expiry of the period of 28 days beginning with the date of the notice under subsection (2) before deciding whether to give its permission, unless the Nature Conservancy Council have notified the authority that it need not wait until then.
- (5) The authority shall take any advice received from the Council into account—
 - (a) in deciding whether or not to permit the proposed operations, and
 - (b) if it does decide to do so, in deciding what (if any) conditions are to be attached to the permission.
- (6) If the Council advise against permitting the operations, or advise that certain conditions should be attached, but the section 28G authority does not follow that advice, the authority—
 - (a) shall give notice of the permission, and of its terms, to the Council, the notice to include a statement of how (if at all) the authority has taken account of the Council’s advice, and
 - (b) shall not grant a permission which would allow the operations to start before the end of the period of 21 days beginning with the date of that notice.
- (7) In this section “permission”, in relation to any operations, includes authorisation, consent, and any other type of permission (and “permit” and “permitting” are to be construed accordingly).

28J Management schemes

- (1) The Nature Conservancy Council may formulate a management scheme for all or part of a site of special scientific interest.

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- (2) A management scheme is a scheme for—
 - (a) conserving the flora, fauna, or geological or physiographical features by reason of which the land (or the part of it to which the scheme relates) is of special interest; or
 - (b) restoring them; or
 - (c) both.
- (3) The Council shall serve notice of a proposed management scheme on every owner and occupier of any of the land (or the part of it to which the scheme would relate); but it may be served on them only after they have been consulted about the proposed management scheme.
- (4) The notice may be served with the notification referred to in section 28(1)(b) or afterwards.
- (5) The owners and occupiers upon whom the notice must be served (referred to in this section as “the relevant owners and occupiers”) are—
 - (a) if it is served with the notification under section 28(1)(b), or later but before the notification referred to in section 28(5)(b), the owners and occupiers referred to in section 28(1)(b);
 - (b) if it is served with the notification under section 28(5)(b) or later, the owners and occupiers of such of the land as remains subject to the notification.
- (6) The notice of a proposed management scheme must include a copy of the proposed scheme.
- (7) The notice must specify the time (not being less than three months from the date of the giving of the notice) within which, and the manner in which, representations or objections with respect to the proposed management scheme may be made; and the Council shall consider any representation or objection duly made.
- (8) Where a notice under subsection (3) has been given, the Council may within the period of nine months beginning with the date on which the notice was served on the last of the relevant owners and occupiers either—
 - (a) give notice to the relevant owners and occupiers withdrawing the notice, or
 - (b) give notice to them confirming the management scheme (with or without modifications),and if notice under paragraph (b) is given, the management scheme shall have effect from the time the notice is served on all of the relevant owners or occupiers.
- (9) A notice under subsection (3) shall cease to have effect—
 - (a) on the giving of a notice of withdrawal under subsection (8)(a) to any of the relevant owners and occupiers; or
 - (b) if not withdrawn or confirmed by notice under subsection (8) within the period of nine months referred to there, at the end of that period.
- (10) The Council’s power under subsection (8)(b) to confirm a management scheme with modifications shall not be exercised so as to make complying with it more onerous.

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- (11) The Council may at any time cancel or propose the modification of a management scheme.
- (12) In relation to—
- (a) the cancellation of a management scheme, subsections (3) to (5) apply, and
 - (b) a proposal to modify a management scheme, subsections (3) to (10) apply,
- as they apply in relation to a proposal for a management scheme.
- (13) An agreement under section 16 of the 1949 Act or section 15 of the 1968 Act relating to a site of special scientific interest may provide for any matter for which a management scheme relating to that site provides (or could provide).

28K Management notices

- (1) Where it appears to the Nature Conservancy Council that—
- (a) an owner or occupier of land is not giving effect to a provision of a management scheme, and
 - (b) as a result any flora, fauna or geological or physiographical features by reason of which the land is of special interest are being inadequately conserved or restored,
- they may if they think fit serve a notice on him (a “management notice”).
- (2) They may not serve a management notice unless they are satisfied that they are unable to conclude, on reasonable terms, an agreement with the owner or occupier as to the management of the land in accordance with the management scheme.
- (3) A management notice is a notice requiring the owner or occupier to—
- (a) carry out such work on the land, and
 - (b) do such other things with respect to it,
- as are specified in the notice, and to do so before the dates or within the periods so specified.
- (4) The work and other things specified in the notice must appear to the Council to be measures which it is reasonable to require in order to ensure that the land is managed in accordance with the management scheme.
- (5) The management notice must explain the effect of subsection (7) and (8) and of sections 28L and 28M(2) to (4).
- (6) A copy of the management notice must be served on every other owner and occupier of the land.
- (7) If any of the work or other things required by a management notice have not been done within the period or by the date specified in it, the Council may—
- (a) enter the land, and any other land, and carry out the work, or do the other things; and
 - (b) recover from the owner or occupier upon whom the notice was served any expenses reasonably incurred by them in carrying out the work or doing the other things.

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- (8) If an appeal is brought against the management notice, and upon the final determination of the appeal the notice is affirmed (with or without modifications), subsection (7) applies as if the references there to the management notice were to the notice as affirmed.

28L Appeals against management notices

- (1) A person who is served with a management notice may appeal against its requirements to the Secretary of State; and a management notice does not take effect until—
- (a) the expiry of the period for appealing against it; or
 - (b) if an appeal is brought, its withdrawal or final determination.
- (2) An appeal may be on the ground that some other owner or occupier of the land should take all or any of the measures specified in the management notice, or should pay all or part of their cost.
- (3) Where the grounds of appeal are, or include, that mentioned in subsection (2), the appellant must serve a copy of his notice of appeal on each other person referred to.
- (4) Before determining an appeal, the Secretary of State may, if he thinks fit—
- (a) cause the appeal to take, or continue in, the form of a hearing (which may be held wholly or partly in private if the appellant so requests and the person hearing the appeal agrees), or
 - (b) cause a local inquiry to be held,
- and he must act as mentioned in paragraph (a) or (b) if either party to the appeal (or, in a case falling within subsection (2), any of the other persons mentioned there) asks to be heard in connection with the appeal.
- (5) On determining the appeal, the Secretary of State may quash or affirm the management notice; and if he affirms it, he may do so either in its original form or with such modifications as he thinks fit.
- (6) In particular, on determining an appeal whose grounds are, or include, those mentioned in subsection (2), the Secretary of State may—
- (a) vary the management notice so as to impose its requirements (or some of them) upon any such other person as is referred to in the grounds; or
 - (b) determine that a payment is to be made by any such other person to the appellant.
- (7) In exercising his powers under subsection (6), the Secretary of State must take into account, as between the appellant and any of the other people referred to in subsection (2)—
- (a) their relative interests in the land (considering both the nature of the interests and the rights and obligations arising under or by virtue of them);
 - (b) their relative responsibility for the state of the land which gives rise to the requirements of the management notice; and
 - (c) the relative degree of benefit to be derived from carrying out the requirements of the management notice.

Status: This is the original version (as it was originally enacted).

- (8) The Secretary of State may by regulations made by statutory instrument make provision about appeals under this section, and in particular about—
- (a) the period within which and the manner in which appeals are to be brought, and
 - (b) the manner in which they are to be considered,
- and any such regulations may make different provision for different cases or circumstances.
- (9) A statutory instrument containing regulations under subsection (8) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (10) The Secretary of State may appoint any person to exercise on his behalf, with or without payment, his function of determining an appeal under this section or any matter involved in such an appeal.
- (11) Schedule 10A shall have effect with respect to appointments under subsection (10).
- (12) Subsections (2) to (5) of section 250 of the Local Government Act 1972 (local inquiries: evidence and costs) apply in relation to hearings or local inquiries under this section as they apply in relation to local inquiries under that section, but as if the reference there—
- (a) to the person appointed to hold the inquiry were a reference to the Secretary of State or to the person appointed to conduct the hearing or hold the inquiry under this section; and
 - (b) to the Minister causing an inquiry to be held were to the Secretary of State.
- (13) Section 322A of the Town and Country Planning Act 1990 (orders as to costs where no hearing or inquiry takes place) applies in relation to a hearing or local inquiry under this section as it applies in relation to a hearing or local inquiry referred to in that section.

28M Payments

- (1) Where the Council, under section 28E(6), modify or withdraw a consent, they shall make a payment to any owner or occupier of the land who suffers loss because of the modification or withdrawal.
- (2) The Council may, if they think fit, make one or more payments to any owner or occupier of land in relation to which a management scheme under section 28J is in force.
- (3) The amount of a payment under this section is to be determined by the Council in accordance with guidance given and published by the Ministers.
- (4) Section 50(3) applies to the determination of the amount of payments under this section as it applies to the determination of the amount of payments under that section.

28N Compulsory purchase

- (1) The Nature Conservancy Council may in circumstances set out in subsection (2) acquire compulsorily all or any part of a site of special scientific interest.
- (2) The circumstances are—
 - (a) that the Council are satisfied that they are unable to conclude, on reasonable terms, an agreement with the owner or occupier as to the management of the land; or
 - (b) that the Council have entered into such an agreement, but they are satisfied that it has been breached in such a way that the land is not being managed satisfactorily.
- (3) A dispute about whether or not there has been a breach of the agreement for the purposes of subsection (2)(b) is to be determined by an arbitrator appointed by the Lord Chancellor.
- (4) Where the Council have acquired land compulsorily under this section, they may—
 - (a) manage it themselves; or
 - (b) dispose of it, or of any interest in it, on terms designed to secure that the land is managed satisfactorily.
- (5) Section 103 of the 1949 Act (general provisions as to acquisition of land) applies for the purposes of this section as it applies for the purposes of that Act.

28P Offences

- (1) A person who, without reasonable excuse, contravenes section 28E(1) is guilty of an offence and is liable on summary conviction to a fine not exceeding £20,000 or on conviction on indictment to a fine.
- (2) A section 28G authority which, in the exercise of its functions, carries out an operation which damages any of the flora, fauna or geological or physiographical features by reason of which a site of special scientific interest is of special interest—
 - (a) without first complying with section 28H(1), or
 - (b) (if it has complied with section 28H(1)) without first complying with section 28H(4)(a),is, unless there was a reasonable excuse for carrying out the operation without complying, guilty of an offence and is liable on summary conviction to a fine not exceeding £20,000 or on conviction on indictment to a fine.
- (3) A section 28G authority acting in the exercise of its functions which, having complied with section 28H(1), fails without reasonable excuse to comply with section 28H(4)(b) is guilty of an offence and is liable on summary conviction to a fine not exceeding £20,000 or on conviction on indictment to a fine.

Status: This is the original version (as it was originally enacted).

- (4) For the purposes of subsections (1), (2) and (3), it is a reasonable excuse in any event for a person to carry out an operation (or to fail to comply with a requirement to send a notice about it) if—
- (a) subject to subsection (5), the operation in question was authorised by a planning permission granted on an application under Part III of the Town and Country Planning Act 1990 or permitted by a section 28G authority which has acted in accordance with section 28I; or
 - (b) the operation in question was an emergency operation particulars of which (including details of the emergency) were notified to the Nature Conservancy Council as soon as practicable after the commencement of the operation.
- (5) If an operation needs both a planning permission and the permission of a section 28G authority, subsection (4)(a) does not provide reasonable excuse unless both have been obtained.
- (6) A person (other than a section 28G authority acting in the exercise of its functions) who without reasonable excuse—
- (a) intentionally or recklessly destroys or damages any of the flora, fauna, or geological or physiographical features by reason of which land is of special interest, or intentionally or recklessly disturbs any of those fauna, and
 - (b) knew that what he destroyed, damaged or disturbed was within a site of special scientific interest,
- is guilty of an offence and is liable on summary conviction to a fine not exceeding £20,000 or on conviction on indictment to a fine.
- (7) It is a reasonable excuse in any event for a person to do what is mentioned in subsection (6) if—
- (a) paragraph (a) or (b) of subsection (4) is satisfied in relation to what was done (reading references there to an operation as references to the destruction, damage or disturbance referred to in subsection (6)), and
 - (b) where appropriate, subsection (5) is also satisfied, reading the reference there to an operation in the same way.
- (8) A person who without reasonable excuse fails to comply with a requirement of a management notice is guilty of an offence and is liable on summary conviction to a fine not exceeding the statutory maximum or on conviction on indictment to a fine.
- (9) In determining the amount of any fine to be imposed on a person convicted of an offence under this section, the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence.
- (10) Proceedings in England and Wales for an offence under this section shall not, without the consent of the Director of Public Prosecutions, be taken by a person other than the Council.
- (11) In this section, “a section 28G authority” means an authority to which section 28G applies.

28Q Change of owner or occupier

- (1) This section applies where the owner of land included in a site of special scientific interest—
 - (a) disposes of any interest of his in the land; or
 - (b) becomes aware that it is occupied by an additional or a different occupier.
- (2) If this section applies, the owner shall send a notice to the Nature Conservancy Council before the end of the period of 28 days beginning with the date on which he disposed of the interest or became aware of the change in occupation.
- (3) The notice is to specify the land concerned and—
 - (a) in a subsection (1)(a) case, the date on which the owner disposed of the interest in the land, and the name and address of the person to whom he disposed of the interest; or
 - (b) in a subsection (1)(b) case, the date on which the change of occupation took place (or, if the owner does not know the exact date, an indication of when to the best of the owner’s knowledge it took place), and, as far as the owner knows them, the name and address of the additional or different occupier.
- (4) A person who fails without reasonable excuse to comply with the requirements of this section is guilty of an offence and is liable on summary conviction to a fine not exceeding level 1 on the standard scale.
- (5) For the purposes of subsection (1), an owner “disposes of” an interest in land if he disposes of it by way of sale, exchange or lease, or by way of the creation of any easement, right or privilege, or in any other way except by way of mortgage.

28R Byelaws

- (1) The Nature Conservancy Council may make byelaws for the protection of a site of special scientific interest.
 - (2) The following provisions of the 1949 Act apply in relation to byelaws under this section as they apply in relation to byelaws under section 20 of that Act—
 - (a) subsections (2) and (3) of section 20 (reading references there to nature reserves as references to sites of special scientific interest); and
 - (b) sections 106 and 107.”
- 2 Section 29 (special protection for certain areas of special scientific interest) and section 30 (compensation where an order is made under section 29) of the 1981 Act shall cease to have effect.
- 3 (1) Section 31 of the 1981 Act (restoration where order under section 29 is contravened) is amended as follows.
- (2) For subsection (1) there is substituted—

Status: This is the original version (as it was originally enacted).

“(1) Where—

(a) the operation in respect of which a person is convicted of an offence under section 28P(1), (2) or (3) has destroyed or damaged any of the flora, fauna or geological or physiographical features by reason of which a site of special scientific interest is of special interest, or

(b) a person is convicted of an offence under section 28P(6),

the court by which he is convicted, in addition to dealing with him in any other way, may make an order requiring him to carry out, within such period as may be specified in the order, such operations (whether on land included in the site of special scientific interest or not) as may be so specified for the purpose of restoring the site of special scientific interest to its former condition.”

(3) For the sidenote, there is substituted “Restoration following offence under section 28P.”.

4 In section 32 (duties of agriculture Ministers with respect to areas of special scientific interest), in subsection (1), for “land notified under section 28(1)” there is substituted “land included in a site of special scientific interest”.

5 (1) Section 52 of the 1981 Act (interpretation of Part II) is amended as follows.

(2) In subsection (1), after the definition of “the Nature Conservancy Councils” there is inserted—

““notice” and “notification” mean notice or notification in writing;

“site of special scientific interest” means an area of land which has been notified under section 28(1)(b);”.

(3) In subsection (2), after “district planning authority” there is inserted “and, in sections 28 to 28D, shall also be construed in accordance with section 28(10);”.

(4) After subsection (2) there is inserted—

“(2A) Where a notification under section 28(1)(b) has been—

(a) modified under section 28(5)(b),

(b) varied under section 28A(3), or

(c) varied with modifications under section 28A(5)(b),

(d) extended under section 28B(2), or

(e) extended with modifications by virtue of section 28B(7),

a reference to such a notification (however expressed) is (unless the context otherwise requires) a reference to the notification as thus altered.

(2B) References to a notification under section 28(1) or 28(5)(b), or to a local land charge existing by virtue of section 28(9), shall be construed in accordance with section 28C(9).

(2C) For the purposes of this Part, in relation to land in England and Wales which is common land, “occupier” includes the commoners or any of them; and

(a) “common land” means common land as defined in section 22 of the Commons Registration Act 1965; and

(b) “commoner” means a person with rights of common as defined in that section.”

Status: This is the original version (as it was originally enacted).

6 In section 67 of the 1981 Act (application to Crown), after subsection (1) there is inserted—

“(1A) An interest in Crown land, other than one held by or on behalf of the Crown, may be acquired under section 28N, but only with the consent of the appropriate authority.

(1B) Byelaws made by virtue of section 28R may apply to Crown land if the appropriate authority consents.”

7 In the 1981 Act, after Schedule 10 there is inserted the following Schedule—

“SCHEDULE
10A

DELEGATION OF APPELLATE FUNCTIONS

Interpretation

1 In this Schedule—

“appointed person” means a person appointed under section 28F(8) or 28L(10); and

“appointment”, in the case of any appointed person, means appointment under either of those provisions.

Appointments

2 An appointment under section 28F(8) or 28L(10) must be in writing and—

- (a) may relate to any particular appeal or matter specified in the appointment or to appeals or matters of a description so specified;
- (b) may provide for any function to which it relates to be exercisable by the appointed person either unconditionally or subject to the fulfilment of such conditions as may be specified in the appointment; and
- (c) may, by notice in writing given to the appointed person, be revoked at any time by the Secretary of State in respect of any appeal or matter which has not been determined by the appointed person before that time.

Powers of appointed person

3 Subject to the provisions of this Schedule, an appointed person shall, in relation to any appeal or matter to which his appointment relates, have the same powers and duties as the Secretary of State, other than—

- (a) any function of making regulations;
- (b) any function of holding an inquiry or other hearing or of causing an inquiry or other hearing to be held; or
- (c) any function of appointing a person for the purpose—
 - (i) of enabling persons to appear before and be heard by the person so appointed, or

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(ii) of referring any question or matter to that person.

Holding of local inquiries and other hearings by appointed persons

- 4 (1) If either of the parties to an appeal or matter expresses a wish to appear before and be heard by the appointed person, the appointed person shall give both of them an opportunity of appearing and being heard.
- (2) Whether or not a party to an appeal or matter has asked for an opportunity to appear and be heard, the appointed person—
- (a) may hold a local inquiry or other hearing in connection with the appeal or matter, and
 - (b) shall, if the Secretary of State so directs, hold a local inquiry in connection with the appeal or matter.
- (3) Where an appointed person holds a local inquiry or other hearing by virtue of this Schedule, an assessor may be appointed by the Secretary of State to sit with the appointed person at the inquiry or hearing and advise him on any matters arising, notwithstanding that the appointed person is to determine the appeal or matter.
- (4) Subject to section 28F(10) or 28L(12), the costs of a local inquiry held under this Schedule shall be defrayed by the Secretary of State.

Revocation of appointments and making of new appointments

- 5 (1) Where under paragraph 2(c) the appointment of the appointed person is revoked in respect of any appeal or matter, the Secretary of State shall, unless he proposes to determine the appeal or matter himself, appoint another person under section 28F(8) or 28L(10) to determine the appeal or matter instead.
- (2) Where such a new appointment is made, the consideration of the appeal or matter, or any hearing in connection with it, shall be begun afresh.
- (3) Nothing in sub-paragraph (2) shall require any person to be given an opportunity of making fresh representations or modifying or withdrawing any representations already made.

*Certain acts and omissions of appointed persons
to be treated as those of the Secretary of State*

- 6 (1) Anything done or omitted to be done by an appointed person in, or in connection with, the exercise or purported exercise of any function to which the appointment relates shall be treated for all purposes as done or omitted to be done by the Secretary of State.
- (2) Sub-paragraph (1) shall not apply—
- (a) for the purposes of so much of any contract made between the Secretary of State and the appointed person as relates to the exercise of the function; or
 - (b) for the purposes of any criminal proceedings brought in respect of anything done or omitted to be done as mentioned in that sub-paragraph.”