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STATUTORY INSTRUMENTS

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**1994 No. 2716**

**The Conservation (Natural Habitats, &c.) Regulations 1994**

[<sup>F1</sup>PART IV

ADAPTATION OF PLANNING AND OTHER CONTROLS

*[<sup>F1</sup>General provisions for protection of European sites*

**F1** Regulations revoked (E.W.) (1.4.2010 except so far as relating to the revocation in relation to W. of reg. 36 and specified words in reg. 3(3), 12.12.2014 in so far as not already in force) by [The Conservation of Habitats and Species Regulations 2010 \(S.I. 2010/490\)](#), regs. 1(2)(4)(b), **133(3)** (with regs. 125, 134)

**Assessment of implications for European site**

**48.**—(1) A competent authority, before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project which—

- (a) is likely to have a significant effect on a European site in Great Britain [<sup>F2</sup>or a European offshore marine site] (either alone or in combination with other plans or projects), and
- (b) is not directly connected with or necessary to the management of the site,

shall make an appropriate assessment of the implications for the site in view of that site's conservation objectives.

(2) A person applying for any such consent, permission or other authorisation shall provide such information as the competent authority may reasonably require for the purposes of the assessment [<sup>F3</sup>or to enable the competent authority to determine whether an appropriate assessment is required].

(3) The competent authority shall for the purposes of the assessment consult the appropriate nature conservation body and have regard to any representations made by that body within such reasonable time as the authority may specify.

(4) They shall also, if they consider it appropriate, take the opinion of the general public; and if they do so, they shall take such steps for that purpose as they consider appropriate.

(5) In the light of the conclusions of the assessment, and subject to regulation 49, the authority shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site [<sup>F4</sup>or European offshore marine site (as the case may be)].

(6) In considering whether a plan or project will adversely affect the integrity of the site, the authority shall have regard to the manner in which it is proposed to be carried out or to any conditions or restrictions subject to which they propose that the consent, permission or other authorisation should be given.

<sup>F5</sup>(7) .....

- F2** Words in reg. 48(1)(a) inserted (21.8.2007) by The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007 (S.I. 2007/1843), regs. 2(1), **5(23)(a)** (with reg. 9)
- F3** Words in reg. 48(2) inserted (S.) (15.2.2007) by The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2007 (S.S.I. 2007/80), regs. 2, **18**
- F4** Words in reg. 48(5) inserted (21.8.2007) by The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007 (S.I. 2007/1843), regs. 2(1), **5(23)(c)** (with reg. 9)
- F5** Reg. 48(7) omitted (31.12.2020) by virtue of The Conservation (Natural Habitats, &c.) (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/113), regs. 1, **20**; 2020 c. 1, Sch. 5 para. 1(1)

#### Commencement Information

- I1** Reg. 48 in force at 30.10.1994, see **reg. 1(2)**

### [<sup>F6</sup>Directions as regards plans and projects

**48A.**—(1) The Scottish Ministers may at any time direct a competent authority (other than the Scottish Ministers or the Secretary of State) to send to them a copy of a plan or project—

- (a) which is being prepared by the competent authority, or which is to be or has been undertaken by the competent authority; or
- (b) which is to be or has been consented to, permitted or otherwise authorised by the competent authority,

and which in the opinion of the Scottish Ministers may have a significant effect on a European site in Great Britain.

(2) The Scottish Ministers shall consider any plan or project in respect of which they have issued a direction under paragraph (1), together with such information in relation to it as they may reasonably require the competent authority to provide.

(3) Where the Scottish Ministers are satisfied that—

- (a) the plan or project falls within regulation 48(1) and no appropriate assessment has been carried out; or
- (b) an appropriate assessment has been carried out which does not comply with the Habitats Directive and these Regulations,

they may direct the competent authority to carry out an appropriate assessment in accordance with the Habitats Directive and these Regulations.

(4) A direction under paragraph (3) shall be issued as soon as reasonably practicable, and may, in particular, specify—

- (a) the manner in which an appropriate assessment must be carried out; and
- (b) the matters to be covered by the appropriate assessment.

(5) Where a direction is issued under paragraph (3), the plan or project and any operation or activity carried out under it is suspended until such time as the Scottish Ministers direct that they are satisfied that an appropriate assessment has been carried out in accordance with the Habitats Directive and these Regulations.

(6) The Scottish Ministers shall issue a direction under paragraph (5) as soon as reasonably practicable after they are satisfied that an appropriate assessment has been carried out in accordance with the Habitats Directive and these Regulations.

(7) The Scottish Ministers shall consult with the appropriate nature conservation body as to the exercise of the Scottish Ministers' functions under paragraphs (1) to (6) of this regulation.

(8) Where a direction is issued under paragraph (3), the Scottish Ministers shall send to the competent authority a summary in writing of their reasons.

(9) A competent authority shall comply with any direction given to it under paragraph (1) or (3).]

**F6** Reg. 48A inserted (S.) (29.6.2007) by The Conservation (Natural Habitats, &c.) Amendment (No. 2) (Scotland) Regulations 2007 (S.S.I. 2007/349), regs. 1(1), 2(3)

### Considerations of overriding public interest

**49.**—(1) If they are satisfied that, there being no alternative solutions, the plan or project must be carried out for imperative reasons of overriding public interest (which, subject to paragraph (2), may be of a social or economic nature), the competent authority may agree [<sup>F7</sup>, subject to paragraph (1A)], to the plan or project notwithstanding a negative assessment of the implications for the site.

[<sup>F8</sup>(1A) A competent authority other than the Scottish Ministers or the Secretary of State shall consult the Scottish Ministers for the purpose of satisfying itself under paragraph (1), and shall have regard to the opinion of the Scottish Ministers.]

(2) Where the site concerned hosts a priority natural habitat type or a priority species, the reasons referred to in paragraph (1) must be either—

(a) reasons relating to human health, public safety or beneficial consequences of primary importance to the environment, or

[<sup>F9</sup>(b) any other imperative reasons of overriding public interest, provided that the competent authority has had regard to the opinion of the [<sup>F10</sup>Scottish Ministers] in satisfying itself that there are such reasons.]

(3) Where a competent authority other than the Secretary of State desire to obtain [<sup>F11</sup>, for the purposes of paragraph (2)(b), the opinion of the Scottish Ministers as to whether reasons are to be considered imperative reasons of overriding public interest, they must submit a written request to the Scottish Ministers]—

(a) identifying the matter on which an opinion is sought, and

(b) accompanied by any documents or information which may be required.

[<sup>F12</sup>(4) In giving, for the purposes of paragraph (2)(b), their opinion as to whether the reasons are imperative reasons of overriding public interest, the Scottish Ministers must have regard to the national interest, and provide their opinion to the competent authority.]

[<sup>F13</sup>(4A) Before giving, for the purposes of paragraph (2)(b), their opinion as to whether the reasons are imperative reasons of overriding public interest, the Scottish Ministers must consult the following, and have regard to their opinion—

(a) the Joint Nature Conservation Committee;

(b) the Secretary of State;

(c) the Department of Agriculture, Environment and Rural Affairs in Northern Ireland;

(d) the Welsh Ministers; and

(e) any other person the Scottish Ministers consider appropriate.]

(5) Where an authority other than the Secretary of State propose to agree to a plan or project under this regulation notwithstanding a negative assessment of the implications for [<sup>F14</sup>the site concerned], they shall notify the Secretary of State.

Having notified the Secretary of State, they shall not agree to the plan or project before the end of the period of 21 days beginning with the day notified to them by the Secretary of State as that on which their notification was received by him, unless the Secretary of State notifies them that they may do so.

(6) In any such case the Secretary of State may give directions to the authority prohibiting them from agreeing to the plan or project, either indefinitely or during such period as may be specified in the direction.

This power is without prejudice to any other power of the Secretary of State in relation to the decision in question.

[<sup>F15</sup>(7) A competent authority shall comply with any direction given to it under paragraph (6).]

- F7** Words in reg. 49(1) inserted (S.) (29.6.2007) by The Conservation (Natural Habitats, &c.) Amendment (No. 2) (Scotland) Regulations 2007 (S.S.I. 2007/349), regs. 1(1), **2(4)(a)**
- F8** Reg. 49(1A) inserted (S.) (29.6.2007) by The Conservation (Natural Habitats, &c.) Amendment (No. 2) (Scotland) Regulations 2007 (S.S.I. 2007/349), regs. 1(1), **2(4)(b)**
- F9** Reg. 49(2)(b) substituted (S.) (15.2.2007) by The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2007 (S.S.I. 2007/80), regs. 2, **19**
- F10** Words in reg. 49(2)(b) substituted (31.12.2020) by The Conservation (Natural Habitats, &c.) (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/113), regs. 1, **21(2)**; 2020 c. 1, Sch. 5 para. 1(1)
- F11** Words in reg. 49(3) substituted (31.12.2020) by The Conservation (Natural Habitats, &c.) (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/113), regs. 1, **21(3)**; 2020 c. 1, Sch. 5 para. 1(1)
- F12** Reg. 49(4) substituted (31.12.2020) by The Conservation (Natural Habitats, &c.) (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/113), regs. 1, **21(4)**; 2020 c. 1, Sch. 5 para. 1(1)
- F13** Reg. 49(4A) inserted (31.12.2020) by The Conservation (Natural Habitats, &c.) (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/113), regs. 1, **21(5)**; 2020 c. 1, Sch. 5 para. 1(1)
- F14** Words in reg. 49(5) substituted (21.8.2007) by The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007 (S.I. 2007/1843), regs. 2(1), **5(24)(b)** (with reg. 9)
- F15** Reg. 49(7) inserted (S.) (29.6.2007) by The Conservation (Natural Habitats, &c.) Amendment (No. 2) (Scotland) Regulations 2007 (S.S.I. 2007/349), regs. 1(1), **2(4)(c)**

#### Commencement Information

- I2** Reg. 49 in force at 30.10.1994, see **reg. 1(2)**

#### Review of existing decisions and consents, &c.

**50.**—(1) Where before the date on which a site becomes a European site [<sup>F16</sup>or a European offshore marine site] or, if later, the commencement of these Regulations, a competent authority have decided to undertake, or have given any consent, permission or other authorisation for, a plan or project to which regulation 48(1) would apply if it were to be reconsidered as of that date, the authority shall as soon as reasonably practicable, review their decision or, as the case may be, the consent, permission or other authorisation, and shall affirm, modify or revoke it.

(2) They shall for that purpose make an appropriate assessment of the implications for the site in view of that site's conservation objectives; and the provisions of regulation 48(2) to (4) [<sup>F17</sup>and regulation 48A] shall apply, with the appropriate modifications, in relation to such a review.

(3) Subject to the following provisions of this Part, any review required by this regulation shall be carried out under existing statutory procedures where such procedures exist, and if none exist the Secretary of State may give directions as to the procedure to be followed.

(4) Nothing in this regulation shall affect anything done in pursuance of the decision, or the consent, permission or other authorisation, before the date mentioned in paragraph (1).

- F16** Words in reg. 50(1) inserted (21.8.2007) by The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007 (S.I. 2007/1843), regs. 2(1), **5(25)** (with reg. 9)

**F17** Words in [reg. 50\(2\)](#) inserted (S.) (29.6.2007) by [The Conservation \(Natural Habitats, &c.\) Amendment \(No. 2\) \(Scotland\) Regulations 2007 \(S.S.I. 2007/349\)](#), regs. 1(1), **2(5)**

#### Commencement Information

**I3** Reg. 50 in force at 30.10.1994, see [reg. 1\(2\)](#)

### Consideration on review

**51.**—(1) The following provisions apply where a decision, or a consent, permission or other authorisation, falls to be reviewed under regulation 50.

(2) Subject as follows, the provisions of regulation 48(5) and (6) and regulation 49 shall apply, with the appropriate modifications, in relation to the decision on the review.

(3) The decision, or the consent, permission or other authorisation, may be affirmed if it appears to the authority reviewing it that other action taken or to be taken by them, or by another authority, will secure that the plan or project does not adversely affect the integrity of the site.

Where that object may be attained in a number of ways, the authority or authorities concerned shall seek to secure that the action taken is the least onerous to those affected.

(4) The Secretary of State may issue guidance to authorities for the purposes of paragraph (3) as to the manner of determining which of different ways should be adopted for securing that the plan or project does not have any such effect, and in particular—

(a) the order of application of different controls, and

(b) the extent to which account should be taken of the possible exercise of other powers;

and the authorities concerned shall have regard to any guidance so issued in discharging their functions under that paragraph.

(5) Any modification or revocation effected in pursuance of this regulation shall be carried out under existing statutory procedures where such procedures exist.

If none exist, the Secretary of State may give directions as to the procedure to be followed.

#### Commencement Information

**I4** Reg. 51 in force at 30.10.1994, see [reg. 1\(2\)](#)

### Co-ordination where more than one competent authority involved

**52.**—(1) The following provisions apply where a plan or project—

(a) is undertaken by more than one competent authority,

(b) requires the consent, permission or other authorisation of more than one competent authority, or

(c) is undertaken by one or more competent authorities and requires the consent, permission or other authorisation of one or more other competent authorities.

(2) <sup>[F18]</sup>Subject to regulation 48A,] Nothing in regulation 48(1) or 50(2) requires a competent authority to assess any implications of a plan or project which would be more appropriately assessed under that provision by another competent authority.

(3) The Secretary of State may issue guidance to authorities for the purposes of regulations 48 to 51 as to the circumstances in which an authority may or should adopt the reasoning or conclusions of another competent authority as to whether a plan or project—

**Changes to legislation:** There are currently no known outstanding effects for the The Conservation (Natural Habitats, &c.) Regulations 1994, Cross Heading: General provisions for protection of European sites. (See end of Document for details)

- (a) is likely to have a significant effect on a European site [<sup>F19</sup>or a European offshore marine site], or
- (b) will adversely affect the integrity of a European site [<sup>F19</sup>or a European offshore marine site];

and the authorities involved shall have regard to any guidance so issued in discharging their functions under those regulations.

(4) In determining whether a plan or project should be agreed to under regulation 49(1) (considerations of overriding public interest) a competent authority other than the Secretary of State shall seek and have regard to the views of the other competent authority or authorities involved.

**F18** Words in reg. 52(2) inserted (S.) (29.6.2007) by [The Conservation \(Natural Habitats, &c.\) Amendment \(No. 2\) \(Scotland\) Regulations 2007 \(S.S.I. 2007/349\)](#), regs. 1(1), **2(6)**

**F19** Words in reg. 52(3)(a)(b) inserted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(26)** (with reg. 9)

#### Commencement Information

**I5** Reg. 52 in force at 30.10.1994, see [reg. 1\(2\)](#)

### Compensatory measures

- 53.** Where in accordance with regulation 49 (considerations of overriding public interest)—
- (a) a plan or project is agreed to, notwithstanding a negative assessment of the implications for a European site [<sup>F20</sup>or European offshore marine site], or
  - (b) a decision, or a consent, permission or other authorisation, is affirmed on review, notwithstanding such an assessment,

the Secretary of State shall secure that any necessary compensatory measures are taken to ensure that the overall coherence of Natura 2000 is protected.

**F20** Words in reg. 53 inserted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(27)** (with reg. 9)

#### Commencement Information

**I6** Reg. 53 in force at 30.10.1994, see [reg. 1\(2\)](#)

### [<sup>F21</sup>Control of operations requiring consent

**53A.**—(1) Regulations 48 and 49 (requirement to consider effect on [<sup>F22</sup>European sites in Great Britain and European offshore marine sites]) apply in relation to the granting of any consent under—

- (a) section 13(4) of the 2004 Act to permit a public body to carry out an operation; or
- (b) section 16(3) of the 2004 Act to permit an owner or occupier of land within a site of special scientific interest to carry out an operation requiring consent on the land.

(2) Where in such a case SNH considers that any adverse effects of the plan or project on the integrity of a European site [<sup>F23</sup>or European offshore marine site] would be avoided if the consent were subject to conditions, it may grant consent subject to those conditions.

(3) Where, in any case, whether in pursuance of sections 13(4) or 16(3) of the 2004 Act or otherwise, in light of the conclusions of an appropriate assessment made under regulation 48(1),

SNH has not given consent for an operation, but it considers that there is a risk that the operation may nevertheless be carried out, it shall notify Scottish Ministers.]]

- F21** Reg. 53A inserted (S.) (29.11.2004) by The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2004 (S.S.I. 2004/475), regs. 1(1), **16(b)** (with regs. 20, 21)
- F22** Words in reg. 53A(1) substituted (S.) (21.8.2007) by The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007 (S.I. 2007/1843), regs. 2(1), **5(28)(a)** (with reg. 9)
- F23** Words in reg. 53A(2) inserted (S.) (21.8.2007) by The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007 (S.I. 2007/1843), regs. 2(1), **5(28)(b)** (with reg. 9)

**Changes to legislation:**

There are currently no known outstanding effects for the The Conservation (Natural Habitats, &c.) Regulations 1994, Cross Heading: General provisions for protection of European sites.