

2001 No. 3966

AGRICULTURE, ENGLAND

**The Environmental Impact Assessment
(Uncultivated Land and Semi-natural Areas)
(England) Regulations 2001**

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Coming into force - - 1 February 2002

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The Secretary of State for Environment, Food and Rural Affairs, being a Minister designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to measures relating to the requirement for an assessment of the impact on the environment of projects likely to have significant effects on the environment and to the conservation of natural habitats and of wild fauna and flora, in exercise of the powers conferred upon her by the said section 2(2), hereby makes the following Regulations:

Title, extent and commencement

1. These Regulations may be cited as the Environmental Impact Assessment (Uncultivated Land and Semi-natural Areas) (England) Regulations 2001, shall extend only to England and shall come into force on 1 February 2002.

Interpretation

2.—(1) In these Regulations—

“agricultural” has the same meaning as in the Agriculture Act 1947(c);

“additional environmental information” means any additional information required as part of the environmental statement in accordance with regulation 10(1);

“consent” means consent granted under regulation 13(1) of these Regulations;

“consultation bodies” means—

(a) English Nature(d);

(b) the Historic Buildings and Monuments Commission for England(e);

(c) the Countryside Agency(f);

(d) the Environment Agency(g); and

(e) any other public authority, statutory body or other organisation which, in the opinion of the Secretary of State, has any interest in or holds any information which might be relevant to the project;

“EEA State” means a State which is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed in Brussels on 17th March 1993;

“the EIA Directive” means Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment(h);

“environmental statement” means a statement—

(a) that includes such of the information referred to in Part I of Schedule 2 as is reasonably required to assess the environmental effects of the project and which the applicant for consent can, having regard in particular to current knowledge and methods of assessment, reasonably be required to compile, but

(b) that includes at least the information referred to in Part II of Schedule 2.

(a) S.I. 1988/785 (in relation to measures relating to the requirement for an assessment of the impact on the environment of projects likely to have significant effects on the environment) and S.I. 1992/2870 (in relation to measures relating to the conservation of natural habitats and of wild fauna and flora).

(b) 1972 c. 68. The enabling powers of section 2(2) of this Act were extended by virtue of the amendment of section 1(2) by section 1 of the European Economic Area Act 1993 (c. 51).

(c) 1947 c. 48.

(d) See section 128 of the Environmental Protection Act 1990 (c. 43) and section 73 of the Countryside and Rights of Way Act 2000 (c. 37).

(e) The Historic Buildings and Monuments Commission for England is the statutory name for English Heritage. See section 32 of the National Heritage Act 1983 (c. 47).

(f) See section 1(1) of the National Parks and Access to the Countryside Act 1949 (c. 97) (as substituted by section 130 and paragraph 1 of Schedule 8 of the Environmental Protection Act 1990) and the Development Commission (Transfer of Functions and Miscellaneous Provisions) Order 1999 (S.I. 1999/416).

(g) See section 1(1) of the Environment Act 1995 (c. 25).

(h) OJ No. L175, 5.7.85, p. 40, as last amended by Council Directive 97/11/EC, OJ No. L73, 14.3.97, p. 5.

“European site” means those sites described in paragraphs (a), (b), (d) and (e) of regulation 10(1) of the Habitats Regulations;

“the Habitats Directive” means Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora^(a);

“the Habitats Regulations” means the Conservation (Natural Habitats, &c.) Regulations 1994^(b);

“interested parties” means those persons who notify the Secretary of State in accordance with regulation 15(5) that they wish to make representations in respect of an appeal;

“project” means—

(a) the execution of construction works or other installations or schemes; or

(b) other interventions in the natural surroundings and landscape,

involving the use of uncultivated land or semi-natural areas for intensive agricultural purposes;

“the relevant land” means the land upon which the project is to be carried out or, in relation to a project which has already been carried out, has been carried out;

“relevant project” means a project which the Secretary of State has decided is likely to have significant effects on the environment in accordance with regulation 5(4) (or is deemed to have so decided in accordance with regulation 5(8));

“screening decision” means a decision taken by the Secretary of State under regulation 5(4) or which is deemed to have been taken by her under regulation 5(8);

“transborder project” means a project where the relevant land is situated either partly in England and partly in Wales or partly in England and partly in Scotland;

(2) Unless it is otherwise provided, expressions used both in these Regulations and in the EIA Directive or in the Habitats Directive shall have the same meaning in these Regulations as they have in those respective Directives.

(3) A reference in these Regulations to a numbered regulation or Schedule shall be construed as a reference to the regulation or Schedule bearing that number in these Regulations.

(4) All applications, notifications, representations, requests, approvals and agreements to which these Regulations apply shall be made in writing.

(5) “Writing” in paragraph (4) above, except where it applies to notices under regulation 22 or 24, shall include an electronic communication within the meaning of the Electronic Communications Act 2000^(c) provided that notifications required to be made by the Secretary of State to any person shall only be made by an electronic communication if the intended recipient has himself used that form of electronic communication in communicating with the Secretary of State pursuant to any provision of these Regulations or has otherwise represented that that form of electronic communication is a means by which persons can communicate with him.

(6) Notices or documents required or authorised to be served, sent or given under these Regulations may be sent by post.

Application of Regulations

3.—(1) These Regulations apply to any project which is not exempt under paragraphs (2) or (3) below.

(2) A project is exempt under this paragraph if it:

(a) is a project described in regulation 3(2) of the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999^(d);

(b) constitutes development to which the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999^(e) apply; or

(a) OJ No. L206, 22/07/1992, p. 7, as last amended by Council Directive 97/62/EC, OJ No. L305, 8.11.97, p. 42.

(b) S.I. 1994/2716, as amended by S.I. 1997/3055 and S.I. 2000/192.

(c) 2000 c. 7.

(d) S.I. 1999/2228.

(e) S.I. 1999/293, as amended by S.I. 1999/416 and S.I. 2000/2867.

- (c) constitutes the carrying out of improvement works by a drainage body within the meaning of the Environmental Impact Assessment (Land Drainage Improvement Works) Regulations 1999(a).

(3) A project is exempt under this paragraph to the extent that the Secretary of State, in accordance with Article 2(3) of the EIA Directive, directs that it shall be exempt from these Regulations.

(4) In the case of a project which the Secretary of State decides is likely to have a significant effect on a European site (either alone or in combination with other projects), the power to direct that the project is exempt from these Regulations under paragraph (3) above shall be exercisable only to the extent that compliance with the Habitats Directive is secured in relation to the project.

Requirement for screening decision

- 4. No person shall begin or carry out a project without first obtaining a screening decision.

Screening procedure

5.—(1) An application for a screening decision shall be accompanied by—

- (a) a plan sufficient to identify the relevant land;
- (b) a brief description of the nature, extent and purpose of the project and of its possible effects on the environment; and
- (c) such other information or representations as the applicant may wish to provide or make.

(2) The Secretary of State shall notify the applicant for a screening decision of the date the application was received by her.

(3) If the Secretary of State considers she does not have sufficient information to make a screening decision she may request that the applicant supply any additional information she requires.

(4) The Secretary of State shall decide in accordance with the selection criteria set out in Schedule 1 and paragraph (5) below whether a project is likely to have a significant effect on the environment.

(5) A project which the Secretary of State decides is likely to have a significant effect on a European site (either alone or in combination with other projects), and which is not directly connected with or necessary to the management of the site, shall be treated as likely to have a significant effect on the environment.

(6) The Secretary of State shall make a screening decision within thirty-five days of the date notified to the applicant in accordance with paragraph (2) above or such longer period as may be agreed with the applicant and, before reaching a screening decision, may consult with such of the consultation bodies as she thinks fit.

(7) The Secretary of State shall—

- (a) notify a screening decision together with a statement giving the full reasons for the decision to the applicant;
- (b) enter the screening decision in a register to which the public shall have access at all reasonable times; and
- (c) notify the screening decision to such of the consultation bodies as would, in her opinion, wish to be informed of it.

(8) If an applicant who has not been notified of a screening decision within the period specified in paragraph (6) above notifies the Secretary of State that he intends to treat such failure to notify him as a decision that the project is a relevant project, the Secretary of State shall be deemed to have decided that the project is a relevant project on the date the applicant so notifies her.

(a) S.I. 1999/1783.

(9) If at any time after the Secretary of State has decided or is deemed to have decided that a project is a relevant project under this regulation, she shall receive further information or representations which cause her to decide that the project is not a relevant project, she shall notify that decision and a statement giving the full reasons for the decision to the applicant and to the consultation bodies notified in accordance with paragraph (7)(c) above and shall enter the decision in the register referred to at paragraph (7)(b) above.

(10) If a project to which a screening decision relates has not been commenced before the expiry of three years from the date it was notified to the applicant or of the date it was deemed to have been decided in accordance with paragraph (8) above, or of such longer period as may have been agreed by the Secretary of State, that screening decision shall cease to have effect.

Requirement for consent

6. No person shall begin or carry out a relevant project without first obtaining consent from the Secretary of State.

Scoping opinion

7.—(1) After obtaining a screening decision and before applying for consent the applicant may request the Secretary of State to give her opinion as to the information to be provided in the environmental statement (“a scoping opinion”).

(2) If a scoping opinion is requested the Secretary of State shall consult the applicant and such of the consultation bodies as she thinks fit before she gives her opinion.

(3) If the Secretary of State considers she has not been supplied with sufficient information to give a scoping opinion she shall notify the applicant of the matters upon which she requires additional information within twenty-eight days from the date of receipt by her of the request for the opinion.

(4) The Secretary of State shall provide the applicant with a scoping opinion within five weeks from the date of receipt by her of the request for the opinion or from the date of receipt by her of any additional information requested in accordance with paragraph (3) above.

Provision of information

8.—(1) Any consultation body which is consulted by the Secretary of State in accordance with regulation 7(2) or which receives a request for information from a person who is intending to apply for consent shall determine whether they have in their possession any information which they consider relevant to the preparation of the environmental statement and, if they have, they shall, subject to paragraphs (2) and (3) below, make that information available to the applicant within twenty-eight days from the date of consultation or receipt of the request, as the case may be.

(2) A reasonable charge may be made to the applicant by any body providing information under paragraph (1) above which reflects the cost of making the relevant information available.

(3) Paragraph (1) above shall not require disclosure of information which is either capable of being treated as confidential or required to be so treated under regulation 4 of the Environmental Information Regulations 1992(a).

The consent application

9.—(1) An application for consent (which shall include the environmental statement) shall be made to the Secretary of State.

(2) An applicant for consent shall provide to the Secretary of State such number of copies of the application as she may reasonably require.

(3) After the Secretary of State has received an application for consent in accordance with regulation 9(1) and (2) she shall—

- (a) send a copy of the application to such of the consultation bodies as she thinks fit and inform them that they may make representations within six weeks from the date the application was received by them; and

(a) S.I. 1992/3240, as amended by S.I. 1998/1447.

- (b) for the purpose of ensuring that members of the public concerned are given an opportunity to make representations before the application is determined, publish in a newspaper circulating in the locality of the relevant land a notice—
 - (i) announcing that the application has been made;
 - (ii) specifying an address at which copies of the application may be inspected free of charge and where anyone who wishes to obtain copies of the application may do so (for which a reasonable charge may be made) at all reasonable hours within six weeks from the date of publication of the notice; and
 - (iii) stating that any person wishing to make any representations in relation to the likely environmental effects of the project for which consent is sought shall make them in writing to the Secretary of State at the address specified at paragraph (ii) above within six weeks from the date of publication of the notice.

Additional information

10.—(1) If, after having complied with regulation 9(3), the Secretary of State reaches the opinion that the environmental statement should contain additional information in order to be an environmental statement, she shall notify the applicant of the information (and the number of copies) required and the applicant shall provide the Secretary of State with that information.

(2) The Secretary of State shall send a copy of the additional environmental information to such of the consultation bodies as she shall think fit and inform them that they may make representations within twenty-eight days.

(3) The Secretary of State shall publish in a newspaper circulating in the locality of the relevant land a notice—

- (a) referring to the application to which the additional environmental information relates and the date on which that application was made;
- (b) announcing that the additional environmental information has been received;
- (c) specifying an address at which copies of the additional environmental information may be inspected free of charge and where anyone who wishes to obtain copies of the additional environmental information may do so (for a reasonable charge) at all reasonable hours within twenty-eight days from the date of publication of the notice; and
- (d) stating that any person wishing to make any representations in relation to the additional environmental information shall make them to the Secretary of State in writing at the address specified at paragraph (c) above within twenty-eight days from the date of publication of the notice.

Other EEA States

11.—(1) As soon as possible following receipt of an application for consent the Secretary of State shall consider whether the relevant project is also likely to have significant effects on the environment of another EEA State and, if she is of the opinion that such effects are likely, or where an EEA State likely to be significantly affected so requests, the Secretary of State shall send to that EEA State:

- (a) details of the nature and location of the relevant project and any information she has on the impact it is likely to have on the EEA State; and
- (b) an indication as to whether she believes consent will be given and the nature of any such consent,

and shall request that the EEA State indicate within a reasonable time whether it wishes to participate in the procedure for which these Regulations provide.

(2) If the EEA State indicates that it does wish to participate in the procedure for which these Regulations provide, the Secretary of State shall send it a copy of the application for consent (including the environmental statement) together with any additional environmental information and shall provide it with relevant information regarding the procedure under these Regulations.

- (3) The Secretary of State shall also—
- (a) arrange for the particulars and information referred to in paragraphs (1) and (2) above to be made available, within a reasonable time, to the authorities referred to in Article 6(1) of the EIA Directive and the public concerned in the territory of the EEA State likely to be significantly affected; and
 - (b) ensure that those authorities and the public concerned are given an opportunity, before consent for the project is granted, to forward to the Secretary of State, within a reasonable time, their opinion on the information supplied.
- (4) The Secretary of State shall in accordance with Article 7(4) of the EIA Directive—
- (a) enter into consultations with the EEA State concerned regarding, amongst other things, the potential significant effects of the project on the environment of that State and the measures envisaged to reduce or eliminate such effects; and
 - (b) seek to agree with the other EEA State a reasonable period of time for the duration of the consultation period (to include consideration of any opinions received pursuant to paragraph (3)(b) above).
- (5) Where the Secretary of State receives from another EEA State information which has been made available in accordance with Article 7(1) and (2) of the EIA Directive (which relates to projects in one EEA State which are likely to have significant effects on the environment of another EEA State), the Secretary of State shall—
- (a) arrange for that information to be made available, within a reasonable time, to such of the consultation bodies and such members of the public as, in her opinion, would be likely to be concerned by the project; and
 - (b) ensure that the consultation bodies and members of the public provided with information in accordance with sub-paragraph (a) above are given an opportunity during the period agreed between the Secretary of State and the relevant EEA State in accordance with paragraph (6)(b) below, to forward to the competent authority in the relevant EEA State, within a reasonable time, their opinion on the information provided.
- (6) The Secretary of State shall also, in accordance with Article 7(4) of the EIA Directive,—
- (a) enter into consultations with an EEA State from which information has been received as mentioned in paragraph (5) above regarding, amongst other things, the potential significant effects of the proposed project on the environment in England and the measures envisaged to reduce or eliminate such effects; and
 - (b) seek to agree with that EEA State a reasonable period, before consent for the project is granted, during which the consultation bodies and members of the public referred to in paragraph (5)(b) above may forward their opinion to the competent authority in that EEA State in accordance with that paragraph.

Transborder projects

12.—(1) In the case of a transborder project where the greater part of the relevant land is situated in England, the Secretary of State shall consult the Scottish Ministers^(a) or the National Assembly for Wales^(b) as appropriate, before making a screening decision under regulation 5(4), giving a scoping opinion under regulation 7(4) or granting or refusing consent under regulation 13(1).

(2) Subject to paragraph (4) below, in the case of a transborder project where the greater part of the relevant land is situated in Scotland or in Wales, that project shall be subject only to the equivalent regulations applicable to the project in Scotland or Wales as the case may be.

(3) If so requested by the Scottish Ministers or the National Assembly for Wales as appropriate, the Secretary of State may agree that an application in respect of a transborder project to which these Regulations would otherwise apply be subject only to the equivalent regulations applicable to the project in Scotland or Wales as the case may be.

(4) If, at the request of the Secretary of State, the Scottish Ministers or the National Assembly for Wales as appropriate, shall agree, a transborder project to which paragraph (2) above would otherwise apply shall be subject only to these Regulations.

(a) See section 44(2) of the Scotland Act 1998 (c. 46).

(b) See section 1 of the Government of Wales Act 1998 (c. 38).

The consent decision

13.—(1) The Secretary of State shall consider, in the light of the environmental statement, any additional environmental information and any representations received in accordance with paragraph (3) of regulation 9, paragraph (2) or (3) of regulation 10 and, in respect of projects to which regulation 11 applies, in the light of consultations with the relevant EEA State and any opinions received pursuant to paragraph (3)(b) of that regulation, whether or not to grant consent for the project.

(2) The Secretary of State shall not reach her decision under paragraph (1) above until of the latest of—

- (a) the expiry of the period specified in the notice published under regulation 9(3)(b);
- (b) the expiry of twenty-eight days after the later of the date on which any additional environmental information was sent to any consultation bodies and the date that notice of it was published in accordance with regulation 10(3); and
- (c) the expiry of any period agreed between the Secretary of State and the relevant EEA State pursuant to regulation 11(4)(b).

(3) The Secretary of State shall not grant consent for a project which would involve doing anything which would be unlawful under regulations 39, 41 or 43 of the Habitats Regulations (which shall not include anything for which a licence has been granted under regulation 44 of those Regulations).

(4) Paragraphs (5) to (9) below shall apply to a decision by the Secretary of State whether or not to grant consent for a project which is likely to have a significant effect upon a European site (either alone or in combination with other projects) (referred to in those paragraphs as “the project”).

(5) Subject to paragraphs (7) and (8) below, the Secretary of State shall grant consent for the project only if she has considered its implications for the European site and is satisfied that the project will not adversely affect the integrity of that site.

(6) The consideration to be undertaken under paragraph (5) above shall involve an appropriate assessment of the implications of the project for the European site in view of that site’s conservation objectives.

(7) If the Secretary of State is satisfied that, there being no alternative solution, the project must be carried out for imperative reasons of overriding public interest (which, subject to paragraph (8) below, may be of a social or economic nature), the Secretary of State may grant consent for the project notwithstanding a negative assessment of the implications for a European site.

(8) Where the European site concerned hosts a priority natural habitat type or a priority species, the reasons referred to in paragraph (7) must be either—

- (a) reasons relating to human health, public safety or beneficial consequences of primary importance to the environment, or
- (b) other reasons which in the opinion of the European Commission are in the case of the site concerned imperative reasons of overriding public interest.

(9) Where in accordance with paragraph (7) consent is granted for a project notwithstanding a negative assessment of the implications for a European site, the Secretary of State shall secure that any necessary compensatory measures are taken to ensure that the overall coherence of Natura 2000 (as defined in the Habitats Regulations) is protected.

(10) Any consent granted in accordance with paragraph (1) above shall be subject to the conditions required by paragraph (11) below and to such additional conditions as the Secretary of State may think fit.

(11) Every consent shall be granted subject to conditions to the effect that—

- (a) the consent shall lapse if the project has not commenced (by the carrying out of a material act) within one year of the date on which it was granted;

- (b) if the project has not been completed (which, in this regulation, shall mean that works permitted by the consent have been carried out and completed and all changes in the use or level of use of the relevant land permitted by the consent have been implemented) within three years of the date on which the consent was granted, the consent shall expire and the Secretary of State may require operations or uses implemented pursuant to the consent to cease until she has granted further consent in accordance with paragraph (d);
- (c) the consent authorises the project only as described in the consent application, subject to any amendments approved by the Secretary of State pursuant to a request by the applicant, and any material change in the operations or uses so authorised shall require further consent in accordance with paragraph (d);
- (d) applications for further consent under conditions in paragraphs (b) or (c) above shall be subject to such of the requirements of these Regulations as the Secretary of State shall think fit.

(12) When the Secretary of State has decided whether to grant consent she shall—

- (a) notify the applicant, those consultation bodies to whom copies of the consent application were sent in accordance with regulation 9(3)(a), any EEA State consulted pursuant to paragraph (4) of regulation 11 and any authority or person who forwarded their opinion to the Secretary of State pursuant to paragraph (3)(b) of that regulation of her decision together with the full reasons and considerations on which the decision is based;
- (b) inform the public of the decision by publishing a notice in a newspaper circulating in the locality in which the relevant land is situated or by such other means as she may think reasonable in the circumstances, and
- (c) make available for public inspection a statement containing:
 - (i) the content of the decision;
 - (ii) the full reasons and considerations on which the decision is based; and
 - (iii) a description, where relevant, of the principal measures required to be taken to avoid, reduce or offset the major adverse effects of the project.

(13) Where the Secretary of State has decided to grant consent for a project—

- (a) which consists of 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 (as defined by the Wildlife and Countryside Act 1981(a)) is of special interest;
- (b) which English Nature have advised against permitting or have advised should be permitted only subject to certain conditions; and
- (c) in respect of which the Secretary of State's decision does not follow the advice in subparagraph (b) above,

she shall give notice of her decision to English Nature, including a statement of how (if at all) she has taken account of English Nature's advice, and shall impose a condition on the consent to prevent the project from being commenced before the end of the period of twenty-one days beginning with the date of that notice.

Review of decisions and consents

14. Schedule 3 shall apply to—

- (a) any decision that a project is not a relevant project made in accordance with regulation 5(4); and
- (b) any consent granted in accordance with regulation 13(1),

where, after the date of the decision or grant of consent, a site becomes a European site and in the opinion of the Secretary of State the carrying out or completion (within the meaning of regulation 13(1)(b)) of the project would be likely to have a significant effect on that site and would not be directly connected with or necessary for the management of the site.

(a) 1981 c. 69 (the definition in section 52(1) was inserted by paragraph 5 of Schedule 9 to the Countryside and Rights of Way Act 2000 (2000 c. 37)).

Appeals (general provisions)

15.—(1) The following persons—

- (a) a person who has applied for a screening decision in respect of a project which the Secretary of State has decided is a relevant project, or is deemed to have so decided under regulation 5(8);
- (b) a person who has applied for consent for a relevant project in respect of which consent has been refused or has been granted subject to conditions (other than those specified in regulation 13(11)); and
- (c) a person upon whom a notice of a decision has been served in accordance with paragraph 3 of Schedule 3 or upon whom a notice has been served in accordance with paragraph 5 of that Schedule,

may by notice appeal to the Secretary of State against the consent, decision or notice as the case may be (in this regulation referred to as “the relevant decision”) in accordance with this regulation.

(2) A person to whom paragraph (1) above applies must serve notice of an appeal on the Secretary of State within three months from the date upon which that person was notified of the relevant decision.

(3) Notice of an appeal shall include—

- (a) a description of the relevant decision;
- (b) a statement of the grounds of appeal; and
- (c) a statement indicating whether the appellant wishes the appeal to be in the form of a hearing or a local inquiry or to be disposed of on the basis of written representations.

(4) As soon as reasonably practicable after receipt of notice of an appeal the Secretary of State shall serve copies of the notice on such of the consultation bodies as she thinks fit; on any person who made representations in respect of the relevant decision; on any EEA State consulted pursuant to paragraph (4) of regulation 11 and on any authority or person who forwarded their opinion to the Secretary of State pursuant to paragraph (3)(b) of that regulation; and on any other person who appears to her to have a particular interest in the subject matter of the appeal.

(5) A person upon whom a copy of a notice of an appeal has been served in accordance with paragraph (4) above may not make representations in respect of the appeal unless he notifies the Secretary of State that he wishes to do so within twenty-one days of the date on which a copy of the notice was served upon him.

(6) Before determining an appeal the Secretary of State shall decide, if the appellant has indicated that he wishes to be heard, whether the hearing shall be by local inquiry and, if the appellant has not indicated that he wishes to be heard, whether the appeal shall be determined by written representations, hearing or local inquiry and in either case shall notify her decision to the appellant and to any persons who notified the Secretary of State in accordance with paragraph (5) that they wished to make representations accordingly.

(7) On determining the appeal, the Secretary of State may allow or dismiss the appeal, or reverse any part of the decision which is the subject of the appeal, and may deal with the appeal in the same way as if it were a decision of first instance.

(8) The Secretary of State may appoint any person to exercise on her behalf, with or without payment, her function of determining the appeal or any matter involved in the appeal and Schedule 4 shall have effect with respect to such appointment.

(9) Subsections (2) to (5) of section 250 of the Local Government Act 1972(a)(local inquiries, evidence and costs) apply in relation to hearings or local inquiries held in accordance with regulation 17 below as they apply to local inquiries under that section, but as if the references there to the Minister were references to the Secretary of State.

(10) Section 322A of the Town and Country Planning Act 1990(b) (orders as to costs where no hearing or inquiry takes place) applies in relation to a hearing or local inquiry under regulation 17 below as it applies in relation to a hearing or local inquiry referred to in that section.

(a) 1972 c. 70; section 250(4) was amended by Part III of Schedule 12 to the Housing and Planning Act 1986 (c. 63).
(b) 1990 c. 8; section 322A was inserted by section 30(1) of the Planning and Compensation Act 1991 (c. 34).

(11) Except as otherwise provided by this regulation or by regulation 16 or 17 below the Secretary of State shall determine the procedure (which may include provision for site visits) for deciding the appeal.

(12) Any representations, statement or other documents to be submitted to the Secretary of State in accordance with regulation 16 or 17 below shall be accompanied by such number of copies as the Secretary of State may specify.

Determination of appeals by written representations

16.—(1) This regulation shall apply to an appeal which is to be determined by written representations.

(2) Within six weeks of receiving notice that the appeal is to be determined by written representations, the appellant shall either serve on the Secretary of State any further representations that he wishes to be considered by the Secretary of State or shall notify the Secretary of State that he wishes to rely on the information already supplied by him, and the Secretary of State shall either send to the interested parties copies of any further representations made by the appellant or shall notify them that the appellant does not intend to make further representations as the case may be.

(3) Any of the interested parties who wishes to make representations in respect of the appeal shall, within twenty-eight days of receipt of further representations made by the appellant or of notification that the appellant does not wish to make further representations, as the case may be, serve such representations on the Secretary of State and the Secretary of State shall send copies of the representations served upon her to the appellant and to the other interested parties.

(4) The Secretary of State shall allow the appellant and the other interested parties a period of not less than fourteen days in which to respond to the representations made in accordance with paragraph (3) above.

(5) No earlier than the expiry of the period specified in paragraph (4) above, the Secretary of State or the person appointed to determine the appeal, as the case may be, shall determine the appeal and shall notify the decision and the reasons for it to the appellant and to the interested parties.

Determination of appeals by hearing or local inquiry

17.—(1) This regulation shall apply to an appeal which is to be determined by hearing or by local inquiry.

(2) Within six weeks of receiving notice that the appeal is to be determined by hearing or by local inquiry, the appellant shall serve on the Secretary of State a statement which contains full particulars of his case and copies of any documents to which he wishes to refer at the hearing or local inquiry and the Secretary of State shall send copies of the statement and documents to the interested parties.

(3) The Secretary of State shall give the appellant and the interested parties at least six weeks' notice of the date, time and place fixed for the hearing or local inquiry and of the name of the person appointed to conduct the hearing or local inquiry (or, as applicable, to determine the appeal) and shall give, not less than twenty-one days before the date fixed for the hearing or local inquiry, such notice to the public as she may think fit.

(4) The Secretary of State may vary the time or place for the holding of the hearing or local inquiry and shall give such notice of any such variation as she may think fit.

(5) Any of the interested parties who wishes to be heard at the hearing or local inquiry shall, within twenty eight days of receipt of the appellant's statement pursuant to paragraph (2) above, notify the Secretary of State that he wishes to appear and the Secretary of State may require any person who has so notified her to serve upon her a statement containing the particulars of his case together with copies of any documents to which he wishes to refer at the hearing or local inquiry (other than those to which the appellant has expressed a wish to refer) within four weeks of being so required and the Secretary of State shall send copies of such statements to the appellant and to the other interested parties.

(6) The Secretary of State may by notice require the appellant or any other person who has provided a statement in accordance with paragraph (5) above to provide her with such further information about the matters contained in the statement as she may specify and she shall send a copy of such information to the interested parties or to the appellant and the other interested parties as the case may be.

(7) Before a hearing or local inquiry takes place the Secretary of State shall make all of the documents submitted by the appellant and the interested parties in respect of the hearing or local inquiry available for inspection by any person who so requests.

(8) The persons entitled to be heard at a hearing or local inquiry are—

- (a) the appellant;
- (b) the interested parties; and
- (c) any other person whom the person appointed to conduct the hearing shall permit to be heard.

(9) A person entitled to appear at a local inquiry who proposes to give evidence at the inquiry by reading a proof of evidence shall send a copy of the proof of evidence to the Secretary of State together with a written summary not less than three weeks before the date fixed for the local inquiry and the Secretary of State shall send copies of the proof and summary to the interested parties or to the appellant and the other interested parties as the case may be.

(10) After the conclusion of the hearing or local inquiry, the person appointed to conduct the hearing or local inquiry shall, unless he has been appointed to determine the appeal, make a report to the Secretary of State which shall include his conclusions and his recommendations or his reasons for not making any recommendations.

(11) If the Secretary of State differs from the person making the report in accordance with paragraph (10) above on any matter of fact mentioned in, or appearing to her to be material to, a conclusion reached by that person, or takes into consideration any new evidence or new matter of fact and is for that reason disposed to disagree with a recommendation made in the report, she shall not come to a decision without first affording to any persons who appeared at the hearing or local inquiry the opportunity of making representations to her within such reasonable time as she shall specify.

(12) The Secretary of State or the person appointed to determine the appeal, as the case may be, shall notify the decision and the reasons for it, and shall send a copy of any report made in accordance with paragraph (10) above, to the appellant, to the interested parties and to any other persons who appeared at the hearing or local inquiry and who asked to be notified of the decision.

Application to the court by person aggrieved

18.—(1) On the application of any person aggrieved by a decision of the Secretary of State that a project is not a relevant project or by a decision to grant consent for a relevant project, the High Court may make an order quashing the decision where it is satisfied that the decision is not within the powers of regulation 5(4) or 13(1), as the case may be, or that the interests of the person who has applied to the court have been substantially prejudiced by a failure to comply with any other requirement of these Regulations.

(2) An application to the High Court under this regulation shall be made within six weeks from the date of publication of the decision in accordance with regulation 5(7)(b) or 13(12)(b).

(3) The High Court may by interim order, pending the determination of an application under this regulation, stay the operation of the decision on such terms as it may think fit.

Offence of carrying out a project without a decision under these Regulations

19. Any person who begins or carries out a project without first obtaining either a decision that the project is not a relevant project or a decision granting consent for the project in accordance with these Regulations shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Offence of carrying out work in contravention of a condition

20. Any person who carries out any activity in contravention of any condition of a consent granted in accordance with these Regulations shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Offence of procuring a decision by supplying false information etc

21.—(1) Any person who, for the purpose of procuring a particular decision on an application made under these Regulations,—

- (a) knowingly or recklessly makes a statement which is false or misleading in a material particular;
- (b) with intent to deceive, uses any document which is false or misleading in a material particular; or
- (c) with intent to deceive, withholds any material information,

shall be guilty of an offence.

(2) A person guilty of an offence under paragraph (1) above shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment, to a fine.

Stop notices

22.—(1) Where it appears to the Secretary of State that an offence has been committed under regulation 19, 20 or 21 above and she considers that the potential harm to the environment of any activity to which the offence relates is such that the work should cease with immediate effect, she may serve a notice (in this regulation referred to as a “stop notice”) prohibiting all or any part of such work.

(2) The Secretary of State may serve a stop notice on any person who appears to her to have an interest in the relevant land or to be engaged in any activity prohibited by the notice.

(3) The Secretary of State may at any time withdraw a stop notice (without prejudice to her power to serve another) by serving notice to that effect on those persons served with the stop notice.

(4) A stop notice shall take effect no earlier than the time and date specified in the notice which, except in an emergency, shall not be less than twenty-four hours after it has been served.

(5) A stop notice shall cease to have effect if a notice of withdrawal is served in accordance with paragraph (3); if the Secretary of State (or a person appointed by her to determine an appeal) grants consent for the prohibited work; or if the Secretary of State (or a person appointed by her to determine an appeal) decides that the prohibited work is not a relevant project.

Penalties for contravention of a stop notice

23.—(1) Any person who contravenes a stop notice that has been served on him shall be guilty of an offence.

(2) An offence under this regulation may be charged by reference to any day or longer period of time and a person may be convicted of a second or subsequent offence under this regulation by reference to any period of time following the preceding conviction for such an offence.

(3) References in this regulation to contravening a stop notice shall mean causing or permitting its contravention.

(4) A person guilty of an offence under this regulation shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum; and
- (b) on conviction on indictment to a fine.

(5) In proceedings for an offence under this regulation it shall be a defence for the accused to prove—

- (a) that the stop notice was not served on him; and
- (b) that he did not know, and could not reasonably have been expected to know, of its existence.

Reinstatement

24.—(1) Where it appears to the Secretary of State that an offence has been committed under regulation 19, 20 or 21 she may serve a notice (“a reinstatement notice”) upon the person who appears to her to be responsible for committing the offence requiring that person to reinstate, to her satisfaction, the relevant land to the condition it was in before the project was commenced and specifying the period within which the reinstatement is required to be carried out.

(2) Where the condition of the relevant land before the project was commenced cannot be determined with reasonable accuracy or where it is not possible to return the relevant land to the same condition it was in before the project commenced, the reinstatement notice shall impose such requirements for the purposes of reinstatement as shall, in the opinion of the Secretary of State (after consultation with such of the consultation bodies as she thinks fit), be reasonable in the circumstances.

(3) A person served with a notice under paragraph (1) above may, within twenty-one days from the date on which the notice is served on him, appeal to the Magistrates’ Court by way of complaint for an order on any of the following grounds:—

- (a) that the notice or any requirement in the notice is not within the power conferred by this regulation;
- (b) that there has been some material informality, defect or error in, or in connection with, the notice; or
- (c) that any of the requirements of the notice are unreasonable.

(4) An appellant shall at the same time as he makes a complaint, deposit with the justices’ clerk a notice of appeal stating his name and address and the grounds on which the appeal is made and shall serve a copy of the notice on the Secretary of State.

(5) The justices’ clerk or the court may give, vary or revoke directions for the conduct of proceedings, including—

- (a) the timetable for the proceedings;
- (b) the submission of evidence; and
- (c) the order of speeches.

(6) The Magistrates’ Courts Act 1980(a) shall apply to the proceedings.

(7) Where an appeal is made in accordance with this regulation, the reinstatement notice shall be of no effect pending the final determination or abandonment of the appeal.

(8) Any party to the proceedings of a Magistrates’ Court in which a decision is made in accordance with this regulation may appeal against that decision to the High Court.

(9) If any person, without reasonable excuse, fails to comply with any requirement of a reinstatement notice served under paragraph (1) above he shall be guilty of an offence and liable on summary conviction—

- (a) to a fine not exceeding level 5 on the standard scale; and
- (b) if the failure is continued after conviction, to a further fine not exceeding one twentieth of the maximum available for the substantive offence for every day on which the failure is so continued.

Powers of entry and default powers

25.—(1) Any person duly authorised in writing by the Secretary of State may, at a reasonable time, enter and inspect any land for the purpose of—

- (a) ascertaining whether an offence under regulation 19, 20, 21, 23 or 24 has been committed on or in connection with that land;
- (b) serving a reinstatement notice under regulation 24 in respect of that land; or
- (c) exercising any functions under Schedule 3,

if there are reasonable grounds for entering for the purpose in question.

(a) 1980 c. 43.

(2) Any person duly authorised in writing by the Secretary of State who has reasonable grounds for suspecting that a person has committed an offence under regulation 21, may enter any premises, other than premises used only as a dwelling, which are, or which such person has reasonable cause to believe to be, occupied by, or in the possession of, the person believed to be responsible for committing the offence, and may inspect and take copies of any records he has reasonable cause to believe are relevant to the suspected offence.

(3) If any measures required by a reinstatement notice or by notice served in accordance with paragraph 5 of Schedule 3 have not been taken within the period specified in the notice—

- (a) any person duly authorised in writing by the Secretary of State may, at a reasonable time, enter the land to which the notice relates and take those measures, and
- (b) recover from the person in default the expenses reasonably incurred by him in doing so.

(4) A person authorised under paragraph (1), (2) or (3) above to enter any land or premises shall, if so requested, produce evidence of his authority before so entering.

(5) A person authorised under paragraph (1), (2) or (3) above to enter any land or premises may take with him such other persons and such equipment as he considers necessary.

(6) Any person in occupation or possession of land or premises entered by a person authorised under paragraph (1), (2) or (3) above shall give to that person such assistance as the authorised person may reasonably request so as to enable him to exercise any power conferred upon him by this regulation.

(7) A person who intentionally obstructs or impedes any person acting in the exercise of the powers conferred by this regulation or who fails without reasonable excuse to comply with a request made under paragraph (6) shall be guilty of an offence and be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

10 December 2001

Whitty
Parliamentary Under-Secretary of State
Department for Environment, Food and Rural Affairs

SELECTION CRITERIA FOR THE SCREENING DECISION

1. Characteristics of projects

The characteristics of projects, having regard in particular to—

- (a) the size of the project;
- (b) the cumulation with other projects;
- (c) the use of natural resources;
- (d) the production of waste;
- (e) pollution and nuisances; and
- (f) the risk of accidents, having regard in particular to substances or technologies used.

2. Location of Project

The environmental sensitivity of geographical areas likely to be affected by projects, having regard in particular to—

- (a) the existing land use;
- (b) the relative abundance, quality and regenerative capacity of natural resources in the area; and
- (c) the absorption capacity of the natural environment, paying particular attention to the following areas—
 - (i) wetlands;
 - (ii) coastal zones;
 - (iii) mountain and forest areas;
 - (iv) nature reserves and parks;
 - (v) areas classified or protected under legislation (including European sites);
 - (vi) areas in which environmental quality standards laid down in any legislation of the Communities have already been exceeded;
 - (vii) densely populated areas; and
 - (viii) landscapes of historical, cultural or archaeological significance.

3. The potential impact

The potential significant effects of projects, in relation to criteria set out under 1 and 2 above, having regard in particular to—

- (a) the extent of the impact (geographical area and size of the affected population);
- (b) the impact on other EEA States;
- (c) the magnitude and complexity of the impact;
- (d) the probability of the impact; and
- (e) the duration, frequency and reversibility of the impact.

INFORMATION FOR INCLUSION IN THE ENVIRONMENTAL STATEMENTS

PART I

1. Description of the project, including in particular—

- (a) a description of the physical characteristics of the whole project and the land use requirements during the construction, or other implementation, and operational phases;
- (b) a description of the main characteristics of the production processes, for instance, nature and quantity and the materials used;
- (c) an estimate, by type and quantity, of expected residues and emissions (water, air and soil pollution, noise, vibration, light, heat, radiation, etc.) resulting from the operation of the proposed project.

2. An outline of the main alternatives studied by the applicant for consent and an indication of the main reasons for his choice, taking into account the environmental effects.

3. A description of the aspects of the environment likely to be significantly affected by the proposed project, including, in particular, population, fauna, flora, soil, water, air climatic factors, material assets, including the architectural and archaeological heritage, landscape and the inter-relationship between the above factors.

4. A description of the likely significant effects of the project on the environment, which should cover the direct effects and any indirect, secondary, cumulative, short, medium and long-term, permanent and temporary, positive and negative effects of the project, resulting from:

- (a) the existence of the project;
- (b) the use of natural resources; and
- (c) the emission of pollutants, the creation of nuisances and the elimination of waste,

and the description by the applicant for consent of the forecasting methods used to assess the effects on the environment.

5. A description of the measures envisaged to prevent, reduce and where possible offset any significant adverse effects on the environment.

6. A non-technical summary of the information provided under paragraphs 1 to 5 of this Part.

7. An indication of any difficulties (technical deficiencies or lack of know-how) encountered by the applicant for consent in compiling the required information.

PART II

1. A description of the project comprising information on the site, design and size of the project.

2. A description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects.

3. The data required to identify and assess the main effects which the project is likely to have on the environment.

4. An outline of the main alternatives studied by the applicant for consent and an indication of the main reasons for his choice, taking into account the environmental effects.

5. A non-technical summary of the information provided under paragraphs 1 to 4 of this Part.

SCHEDULE 3

Regulation 14

REVIEW OF DECISIONS AND CONSENTS

1. The Secretary of State shall as soon as reasonably practicable make an appropriate assessment of the implications for the European site of the project permitted by the decision or consent in view of that site's conservation objectives for the purpose of determining whether the project will adversely affect the integrity of the site.

2. For the purposes of the assessment the Secretary of State—

- (a) may require any person interested in the relevant land to supply her with such information as she may reasonably think necessary;
- (b) shall consult English Nature and have regard to any representations made by them within such reasonable time as she may specify; and
- (c) may, if she considers it appropriate, consult members of the public.

3. Unless, following the assessment, the Secretary of State is satisfied that the project permitted by the decision or consent will not adversely affect the integrity of the European site, and paragraph (7) of regulation 13 does not apply, she shall, in the case of a decision, revoke that decision and, in the case of a consent, either revoke that consent or make such modifications to the consent as shall appear to her to be necessary to ensure that the project will not adversely affect the integrity of the European site and she shall notify her decision to all persons who appear to her to have an interest in the relevant land.

4. Subject to paragraph 5 below, a revocation or modification of a decision or a consent in pursuance of which works have been commenced or completed shall not affect so much of those works as have already been carried out.

5. If, where a project which is subject to a decision made under paragraph 3 above has commenced, it appears to the Secretary of State to be necessary to safeguard the integrity of the European site, she may by notice require the person responsible for carrying out such works or any person interested in the relevant land to carry out such works of reinstatement as may be reasonable in the circumstances and any person who carries out works in compliance with such a requirement shall be entitled, on making a claim in accordance with paragraph 8 below, to recover from the Secretary of State compensation in respect of any expenses reasonably incurred by him in that behalf.

6. Regulation 15 shall apply to a decision made in accordance with paragraph 3 above and to a notice served in accordance with paragraph 5 above.

7. If, following a decision under paragraph 3 above, a person has incurred expenditure in carrying out work which is rendered abortive by the revocation or modification or has otherwise sustained loss or damage which is directly attributable to the revocation or modification, he shall be entitled to be paid compensation on submitting a claim in accordance with paragraph 8 below.

8. A claim for compensation payable under paragraph 5 or 7 above shall be submitted to the Secretary of State within six weeks of notification of the decision in respect of which compensation is payable and shall be accompanied by such evidence as the Secretary of State may reasonably require.

9. Any dispute as to the amount of compensation payable under paragraphs 5 or 7 above may be referred to the Lands Tribunal^(a) within six years of the date of notification of the decision in respect of which compensation is payable.

10. Nothing in this regulation shall affect anything done in pursuance of a decision or consent before the date the site became a European site.

SCHEDULE 4

Regulation 15(8)

DELEGATION OF APPELLATE FUNCTIONS

1. In this Schedule “appointed person” means a person appointed under regulation 15(8) and “appointment” means an appointment under that regulation.

2. A appointment 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.

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 has under paragraphs (7), (10), (11) and (12) of regulation 15.

4.—(1) The provisions of this paragraph, instead of regulation 15(6), shall apply to an appeal which falls to be determined by an appointed person.

(2) If the appellant expresses a wish to appear before and be heard by the appointed person, the appointed person shall give him an opportunity of appearing and being heard.

(3) Whether or not an appellant 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.

(4) Whether either sub-paragraph (2) or (3) above applies, the appointed person shall notify his decision that a hearing or a local inquiry, as the case may be, is to be held to the appellant and to any persons who notified the Secretary of State that they wished to make representations in accordance with regulation 15(5).

(5) 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.

(6) Subject to regulation 15(9), the costs of the hearing or local inquiry held under this Schedule shall be defrayed by the Secretary of State.

5.—(1) Where under paragraph (2)(c) above the appointment of the appointed person is revoked in respect of any appeal or matter, the Secretary of State shall, unless she proposes to determine the appeal or matter herself, appoint another person under regulation 15(8) to determine the appeal or matter instead.

(2) Where such a new appointment is made, the consideration of the appeal or matter, or any local inquiry or other hearing in connection with it, shall be begun afresh.

(3) Nothing in sub-paragraph (2) above shall require any person to be given an opportunity of making fresh representations or modifying or withdrawing any representations already made.

(a) See section 1 of the Lands Tribunal Act 1949 (c. 42).

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) above 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.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement, in relation to projects for the use of uncultivated land and semi-natural areas in England for intensive agricultural purposes, Council Directive 85/337/EEC (as last amended by Council Directive 97/11/EEC) on the assessment of the effects of certain public and private projects on the environment and Council Directive 1992/43/EEC (as last amended by Council Directive 97/62/EC) on the conservation of natural habitats and of wild fauna and flora (“the Habitats Directive”) insofar as it applies to such projects.

The definition of “project” identifies those activities which are subject to the requirements of the Regulations. Regulation 4 prevents any projects from being undertaken unless a screening decision is first obtained. The screening decision determines whether the project is one which is likely to have significant effects on the environment (which will include a project likely to have a significant effect on a European site within the meaning of the Conservation (Natural Habitats, &c.) Regulations 1994 (as amended) (“the Habitats Regulations”). A project which has been so determined is defined as a “relevant project” in the Regulations. The screening decision must be reached in accordance with the selection criteria set out in Schedule 1 of the Regulations. The procedural requirements in respect of screening decisions are set out in Regulation 5.

Regulation 6 prohibits a relevant project from being carried out without consent first having been obtained from the Secretary of State.

Regulation 7 entitles the prospective applicant for consent to obtain an opinion from the Secretary of State as to the information which will be required as part of the environmental statement to accompany the application for consent.

Regulation 8 requires the environmental bodies referred to to provide any relevant information in their possession to the applicant for consent.

Regulations 9 and 10 contain the procedural requirements for the application for consent. The application is required to include the environmental statement which is defined as a statement which includes the information in Part II of Schedule 2 to the Regulations and such of the information in Part I of Schedule 2 as is reasonably required to assess the environmental effects of the project.

Regulation 11 contains provisions for notifying other States which are parties to the Agreement on the European Economic Area of projects likely to have environmental effects on those States and for giving them the opportunity to make representations in respect of such projects. It also contains provisions for consideration of the effects of projects in other EEA States which are notified to the Secretary of State as being likely to have environmental effects on England.

Regulation 12 specifies how decisions under the Regulations are to be made in respect of projects partly located in England and partly in Wales or partly in England and partly in Scotland.

Regulation 13 prescribes how the Secretary of State should decide whether to grant consent for a project. It requires her to take into account all of the information and representations provided in accordance with the Regulations.

Under Regulation 13(3) the Secretary of State may not grant consent for a project which would involve activities prohibited under those provisions of the Habitats Regulations which implement Articles 12, 13, 15 and 16 (requirements for protection of species) of the Habitats Directive.

Paragraphs (4) to (9) of this regulation implement the requirements to be met before consent can be granted for a project which is likely to have a significant effect on a European site. Although the same information and representations need to be taken into account, insofar as they may be relevant, as with any other project, there are specific tests to be met. These specific tests implement Article 6(3) of the Habitats Directive. The provisions in these Regulations are similar to those in the Habitats Regulations which apply to other consent regimes.

Regulation 13(11) specifies mandatory conditions to which the consents are required to be subject to ensure that consents are implemented and that further consent is required for works which are materially different from those permitted.

Regulation 13(12) contains procedural requirements to be complied with in granting or refusing consent.

Regulation 13(13) reproduces the provisions in the Wildlife and Countryside Act 1981 which apply where a competent authority intends to grant consent for any project which consists of an operation likely to damage a site of special scientific interest against the advice of English Nature.

Regulation 14 and Schedule 3 implement Article 6(2) of the Habitats Directive by ensuring that any decisions taken in accordance with the Regulations before the designation of a European site which would permit a project to be carried out which would adversely affect the integrity of the site are reviewed and revoked or modified as necessary.

An applicant for a screening decision or for consent for a relevant project (or a person interested in a project subject to a revocation or modification under the review provisions contained in Schedule 3) may appeal against an adverse decision to the Secretary of State. An appellant is entitled to be heard by a person appointed by the Secretary of State for the purpose which hearing may take the form of a local inquiry if the Secretary of State so decides. The general appeal provisions are contained in regulation 15 and Schedule 4 and the procedures for determination by written representations and by hearing or local inquiry are contained in regulations 16 and 17 respectively.

Persons aggrieved by decisions allowing projects to take place may apply to the High Court for a review of those decisions within six weeks of the decision being published (regulation 18).

Persons who carry on projects without first obtaining either a negative screening decision or consent for the project, or who act in breach of conditions imposed on a consent, commit an offence under the Regulations. It is also an offence under the Regulations to make false or misleading statements in order to obtain a particular decision.

If the Secretary of State wishes to ensure that unauthorised activities are stopped with immediate effect, she can serve a stop notice on the person carrying out the activities or on any person with an interest in the land upon which the activities are taking place. Non-compliance with the stop notice is an offence (regulation 23).

Regulation 24 contains a power for the Secretary of State to serve a notice requiring a person she believes to be responsible for committing an offence to reinstate the land to its former condition. An appeal against a reinstatement notice lies to the Magistrates' Court. Failure to comply with the requirements of a reinstatement notice is an offence.

Regulation 25 contains powers of entry in connection with carrying out the functions of the Secretary of State under the Regulations and includes the power to inspect and take copies of records. Powers are also provided to enter land for the purpose of carrying out works of reinstatement following non-compliance with a reinstatement notice.

A Transposition Note has been prepared for these Regulations and a copy has been placed in the library of each House of Parliament. Copies of the Transposition Note can be obtained from EIA Unit, Rural Development Service, DEFRA, Coley Park, Reading, RG1 6DT.

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AGRICULTURE, ENGLAND

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