
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Conservation (Natural Habitats, &c.) Regulations 1994 (“the 1994 Regulations”), which make provision implementing Council Directive 92/43/EEC on the conservation of natural habitats and of wild flora and fauna (“the Habitats Directive”) (OJ No. L206, 22.07.92, p.7).

^{M1}Part 2 makes provision for the adaptation of the planning regime introduced under the Planning Act 2008 for nationally significant infrastructure projects, for the protection of any site protected under the Habitats Directive (a “European site”). In particular, the amendments made by regulation 6 (which extends to Great Britain) will require the effect on a European site to be considered before the grant of development consent. Subject to certain exceptions, a development consent cannot be granted where the integrity of the European site would be adversely affected. New regulation 67B (which extends to Great Britain) requires development consent granted before the date on which a site becomes a European site to be reviewed and in certain circumstances revoked where the integrity of the site would be adversely affected. Regulations 7 and 8 (which respectively extend to England and Wales only and Scotland only) require the competent authority to consider the effect of a National Policy Statement on European sites, before the statement is designated.

^{M2M3}Part 3 (which extends to England and Wales only) makes equivalent provision for the requirement to consider the effect on a European site and for review as respects marine works, including licences under Part 2 of the Food and Environment Protection Act 1985, consents under section 34 of the Coast Protection Act 1949 and approvals for works involved in the construction or modification of a harbour.

Part 4 (which extends to England and Wales only) amends the provisions concerning special nature conservation orders under the Habitats Regulations, to extend the power to control activities causing harm to a European site. Regulation 10 extends this power so that it is no longer limited to controlling land-based activities taking place within the European site and now extends to controlling any activities which are likely to harm a European site, whether those activities take place on the site or not and on land or not.

New regulation 23(1) prevents a person who has received a notice from the Secretary of State from carrying out any operation specified in the special nature conservation order unless certain conditions are met. The offence under regulation 23(3) can now only be committed by a person to whom a notice has been given under regulation 23(1) (as amended).

An impact assessment has not been prepared in relation to the amendments in Part 2 of these Regulations. An impact assessment relating to the Planning Bill (introduced in Parliament on 27th November 2007) can be found on the Department for Communities and Local Government website. Part 2 has no additional impact on business, charities or the public sector.

A transposition note setting out how the amendments transpose the provisions of the Habitats Directive and a full impact assessment of the effect that Parts 3 and 4 of this instrument will have on the costs of business and the voluntary sector is available from the Wildlife, Habitats and Biodiversity Division, Defra, Temple Quay, Bristol BS1 6EB and is annexed to the Explanatory Memorandum which is available along the instrument on the OPSI website.

Changes to legislation:

There are currently no known outstanding effects for the The Conservation (Natural Habitats, &c.) (Amendment) (No. 2) Regulations 2009.