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STATUTORY INSTRUMENTS

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**2010 No. 490**

**WILDLIFE**

**COUNTRYSIDE**

**The Conservation of Habitats and Species Regulations 2010**

*Made* - - - - *1st March 2010*

*Laid before Parliament* *8th March 2010*

*Laid before the National*

*Assembly for Wales* - - *8th March 2010*

*Coming into force in accordance with regulation 1(2),*

*(3) and (4)*

The Secretary of State is designated<sup>(1)</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>(2)</sup> in relation to the environment, and the Welsh Ministers are designated<sup>(3)</sup> for those purposes in relation to the conservation of natural habitats and of wild fauna and flora.

In exercise of the powers conferred on them by section 2(2) of the European Communities Act 1972 and paragraph 1A of Schedule 2<sup>(4)</sup> to that Act, and by section 307(3) and (5) of the Criminal Justice Act 2003<sup>(5)</sup>, the Secretary of State and the Welsh Ministers make these Regulations, the Welsh Ministers in relation to Wales, to the extent that they are designated to do so, and the Secretary of State in relation to every other aspect.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Secretary of State and to the Welsh Ministers that it is expedient for any reference in these Regulations to an Annex to Council Directive [92/43/EEC](#) (on the conservation of natural habitats and of wild fauna and flora<sup>(6)</sup>) to be construed as a reference to that Annex as amended from time to time.

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(1) [S.I. 2008/301](#).

(2) [1972 c. 68](#).

(3) [S.I. 2002/248](#). The designation is subject to the exceptions set out in Schedule 2 to that Order. The functions conferred on the National Assembly for Wales by means of that Order are now exercisable by the Welsh Ministers, by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act [2006 \(c. 32\)](#).

(4) Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act [2006 \(c. 51\)](#).

(5) [2003 c. 44](#).

(6) OJ No L 206, 22.7.1992, p. 7, last amended by Council Directive [2006/105/EC](#) (OJ No L 363, 20.12.2006, p. 368).

## PART 1

### INTRODUCTORY AND GENERAL PROVISIONS

#### Citation and commencement

1.—(1) These Regulations may be cited as the Conservation of Habitats and Species Regulations 2010.

(2) Except as provided by paragraphs (3) and (4), these Regulations come into force on 1st April 2010.

(3) In regulation 6 (relevant authorities in relation to marine areas and European marine sites), paragraph (i) (inshore fisheries and conservation authority) comes into force immediately after section 153 of the Marine Act<sup>(7)</sup> (management of inshore fisheries) comes into force.

(4) The following provisions come into force immediately after section 134 of the Marine Act (orders for protection of marine conservation zones in Wales) comes into force (so far as not already brought into force)—

- (a) paragraph (2) of regulation 38 (European marine sites: byelaws and orders), and paragraphs (3), (4) and (5) of that regulation in so far as they relate to paragraph (2); and
- (b) paragraph (3) of regulation 133 (revocations), in so far as that paragraph relates to the revocation, as regards Wales, of—
  - (i) the entry “sections 36 and 37 of the Wildlife and Countryside Act 1981 (marine nature reserves),” in paragraph (3) of regulation 3 (implementation of Directive) of the 1994 Regulations<sup>(8)</sup>, and
  - (ii) regulation 36 (byelaws for protection of European marine site) of the 1994 Regulations.

#### Extent

2.—(1) Except as provided in this regulation, these Regulations extend to England and Wales only.

(2) The following provisions also extend to Scotland—

- (a) regulation 3<sup>(9)</sup> (interpretation in relation to adjacent sea);
- (b) regulation 9 (exercise of functions in accordance with Habitats Directive);
- (c) regulation 39<sup>(10)</sup> (statement under Planning Act 2008<sup>(9)</sup>);
- (d) in regulation 68 (grant of planning permission)—
  - (i) paragraph (1)(e)(ii) and (iii) (deemed grant of planning permission under section 57(2) of the Town and Country Planning (Scotland) Act 1997<sup>(10)</sup> and section 5(1) of the Pipe-lines Act 1962<sup>(11)</sup>), and
  - (ii) paragraph (2) in so far as that paragraph relates to paragraph (1)(e)(ii) and (iii) of that regulation;
- (e) in regulation 69 (planning permission: duty to review), in paragraph (3)—
  - (i) sub-paragraph (b) (direction under section 5(1) of the Pipe-lines Act 1962), and

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<sup>(7)</sup> 2009 c. 23.

<sup>(8)</sup> S.I. 1994/2716.

<sup>(9)</sup> 2008 c. 29.

<sup>(10)</sup> 1997 c. 8.

<sup>(11)</sup> 1962 c. 58; section 5(1) was amended by S.I. 1999/742, paragraph 2(3) of the Schedule.

- (ii) sub-paragraph (d) in so far as that sub-paragraph relates to a direction under section 57(2) of the Town and Country Planning (Scotland) Act 1997;
  - (f) regulations 81, 82 and 83(2) (development consent under Planning Act 2008);
  - (g) Chapter 4 of Part 6 (electricity);
  - (h) Chapter 5 of Part 6 (pipe-lines);
  - (i) regulation 106 (national policy statements under Planning Act 2008), and regulations 102, 103 and 105 in so far as they apply in relation to a national policy statement by virtue of regulation 106; and
  - (j) in Schedule 6 (amendments of legislation)—
    - (i) sub-paragraph (3) of paragraph 5 (amendment of section 123 of the Marine Act),
    - (ii) sub-paragraph (5) of that paragraph (amendment of section 237 of that Act), and
    - (iii) paragraph 7 (amendment of the 2007 Regulations<sup>(12)</sup>),and regulation 132 in so far as it relates to those provisions.
- (3) The following provisions also extend to Scotland in so far as they have effect in relation to the provisions specified in paragraph (2)—
- (a) regulations 3 (interpretation), 5 (nature conservation bodies), 7 (competent authorities) and 8 (European sites and European marine sites);
  - (b) Chapter 1 of Part 6 (general provisions in relation to Part 6 (assessment of plans and projects)); and
  - (c) regulations 128 (advisory role of the Joint Nature Conservation Committee), 129(3) (advisory role of Scottish Natural Heritage) and 131 (notices).
- (4) The following provisions also extend to Northern Ireland—
- (a) sub-paragraph (3) of paragraph 5 of Schedule 6 (amendment of section 123 of the Marine Act),
  - (b) sub-paragraph (5) of that paragraph (amendment of section 237 of that Act), and
  - (c) paragraph 7 of Schedule 6 (amendment of the 2007 Regulations),
- and regulation 132 in so far as it relates to those provisions.
- (5) Paragraph 6 of Schedule 6 (amendment of the 1994 Regulations), and regulation 132 in so far as it relates to that paragraph, extend to Scotland only.
- (6) The revocation of an enactment by any provision of regulation 133 (revocations) or Schedule 7 (revocations) has the same extent as the enactment revoked, except that the following provisions do not extend to Scotland—
- (a) paragraph (3) of that regulation, and paragraph (1) of that regulation so far as it relates to paragraph (3); and
  - (b) paragraph (4)(b) of that regulation and Part 2 of that Schedule.

## Interpretation

### 3.—(1) In these Regulations—

“the 1949 Act” means the National Parks and Access to the Countryside Act 1949<sup>(13)</sup>;

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<sup>(12)</sup> S.I. 2007/1842.

<sup>(13)</sup> 1949 c. 97.

“the 1994 Regulations” means the Conservation (Natural Habitats, &c.) Regulations 1994<sup>(14)</sup>;

“the 2007 Regulations” means the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007<sup>(15)</sup>;

“the appropriate authority” means the Secretary of State in relation to England, and the Welsh Ministers in relation to Wales (but see modifications of that term in regulations 9(7), 67(1)(b) and (3)(c), 94(6) and 106(3)(b));

“competent authority” is to be construed in accordance with regulation 7 (competent authorities);

“conservation” has the meaning given by Article 1(a) of the Habitats Directive;

“conservation status” and “favourable conservation status” have the meanings given by paragraphs (e) (in relation to habitats) and (i) (in relation to species) of Article 1 of the Habitats Directive;

“destroy”, in relation to an egg, includes doing anything to the egg which is calculated to prevent it from hatching, and “destruction” is to be construed accordingly;

“the devolved administrations” means the Welsh Ministers, the Department of the Environment in Northern Ireland and the Scottish Ministers;

“enactment” includes a local enactment and an enactment contained in subordinate legislation, and “subordinate legislation” has the same meaning as in the Interpretation Act 1978<sup>(16)</sup> (see section 21 of that Act);

“English inshore region” means the area of sea within the seaward limits of the territorial sea adjacent to England;

“European marine site” has the meaning given by paragraph (4) of regulation 8 (European sites and European marine sites);

“European offshore marine site” means a European offshore marine site within the meaning of regulation 15 of the 2007 Regulations (meaning of European offshore marine site);

“European site” has the meaning given by regulation 8 (European sites and European marine sites);

“functions” includes powers and duties;

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

“land” includes land covered by water;

“local planning authority” means, except as otherwise provided, any authority having any function as a local planning authority or mineral planning authority under the TCPA 1990<sup>(17)</sup>;

“management agreement” means an agreement made, or having effect as if made, under regulation 16 (management agreements);

“the Marine Act” means the Marine and Coastal Access Act 2009<sup>(18)</sup>;

“marine area” means (subject to regulation 9(8)) the English inshore region and the Welsh inshore region;

(14) S.I. 1994/2716, amended by the Environment Act 1995 (c. 25), paragraph 233 of Schedule 22, the Land Reform (Scotland) Act 2003 (asp 2), paragraphs 14 to 16 of Schedule 2, and S.I. 1996/525, S.I. 1996/973, S.I. 1997/3055, S.I. 1999/1820, S.I. 2000/192, S.S.I. 2000/323, S.I. 2000/1973, S.I. 2003/2155, S.S.I. 2004/475, S.I. 2005/3389, S.S.I. 2006/270, S.I. 2006/1282, S.S.I. 2007/80, S.S.I. 2007/349, S.S.I. 2007/485, S.S.I. 2007/517, S.I. 2007/1843, S.I. 2007/3538, S.S.I. 2008/17, S.S.I. 2008/425, S.S.I. 2008/427, S.I. 2008/2172, S.I. 2009/6, S.S.I. 2009/222, S.S.I. 2009/343, S.I. 2009/1307, S.I. 2009/2438, S.I. 2009/3160 and S.I. 2010/489 (W. 55).

(15) S.I. 2007/1842, amended by S.S.I. 2007/485, S.I. 2009/7 and S.I. 2010/491.

(16) 1978 c. 30.

(17) 1990 c. 8.

(18) 2009 c. 23.

“Natura 2000” means the European network of special areas of conservation, and special protection areas under the old Wild Birds Directive or the new Wild Birds Directive, provided for by Article 3(1) of the Habitats Directive;

“natural habitats” has the meaning given by Article 1(b) of the Habitats Directive;

“nature conservation body” and “appropriate nature conservation body” have the meaning given by regulation 5 (nature conservation bodies);

“the new Wild Birds Directive” means Directive [2009/147/EC](#) of the European Parliament and of the Council on the conservation of wild birds<sup>(19)</sup>;

“officer”—

- (a) in relation to a body corporate, means a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body, and
- (b) in relation to an unincorporated body, means any member of its governing body or a chief executive, manager or other similar officer of the body;

“the old Wild Birds Directive” means Council Directive [79/409/EEC](#) on the conservation of wild birds<sup>(20)</sup>;

“priority natural habitat types” has the meaning given by Article 1(d) of the Habitats Directive;

“priority species” has the meaning given by Article 1(h) of the Habitats Directive;

“the register” means the register of European sites provided for by regulation 13 (register of European sites);

“relevant authorities”, in relation to marine areas and European marine sites, is to be construed in accordance with regulation 6 (relevant authorities in relation to marine areas and European marine sites);

“relevant licensing body” has the meaning given by regulation 56 (relevant licensing body);

“research” includes inquiries and investigations;

“restricted English inshore region” means so much of the English inshore region as lies to seaward of mean low water mark;

“sample” means a sample of blood, tissue or other biological material;

“Scottish inshore region” means the area of sea within the seaward limits of the territorial sea adjacent to Scotland;

“sea” includes—

- (a) any area submerged at mean high water spring tide, and
- (b) the waters of every estuary, river or channel, so far as the tide flows at mean high water spring tide,

and any reference to an area of sea includes the bed and subsoil of the sea within that area;

“ship” means any vessel (including hovercraft, submersible craft and other floating craft) other than one which permanently rests on, or is permanently attached to, the seabed;

“site” has the meaning given by Article 1(j) of the Habitats Directive;

“site of Community importance” has the meaning given by Article 1(k) of the Habitats Directive;

“special area of conservation” has the meaning given by Article 1(l) of the Habitats Directive;

“specimen”—

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<sup>(19)</sup> OJ No L 20, 26.1.2010, p. 7.

<sup>(20)</sup> OJ No L 103, 25.4.1979, p. 1; the old Wild Birds Directive was repealed by the new Wild Birds Directive.

- (a) for the purposes of Part 7 (enforcement), means any animal or plant, or any part of, or anything derived from, an animal or plant, and
  - (b) for all other purposes has the meaning given by Article 1(m) of the Habitats Directive; “statutory undertaker” means a person who is, or is deemed to be, a statutory undertaker for the purposes of any provision of Part 11 of the TCPA 1990 (statutory undertakers); “the TCPA 1990” means the Town and Country Planning Act 1990<sup>(21)</sup>; “the WCA 1981” means the Wildlife and Countryside Act 1981<sup>(22)</sup>; and “Welsh inshore region” means the area of sea within the seaward limits of the territorial sea adjacent to Wales.
- (2) The area of sea referred to in sub-paragraph (a) of the definition of “sea” in paragraph (1) includes waters in any area—
- (a) which is closed, whether permanently or intermittently, by a lock or other artificial means against the regular action of the tide, but
  - (b) into and from which seawater is caused or permitted to flow, whether continuously or from time to time.
- (3) Terms not defined in paragraph (1) which are used in these Regulations and also in the Habitats Directive have the meaning they bear in that Directive.
- (4) In these Regulations, any reference to an Annex to the Habitats Directive is a reference to that Annex to that Directive as amended from time to time.
- (5) Subject to regulation 83(1)(which relates to the construction of provisions of Chapter 2 of Part 6 as one with the TCPA 1990), these Regulations apply to the Isles of Scilly as if the Isles were a county and the Council of the Isles were a county council.
- (6) Except as provided by paragraph (7), for the purposes of these Regulations—
- (a) any reference to England includes the English inshore region;
  - (b) any reference to Wales includes the Welsh inshore region;
  - (c) any reference to Scotland includes the Scottish inshore region; and
  - (d) any reference to Great Britain includes the English inshore region, the Welsh inshore region and the Scottish inshore region.
- (7) Paragraph (6) does not apply for the purposes of—
- (a) in paragraph (1), the definitions of “English inshore region”, “Welsh inshore region” and “Scottish inshore region”; or
  - (b) paragraph (8).
- (8) For the purposes of these Regulations—
- (a) the sea adjacent to England is so much of the sea adjacent to Great Britain as is not the sea adjacent to Wales or the sea adjacent to Scotland;
  - (b) “the sea adjacent to Wales” is to be construed in accordance with article 6 of and Schedule 3 to the National Assembly for Wales (Transfer of Functions) Order 1999<sup>(23)</sup> (the sea adjacent to Wales); and
  - (c) “the sea adjacent to Scotland” is to be construed in accordance with article 3 of and Schedule 1 to the Scottish Adjacent Waters Boundaries Order 1999<sup>(24)</sup>.

<sup>(21)</sup> 1990 c. 8.<sup>(22)</sup> 1981 c. 69.<sup>(23)</sup> S.I. 1999/672. These provisions continue to have effect as if made under section 158(3) of the Government of Wales Act 2006 (c. 32), by virtue of paragraph 26(3) of Schedule 11 to that Act.<sup>(24)</sup> S.I. 1999/1126.

(9) Nothing in these Regulations is to be construed as excluding the application of the provisions of Part 1 of the WCA 1981 (wildlife) in relation to animals or plants also protected under Part 3, 4 or 5 of these Regulations.

### **Plans or projects relating to offshore marine area or offshore marine installations**

**4.—**(1) Nothing in these Regulations requires an appropriate assessment of any plan or project so far as that plan or project is to be carried out on, in or in relation to any part of the sea in the offshore marine area, or on or in relation to an offshore marine installation.

(2) In paragraph (1)—

(a) “offshore marine area” means—

- (i) any part of the seabed and subsoil situated in any area designated under subsection (7) of section 1 of the Continental Shelf Act 1964<sup>(25)</sup> (exploration and exploitation of continental shelf), and
- (ii) any part of the waters within British fishery limits<sup>(26)</sup> (except the internal waters of, and the territorial sea adjacent to, the United Kingdom, the Channel Islands and the Isle of Man); and

(b) “offshore marine installation” means any artificial island, installation or structure (other than a ship) which is situated—

- (i) in any part of the waters in any area designated under section 1(7) of the Continental Shelf Act 1964, or
- (ii) in any part of the waters in any area designated under subsection (4) of section 84 of the Energy Act 2004<sup>(27)</sup> (exploitation of areas outside the territorial sea for energy production).

### **Nature conservation bodies**

**5.—**(1) Except as provided by paragraphs (2) and (3), in these Regulations—

(a) “nature conservation body” means Natural England or the Countryside Council for Wales; and

(b) “the appropriate nature conservation body” means—

- (i) Natural England, in relation to England, or
- (ii) the Countryside Council for Wales, in relation to Wales.

(2) In regulations 48 (surveillance of conservation status of habitats and species), 50 (monitoring of incidental capture and killing) and Part 6 (assessment of plans and projects)—

(a) “nature conservation body” means Natural England, the Countryside Council for Wales or the Joint Nature Conservation Committee<sup>(28)</sup>; and

(b) in relation to a European offshore marine site, “the appropriate nature conservation body” means the Joint Nature Conservation Committee.

(3) In the regulations referred to in regulation 2(2)(a) and (c) to (j) and (3)—

(a) “nature conservation body” means Natural England, the Countryside Council for Wales or Scottish Natural Heritage; and

<sup>(25)</sup> 1964 c. 29; section 1(7) was amended by the Oil and Gas (Enterprise) Act 1982 (c. 23), paragraph 1 of Schedule 3. Areas have been designated under section 1(7) by S.I. 1987/1265, 2000/3062 and 2001/3670.

<sup>(26)</sup> As defined by section 1 of the Fishery Limits Act 1976 (c. 86).

<sup>(27)</sup> 2004 c. 20. An area has been designated under section 84(4) by S.I. 2004/2668.

<sup>(28)</sup> The Joint Nature Conservation Committee was established by the Environmental Protection Act 1990 (c. 43), section 128(4), and reconstituted by the Natural Environment and Rural Communities Act 2006 (c. 16), section 31 and Schedule 4.



- (b) except where paragraph (2)(b) applies, “the appropriate nature conservation body” means—
- (i) Natural England, in relation to England,
  - (ii) the Countryside Council for Wales, in relation to Wales, or
  - (iii) Scottish Natural Heritage, in relation to Scotland.

### **Relevant authorities in relation to marine areas and European marine sites**

**6.** For the purposes of these Regulations the relevant authorities, in relation to a marine area or European marine site, are such of the following as have functions in relation to land or waters within or adjacent to that area or site—

- (a) a nature conservation body;
- (b) a county council, county borough council, district council or London borough council;
- (c) the Environment Agency;
- (d) the Marine Management Organisation;
- (e) a water undertaker or sewerage undertaker, or an internal drainage board;
- (f) a navigation authority within the meaning of the Water Resources Act 1991<sup>(29)</sup>;
- (g) a harbour authority within the meaning of the Harbours Act 1964<sup>(30)</sup>;
- (h) a lighthouse authority;
- (i) an inshore fisheries and conservation authority established under Part 6 of the Marine Act<sup>(31)</sup> (management of inshore fisheries);
- (j) a local fisheries committee constituted under the Sea Fisheries Regulation Act 1966<sup>(32)</sup> or any authority exercising the powers of such a committee; and
- (k) a National Park authority.

### **Competent authorities**

**7.—(1)** For the purposes of these Regulations, “competent authority” includes—

- (a) any Minister of the Crown (as defined in the Ministers of the Crown Act 1975<sup>(33)</sup>), government department, statutory undertaker, public body of any description or person holding a public office;
- (b) the Welsh Ministers; and
- (c) any person exercising any function of a person mentioned in sub-paragraph (a) or (b).

**(2)** In the following provisions (and as provided in regulation 67(3)(a)), “competent authority” includes the Scottish Ministers—

- (a) paragraph (2) of regulation 68 (grant of planning permission), in so far as that paragraph relates to a deemed grant of planning permission under—
  - (i) section 57(2) of the Town and Country Planning (Scotland) Act 1997<sup>(34)</sup>, as mentioned in regulation 68(1)(e)(ii), or
  - (ii) section 5(1) of the Pipe-lines Act 1962<sup>(35)</sup>, as mentioned in regulation 68(1)(e)(iii);

<sup>(29)</sup> 1991 c. 57; see definition of “navigation authority” in section 221(1).

<sup>(30)</sup> 1964 c. 40; see definition of “harbour authority” in section 57(1).

<sup>(31)</sup> No inshore fisheries and conservation authorities are yet established.

<sup>(32)</sup> 1966 c. 38.

<sup>(33)</sup> 1975 c. 26.

<sup>(34)</sup> 1997 c. 8.

<sup>(35)</sup> 1962 c. 58; section 5(1) was amended by S.I. 1999/742, paragraph 2(3) of the Schedule.



- (b) Chapter 4 of Part 6 (electricity); and
- (c) Chapter 5 of Part 6 (pipe-lines).
- (3) In paragraph (1)—
  - (a) “public body” includes any local authority, joint board, joint committee or National Park authority; and
  - (b) “public office” means—
    - (i) an office under the Crown,
    - (ii) an office created or continued in existence by a public general Act or by legislation passed by the National Assembly for Wales, or
    - (iii) an office the remuneration in respect of which is paid out of money provided by Parliament or the National Assembly for Wales.
- (4) In paragraph (3)(a)—
  - “local authority” means—
    - (a) in relation to England, a county council, a district council, a parish council, a London borough council, the Common Council of the City of London, the sub-treasurer of the Inner Temple or the under treasurer of the Middle Temple, and
    - (b) in relation to Wales, a county council, a county borough council or a community council;
  - “joint board” means a joint planning board within the meaning of section 2(36) of the TCPA 1990 (joint planning boards); and
  - “joint committee” means a joint committee appointed under subsection (1)(b) of section 102 of the Local Government Act 1972(37) (appointment of committees).

### **European sites and European marine sites**

- 8.—(1) Subject to paragraph (2), in these Regulations a “European site” means—
- (a) a special area of conservation;
  - (b) a site of Community importance which has been placed on the list referred to in the third sub-paragraph of Article 4(2) of the Habitats Directive;
  - (c) a site hosting a priority natural habitat type or priority species protected in accordance with Article 5(4) of the Habitats Directive (a site in respect of which consultation has been initiated under Article 5(1) of that Directive, during the consultation period or pending a decision of the Council under Article 5(3));
  - (d) an area classified pursuant to Article 4(1) or (2) of the old Wild Birds Directive or the new Wild Birds Directive; or
  - (e) a site which has been proposed to the European Commission under regulation 10 (selection of sites eligible for identification as of Community importance), until such time as—
    - (i) the site is placed on the list of sites of Community importance referred to in the third sub-paragraph of Article 4(2) of the Habitats Directive, or
    - (ii) agreement is reached or a decision is taken pursuant to Article 4(2) of that Directive not to place the site on that list.
- (2) In these Regulations, a reference to a European site—

(36) Relevant amendments were made to section 2 by the Local Government (Wales) Act 1994 (c. 19), section 19(1) and (4)(a) and Schedule 18.

(37) 1972 c. 70; section 102(1) was amended by the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), paragraph 16 of Schedule 9; the Children Act 1989 (c. 41), paragraph 31 of Schedule 13; and the Local Government and Housing Act 1989 (c. 42), paragraph 25(a) of Schedule 11.

- (a) in Part 6 (assessment of plans and projects), is a reference to a European site in Great Britain; and
  - (b) in any other provision of these Regulations, except where otherwise indicated, is a reference to a European site in England or Wales.
- (3) In any enactment other than these Regulations, a reference to a European site within the meaning of these Regulations is a reference to a European site as defined in paragraph (1).
- (4) In these Regulations a “European marine site” means a European site so far as consisting of marine areas.

### Exercise of functions in accordance with the Habitats Directive

9.—(1) The appropriate authority and the nature conservation bodies must exercise their functions under the enactments relating to nature conservation so as to secure compliance with the requirements of the Habitats Directive.

(2) Paragraph (1) applies, in particular, to functions under the following enactments—

- (a) Part 3 of the 1949 Act (nature conservation);
- (b) section 15 of the Countryside Act 1968<sup>(38)</sup> (areas of special scientific interest);
- (c) Part 1 (wildlife) and sections 28 to 28S<sup>(39)</sup> and 31 to 35<sup>(40)</sup> of the WCA 1981 (which relate to sites of special scientific interest);
- (d) sections 131, 132 and 134<sup>(41)</sup> of the Environmental Protection Act 1990 (which relate to nature conservation functions of the Countryside Council for Wales);
- (e) the Natural Environment and Rural Communities Act 2006<sup>(42)</sup>; and
- (f) these Regulations.

(3) A competent authority must, in relation to a marine area, exercise any of their functions which are relevant to marine conservation so as to secure compliance with the requirements of the Habitats Directive.

(4) Paragraph (3) applies, in particular, to functions under the following enactments—

- (38) 1968 c. 41; section 15 was amended by the WCA 1981, section 72(8) and Part 1 of Schedule 17; the Environmental Protection Act 1990 (c. 43), paragraph 4(2) of Schedule 9 and Part 6 of Schedule 16; the Countryside and Rights of Way Act 2000 (c. 37), section 75(3); the Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5), paragraph 29(1) and (2) of Schedule 12; and the Natural Environment and Rural Communities Act 2006 (c. 16), paragraph 48 of Schedule 11 and Schedule 12.
- (39) Section 28 was substituted, and sections 28A to 28R were inserted, by the Countryside and Rights of Way Act 2000 (c. 37), paragraph 1 of Schedule 9; sections 28 to 28R were amended by the Natural Environment and Rural Communities Act 2006 (c. 16) (“the 2006 Act”), paragraph 79 of Schedule 11; section 28D was amended by the 2006 Act, section 56; section 28E was amended by the 2006 Act, paragraph 80 of Schedule 11; section 28G was amended by the 2006 Act, paragraph 81 of Schedule 11 and Schedule 12; section 28P was amended by the 2006 Act, section 55; and section 28S was inserted by the 2006 Act, section 58(1).
- (40) Sections 31 to 34 were repealed as regards Scotland by the Nature Conservation (Scotland) Act 2004 (asp 6), paragraph 4 of Schedule 7; section 31 was amended by the Criminal Justice Act 1982 (c. 48), sections 37 and 46, by the Countryside and Rights of Way Act 2000 (c. 37) (“the 2000 Act”), paragraph 3 of Schedule 9, by the Constitutional Reform Act 2005 (c. 4), paragraph 37 of Schedule 9, and by the Natural Environment and Rural Communities Act 2006 (c. 16) (“the 2006 Act”), section 55(5) and paragraph 79 of Schedule 11; section 32 was amended by the Agriculture Act 1986 (c. 49), section 20(1), (2) and (3), by the 2000 Act, paragraph 4 of Schedule 9 and Part 3 of Schedule 16, and by the 2006 Act, paragraph 79 of Schedule 11; section 33 was amended by the 2006 Act, paragraph 82 of Schedule 11; section 34 was amended by the Local Government Act 1985 (c. 51), paragraph 7 of Schedule 3, by the Planning (Consequential Provisions) Act 1990 (c. 11), paragraph 54(1) of Schedule 2, by the Local Government (Wales) Act 1994 (c. 19), paragraph 65(3) of Schedule 16, by the 2000 Act, section 78, and by the 2006 Act, paragraph 83 of Schedule 11 and Schedule 12; section 34A was inserted by the 2006 Act, paragraph 84 of Schedule 11; and section 35 was amended by the 2006 Act, paragraph 85 of Schedule 11.
- (41) 1990 c. 43; section 131 was amended by the Natural Environment and Rural Communities Act 2006 (c. 16) (“the 2006 Act”), paragraph 120 of Schedule 11; section 132 was amended by the 2006 Act, paragraph 121 of Schedule 11 and Schedule 12; and section 134 was amended by the 2006 Act, paragraph 123 of Schedule 11.
- (42) 2006 c. 16.

- (a) the Sea Fisheries Acts within the meaning of section 1 of the Sea Fisheries (Wildlife Conservation) Act 1992<sup>(43)</sup> (conservation in the exercise of sea fisheries functions);
- (b) the Dockyard Ports Regulation Act 1865<sup>(44)</sup>;
- (c) subsection (2) of section 2 of the Military Lands Act 1900<sup>(45)</sup> (provision as to byelaws relating to the sea, tidal water or shore);
- (d) the Harbours Act 1964<sup>(46)</sup>;
- (e) Part 2 of the Control of Pollution Act 1974<sup>(47)</sup> (pollution of water);
- (f) the Water Resources Act 1991<sup>(48)</sup>;
- (g) the Land Drainage Act 1991<sup>(49)</sup>;
- (h) the Planning Act 2008<sup>(50)</sup>;
- (i) the Marine Act; and
- (j) these Regulations.

(5) Without prejudice to the preceding provisions, a competent authority, in exercising any of their functions, must have regard to the requirements of the Habitats Directive so far as they may be affected by the exercise of those functions.

(6) This regulation applies, in relation to Scotland, only in relation to functions which relate to reserved matters (within the meaning of Schedule 5 to the Scotland Act 1998<sup>(51)</sup> (reserved matters)).

(7) To the extent that paragraph (1) relates to functions exercised in relation to Scotland, the reference in that paragraph to the appropriate authority includes the Secretary of State exercising functions in relation to Scotland.

(8) In paragraph (3), “marine area” includes the Scottish inshore region.

## PART 2

### CONSERVATION OF NATURAL HABITATS AND HABITATS OF SPECIES

#### *European sites*

#### **Selection of sites eligible for identification as of Community importance**

**10.**—(1) On the basis of the criteria set out in Annex III (Stage 1) to the Habitats Directive, and relevant scientific information, the appropriate authority must propose a list of sites in England or Wales which are eligible for identification as of Community importance, indicating with respect to each site—

- (a) which natural habitat types in Annex I to the Habitats Directive the site hosts; and
- (b) which species in Annex II to the Habitats Directive that are native to Great Britain the site hosts.

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<sup>(43)</sup> 1992 c. 36; a relevant amendment was made by S.I. 1999/1820.

<sup>(44)</sup> 1865 c. 125.

<sup>(45)</sup> 1900 c. 56; section 2(2) was amended by SR & O 1924/1370, the Crown Estate Act 1961 (c. 55), section 1, and S.I. 1964/488.

<sup>(46)</sup> 1964 c. 40.

<sup>(47)</sup> 1974 c. 40.

<sup>(48)</sup> 1991 c. 57.

<sup>(49)</sup> 1991 c. 59.

<sup>(50)</sup> 2008 c. 29.

<sup>(51)</sup> 1998 c. 46.

(2) For animal species ranging over wide areas these sites must correspond to the places within the natural range of such species which present the physical or biological factors essential to their life and reproduction.

(3) For aquatic species which range over wide areas, such sites are to be proposed only where there is a clearly identifiable area representing the physical and biological factors essential to their life and reproduction.

(4) The appropriate authority may propose modification of the list in the light of the results of the surveillance referred to in Article 11 of the Habitats Directive.

(5) The list, and any new site included in that list, must be transmitted to the European Commission together with information on each site including—

- (a) a map of the site,
- (b) its name, location and extent, and
- (c) the data resulting from application of the criteria specified in Annex III (Stage 1) to the Habitats Directive,

provided in a format established by the European Commission.

#### **Designation of special areas of conservation**

**11.**—(1) Once a site of Community importance in England or Wales has been adopted in accordance with the procedure laid down in Article 4(2) of the Habitats Directive, the appropriate authority must designate that site as a special area of conservation as soon as possible and no later than six years from the date of adoption of that site.

(2) The appropriate authority must establish priorities for the designation of sites in the light of—

- (a) the importance of the sites for the maintenance or restoration at a favourable conservation status of—
  - (i) a natural habitat type specified in Annex I to the Habitats Directive, or
  - (ii) a species specified in Annex II to the Habitats Directive,and for the coherence of Natura 2000; and
- (b) the threats of degradation or destruction to which the sites are exposed.

#### **Consultation as to inclusion of site omitted from the list**

**12.** If consultation is initiated by the European Commission in accordance with Article 5(1) of the Habitats Directive with respect to a site in England or Wales hosting a priority natural habitat type or priority species, and—

- (a) the appropriate authority and the European Commission agree, within the period of six months mentioned in Article 5(2) of the Habitats Directive, that the site should be selected as a site of Community importance, or
- (b) the European Council, acting on a proposal from the European Commission in pursuance of Article 5(2) of the Habitats Directive, decides that the site should be so selected in accordance with Article 5(3) of that Directive,

for the purposes of these Regulations the site is to be treated as having been placed on the list referred to in the third sub-paragraph of Article 4(2) of the Habitats Directive as from the date of the agreement referred to in paragraph (a) or the decision referred to in paragraph (b).

### *Register of European sites*

#### **Register of European sites**

**13.—**(1) A register of European sites, in an appropriate format, must be compiled and maintained by—

- (a) the Secretary of State, in relation to European sites in England; and
  - (b) the Welsh Ministers, in relation to European sites in Wales.
- (2) The registers must include—
- (a) special areas of conservation, as soon as they are designated by the appropriate authority;
  - (b) sites of Community importance as soon as they are placed on the list referred to in the third sub-paragraph of Article 4(2) of the Habitats Directive, until they are designated as special areas of conservation;
  - (c) any site hosting a priority natural habitat type or priority species in respect of which consultation is initiated under Article 5(1) of the Habitats Directive, during the consultation period or pending a Council decision under Article 5(3);
  - (d) areas classified pursuant to Article 4(1) or (2) of the old Wild Birds Directive or the new Wild Birds Directive, as soon as they are classified by the appropriate authority; and
  - (e) any site which has been proposed to the European Commission under regulation 10 (selection of sites eligible for identification as of Community importance), until such time as paragraph (i) or (ii) of regulation 8(1)(e) applies.
- (3) The appropriate authority, in relation to the register for which that authority is responsible—
- (a) may amend any entry;
  - (b) must remove any entry relating to a site which is no longer a European site; and
  - (c) must keep a copy available for public inspection at all reasonable hours and free of charge.
- (4) An entry in the register in respect of a European site other than a European marine site is a local land charge.

#### **Notification of changes to the register**

**14.—**(1) As soon as possible after including a European site in the register or amending an entry in the register, the appropriate authority must notify the appropriate nature conservation body and send to that body a copy of the new or amended entry.

(2) As soon as possible after removing an entry from the register, the appropriate authority must notify the appropriate nature conservation body.

(3) The nature conservation bodies must keep a copy of the register entries relating to European sites in their area available for public inspection at all reasonable hours and free of charge.

#### **Notice to landowners and other bodies**

**15.—**(1) As soon as practicable after a nature conservation body receive notification under regulation 14 in relation to a European site, they must give notice to—

- (a) every owner or occupier of land within that site;
- (b) every local planning authority in whose area that site, or any part of it, is situated;
- (c) the Marine Management Organisation, if that site is a European marine site; and
- (d) such other persons as the appropriate authority may direct.

(2) Where, under paragraph (1), a nature conservation body give notice to a person (“P”) that a site has been included in the register, or that a register entry relating to a site has been amended, the nature conservation body must provide P with a copy of the register entry.

(3) In paragraph (2) the register entry a copy of which must be provided to P—

- (a) in the case of notice given under paragraph (1)(a), is the register entry (or that part of an entry) which relates to the land owned or occupied by P; and
- (b) in the case of notice given under paragraph (1)(b), is the register entry (or that part of an entry) which relates to the land within P’s area.

(4) The appropriate authority may give directions as to the form and content of notices under this regulation.

### *Management agreements*

#### **Management agreements**

**16.**—(1) The appropriate nature conservation body may, for the purposes specified in paragraph (2), make an agreement (a “management agreement”) with a person who has an interest in—

- (a) land which forms part of a European site, or
- (b) land adjacent to such a site,

about the management or use of the land.

(2) A management agreement may be made for the purposes of the management, conservation, restoration or protection of the site, or any part of it.

(3) A management agreement may, in particular—

- (a) impose on the person who has an interest in the land obligations in respect of the use of the land;
- (b) impose on the person who has an interest in the land restrictions on the exercise of rights over the land;
- (c) provide for the carrying out of such work as may be expedient for the purposes of the agreement by any person or persons;
- (d) provide for any matter for which a management scheme relating to a site of special scientific interest provides (or could provide);
- (e) provide for the making of payments by either party to the other party or to any other person;
- (f) contain incidental and consequential provision.

(4) A management agreement is, unless the agreement otherwise provides—

- (a) binding on persons deriving title under or from the person with whom the appropriate nature conservation body make the agreement; and
- (b) enforceable by the appropriate nature conservation body against those persons.

(5) Paragraphs 1 to 3 of Schedule 2 to the Forestry Act 1967<sup>(52)</sup> (which makes provision for certain persons to enter into forestry dedication covenants) apply to management agreements as they apply to forestry dedication covenants.

(6) In this regulation—

<sup>(52)</sup> 1967 c. 10; paragraphs 1 to 3 of Schedule 2 were amended by the Endowments and Glebe Measure 1976 (1976 No. 4), Schedule 7; the Trusts of Land and Appointment of Trustees Act 1996 (c. 47), Schedule 4; and the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No. 1), paragraph 14 of Schedule 5.

- (a) “interest in land” has the same meaning as in the 1949 Act; and
- (b) “management scheme” and “site of special scientific interest” have the same meaning as in Part 2 (nature conservation, countryside and national parks) of the WCA 1981.

### Existing agreements

**17.**—(1) For the purposes of these Regulations, any agreement made before 1st April 2010 in relation to land in England or Wales which on or after that date becomes land within a European site, or adjacent to such a site, being an agreement made under—

- (a) section 16 of the 1949 Act<sup>(53)</sup> (agreements for management of nature reserves),
- (b) section 15 of the Countryside Act 1968<sup>(54)</sup> (areas of special scientific interest), or
- (c) section 7 of the Natural Environment and Rural Communities Act 2006<sup>(55)</sup> (management agreements),

has effect upon the designation of the site as if it were a management agreement entered into by Natural England or the Countryside Council for Wales (as the case may be) under regulation 16.

(2) Any other thing done or deemed to have been done under—

- (a) any provision of Part 3 (nature conservation) of the 1949 Act, or under Part 6 (general, financial and supplementary) of that Act so far as it applies for the purposes of Part 3, or
- (b) section 15 of the Countryside Act 1968,

in respect of any land prior to that land becoming land within a European site, or adjacent to such a site, continues to have effect as if done under the corresponding provision of these Regulations.

(3) Any reference in a relevant enactment to a nature reserve within the meaning of section 15<sup>(56)</sup> (meaning of “nature reserve”) of the 1949 Act is to be construed as including a reference to a European site, and in this paragraph “a relevant enactment” means an enactment not contained in, or in an instrument made under, the 1949 Act or the WCA 1981.

### Certain payments under management agreements

**18.**—(1) This regulation applies where the appropriate nature conservation body offer to enter into a management agreement providing for the making of payments by them to—

- (a) a person who has given notice under paragraph (1)(a) of regulation 20 (restriction on carrying out operations specified in notification) or paragraph (5)(a)(ii) or (b) of regulation 26 (restriction on carrying out operations specified in order); or
- (b) a person whose application for a farm capital grant within the meaning of regulation 24 has been refused in consequence of an objection by that body.

(2) Subject to paragraph (3), such payments must be of such amounts as may be determined by the appropriate nature conservation body in accordance with guidance given by the appropriate authority.

(3) If the person with whom the agreement is to be made so requires within one month of receiving the offer, the determination of those amounts must be referred to an arbitrator to be appointed, in default of agreement, by the appropriate authority.

<sup>(53)</sup> Relevant amendments were made to section 16 by the Natural Environment and Rural Communities Act 2006 (c. 16), paragraph 14 of Schedule 11.

<sup>(54)</sup> 1968 c. 41; relevant amendments were made to section 15 by the WCA 1981, section 72(8) and Part 1 of Schedule 17; the Environmental Protection Act 1990 (c. 43), paragraph 4(2) of Schedule 9 and Part 6 of Schedule 16; the Countryside and Rights of Way Act 2000 (c. 37), section 75(3); and the Natural Environment and Rural Communities Act 2006 (c. 16), paragraph 48 of Schedule 11 and Schedule 12.

<sup>(55)</sup> 2006 c. 16.

<sup>(56)</sup> Section 15 was substituted by the Natural Environment and Rural Communities Act 2006 (c. 16), paragraph 12 of Schedule 11.



(4) Where the amounts determined by the arbitrator exceed those determined by the appropriate nature conservation body, that body must—

- (a) amend the offer so as to give effect to the arbitrator's determination; or
- (b) except in the case of an offer made to a person whose application for a farm capital grant has been refused in consequence of an objection by the appropriate nature conservation body, withdraw the offer.

### *Control of potentially damaging operations*

#### **Notification of potentially damaging operations**

**19.**—(1) This regulation and regulations 20 to 22 apply where a notification is in force under section 28(57) of the WCA 1981 (sites of special scientific interest) in relation to land which is or forms part of a European site.

(2) The appropriate nature conservation body may, for the purpose of securing compliance with the requirements of the Habitats Directive, at any time amend the notification with respect to—

- (a) the flora, fauna or geological or physiographical features by reason of which the land is of special interest; or
- (b) any operations appearing to the appropriate nature conservation body to be likely to damage that flora or fauna or those features.

(3) The appropriate nature conservation body must give notice of any amendment to—

- (a) every owner and occupier of land within the European site who in the opinion of that body may be affected by the amendment, and
- (b) the local planning authority in whose area the land is situated,

and after service of a notice under sub-paragraph (a) the notification has effect in relation to such an owner or occupier in its amended form.

(4) Any local land charge relating to a notification by virtue of section 28(9) of the WCA 1981 must be varied in accordance with the amendment to that notification.

#### **Restriction on carrying out operations specified in notification**

**20.**—(1) While a notification under section 28(1) of the WCA 1981 is in force in relation to any land which is or forms part of a European site, the owner or occupier of that land must not carry out, or cause or permit to be carried out, on that land any operation specified in the notification unless—

- (a) one of them has given the appropriate nature conservation body written notice of a proposal to carry out the operation, specifying its nature and where it is proposed to carry it out; and
- (b) one of the conditions specified in paragraph (2) is fulfilled.

(2) The conditions are—

- (a) that the operation is carried out with the written consent of the appropriate nature conservation body;
- (b) that the operation is carried out in accordance with the terms of a management agreement;
- (c) that four months have passed since the notice under paragraph (1)(a) was given.

(3) If before the end of the period of four months referred to in sub-paragraph (c) of paragraph (2) the relevant person agrees in writing with the appropriate nature conservation body that the condition

(57) Section 28 was substituted by the Countryside and Rights of Way Act 2000 (c. 37), paragraph 1 of Schedule 9, and amended by the Natural Environment and Rural Communities Act 2006 (c. 16), paragraph 79 of Schedule 11.

specified in that sub-paragraph does not apply in relation to the operation in question, as from the date of the agreement paragraph (2) has effect in relation to the operation (as regards both the owner and the occupier of the land in question) as if that sub-paragraph were omitted.

(4) If, after such an agreement has been made, the relevant person (whether a party to the agreement or not) gives written notice to the appropriate nature conservation body that that person wishes to terminate the agreement, paragraph (2) has effect in relation to the operation in question (as regards both the owner and the occupier of the land in question) as if sub-paragraph (c) specified a period of one month from the giving of that notice, or any longer period specified in that notice.

(5) A person who, without reasonable excuse, contravenes paragraph (1) commits an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(6) For the purposes of paragraph (5) it is a reasonable excuse for a person to carry out an operation if—

- (a) the operation was an emergency operation particulars of which (including details of the emergency) were notified to the appropriate nature conservation body as soon as practicable after the commencement of the operation; or
- (b) the operation was authorised by a planning permission granted on an application under Part 3 (control over development) of the TCPA 1990.

(7) The appropriate nature conservation body may take such steps as may be necessary for the purpose of enforcing this regulation.

(8) Proceedings for an offence under this regulation must not, without the consent of the Director of Public Prosecutions, be taken by a person other than the appropriate nature conservation body.

(9) In paragraphs (3) and (4) “the relevant person”—

- (a) in a case where the notice under paragraph (1)(a) was given by the owner of the land in question, means the owner of that land;
- (b) in a case where that notice was given by the occupier of that land, means the occupier of that land.

### **Assessment of implications for European sites**

**21.**—(1) Where it appears to the appropriate nature conservation body that an application for consent under regulation 20(2)(a) relates to an operation which is or forms part of a plan or project which—

- (a) is likely to have a significant effect on a European site (either alone or in combination with other plans or projects), and
- (b) is not directly connected with or necessary to the management of that site,

they must make an appropriate assessment of the implications for that site in view of that site’s conservation objectives.

(2) In the light of the conclusions of the assessment, they may give consent for the operation only after having ascertained that the plan or project will not adversely affect the integrity of the site.

(3) This regulation does not apply in relation to a site which is a European site by reason of regulation 8(1)(c) (site protected in accordance with Article 5(4) of the Habitats Directive).

### **Notification of appropriate authority in case of risk**

**22.**—(1) Where the appropriate nature conservation body have not given consent for an operation, but they consider that there is a risk that the operation may nevertheless be carried out, they must notify the appropriate authority.

(2) Such notification must be given at least one month before the end of the period mentioned in regulation 20(2)(c).

### **Existing notices and consents**

**23.—**(1) Any notice previously given under subsection (1)(a) of section 28E(58) (duties in relation to sites of special scientific interest) of the WCA 1981, or any consent previously given under section 28E(3)(a) of that Act, in relation to land which on or after 1st April 2010 becomes land within a European site, has effect, subject as follows, as if given under regulation 20(1)(a) or (2)(a), respectively.

(2) The appropriate nature conservation body must review any such consent as regards its compatibility with the conservation objectives of the site, and may modify or withdraw it.

(3) Notice of any such modification or withdrawal of consent must be given to every owner and occupier of land within the site who in the opinion of the appropriate nature conservation body may be affected by it; and after such notice has been given, the consent has effect in relation to an owner or occupier as so modified or withdrawn.

(4) The modification or withdrawal of a consent does not affect anything done in reliance on the consent before the modification or withdrawal takes effect.

(5) Where or to the extent that an operation ceases to be authorised by a consent by reason of the consent being modified or withdrawn, the period after which in accordance with regulation 20(2)(c) the operation may be carried out in the absence of consent is four months from the giving of notice of the modification or withdrawal under paragraph (3).

(6) Regulation 22 (notification of appropriate authority in case of risk) applies in such a case, with the following modifications—

- (a) for the reference to consent not having been given substitute a reference to consent being modified or withdrawn; and
- (b) for the reference to the period specified in regulation 20(2)(c) substitute a reference to the period specified in paragraph (5).

### **Farm capital grants**

**24.—**(1) Where an application for a farm capital grant is made as respects expenditure incurred or to be incurred for the purpose of activities on land within a European site, the appropriate authority—

- (a) must, so far as may be consistent with the purposes of the grant provisions, exercise their functions so as to further the conservation of the flora, fauna, or geological or physiographical features by reason of which the land is a European site; and
- (b) where the appropriate nature conservation body have objected to the making of the grant on the ground that the activities in question have destroyed or damaged or will destroy or damage that flora or fauna or those features, must not make the grant except after considering the objection.

(2) Where in consequence of an objection by the appropriate nature conservation body, an application for a grant as respects expenditure to be incurred is refused on the ground that the activities in question will have such an effect as is mentioned in paragraph (1)(b), the appropriate nature conservation body must, within three months of their receiving notice of the appropriate authority's decision, offer to enter into a management agreement—

- (a) imposing restrictions as respects those activities, and

(58) Section 28E was inserted by the Countryside and Rights of Way Act 2000 (c. 37), paragraph 1 of Schedule 9, and amended by the Natural Environment and Rural Communities Act 2006 (c. 16), paragraphs 79 and 80 of Schedule 11.

(b) providing for the making by them of payments to the applicant, in the terms of a draft submitted to the applicant.

(3) In this regulation—

(a) “farm capital grant” means—

- (i) a grant under a scheme made under section 29 of the Agriculture Act 1970<sup>(59)</sup> (farm capital grants), or
- (ii) a grant under regulations made under section 2(2) of the European Communities Act 1972<sup>(60)</sup> to a person carrying on an agricultural business within the meaning of those regulations in respect of expenditure incurred or to be incurred for the purposes of or in connection with that business, being expenditure of a capital nature or incurred in connection with expenditure of a capital nature; and

(b) “grant provisions” means—

- (i) in the case of a grant of a kind described in sub-paragraph (a)(i), the scheme under which the grant is made and section 29 of the Agriculture Act 1970, and
- (ii) in the case of a grant of a kind described in sub-paragraph (a)(ii), the regulations under which the grant is made and the EU instrument in pursuance of which the regulations were made.

### *Special nature conservation orders*

#### **Power to make special nature conservation order**

**25.—**(1) The appropriate authority may, after consultation with the appropriate nature conservation body, make in respect of any land within a European site an order (a “special nature conservation order”) specifying operations (whether on land specified in that order or elsewhere and whether or not within the European site) which appear to the appropriate authority to be of a kind which, if carried out in certain circumstances or in a particular manner, would be likely to destroy or damage the flora, fauna, or geological or physiographical features by reason of which the land is a European site.

(2) A special nature conservation order may be amended or revoked by a further order.

(3) Schedule 1 has effect with respect to the making, confirmation and coming into operation of special nature conservation orders and amending or revoking orders.

(4) A special nature conservation order specifying operations on land is a local land charge.

(5) If an order under paragraph (1) specifies any operation of a kind not carried out, or proposed to be carried out, on land within a European site, the order must specify the operation by reference to the place where it is being, or is proposed to be, carried out.

#### **Restriction on carrying out operations specified in order**

**26.—**(1) In respect of any land within a European site in respect of which a special nature conservation order is made, the appropriate authority may serve a notice (a “stop notice”) on any person carrying out, or proposing to carry out, any operation of a kind specified in that order which appears to the appropriate authority to be likely to destroy or damage the flora, fauna, or geological or physiographical features by reason of which the land is a European site.

(2) The stop notice must specify—

<sup>(59)</sup> 1970 c. 40; section 29 was amended by the Agriculture (Miscellaneous Provisions) Act 1976 (c. 55), section 15; the Criminal Justice Act 1982 (c. 48), sections 37, 38 and 46; and the Statute Law (Repeals) Act 1986 (c. 12).

<sup>(60)</sup> 1972 c. 68.

- (a) details of the operation;
- (b) details of the European site to which the notice relates; and
- (c) the date on which the notice takes effect.

(3) Where the identity of a person carrying out, or proposing to carry out, the operation is not reasonably ascertainable, the appropriate authority may, instead of serving a stop notice, publish a notice in at least one local newspaper circulating in the area in which the land to which the notice relates is situated, and affix a copy or copies of the notice to some conspicuous object or objects on the land to which the notice relates.

(4) A person on whom a stop notice is served must not carry out on any land within a European site in respect of which a special nature conservation order is in force, or in the place by reference to which the operation is specified, any operation specified in the order, unless the notice condition specified in paragraph (5) and the consent condition specified in paragraph (6) are fulfilled.

(5) The notice condition is—

- (a) where the operation is carried out on land, that—
  - (i) the operation is carried out, or caused or permitted to be carried out, by the owner or occupier of the land, and
  - (ii) after service of the stop notice, one of them has given the appropriate nature conservation body written notice of a proposal to carry out the operation, specifying its nature and where it is proposed to carry it out; and
- (b) in any other case, that after service of the stop notice, the person proposing to carry out the operation has given the appropriate nature conservation body written notice of a proposal to carry out the operation, specifying its nature and where it is proposed to carry it out.

(6) The consent condition is—

- (a) that the operation is carried out with the written consent of the appropriate nature conservation body; or
- (b) that the operation is carried out in accordance with the terms of a management agreement.

(7) A consent under paragraph (6)(a) may be given—

- (a) subject to conditions, and
- (b) for a limited period,

specified in the consent.

(8) A person who, without reasonable excuse, contravenes paragraph (4) commits an offence and is liable—

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

(9) For the purposes of paragraph (8) it is a reasonable excuse for a person to carry out an operation if—

- (a) the operation was an emergency operation particulars of which (including details of the emergency) were notified to the appropriate nature conservation body as soon as practicable after the commencement of the operation; or
- (b) the operation was authorised by a planning permission granted on an application under Part 3 (control over development) of the TCPA 1990.

(10) For the purposes of this regulation and regulations 27 and 28—

- (a) a “stop notice” means a notice served under paragraph (1);

- (b) references to the service of a stop notice are taken to mean (in an appropriate case) the publication and affixing of a notice under paragraph (3); and
- (c) where a notice is published and affixed under paragraph (3), any person carrying out an operation specified in the notice is taken to be a person on whom a stop notice is served.

### **Assessment of implications for European sites after service of stop notice**

**27.**—(1) Where it appears to the appropriate nature conservation body that an application for consent under regulation 26(6)(a) relates to an operation which is or forms part of a plan or project which—

- (a) is likely to have a significant effect on a European site (either alone or in combination with other plans or projects), and
- (b) is not directly connected with or necessary to the management of that site,

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

(2) In the light of the conclusions of the assessment, they may give consent for the operation only after having ascertained that the plan or project will not adversely affect the integrity of the site.

(3) Where the appropriate nature conservation body refuse consent they must give reasons for their decision.

(4) A person on whom a stop notice is served may—

- (a) within two months of receiving notice of the refusal of consent, or
- (b) if no notice of a decision is received by that person within three months of an application for consent being made,

by notice in writing to the appropriate nature conservation body require them to refer the matter as soon as possible to the appropriate authority.

(5) If, following a referral under paragraph (4), the appropriate authority 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 (6), may be of a social or economic nature), the appropriate authority may direct the appropriate nature conservation body to give consent to the operation.

(6) Where the site concerned hosts a priority natural habitat type or a priority species, the reasons referred to in paragraph (5) must be either—

- (a) reasons relating to human health, public safety or beneficial consequences of primary importance to the environment; or
- (b) any other reasons which the appropriate authority, having due regard to the opinion of the European Commission, consider to be imperative reasons of overriding public interest.

(7) Where the appropriate authority direct the appropriate nature conservation body to give consent under paragraph (5), the appropriate authority must secure that such compensatory measures are taken as are necessary to ensure that the overall coherence of Natura 2000 is protected.

(8) This regulation does not apply in relation to a site which is a European site by reason of regulation 8(1)(c) (site protected in accordance with Article 5(4) of the Habitats Directive).

### **Compensation for effect of stop notice**

**28.**—(1) Where the appropriate authority have served a stop notice on any person, the appropriate nature conservation body must pay compensation to any person who—

- (a) at the time at which the notice is served has an interest in affected relevant land; and

- (b) on a claim duly made to the appropriate nature conservation body, shows that the value of that interest is less than it would have been if the notice had not been served.
- (2) No claim for compensation may be made in respect of an order unless the appropriate authority have given notice of the decision in respect of that order under paragraph 6(1) or (2) of Schedule 1 (special nature conservation orders: procedure).
- (3) The amount of the compensation payable is the difference between the value of the interest and what that value would have been had a stop notice not been served.
- (4) For this purpose—
  - (a) an interest in land is to be valued at the time when the stop notice is served; and
  - (b) where a person, by reason of having more than one interest in affected relevant land, makes more than one claim in respect of the same restriction having effect by virtue of a stop notice being served, the various interests in respect of which that person claims compensation are to be valued together.
- (5) Section 10 of the Land Compensation Act 1973<sup>(61)</sup> (mortgages, trusts of land and settlements) applies in relation to compensation under this regulation as it applies in relation to compensation under Part 1 of that Act.
- (6) For the purposes of assessing compensation under this regulation, the rules set out in section 5 of the Land Compensation Act 1961<sup>(62)</sup> (rules for assessing compensation on a compulsory acquisition) have effect, so far as applicable and subject to any necessary modifications, as they have effect for the purpose of assessing compensation for the compulsory acquisition of an interest in land.
- (7) Interest is payable in relation to compensation, at the rate for the time being prescribed under section 32 of the Land Compensation Act 1961 (rate of interest after entry on land), from the date of the claim until payment.
- (8) In the case of any dispute as to compensation—
  - (a) the Upper Tribunal has the function of determining the dispute; and
  - (b) section 4<sup>(63)</sup> of the Land Compensation Act 1961 (costs) applies in relation to the determination, subject to any necessary modifications.
- (9) In this regulation—
  - (a) “affected relevant land” means land which forms part of an agricultural unit which comprises land to which the stop notice relates; and
  - (b) “agricultural unit” means land which is occupied by a person as a unit for agricultural purposes, including any dwelling or other building occupied by that person for the purpose of farming the land.

## Restoration orders

**29.**—(1) Where a person (“P”) is convicted of an offence under regulation 26 (restriction on carrying out operations specified in order), the court may, in addition to dealing with P in any other way, make an order (a “restoration order”) requiring P to carry out, within such period as may be specified in the order, such operations for the purpose of restoring the land to its former condition as may be so specified.

<sup>(61)</sup> 1973 c. 26; relevant amendments to section 10 were made by the Trusts of Land and Appointment of Trustees Act 1996 (c. 47), paragraph 13 of Schedule 3.

<sup>(62)</sup> 1961 c. 33; section 5 was amended by the Planning and Compensation Act 1991 (c. 34), paragraph 1 of Schedule 15 and Part 3 of Schedule 19, and by S.I. 2009/1307.

<sup>(63)</sup> Section 4 was amended by S.I. 2009/1307.



(2) A restoration order made on conviction on indictment is to be treated for the purposes of section 30 of the Criminal Appeal Act 1968<sup>(64)</sup> (restitution of property) as an order for the restitution of property.

(3) In the case of a restoration order made by a magistrates' court, the period specified in the order does not begin to run—

- (a) in any case until the end of the period for the time being prescribed by law for the giving of notice of appeal against a decision of a magistrates' court; and
- (b) where notice of appeal is given within the period so prescribed, until determination of the appeal.

(4) At any time before a restoration order has been fully complied with, the court may, on the application of the person subject to the order, discharge or vary the order if it appears to the court that a change in circumstances has made compliance with the order impracticable or unnecessary.

(5) A person who fails without reasonable excuse to comply with a restoration order commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(6) A person who continues to fail to comply with a restoration order, following conviction under paragraph (5), may be proceeded against for a further offence from time to time until the order is complied with.

(7) If, within the period specified in a restoration order, any operations specified in the order have not been carried out, the appropriate nature conservation body may enter the land and carry out those operations and recover from the person subject to the order any expenses reasonably incurred by them in doing so.

### *Byelaws*

#### **Power to make byelaws**

**30.**—(1) The appropriate nature conservation body may make byelaws for the protection of a European site under section 20 of the 1949 Act<sup>(65)</sup> (byelaws for protection of nature reserves).

(2) Such byelaws may, in particular, make the kinds of provision mentioned in this regulation, subject to regulation 31(1).

(3) Byelaws may—

- (a) provide for prohibiting or restricting the entry into, or movement within, the site of persons, vehicles, boats or animals;
- (b) prohibit or restrict the killing, taking, molesting or disturbance of living creatures of any description in the site, the taking, destruction or disturbance of eggs of any such creature, the taking of, or interference with, vegetation of any description in the site, or the doing of anything in the site which will interfere with the soil or damage any object in the site;
- (c) contain provisions prohibiting the depositing of rubbish and the leaving of litter in the site; and
- (d) prohibit or restrict, or provide for prohibiting or restricting, the lighting of fires in the site or the doing of anything likely to cause a fire in the site.

<sup>(64)</sup> 1968 c. 19; section 30 was substituted by the Criminal Justice Act 1988 (c. 33), paragraphs 20 and 28 of Schedule 15, and amended by the Constitutional Reform Act 2005 (c. 4), paragraph 16(1) and (2) of Schedule 9.

<sup>(65)</sup> Section 20 was amended by the Telecommunications Act 1984 (c. 12), paragraph 28 of Schedule 4; the Water Act 1989 (c. 15), paragraph 13 of Schedule 25; the Communications Act 2003 (c. 21), paragraph 20(1) and (2) of Schedule 17; and the Natural Environment and Rural Communities Act 2006 (c. 16), paragraph 15(d) of Schedule 11.

(4) Byelaws may prohibit or restrict any activity referred to in paragraph (3) within such area surrounding or adjoining the site as appears to the appropriate nature conservation body necessary for the protection of the site.

(5) Byelaws may provide for the issue, on such terms and subject to such conditions as may be specified in the byelaws, of permits authorising—

(a) entry into the site or any such surrounding or adjoining area as is mentioned in paragraph (4), or

(b) the doing of anything within the site, or any such surrounding or adjoining area, where such entry, or doing that thing, would otherwise be unlawful under the byelaws.

(6) Byelaws may be made so as to relate either to the whole or to any part of the European site, or of any such surrounding or adjoining area as is mentioned in paragraph (4), and may make different provision for different parts of the site.

(7) This regulation does not apply in relation to a European marine site (but see regulation 38 (European marine sites: byelaws and orders)).

### **Byelaws: supplementary provisions**

**31.—**(1) Relevant byelaws must not interfere with—

(a) the exercise by any person of a right vested in that person as owner, lessee or occupier of land in the European site, or in any such surrounding or adjoining area as is mentioned in regulation 30(4);

(b) the exercise of any public right of way;

(c) the exercise of any functions of statutory undertakers;

(d) the exercise of any functions of an internal drainage board<sup>(66)</sup> or the Commissioners appointed under the Tweed Fisheries Act 1969<sup>(67)</sup>; or

(e) the provision of an electronic communications code network or the exercise of any right conferred by or in accordance with the electronic communications code on the provider of any such network.

(2) Sections 236 to 238 of the Local Government Act 1972<sup>(68)</sup> (procedure, etc., for byelaws; offences against byelaws; evidence of byelaws) apply to all relevant byelaws as if the appropriate nature conservation body were a local authority within the meaning of that Act.

(3) In relation to relevant byelaws, the confirming authority for the purposes of section 236<sup>(69)</sup> of the Local Government Act 1972 is the appropriate authority.

(4) The appropriate nature conservation body may take such steps as may be necessary for the purpose of enforcing byelaws made by them.

(5) In this regulation and in regulations 32 and 33, “relevant byelaws” means byelaws under section 20 of the 1949 Act as it applies by virtue of regulation 30.

<sup>(66)</sup> See section 1 of the Land Drainage Act 1991 (c. 59).

<sup>(67)</sup> 1969 c. xxiv.

<sup>(68)</sup> 1972 c. 70; section 236 was amended by the Civil Aviation Act 1982 (c. 16), paragraph 11 of Schedule 15; the Local Government Act 1985 (c. 51), paragraph 31(1) of Schedule 14; the Water Act 1989 (c. 15), Part 1 of Schedule 27; the Local Government (Wales) Act 1994 (c. 19), paragraph 50 of Schedule 15; the Greater London Authority Act 1999 (c. 29), sections 76 and 166; S.I. 2001/3719; the Local Government and Public Involvement in Health Act 2007 (c. 28), section 129(1) and (2); and the Local Democracy, Economic Development and Construction Act 2009 (c. 20) (“the 2009 Act”), paragraphs 10 and 34 of Schedule 6. Section 238 was amended by S.I. 2001/3719 and the 2009 Act, paragraphs 10 and 36 of Schedule 6.

<sup>(69)</sup> See definition of “the confirming authority” in subsection (11).

### **Compensation for effect of byelaws**

**32.**—(1) Where the exercise of any right vested in a person (“P”), whether by reason of P’s being entitled to any interest in land or by virtue of a licence or agreement, is prevented or hindered by the coming into operation of relevant byelaws, P is entitled to receive compensation from the appropriate nature conservation body.

(2) Any dispute arising on a claim for any such compensation is to be determined by the Upper Tribunal.

(3) For the purposes of any such reference to the Upper Tribunal, section 4 of the Land Compensation Act 1961<sup>(70)</sup> (costs) has effect with the substitution for references to the acquiring authority of references to the authority from whom the compensation in question is claimed.

(4) Rules (2) to (4) of the Rules set out in section 5<sup>(71)</sup> of that Act (rules for assessing compensation on a compulsory acquisition) apply to the calculation of any such compensation, in so far as it is calculated by reference to the depreciation of the value of an interest in land.

(5) In the case of an interest in land subject to a mortgage—

- (a) any such compensation in respect of the depreciation of that interest is to be calculated as if the interest were not subject to the mortgage;
- (b) a claim or application for the payment of any such compensation may be made by any person who when the byelaws giving rise to the compensation were made was the mortgagee of the interest, or by any person claiming under such a person, but without prejudice to the making of a claim or application by any other person;
- (c) subject to sub-paragraph (d), a mortgagee is not entitled to any such compensation in respect of that mortgagee’s interest as such; and
- (d) any compensation payable in respect of the interest subject to the mortgage must be paid to the mortgagee or, where there is more than one mortgagee, to the first mortgagee, and must in either case be applied by the mortgagee as if it were proceeds of sale.

### **Continuation in force of existing byelaws**

**33.** Any byelaws in force under section 20 of the 1949 Act in relation to land which on or after 1st April 2010 becomes land within a European site, or adjacent to such a site—

- (a) have effect as if they are relevant byelaws; and
- (b) are to be construed as if originally made as such byelaws.

### *Powers of compulsory acquisition*

### **Powers of compulsory acquisition**

**34.**—(1) Where the appropriate nature conservation body are satisfied—

- (a) that they are unable, as respects any interest in land within a European site, to conclude a management agreement on terms appearing to them to be reasonable, or
- (b) where they have entered into a management agreement as respects such an interest, that a breach of the agreement has occurred which prevents or impairs the satisfactory management of the European site,

they may acquire that interest compulsorily.

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<sup>(70)</sup> 1961 c. 33; section 4 was amended by S.I. 2009/1307.

<sup>(71)</sup> Section 5 was amended by the Planning and Compensation Act 1991 (c. 34), paragraph 1 of Schedule 15 and Part 3 of Schedule 19, and by S.I. 2009/1307.

(2) Such a breach as is mentioned in paragraph (1)(b) is not to be treated as having occurred by virtue of any act or omission capable of remedy unless there has been default in remedying it within a reasonable time after notice given by the appropriate nature conservation body requiring that act or omission to be remedied.

(3) Any dispute arising as to whether there has been such a breach of a management agreement is to be determined by an arbitrator appointed by the Lord Chancellor.

(4) The power of compulsory acquisition conferred by paragraph (1) on the appropriate nature conservation body may be exercised in any particular case only after authorisation by the appropriate authority.

(5) In relation to any acquisition of land under this regulation, the Acquisition of Land Act 1981<sup>(72)</sup> applies; and in relation to any such acquisition of any interest in land, the Compulsory Purchase Act 1965<sup>(73)</sup> applies.

(6) In this regulation—

- (a) “land” includes any interest in land; and
- (b) an “interest”, in relation to land, includes any estate in land and any right over land, whether the right is exercisable by virtue of the ownership of an interest in land or by virtue of a licence or agreement, and in particular includes sporting rights.

### *European marine sites*

#### **Marking of site and advice by nature conservation bodies**

**35.**—(1) The appropriate nature conservation body may install markers indicating the existence and extent of a European marine site.

(2) This power is exercisable subject to the obtaining of any necessary consent under section 34 of the Coast Protection Act 1949<sup>(74)</sup> (restriction of works detrimental to navigation).

(3) As soon as possible after a site becomes a European marine site, the appropriate nature conservation body must advise other relevant authorities as to—

- (a) the conservation objectives for that site; and
- (b) any operations which may cause deterioration of natural habitats or the habitats of species, or disturbance of species, for which the site has been designated.

#### **Management scheme for European marine site**

**36.**—(1) The relevant authorities, or any of them, may establish for a European marine site a management scheme under which their functions (including any power to make byelaws) are to be exercised so as to secure in relation to that site compliance with the requirements of the Habitats Directive.

(2) Only one management scheme may be made for each European marine site.

(3) A management scheme may be amended from time to time.

(4) As soon as a management scheme has been established, or is amended, a copy of it must be sent by the relevant authority or authorities concerned to the appropriate nature conservation body.

<sup>(72)</sup> 1981 c. 67.

<sup>(73)</sup> 1965 c. 56.

<sup>(74)</sup> 1949 c. 74; section 34 was amended by the Merchant Shipping Act 1988 (c. 12), section 36, and by the Statute Law Revision Act 1953 (c. 5).

### **Direction to establish or amend management scheme**

**37.**—(1) The appropriate authority may give directions to the relevant authorities, or any of them, as to the establishment of a management scheme for a European marine site.

(2) Directions may, in particular—

- (a) require conservation measures specified in the direction to be included in the scheme;
- (b) appoint one of the relevant authorities to co-ordinate the establishment of the scheme;
- (c) set time limits within which any steps are to be taken;
- (d) provide that the approval of the appropriate authority is required before the scheme is established; and
- (e) require any relevant authority to supply to the appropriate authority such information concerning the establishment of the scheme as may be specified in the direction.

(3) The appropriate authority may give directions to the relevant authorities, or any of them, as to the amendment of a management scheme for a European marine site, either generally or in any particular respect.

(4) Any direction under this regulation must be in writing and may be varied or revoked by a further direction.

### **European marine sites: byelaws and orders**

**38.**—(1) The Marine Management Organisation may make byelaws for the protection of a European marine site in England under section 129 of the Marine Act (byelaws for protection of marine conservation zones in England).

(2) The Welsh Ministers may make orders for the protection of a European marine site in Wales under section 134 of that Act (orders for protection of marine conservation zones in Wales).

(3) The provisions of Chapter 1 (marine conservation zones) of Part 5 of that Act relating to byelaws under section 129 or orders under section 134 apply, with the modifications described in paragraph (4), in relation to byelaws made by virtue of paragraph (1) or (as the case may be) orders made by virtue of paragraph (2).

(4) The modifications are—

- (a) any reference to an MCZ is to be read as a reference to a European marine site;
- (b) in sections 129(1) and 134(1), the reference to furthering the conservation objectives stated for an MCZ is to be read as a reference to protecting a European marine site;
- (c) the reference in section 129(3)(c) to hindering the conservation objectives stated for an MCZ is to be read as a reference to damaging a European marine site.

(5) Nothing in byelaws or orders made by virtue of this regulation may interfere with the exercise of any functions of a relevant authority, any functions conferred by or under an enactment (whenever passed) or any right of any person (whenever vested).

### *Nature conservation policy in planning contexts*

### **Nature conservation policy in planning contexts**

**39.**—(1) For the purposes of—

- (a) subsection (3) of section 17(**75**) (local development documents) of the Planning and Compulsory Purchase Act 2004(**76**),

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(75) Section 17(3) was amended by the Planning Act 2008 (c. 29), section 180(3)(b).

- (b) subsection (2)(b) of section 62 (local development plan) of that Act, and
- (c) subsection (2)(b) of section 70 (regional strategy) of the Local Democracy, Economic Development and Construction Act 2009<sup>(77)</sup>,

policies relating to the development and use of land are to be taken to include policies encouraging the management of features of the landscape which are of major importance for wild fauna and flora.

(2) For the purposes of—

- (a) subsection (3A) of section 12<sup>(78)</sup> (preparation of unitary development plan) of the TCPA 1990;
- (b) subsection (3) of section 31<sup>(79)</sup> (structure plans: continuity, form and content) of that Act; and
- (c) subsection (3) of section 36<sup>(80)</sup> (local plans) of that Act,

policies in respect of the conservation of the natural beauty and amenity of the land are to be taken to include policies encouraging the management of features of the landscape which are of major importance for wild fauna and flora.

(3) The features of the landscape referred to in paragraphs (1) and (2) are those which, by virtue of their linear and continuous structure (such as rivers with their banks or the traditional systems of marking field boundaries) or their function as “stepping stones” (such as ponds or small woods), are essential for the migration, dispersal and genetic exchange of wild species.

(4) Where the Secretary of State considers it necessary, the Secretary of State must include in a national policy statement under Part 2 (national policy statements) of the Planning Act 2008<sup>(81)</sup> policy that encourages the management of such features of the landscape (as mentioned in paragraph (3)) which are of major importance for wild fauna and flora.

## PART 3

### PROTECTION OF SPECIES

#### *Protection of animals*

#### **European protected species of animals**

**40.**—(1) Schedule 2 (European protected species of animals) lists those species of animals listed in Annex IV(a) to the Habitats Directive which have a natural range which includes any area in Great Britain.

(2) References in this Part to a “European protected species” of animal are to any of those species.

#### **Protection of certain wild animals: offences**

**41.**—(1) A person who—

<sup>(76)</sup> 2004 c. 5.

<sup>(77)</sup> 2009 c. 20.

<sup>(78)</sup> Section 12(3A) was inserted by the Planning and Compensation Act 1991 (c. 34), paragraph 2(1) of Schedule 4. Part 2 of the TCPA 1990 (which includes sections 12, 31 and 36) was repealed by the Planning and Compulsory Purchase Act 2004 (c. 5), Schedule 9, subject to transitional provisions contained in Schedule 8 to that Act. In relation to Wales, transitional provisions contained in article 4 of S.I. 2005/1229 (W. 87) (C. 56) have the effect that section 12 of the TCPA 1990 continues to apply in relation to certain local planning authorities.

<sup>(79)</sup> Section 31(3) was substituted by the Planning and Compensation Act 1991 (c. 34), paragraph 16 of Schedule 4.

<sup>(80)</sup> Section 36 was substituted by the Planning and Compensation Act 1991 (c. 34), paragraph 17 of Schedule 4.

<sup>(81)</sup> 2008 c. 29.

- (a) deliberately captures, injures or kills any wild animal of a European protected species,
- (b) deliberately disturbs wild animals of any such species,
- (c) deliberately takes or destroys the eggs of such an animal, or
- (d) damages or destroys a breeding site or resting place of such an animal,

is guilty of an offence.

(2) For the purposes of paragraph (1)(b), disturbance of animals includes in particular any disturbance which is likely—

- (a) to impair their ability—
  - (i) to survive, to breed or reproduce, or to rear or nurture their young, or
  - (ii) in the case of animals of a hibernating or migratory species, to hibernate or migrate;or
- (b) to affect significantly the local distribution or abundance of the species to which they belong.

(3) It is an offence for any person—

- (a) to be in possession of, or to control,
- (b) to transport,
- (c) to sell or exchange, or
- (d) to offer for sale or exchange,

anything to which this paragraph applies.

(4) Paragraph (3) applies to—

- (a) any live or dead animal or part of an animal—
  - (i) which has been taken from the wild, and
  - (ii) which is of a species or subspecies listed in Annex IV(a) to the Habitats Directive;and
- (b) anything derived from such an animal or any part of such an animal.

(5) Paragraphs (1) and (3) apply regardless of the stage of the life of the animal in question.

(6) Unless the contrary is shown, in any proceedings for an offence under paragraph (1) the animal in question is presumed to have been a wild animal.

(7) In any proceedings for an offence under paragraph (3), where it is alleged that an animal or a part of an animal was taken from the wild, it is presumed, unless the contrary is shown, that that animal or part of an animal was taken from the wild.

(8) A person guilty of an offence under this regulation is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale, or to both.

(9) Guidance as to the application of the offences in paragraph (1)(b) or (d) in relation to particular species of animals or particular activities may be published by—

- (a) the appropriate authority; or
- (b) the appropriate nature conservation body, with the approval of the appropriate authority.

(10) In proceedings for an offence under paragraph (1)(b) or (d), a court must take into account any relevant guidance published under paragraph (9).

(11) In deciding upon the sentence for a person convicted of an offence under paragraph (1)(d), the court must in particular have regard to whether that person could reasonably have avoided the damage to or destruction of the breeding site or resting place concerned.



**Protection of certain wild animals: defences**

**42.—**(1) A person (“P”) is not guilty of the offence under regulation 41(1)(a) of deliberately capturing a wild animal of a European protected species, or an offence under regulation 41(3)(a) or (b), if P shows that the act in question—

- (a) was in relation to an animal that had been disabled otherwise than by P’s unlawful act; and
- (b) was done solely for one or both of the purposes of—
  - (i) tending it and releasing it when no longer disabled, or
  - (ii) releasing it after it had been tended.

(2) A person (“P”) is not guilty of an offence under regulation 41(1)(a) or 41(3)(a) or (b) if P shows that the act in question—

- (a) was in relation to an animal that had been seriously disabled otherwise than by P’s unlawful act and that there was no reasonable chance of its recovering; and
- (b) was done solely for one or both of the purposes of—
  - (i) ending the animal’s life, or
  - (ii) disposing of it (otherwise than by sale or exchange) as soon as practicable after it was dead.

(3) A person is not guilty of the offence under regulation 41(1)(a) of deliberately injuring a wild animal of a European protected species if that person shows that this was done solely—

- (a) for the purpose of taking a sample by virtue of any of the sampling provisions; or
- (b) for the purpose of taking a sample to be used in evidence in any criminal proceedings in respect of an offence specified in paragraph (11) (wherever the offence was committed).

(4) A person is not guilty of an offence under regulation 41(3)(a) or (b) if that person shows that the act in question was done solely for one or more of the purposes of—

- (a) investigating whether an offence specified in paragraph (11) is being or has been committed (wherever the offence was committed);
- (b) bringing, conducting, or giving evidence in, any criminal proceedings in respect of any such offence; or
- (c) giving effect to an order under any of the forfeiture provisions.

(5) Subject to paragraph (6), a person who shows that the animal or part of the animal in question, or the animal or part of the animal from which the thing in question is derived, was lawfully taken from the wild is not guilty of an offence under regulation 41(3).

(6) The defence in paragraph (5) does not apply—

- (a) in respect of the offences in regulation 41(3)(a) and (b) if—
  - (i) the animal or part in question is an animal, or part of an animal, of a European protected species or of the species *Lacerta vivipara pannonica* (viviparous lizard) or *Lycaena dispar* (the large copper butterfly), or the thing in question is derived from such an animal, and
  - (ii) the animal, part or thing in question was in the defendant’s possession or control, or transported by the defendant, for the purpose of sale or exchange; or
- (b) in respect of the offences in regulation 41(3)(c) and (d), if the animal or part in question is an animal, or part of an animal, of any of the species referred to in sub-paragraph (a)(i), or the thing in question is derived from such an animal.

(7) For the purposes of paragraph (5) an animal, or part of an animal, is treated as having been lawfully taken from the wild if—

- (a) it was taken from the wild in the European territory of a member State, being territory to which the TFEU applies, without contravention of the law of that member State and before the implementation date; or
  - (b) it was taken from the wild elsewhere.
- (8) A person is not guilty of an offence under regulation 41(3) if that person shows that the animal or part of the animal, or the animal from which the thing in question is derived—
- (a) is of a species listed in the second column of Schedule 3 (excluded populations of certain species) and was from a population occurring in a country or area which is specified in respect of that species in the third column of that Schedule;
  - (b) is of the species *Capra aegagrus* (wild goat) and was not from a naturally occurring population;
  - (c) is of the subspecies *Ovis gmelini musimon* (European mouflon) and was not from a naturally occurring population in Corsica or Sardinia; or
  - (d) is of the species *Coregonus oxyrhynchus* (houting) and either was from Finland or was not from an anadromous population.
- (9) The defences in paragraphs (1) to (4) do not apply where it is shown by the prosecution that the defendant's action did not satisfy the conditions in paragraph (10).
- (10) Those conditions are that—
- (a) there was no satisfactory alternative; and
  - (b) the action was not detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range.
- (11) For the purposes of paragraphs (3)(b) and (4)(a) and (b), the specified offences are—
- (a) an offence under section 9(82) (protection of certain wild animals), 11(83) (prohibition of certain methods of killing or taking wild animals) or 17(84) (false statements made for obtaining registration or licence etc.) of the WCA 1981, or an offence under section 18 of that Act (attempts to commit offences etc.) which relates to an offence under section 9 or 11;
  - (b) an offence under the following provisions of these Regulations—
    - (i) regulation 41 (protection of certain wild animals: offences),
    - (ii) regulation 43 (prohibition of certain methods of capturing or killing wild animals),
    - (iii) regulation 57 (false statements made for obtaining licence), where that offence relates to the obtaining of a licence under regulation 53 (licences for certain activities relating to animals or plants), or
    - (iv) regulation 116 (attempts and possession of means of committing offence), where that offence relates to an offence under regulation 41 or 43;
  - (c) an offence under the 1997 Regulations or an offence of attempting to commit such an offence; or
  - (d) an offence under regulation 39(85) (protection of wild animals listed in Annex IV(a) to the Habitats Directive), 41 (prohibition of certain methods of capturing or killing wild animals) or 51 (false statements made for obtaining licence) of the 2007 Regulations, an offence of attempting to commit an offence under regulation 39 or 41 of those Regulations,

(82) Relevant amendments were made to section 9 by the Countryside and Rights of Way Act 2000 (c. 37), paragraph 5(b) of Schedule 12.

(83) Relevant amendments were made to section 11 by the Wildlife and Countryside (Amendment) Act 1991 (c. 39), section 2.

(84) Section 17 was amended by the Countryside and Rights of Way Act 2000 (c. 37), Part 4 of Schedule 16.

(85) Regulation 39 was amended by S.I. 2009/7.

or an offence under regulation 64 of those Regulations (possession of means of committing offence) which relates to an offence under regulation 39 or 41 of those Regulations.

(12) For the purposes of any proceedings for an offence under regulation 41(3), the common names given in parentheses in paragraphs (6) and (8) are to be disregarded.

### **Prohibition of certain methods of capturing or killing wild animals**

**43.**—(1) This regulation applies in relation to the capturing or killing of a wild animal—

- (a) of any of the species listed in Schedule 4 (which lists those species listed in Annex V(a) to the Habitats Directive, and to which Article 15 of that Directive applies, which have a natural range which includes any area of Great Britain); or
- (b) of a European protected species, where the capturing or killing of such animals is permitted in accordance with these Regulations.

(2) It is an offence to use for the purpose of capturing or killing any such wild animal—

- (a) any of the means listed in paragraph (3) or (4);
- (b) any form of capturing or killing from the modes of transport listed in paragraph (5); or
- (c) any other means of capturing or killing which is indiscriminate and capable of causing the local disappearance of, or serious disturbance to, a population of any species of animal listed in Schedule 4 or any European protected species of animal.

(3) The prohibited means of capturing or killing mammals are—

- (a) the use of blind or mutilated animals as live decoys;
- (b) tape recorders;
- (c) electrical and electronic devices capable of killing or stunning;
- (d) artificial light sources;
- (e) mirrors and other dazzling devices;
- (f) devices for illuminating targets;
- (g) sighting devices for night shooting comprising an electronic image magnifier or image converter;
- (h) explosives;
- (i) nets which are non-selective according to their principle or their conditions of use;
- (j) traps which are non-selective according to their principle or their conditions of use;
- (k) crossbows;
- (l) poisons and poisoned or anaesthetic bait;
- (m) gassing or smoking out;
- (n) semi-automatic or automatic weapons with a magazine capable of holding more than two rounds of ammunition.

(4) The prohibited means of capturing or killing fish are—

- (a) poison;
- (b) explosives.

(5) The prohibited modes of transport are—

- (a) aircraft;
- (b) moving motor vehicles.

(6) A person guilty of an offence under this regulation is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale, or to both.

### *Protection of plants*

#### **European protected species of plants**

**44.**—(1) Schedule 5 (European protected species of plants) lists those species of plants listed in Annex IV(b) to the Habitats Directive which have a natural range which includes any area in Great Britain.

(2) References in this Part to a “European protected species” of plant are to any of those species.

#### **Protection of certain wild plants: offences**

**45.**—(1) It is an offence deliberately to pick, collect, cut, uproot or destroy a wild plant of a European protected species.

(2) It is an offence for any person—

- (a) to be in possession of, or to control,
- (b) to transport,
- (c) to sell or exchange, or
- (d) to offer for sale or exchange,

anything to which this paragraph applies.

(3) Paragraph (2) applies to—

- (a) any live or dead plant or part of a plant—
  - (i) which has been taken in the wild, and
  - (ii) which is of a species or subspecies listed in Annex II(b) (other than any bryophyte) or Annex IV(b) to the Habitats Directive; and
- (b) anything derived from such a plant or any part of such a plant.

(4) Paragraphs (1) and (2) apply regardless of the stage of the biological cycle of the plant in question.

(5) Unless the contrary is shown, in any proceedings for an offence under paragraph (1) the plant in question is presumed to have been a wild plant.

(6) In any proceedings for an offence under paragraph (2), where it is alleged that a plant or a part of a plant was taken in the wild, it is presumed, unless the contrary is shown, that that plant or part of a plant was taken in the wild.

(7) A person guilty of an offence under this regulation is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale, or to both.

#### **Protection of certain wild plants: defences**

**46.**—(1) A person is not guilty of the offence under regulation 45(1) of picking or cutting a wild plant of a European protected species if this was done solely—

- (a) for the purpose of taking a sample by virtue of any of the sampling provisions; or
- (b) for the purpose of taking a sample to be used in evidence in any criminal proceedings in respect of an offence specified in paragraph (6) (wherever the offence was committed).

(2) A person is not guilty of an offence under regulation 45(2)(a) or (b) if that person shows that the act in question was done solely for one or more of the purposes of—

- (a) investigating whether an offence specified in paragraph (6) is being or has been committed (wherever the offence was committed);
- (b) bringing, conducting, or giving evidence in, any criminal proceedings in respect of any such offence; or
- (c) giving effect to an order under any of the forfeiture provisions.

(3) Subject to paragraph (4), a person who shows that the plant or part of the plant in question, or the plant or part of the plant from which the thing in question is derived, was lawfully taken in the wild, is not guilty of an offence under regulation 45(2).

(4) The defence in paragraph (3) does not apply—

- (a) in respect of the offences in regulation 45(2)(a) and (b) if—
  - (i) the plant or part in question is a plant, or part of a plant, of a European protected species, or the thing in question is derived from such a plant, and
  - (ii) the plant, part or thing in question was in the defendant's possession or control, or transported by the defendant, for the purpose of sale or exchange; or
- (b) in respect of the offences in regulation 45(2)(c) and (d), if the plant or part in question is a plant, or part of a plant, of a European protected species, or the thing in question is derived from such a plant.

(5) For the purposes of paragraph (3) a plant, or part of a plant, is treated as having been lawfully taken in the wild if—

- (a) it was taken in the wild in the European territory of a member State, being territory to which the TFEU applies, without contravention of the law of that member State and before the implementation date; or
- (b) it was taken in the wild elsewhere.

(6) For the purposes of paragraphs (1)(b) and (2)(a) and (b), the specified offences are—

- (a) an offence under section 13 (protection of wild plants) or 17(86) (false statements made for obtaining registration or licence etc.) of the WCA 1981, or an offence under section 18 of that Act (attempts to commit offences etc.) which relates to an offence under section 13;
- (b) an offence under the following provisions of these Regulations—
  - (i) regulation 45 (protection of certain wild plants: offences),
  - (ii) regulation 57 (false statements made for obtaining licence), where that offence relates to the obtaining of a licence under regulation 53 (licences for certain activities relating to animals or plants), or
  - (iii) regulation 116 (attempts and possession of means of committing offence), where that offence relates to an offence under regulation 45;
- (c) an offence under the 1997 Regulations or an offence of attempting to commit such an offence; or
- (d) an offence under regulation 43 (offences relating to wild plants listed in Annex IV(b) to the Habitats Directive) or 51 (false statements made for obtaining licence) of the 2007 Regulations, an offence of attempting to commit an offence under regulation 43 of those Regulations, or an offence under regulation 64 of those Regulations (possession of means of committing offence) which relates to an offence under regulation 43 of those Regulations.

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(86) Section 17 was amended by the Countryside and Rights of Way Act 2000 (c. 37), Part 4 of Schedule 16.

### *Interpretation of Part 3*

#### **Interpretation of Part 3**

**47. In this Part—**

- (a) “the 1997 Regulations” means the Control of Trade in Endangered Species (Enforcement) Regulations 1997<sup>(87)</sup>;
- (b) “the forfeiture provisions” means—
  - (i) subsection (6) of section 21<sup>(88)</sup> (penalties, forfeitures etc.) of the WCA 1981,
  - (ii) regulation 122 (forfeiture) of these Regulations, or
  - (iii) regulation 11 (forfeiture) of the 1997 Regulations;
- (c) “the implementation date” means—
  - (i) where the relevant State became a member State before 10th June 1994, 10th June 1994, and
  - (ii) in any other case, the date on which the relevant State became a member State;
- (d) “relevant State” means the State in whose territory—
  - (i) the animal, or part of it, was taken from the wild, or
  - (ii) the plant, or part of it, was taken in the wild,as the case may be;
- (e) “the sampling provisions” means—
  - (i) section 18C<sup>(89)</sup> (Group 1 offences and licences: examining specimens and taking samples), 18E<sup>(90)</sup> (Group 2 offences: examining specimens and taking samples) or 19XA<sup>(91)</sup> (constables’ powers in connection with samples) of the WCA 1981,
  - (ii) regulation 113 (powers in relation to samples: constables) or 114 (powers in relation to specimens and samples: wildlife inspectors) of these Regulations,
  - (iii) paragraph (3) or (5) of regulation 9 (powers of entry) of the 1997 Regulations, or
  - (iv) paragraph (2) of regulation 56 (powers relating to specimens) of the 2007 Regulations; and
- (f) “the TFEU” means the Treaty on the Functioning of the European Union.

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<sup>(87)</sup> [S.I. 1997/1372](#), amended by [S.I. 2005/1674](#), [2007/2952](#) and [2009/1773](#).

<sup>(88)</sup> A relevant amendment was made to section 21(6) by the Natural Environment and Rural Communities Act 2006 (c. 16) (“the 2006 Act”), paragraph 73(1) of Schedule 11.

<sup>(89)</sup> Section 18C was inserted by the 2006 Act, paragraph 1 of Schedule 5.

<sup>(90)</sup> Section 18E was inserted by the 2006 Act (by the same provisions as inserted section 18C).

<sup>(91)</sup> Section 19XA was inserted by the 2006 Act, paragraph 3 of Schedule 5, and amended by the Criminal Justice and Immigration Act 2008 (c. 4), paragraph 7 of Schedule 26.

## PART 4

### ADDITIONAL PROTECTION OF HABITATS AND WILD ANIMALS AND PLANTS

#### *Surveillance and monitoring*

##### **Surveillance of conservation status of habitats and species**

**48.**—(1) The appropriate authority must make arrangements in accordance with paragraphs (4) to (6) for the surveillance of the conservation status of natural habitat types of Community interest and species of Community interest, and in particular priority natural habitat types and priority species.

(2) In respect of the arrangements made by the Secretary of State under paragraph (1), the Secretary of State must, from time to time—

- (a) consult the devolved administrations;
- (b) provide the devolved administrations with such information as the Secretary of State considers appropriate that has been derived from the surveillance which has been arranged; and
- (c) review those arrangements and, if appropriate, revise them.

(3) In respect of the arrangements made by the Welsh Ministers under paragraph (1), the Welsh Ministers must, from time to time—

- (a) consult the Secretary of State and the other devolved administrations;
- (b) provide the Secretary of State and the other devolved administrations with such information as the Welsh Ministers consider appropriate that has been derived from the surveillance which has been arranged; and
- (c) review those arrangements and, if appropriate, revise them.

(4) The appropriate nature conservation body must—

- (a) assess how and to what extent surveillance of the conservation status of each relevant habitat and species is to be carried out, having regard to—
  - (i) whether a habitat or species is a priority natural habitat type or priority species, and
  - (ii) the conservation status of the habitat or species; and
- (b) advise the appropriate authority as to the need for such surveillance.

(5) The appropriate authority must ensure that the necessary surveillance is carried out on an ongoing basis.

(6) Surveillance for the purposes of this regulation may be carried out by—

- (a) a nature conservation body;
- (b) any other person acting pursuant to, and in accordance with, an agreement with the appropriate authority or a nature conservation body.

(7) In paragraph (4), a “relevant” habitat or species means a habitat or species of a type referred to in paragraph (1).

(8) In this regulation—

- (a) “natural habitat types of Community interest” has the meaning given by Article 1(c) of the Habitats Directive; and
- (b) “species of Community interest” has the meaning given by Article 1(g) of the Habitats Directive.



### **Protection of certain animals and plants from exploitation**

**49.**—(1) The appropriate authority must, as required in the light of information derived from surveillance arranged under regulation 48 or otherwise arranged for the purpose of Article 11 of the Habitats Directive, ensure that measures are taken for the purpose specified in paragraph (2).

(2) The purpose is to ensure that—

- (a) the taking in the wild of specimens of a species listed in Annex V to the Habitats Directive, and
- (b) the exploitation of such specimens,

are compatible with the maintenance of that species at a favourable conservation status.

(3) Where measures are required under paragraph (1), the appropriate authority must make arrangements for surveillance for the purpose of establishing whether the taking in the wild of specimens of the species concerned, and the exploitation of specimens of that species, are compatible with the maintenance of that species at a favourable conservation status.

### **Monitoring of incidental capture and killing**

**50.**—(1) The appropriate authority must make arrangements in accordance with paragraphs (4) to (6) to establish a system to monitor the incidental capture or killing of animals of the species listed in Annex IV(a) to the Habitats Directive.

(2) In respect of the arrangements made by the Secretary of State under paragraph (1), the Secretary of State must, from time to time—

- (a) consult the devolved administrations;
- (b) provide the devolved administrations with such information as the Secretary of State considers appropriate that has been derived from the monitoring which has been arranged; and
- (c) review those arrangements and, if appropriate, revise them.

(3) In respect of the arrangements made by the Welsh Ministers under paragraph (1), the Welsh Ministers must, from time to time—

- (a) consult the Secretary of State and the other devolved administrations;
- (b) provide the Secretary of State and the other devolved administrations with such information as the Welsh Ministers consider appropriate that has been derived from the monitoring which has been arranged; and
- (c) review those arrangements and, if appropriate, revise them.

(4) The appropriate nature conservation body must, in relation to the species of animals listed in Annex IV(a) to the Habitats Directive which are found in England or Wales—

- (a) identify the risks of incidental capture and killing to which those species are subject, and the activities which give rise to such risks;
- (b) maintain a record of instances of incidental capture or killing of animals of those species of which the nature conservation body are aware as a result of the surveillance carried out under regulation 48 (surveillance of conservation status of habitats and species), the monitoring carried out under this regulation or otherwise;
- (c) assess to what extent monitoring of incidental capture and killing is needed, having regard to—
  - (i) the risks identified under sub-paragraph (a),
  - (ii) the instances of incidental capture or killing recorded under sub-paragraph (b),
  - (iii) whether the species is a priority species, and

- (iv) the conservation status of the species; and
- (d) advise the appropriate authority as to the need for such monitoring.
- (5) The appropriate authority must ensure that the necessary monitoring of incidental capture and killing is carried out.
- (6) Monitoring for the purposes of this regulation may be carried out by—
  - (a) a nature conservation body;
  - (b) any other competent authority;
  - (c) any other person acting pursuant to, and in accordance with—
    - (i) an agreement with the appropriate authority or a nature conservation body, or
    - (ii) a condition of a licence or other authorisation granted by a competent authority.

### **Protection from incidental capture and killing**

**51.—**(1) The appropriate authority, as required in the light of information derived from monitoring arranged under regulation 50 or otherwise arranged for the purpose of Article 12(4) of the Habitats Directive, must make arrangements for further research for, or ensure that conservation measures are taken for, the purpose specified in paragraph (2).

(2) The purpose is to ensure that any incidental capture or killing of animals of a species listed in Annex IV(a) to the Habitats Directive does not have a significant negative impact on that species.

### *Introduction of new species*

#### **Introduction of new species from ships**

**52.—**(1) It is an offence for any person on board a ship in any relevant part of the marine area deliberately to introduce into that area, other than in accordance with paragraph (3), any live animal or plant of a kind having a natural range which does not include any area in Great Britain.

(2) For the purposes of paragraph (1), “relevant part” means any part where the introduction would give rise to a risk of prejudice to natural habitats within their natural range or a risk of prejudice to wild native flora or fauna (whether in the place of introduction or elsewhere).

(3) An introduction is in accordance with this paragraph if—

- (a) it resulted from a discharge of water carried as ballast and the discharge was necessary for the purpose of protecting the safety of any person or ship; and
- (b) all reasonably practicable steps were taken—
  - (i) to avoid its occurring in an area where it would give rise to a risk of prejudice to natural habitats within their natural range or a risk of prejudice to wild native flora or fauna (whether in the place of introduction or elsewhere), and
  - (ii) to minimise any risk of such prejudice.

(4) In any proceedings for an offence under this regulation, it is for the defendant to show that the introduction in question was in accordance with paragraph (3).

(5) The appropriate authority may issue guidance about steps which may be taken to avoid committing an offence under this regulation.

(6) In any proceedings for an offence under this regulation—

- (a) where the offence is alleged to have been committed in England, a court must have regard to any guidance issued by the Secretary of State under paragraph (5); and

- (b) where the offence is alleged to have been committed in Wales, a court must have regard to any guidance issued by the Welsh Ministers under paragraph (5).
- (7) A person guilty of an offence under this regulation is liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum; or
  - (b) on conviction on indictment, to a fine.
- (8) Section 14(92) of the WCA 1981 (introduction of new species etc.) does not apply in relation to any act which is an offence under this regulation.

## PART 5

### LICENCES

#### *Grant of licences*

#### **Licences for certain activities relating to animals or plants**

**53.**—(1) Subject to the provisions of this regulation, the relevant licensing body may grant a licence for the purposes specified in paragraph (2).

(2) The purposes are—

- (a) scientific or educational purposes;
- (b) ringing or marking, or examining any ring or mark on, wild animals;
- (c) conserving wild animals or wild plants or introducing them to particular areas;
- (d) protecting any zoological or botanical collection;
- (e) preserving public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment;
- (f) preventing the spread of disease; or
- (g) preventing serious damage to livestock, foodstuffs for livestock, crops, vegetables, fruit, growing timber or any other form of property or to fisheries.

(3) Regulations 41 (protection of certain wild animals: offences), 43 (prohibition of certain methods of capturing or killing wild animals) and 45 (protection of certain wild plants: offences) do not apply to anything done under and in accordance with the terms of a licence granted under paragraph (1).

(4) Subject to the provisions of this regulation, the relevant licensing body may grant a licence to permit the taking or the possession or control of certain specimens of any of the species or subspecies listed in Annex II(b) (other than any bryophyte) or Annex IV to the Habitats Directive notwithstanding that the licence is for a purpose not specified in paragraph (2).

(5) Regulations 41, 43 and 45 do not apply to anything done under and in accordance with the terms of a licence granted under paragraph (4).

(6) A licence under paragraph (4) may be granted only to such persons as are named in the licence.

(7) The relevant licensing body may grant a licence under paragraph (4) only if they are satisfied that the grant of the licence would be consistent with the restrictions in Article 16(1)(e) of the Habitats Directive (namely “under strictly supervised conditions, on a selective basis and to a limited extent” and “in limited numbers”).

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(92) A relevant amendment to section 14 was made by the Countryside and Rights of Way Act 2000 (c. 37), Part 4 of Schedule 16.

- (8) A licence under paragraph (4) must specify—
- (a) the species or subspecies of animal or plant to which the licence relates;
  - (b) the maximum number of specimens which may be taken or be in the possession or control of the person authorised by the licence, or which particular specimens may be taken or be in the possession or control of that person; and
  - (c) the conditions subject to which the action authorised by the licence may be taken and in particular—
    - (i) the methods, means or arrangements by which specimens may be taken or be in the possession or control of the person authorised by the licence,
    - (ii) when or over what period the action authorised by the licence may be taken, and
    - (iii) where the licence authorises any person to take specimens, the area from which they may be taken.
- (9) The relevant licensing body must not grant a licence under this regulation unless they are satisfied—
- (a) that there is no satisfactory alternative; and
  - (b) that the action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range.
- (10) A licence under this regulation which authorises any person to kill wild animals must specify the area within which and the methods by which the wild animals may be killed and must not be granted for a period of more than two years.
- (11) Where the appropriate authority exercise any functions under this regulation (see regulation 56(3)), the appropriate authority must from time to time consult the appropriate nature conservation body as to the exercise of those functions, and must not grant a licence of any description unless the appropriate nature conservation body have advised as to the circumstances in which, in their opinion, licences of that description should be granted.
- (12) Where the Marine Management Organisation exercises any functions under this regulation (see regulation 56(2)(a)(i)), it must from time to time consult Natural England as to the exercise of those functions, and must not grant a licence of any description unless Natural England have advised as to the circumstances in which, in their opinion, licences of that description should be granted.
- (13) It is a defence in proceedings for an offence under section 8(b) of the Protection of Animals Act 1911<sup>(93)</sup> (which restricts the placing on land of poison and poisonous substances) to show that—
- (a) the act alleged to constitute the offence was done under and in accordance with the terms of a licence granted under this regulation; and
  - (b) any conditions specified in the licence were complied with.
- (14) In paragraph (2) “livestock” includes any animal which is kept—
- (a) for the provision of food, skins or fur;
  - (b) for the purpose of its use in the carrying on of any agricultural activity; or
  - (c) for the provision or improvement of shooting or fishing.

### **Licences for the introduction of new species**

**54.—**(1) Subject to paragraph (3), the relevant licensing body may grant a licence in relation to the introduction of new species from ships.

<sup>(93)</sup> 1911 c. 27; a relevant amendment to section 8 was made by the Protection of Animals (Amendment) Act 1927 (c. 27), section 1.

(2) Regulation 52 (introduction of new species from ships) does not apply to anything done under and in accordance with the terms of a licence granted under paragraph (1).

(3) The relevant licensing body must not grant a licence under this regulation unless they are satisfied that the action authorised by the licence will not prejudice natural habitats within their natural range or wild native flora and fauna.

### **Licences: general provisions**

**55.**—(1) This regulation applies in relation to a licence under regulation 53 or 54.

(2) A licence—

- (a) may be, to any degree, general or specific;
- (b) (subject to regulation 53(6)) may be granted either to persons of a class or to a particular person; and
- (c) may be subject to compliance with any specified conditions.

(3) For the purposes of a licence the definition of a class of persons may be framed by reference to any circumstances whatever including, in particular, their being authorised by any other person.

(4) A licence may be modified or revoked at any time by the authority which granted it, but is otherwise valid for the period stated in the licence.

(5) The relevant licensing body may charge for a licence such reasonable sum (if any) as they may determine.

### *Relevant licensing body*

### **Relevant licensing body**

**56.**—(1) For the purposes of regulations 53, 54 and 55, “relevant licensing body” has the meaning given in this regulation.

(2) In the case of a licence granted under regulation 53(1) for a purpose specified in any of sub-paragraphs (a) to (d) of paragraph (2) of that regulation, “relevant licensing body” means—

- (a) in relation to England—
  - (i) so far as the licence relates to the restricted English inshore region, the Marine Management Organisation, and
  - (ii) otherwise, Natural England; or
- (b) in relation to Wales, the Countryside Council for Wales.

(3) In the case of a licence granted—

- (a) under regulation 53(1) for a purpose specified in any of sub-paragraphs (e) to (g) of paragraph (2) of that regulation,
- (b) under regulation 53(4), or
- (c) under regulation 54,

“relevant licensing body” means the appropriate authority.

*Offences***False statements made for obtaining licence**

**57.**—(1) A person (“P”) commits an offence if, for the purposes of obtaining, whether for P or another, the grant of a licence under regulation 53 or 54, P—

- (a) makes a statement or representation, or supplies a document or information, which P knows to be false in a material particular; or
- (b) recklessly makes a statement or representation, or supplies a document or information, which is false in a material particular.

(2) A person guilty of an offence under this regulation is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale, or to both.

**Offence of breaching licence condition**

**58.**—(1) It is an offence for the holder of a licence to contravene or fail to comply with any condition attached to the licence.

(2) Paragraph (1) applies to a licence under regulation 53 granted on or after 21st August 2007.

(3) A person (“P”) is not guilty of an offence under paragraph (1) if P shows that—

- (a) P took all reasonable precautions and exercised all due diligence to avoid commission of the offence; or
- (b) the commission of the offence was otherwise due to matters beyond P’s control.

(4) A person guilty of an offence under paragraph (1) is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale, or to both.

**PART 6****ASSESSMENT OF PLANS AND PROJECTS****CHAPTER 1****GENERAL PROVISIONS***Introductory provisions***Interpretation of Part 6**

**59.** In this Part—

- (a) “the assessment provisions” means regulations 61 (assessment of implications for European sites and European offshore marine sites) and 62 (considerations of overriding public interest); and
- (b) “the review provisions” means regulations 63 (review of existing decisions and consents) and 64 (consideration on review).

**Application of provisions of Chapter 1**

**60.**—(1) The requirements of—

- (a) the assessment provisions, and
- (b) the review provisions,

apply, subject to and in accordance with the provisions of Chapters 2 to 7, in relation to the matters specified in those provisions.

- (2) Supplementary provision is made by regulations 65 to 67.

#### *General provisions for protection of European sites and European offshore marine sites*

### **Assessment of implications for European sites and European offshore marine sites**

**61.**—(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 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 that site,

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

(2) A person applying for any such consent, permission or other authorisation must provide such information as the competent authority may reasonably require for the purposes of the assessment or to enable them to determine whether an appropriate assessment is required.

(3) The competent authority must 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 specify.

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

(5) In the light of the conclusions of the assessment, and subject to regulation 62 (considerations of overriding public interest), the competent authority may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site or the 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 must 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.

- (7) This regulation does not apply in relation to a site which is—

- (a) a European site by reason of regulation 8(1)(c), or
- (b) a European offshore marine site by reason of regulation 15(c) of the 2007 Regulations

(site protected in accordance with Article 5(4) of the Habitats Directive).

(8) Where a plan or project requires an appropriate assessment both under this regulation and under the 2007 Regulations, the assessment required by this regulation need not identify those effects of the plan or project that are specifically attributable to that part of it that is to be carried out in Great Britain, provided that an assessment made for the purpose of this regulation and the 2007 Regulations assesses the effects of the plan or project as a whole.

### **Considerations of overriding public interest**

**62.**—(1) If the competent authority 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), they may agree to the plan or project notwithstanding a negative assessment of the implications for the European site or the European offshore marine site (as the case may be).

(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
- (b) any other reasons which the competent authority, having due regard to the opinion of the European Commission, consider to be imperative reasons of overriding public interest.

(3) Where a competent authority other than the Secretary of State or the Welsh Ministers desire to obtain the opinion of the European Commission as to whether reasons are to be considered imperative reasons of overriding public interest, they may submit a written request to the appropriate authority—

- (a) identifying the matter on which an opinion is sought; and
- (b) accompanied by any documents or information which may be required.

(4) The appropriate authority—

- (a) may seek the opinion of the European Commission concerning the plan or project; and
- (b) where such an opinion is received, must send it to the competent authority.

(5) Where a competent authority other than the Secretary of State or the Welsh Ministers propose to agree to a plan or project under this regulation notwithstanding a negative assessment of the implications for the site concerned—

- (a) they must notify the appropriate authority; and
- (b) they must not agree to the plan or project before the end of the period of 21 days beginning with the day notified by the appropriate authority as that on which their notification was received, unless the appropriate authority notify them that they may do so.

(6) Without prejudice to any other power, the appropriate authority may give directions to the competent authority in any such case prohibiting them from agreeing to the plan or project, either indefinitely or during such period as may be specified in the direction.

### **Review of existing decisions and consents**

**63.**—(1) Where before the date on which a site becomes a European site or a European offshore marine site a competent authority have decided to undertake, or have given any consent, permission or other authorisation for, a plan or project to which regulation 61(1) would apply if it were to be reconsidered as of that date, the authority must, as soon as reasonably practicable—

- (a) review their decision or, as the case may be, the consent, permission or other authorisation; and
- (b) affirm, modify or revoke it.

(2) They must 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 61(2) to (4) apply, with the appropriate modifications, in relation to such a review.

(3) Subject to the provisions of Chapters 2 to 7, any review required by this regulation must be carried out under existing statutory procedures where such procedures exist, and if none exists, the appropriate authority may give directions as to the procedure to be followed.

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



### **Consideration on review**

**64.**—(1) The following provisions apply where a decision, or a consent, permission or other authorisation, falls to be reviewed under regulation 63.

(2) Subject as follows, the provisions of regulations 61(5) and (6) and 62 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 competent 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.

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

(5) The appropriate authority may issue guidance to competent 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.

(6) The competent authorities concerned must have regard to any such guidance.

(7) Any modification or revocation of a decision, or a consent, permission or other authorisation, must be carried out under existing statutory procedures where such procedures exist, and if none exists, the appropriate authority may give directions as to the procedure to be followed.

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

**65.**—(1) This regulation applies 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) Nothing in regulation 61(1) or 63(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 appropriate authority may issue guidance to competent authorities for the purposes of regulations 61 to 64 as to the circumstances in which a competent authority may or should adopt the reasoning or conclusions of another competent authority as to whether a plan or project—

(a) is likely to have a significant effect on a European site or a European offshore marine site; or

(b) will adversely affect the integrity of a European site or a European offshore marine site.

(4) The competent authorities concerned must have regard to any such guidance.

(5) In determining whether a plan or project should be agreed to under regulation 62 (considerations of overriding public interest), a competent authority other than the Secretary of State or the Welsh Ministers must seek and have regard to the views of the other competent authority or authorities involved.

### **Compensatory measures**

**66.** Where in accordance with regulation 62 (considerations of overriding public interest)—

- (a) a plan or project is agreed to, notwithstanding a negative assessment of the implications for a European site or a European offshore marine site, or
- (b) a decision, or a consent, permission or other authorisation, is affirmed on review, notwithstanding such an assessment,

the appropriate authority must secure that any necessary compensatory measures are taken to ensure that the overall coherence of Natura 2000 is protected.

### **Modifications of regulations 61 to 66 in certain cases**

**67.**—(1) Where any provision of regulations 61 to 66 (a “general provision”) applies in relation to a provision specified in paragraph (2), that general provision applies with the following modifications—

- (a) any reference to the Welsh Ministers is omitted; and
- (b) for any reference to the appropriate authority, substitute a reference to the Secretary of State.

(2) The provisions specified for the purposes of paragraph (1) are—

- (a) paragraphs (1)(e)(i) and (2) of regulation 68 (grant of planning permission) in so far as those provisions relate to a direction given by the Secretary of State under section 90<sup>(94)</sup> of the TCPA 1990 (development with government authorisation) that planning permission is deemed to be granted; and
- (b) regulations 81 and 82 (development consent under Planning Act 2008<sup>(95)</sup>).

(3) Where a general provision applies in relation to a provision specified in paragraph (4), that general provision applies with the following modifications—

- (a) any reference to a competent authority is taken to include the Scottish Ministers;
- (b) for any reference to the Welsh Ministers, substitute a reference to the Scottish Ministers; and
- (c) for any reference to the appropriate authority—
  - (i) in a case where the competent authority for the purposes of a provision specified in paragraph (4) are the Scottish Ministers, substitute a reference to the Scottish Ministers, and
  - (ii) in any other case, substitute a reference to the Secretary of State.

(4) The provisions specified for the purposes of paragraph (3) are—

- (a) in regulation 68—
  - (i) paragraph (1)(e)(ii) and (iii) (deemed grant of planning permission under section 57(2) of the Town and Country Planning (Scotland) Act 1997<sup>(96)</sup> and section 5(1) of the Pipe-lines Act 1962<sup>(97)</sup>), and
  - (ii) paragraph (2) in so far as that paragraph relates to paragraph (1)(e)(ii) and (iii) of that regulation;
- (b) Chapter 4 (electricity); and
- (c) Chapter 5 (pipe-lines).

<sup>(94)</sup> Relevant amendments were made to section 90 by the Environment Act 1995 (c. 25), paragraph 32(4) of Schedule 10, and the Transport and Works Act 1992 (c. 42), section 16(1).

<sup>(95)</sup> 2008 c. 29.

<sup>(96)</sup> 1997 c. 8.

<sup>(97)</sup> 1962 c. 58; section 5(1) was amended by S.I. 1999/742, paragraph 2(3) of the Schedule.

(5) Where a general provision applies in relation to regulation 100 (marine works), and confers a function on the appropriate authority, that provision applies with the following modifications—

- (a) in a case to which paragraph (6) applies, for any reference to the appropriate authority, substitute a reference to the Welsh Ministers; and
- (b) in any other case, for any reference to the appropriate authority, substitute a reference to the Secretary of State.

(6) This paragraph applies where the function in question is exercisable in relation to—

- (a) any application to the Welsh Ministers for an authorisation in respect of marine works;
- (b) any application to any other authority for—
  - (i) an authorisation in respect of marine works, the refusal of which gives rise to a right of appeal to the Welsh Ministers,
  - (ii) an authorisation in respect of marine works in relation to which the Welsh Ministers exercise any power of direction or call-in,
  - (iii) an authorisation of a kind mentioned in regulation 100(6)(c)(iii) in respect of works which are to be carried out in relation to a fishery harbour in Wales; or
- (c) the grant of any application of a kind mentioned in sub-paragraph (a) or (b).

(7) In paragraph (6)—

- (a) “authorisation” means any licence, consent or other approval; and
- (b) “marine works” has the same meaning as in regulation 100.

## CHAPTER 2

### PLANNING

#### *Planning permission*

#### **Grant of planning permission**

**68.**—(1) The assessment provisions apply in relation to—

- (a) granting planning permission on an application under Part 3 of the TCPA 1990 (control over development);
- (b) granting planning permission on an application under section 293A(98) of that Act (urgent Crown development);
- (c) granting planning permission, or upholding a decision of the local planning authority to grant planning permission (whether or not subject to the same conditions and limitations as those imposed by the local planning authority), on determining an appeal under section 78(99) of that Act (right to appeal against planning decisions) in respect of such an application;
- (d) granting planning permission under—
  - (i) section 141(2)(a) of that Act (action in relation to purchase notice), or
  - (ii) section 177(1)(a)(100) of that Act (grant or modification of planning permission on appeals against enforcement notices);

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(98) Section 293A was inserted by the Planning and Compulsory Purchase Act 2004 (c. 5), section 82(1).

(99) Section 78 was amended by the Planning and Compensation Act 1991 (c. 34), section 17(2); the Planning and Compulsory Purchase Act 2004 (c. 5), sections 40(2)(e) and 43(2); and the Planning Act 2008 (c. 29), paragraphs 1 and 3 of Schedule 10 and paragraphs 1 and 2 of Schedule 11.

(100) Section 177(1) (a) was substituted by the Planning and Compensation Act 1991 (c. 34), paragraph 24(1)(a) of Schedule 7.

- (e) directing under the following provisions that planning permission is deemed to be granted—
    - (i) subsection (1)(**101**), (2) or (2A)(**102**) of section 90 of that Act (development with government authorisation),
    - (ii) section 57(2) of the Town and Country Planning (Scotland) Act 1997(**103**) (deemed grant of planning permission in relation to development for which a consent has been granted under section 36 or 37 of the Electricity Act 1989(**104**)), or
    - (iii) section 5(1) of the Pipe-lines Act 1962(**105**) (provisions with respect to planning permission concerning pipe-lines);
  - (f) making—
    - (i) an order under section 102(**106**) of the TCPA 1990 (orders requiring discontinuance of use or alteration or removal of buildings or works), including an order made under that section by virtue of section 104 of that Act (powers in relation to section 102 orders) which grants planning permission, or confirming any such order under section 103 of that Act (confirmation of section 102 orders), or
    - (ii) an order under paragraph 1 of Schedule 9(**107**) to that Act (order requiring discontinuance of mineral working), including an order made under that paragraph by virtue of paragraph 11 of that Schedule to that Act (powers in relation to orders under Schedule 9) which grants planning permission; or
  - (g) directing under the following provisions that if an application is made for planning permission it must be granted—
    - (i) section 141(3) of that Act (action in relation to purchase notice), or
    - (ii) section 35(5) of the Planning (Listed Buildings and Conservation Areas) Act 1990(**108**) (action in relation to listed building purchase notice).
- (2) Where the assessment provisions apply, the competent authority may, if they consider that any adverse effects of the plan or project on the integrity of a European site or a European offshore marine site would be avoided if the planning permission were subject to conditions or limitations, grant planning permission or, as the case may be, take action which results in planning permission being granted or deemed to be granted subject to those conditions or limitations.
- (3) Where the assessment provisions apply, outline planning permission must not be granted unless the competent authority are satisfied (whether by reason of the conditions and limitations to which the outline planning permission is to be made subject, or otherwise) that no development likely adversely to affect the integrity of a European site or a European offshore marine site could be carried out under the permission, whether before or after obtaining approval of any reserved matters.
- (4) In paragraph (3), “outline planning permission” and “reserved matters” have the same meanings as in section 92(**109**) of the TCPA 1990 (outline planning permission).

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(**101**) Section 90(1) was amended by the Environment Act 1995 (c. 25), paragraph 32(4) of Schedule 10.

(**102**) Subsection (2A) of section 90 was inserted by the Transport and Works Act 1992 (c. 42), section 16(1).

(**103**) 1997 c. 8.

(**104**) 1989 c. 29.

(**105**) 1962 c. 58; section 5(1) was amended by S.I. 1999/742, paragraph 2(3) of the Schedule.

(**106**) Section 102 was amended by the Planning and Compensation Act 1991 (c. 34), paragraph 6 of Schedule 1 and paragraph 21 of Schedule 7.

(**107**) Paragraph 1 of Schedule 9 was amended by the Planning and Compensation Act 1991 (c. 34), paragraph 15 of Schedule 1.

(**108**) 1990 c. 9.

(**109**) There are amendments to section 92 which are not relevant.

**Planning permission: duty to review**

**69.**—(1) Subject to the following provisions of this regulation, the review provisions apply to any planning permission or deemed planning permission, unless—

- (a) the development to which it related has been completed;
- (b) it was granted subject to a condition as to the time within which the development to which it related was to be begun and that time has expired without the development having been begun; or
- (c) it was granted for a limited period and that period has expired.

(2) The review provisions do not apply to planning permission granted or deemed to have been granted—

- (a) by a development order (but see regulations 73 to 78);
- (b) by virtue of the adoption of a simplified planning zone scheme or of alterations to such a scheme (but see regulation 79); or
- (c) by virtue of the taking effect of an order designating an enterprise zone under paragraph 5 of Schedule 32 to the Local Government, Planning and Land Act 1980(**110**) (enterprise zones), or by virtue of the approval of a modified enterprise zone scheme (but see regulation 80).

(3) Planning permission deemed to be granted by virtue of—

- (a) a direction under section 90(1) of the TCPA 1990 in respect of development for which an authorisation has been granted under section 1(**111**) of the Pipe-lines Act 1962 (pipe-line construction authorisations),
- (b) a direction under section 5(1) of the Pipe-lines Act 1962,
- (c) a direction under section 90(1) of the TCPA 1990 in respect of development for which a consent has been granted under section 36 or 37 of the Electricity Act 1989(**112**) (consents required in relation to generating stations and overhead lines),
- (d) a direction under section 90(2) of the TCPA 1990 or section 57(2) of the Town and Country Planning (Scotland) Act 1997 (which relate to development for which a consent has been granted under section 36 or 37 of the Electricity Act 1989), or
- (e) a direction under section 90(2A) of the TCPA 1990 (which relates to development in pursuance of an order under section 1 or 3 of the Transport and Works Act 1992(**113**) (orders as to railways, tramways or inland waterways)),

must be reviewed in accordance with Chapter 4 (electricity), Chapter 5 (pipe-lines) or Chapter 6 (transport and works) (as the case may be) in conjunction with the review of the underlying authorisation, consent or order.

(4) In the case of planning permission deemed to have been granted in any other case by a direction under section 90(1) of the TCPA 1990, the local planning authority must—

- (a) identify any such permission which they consider falls to be reviewed under the review provisions, and

(110) 1980 c. 65. Schedule 32 was amended by the New Towns Act 1981 (c. 64), paragraph 28 of Schedule 12; the Local Government (Wales) Act 1994 (c. 19), paragraph 59(9) of Schedule 16 and Schedule 18; and the Planning (Consequential Provisions) Act 1990 (c. 11), Part 1 of Schedule 1 and paragraph 44(14) of Schedule 2.

(111) Section 1 was amended by the Criminal Justice Act 1982 (c. 48), sections 37, 38 and 46; S.I. 1999/742, paragraph 2(2) of the Schedule; S.I. 2007/1519, paragraph 4(1) of the Schedule; and the Planning Act 2008 (c. 29), paragraphs 5 and 6 of Schedule 2.

(112) 1989 c. 29. Section 36 was amended by the Energy Act 2004 (c. 20), section 93(1) and (3); the Planning Act 2008 (c. 29), paragraphs 31 and 32 of Schedule 2; the Marine and Coastal Access Act 2009 (c. 23), section 12(7)(a) and (8); and, in relation to Scotland, by S.I. 2006/1054, paragraph 1(1) and (2) of Schedule 1. Section 37 was amended by the Planning Act 2008, paragraphs 31 and 33 of Schedule 2.

(113) 1992 c. 42; sections 1 and 3 were amended by the Planning Act 2008 (c. 29), paragraphs 51, 52 and 53 of Schedule 2.

(b) refer the matter to the government department or person which made the direction, and the department or person must, if in agreement that the planning permission does fall to be so reviewed, review the direction in accordance with the review provisions.

(5) Except as otherwise expressly provided, the review provisions do not apply to planning permission granted or deemed to be granted by a public general Act of Parliament.

(6) Subject to paragraphs (3) and (4), where planning permission granted by the appropriate authority falls to be reviewed under the review provisions—

- (a) it must be reviewed by the local planning authority; and
- (b) the power conferred by section 97(114) of the TCPA 1990 (power to revoke or modify planning permission) is exercisable by that local planning authority as in relation to planning permission granted on an application under Part 3 of that Act (control over development).

(7) In a non-metropolitan county in England the function of reviewing any such planning permission is to be exercised by the district planning authority unless it relates to a county matter (within the meaning of paragraph 1 of Schedule 1(115) to the TCPA 1990), in which case it is exercisable by the county planning authority.

### **Planning permission: consideration on review**

**70.**—(1) In reviewing any planning permission or deemed planning permission under the review provisions, the competent authority must—

- (a) consider whether any adverse effects could be overcome by planning obligations under section 106(116) of the TCPA 1990 (planning obligations) being entered into; and
- (b) if they consider that those effects could be so overcome, invite those concerned to enter into such obligations.

(2) So far as the adverse effects are not thus overcome, the authority must make such order as may be required under—

- (a) section 97 of that Act (power to revoke or modify planning permission); or
- (b) section 102(117) of or paragraph 1 of Schedule 9(118) to that Act (orders requiring discontinuance of use etc.).

(3) Where the authority ascertain that the carrying out or, as the case may be, the continuation of the development would adversely affect the integrity of a European site or a European offshore marine site, they nevertheless need not proceed under the review provisions if and so long as they consider that there is no likelihood of the development being carried out or continued.

### **Planning permission: effect of orders made on review**

**71.**—(1) An order under section 97 of the TCPA 1990 made pursuant to regulation 69 (duty to review) takes effect upon the service of the notices required by section 98(2) of that Act (procedure for section 97 orders) or, where there is more than one such notice and those notices are served at different times, upon the service of the last such notice to be served.

(114) Section 97 was amended by the Planning and Compensation Act 1991 (c. 34), paragraph 4 of Schedule 1 and Part 1 of Schedule 19.

(115) Paragraph 1 of Schedule 1 was amended by the Planning and Compensation Act 1991 (c. 34), paragraph 13 of Schedule 1 and Part 1 of Schedule 19.

(116) Section 106 was substituted by the Planning and Compensation Act 1991 (c. 34), section 12(1), and amended by the Greater London Authority Act 2007 (c. 24), section 33.

(117) Section 102 was amended by the Planning and Compensation Act 1991 (c. 34), paragraph 6 of Schedule 1 and paragraph 21 of Schedule 7.

(118) Paragraph 1 of Schedule 9 was amended by the Planning and Compensation Act 1991 (c. 34), paragraph 15 of Schedule 1.

- (2) Where the appropriate authority determine not to confirm such an order—
- (a) the order ceases to have effect as from the time of that determination;
  - (b) the permission revoked or modified by the order thereafter has effect as if the order had never been made;
  - (c) any period specified in the permission for the taking of any action, being a period which had not expired prior to the date upon which the order took effect under paragraph (1), is extended by a period equal to that during which the order had effect; and
  - (d) there is substituted for any date specified in the permission as being a date by which any action should be taken (“the specified date”), not being a date falling prior to the date upon which the order took effect under paragraph (1), such later date as postpones the specified date by a period equal to that during which the order had effect.

(3) An order under section 102 of or paragraph 1 of Schedule 9 to the TCPA 1990 made pursuant to regulation 69, in so far as it requires the discontinuance of a use of land or imposes conditions upon the continuance of a use of land, takes effect upon the service of the notices required by section 103(3) (confirmation of section 102 orders) or, where there is more than one such notice and those notices are served at different times, upon the service of the last such notice to be served.

(4) Where the appropriate authority determine not to confirm any such order, the order ceases to have effect as from the time of that determination and the use which by the order was discontinued or upon which conditions were imposed—

- (a) may thereafter be continued as if the order had never been made; and
- (b) is to be treated for the purposes of the TCPA 1990 as if it had continued without interruption or modification throughout the period during which the order had effect.

(5) An order under section 97 of that Act made in pursuance of regulation 69 does not affect so much of the development authorised by the permission as was carried out prior to the order taking effect.

(6) An order under section 102 of or paragraph 1 of Schedule 9 to that Act made in pursuance of regulation 69 does not affect anything done prior to the site becoming a European site or European offshore marine site.

### **Planning permission: supplementary provisions as to compensation**

**72.**—(1) Where the appropriate authority determine not to confirm an order under section 97 of the TCPA 1990 which has taken effect under regulation 71(1), any claim for compensation under section 107(119) of that Act (compensation where planning permission revoked or modified) is limited to any loss or damage directly attributable to the permission being suspended or temporarily modified for the duration of the period between the order so taking effect and the appropriate authority’s determination not to confirm the order.

(2) Where the appropriate authority determine not to confirm an order under section 102 of the TCPA 1990 (orders requiring discontinuance of use or alteration or removal of buildings or works) which has taken effect under regulation 71(3), any claim for compensation under section 115 of that Act (compensation in respect of orders under section 102) is limited to any loss or damage directly attributable to any right to continue a use of the land being, by virtue of the order, suspended or subject to conditions for the duration of the period between the order so taking effect and the appropriate authority’s determination not to confirm the order.

- (3) Paragraph (4) applies where—
- (a) compensation is payable in respect of—

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(119) Section 107 was amended by the Planning and Compensation Act 1991 (c. 34), paragraph 8 of Schedule 1 and paragraph 13 of Schedule 6.



- (i) an order under section 97 of the TCPA 1990, or
- (ii) any order mentioned in section 115(1) of that Act or to which that section applies by virtue of section 115(5); and
- (b) the order has been made pursuant to regulation 63 (review of existing decisions and consents).

(4) Where this paragraph applies, the authority liable to pay the compensation must refer the question as to the amount of the compensation to the Upper Tribunal for its determination, unless and to the extent that in any particular case the appropriate authority have indicated in writing that such a reference and determination may be dispensed with.

### *General development orders*

#### **General development orders**

**73.—**(1) It is a condition of any planning permission granted by a general development order, whether made before or after 1st April 2010, that development which—

- (a) is likely to have a significant effect on a European site 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,

must not be begun until the developer has received written notification of the approval of the local planning authority under regulation 75 (approval of local planning authority).

(2) It is a condition of any planning permission granted by a general development order made before 1st April 2010 that development which—

- (a) is likely to have a significant effect on a European site (either alone or in combination with other plans or projects),
- (b) is not directly connected with or necessary to the management of the site, and
- (c) was begun but not completed before that date,

must not be continued until the developer has received written notification of the approval of the local planning authority under regulation 75.

(3) Nothing in this regulation affects anything done pursuant to any such planning permission before 1st April 2010.

#### **General development orders: opinion of appropriate nature conservation body**

**74.—**(1) Where it is intended to carry out development in reliance on the permission granted by a general development order, application may be made in writing to the appropriate nature conservation body for their opinion as to whether the development is likely to have a relevant effect.

(2) The application must give details of the development which is intended to be carried out.

(3) On receiving such an application, the appropriate nature conservation body must consider whether the development is likely to have such an effect.

(4) Where they consider that they have sufficient information to conclude that the development will, or will not, have such an effect, they must notify the applicant and the local planning authority in writing of their opinion.

(5) If the appropriate nature conservation body consider that they have insufficient information to reach either of those conclusions, they must notify the applicant in writing indicating in what respects they consider the information insufficient, and the applicant may supply further information with a view to enabling them to reach a decision on the application.



(6) The opinion of the appropriate nature conservation body, notified in accordance with paragraph (4), that the development is not likely to have a relevant effect is conclusive of that question for the purpose of reliance on the planning permission granted by a general development order.

(7) In this regulation and in regulation 75 “a relevant effect” means such an effect as is mentioned in regulation 73(1)(a) or (2)(a).

#### **General development orders: approval of local planning authority**

**75.**—(1) An application to the local planning authority for approval, as mentioned in regulation 73 (general development orders), must—

- (a) give details of the development which is intended to be carried out; and
- (b) be accompanied by—
  - (i) a copy of any relevant notification by the appropriate nature conservation body under regulation 74 (opinion of appropriate nature conservation body), and
  - (ii) any fee required to be paid.

(2) For the purposes of their consideration of the application the local planning authority must assume that the development is likely to have a relevant effect.

(3) The authority must send a copy of the application to the appropriate nature conservation body and must take account of any representations made by them.

(4) If in their representations the appropriate nature conservation body state their opinion that the development is not likely to have a relevant effect, the local planning authority must send a copy of the representations to the applicant.

(5) The sending of the copy of the representations to the applicant under paragraph (4) has the same effect as a notification by the appropriate nature conservation body of their opinion under regulation 74(4).

(6) In any other case in which the application has been sent to the appropriate nature conservation body, the local planning authority must, taking account of any representations made by the appropriate nature conservation body, make an appropriate assessment of the implications of the development for the European site or European offshore marine site in view of that site’s conservation objectives.

(7) In the light of the conclusions of the assessment the local planning authority may approve the development only after having ascertained that it will not adversely affect the integrity of the site.

#### **General development orders: supplementary**

**76.**—(1) The local planning authority for the purposes of regulations 73 to 75 are the authority to which an application for approval under regulation 75 (approval of local planning authority) would fall to be made if it were an application for planning permission.

(2) The fee payable in connection with an application for such approval is £30.

(3) Approval required by regulation 73 (general development orders) is to be treated—

- (a) for the purposes of the provisions of the TCPA 1990 relating to appeals, as approval required by a condition imposed on a grant of planning permission; and
- (b) for the purposes of the provisions of any general development order relating to the time within which notice of a decision should be given, as approval required by a condition attached to a grant of planning permission.

### *Special development orders*

#### **Special development orders**

77.—(1) A special development order may not grant planning permission for development which—

- (a) is likely to have a significant effect on a European 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.

(2) A special development order made before 1st April 2010 is not to be taken to grant planning permission for development of a kind mentioned in paragraph (1), whether or not the development authorised by the permission has been begun.

(3) Nothing in this regulation affects anything done pursuant to a special development order before 1st April 2010.

(4) A special development order may not grant planning permission for development which is likely to have a significant effect on a European offshore marine site (either alone or in combination with other plans or projects).

### *Local development orders*

#### **Local development orders**

78. A local development order may not grant planning permission for development which—

- (a) is likely to have a significant effect on a European site 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.

### *Simplified planning zones and enterprise zones*

#### **Simplified planning zones**

79.—(1) Where a simplified planning zone scheme is adopted or approved, that scheme is not to be taken to grant planning permission for development which—

- (a) is likely to have a significant effect on a European 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.

(2) A simplified planning zone scheme in force before 1st April 2010 is not to be taken to grant planning permission for development of a kind mentioned in paragraph (1), whether or not the development authorised by the permission has been begun.

(3) Where a simplified planning zone scheme is adopted or approved, that scheme is not to be taken to grant planning permission for development which is likely to have a significant effect on a European offshore marine site (either alone or in combination with other plans or projects).

(4) A simplified planning zone scheme adopted or approved on or after 21st August 2007 and before 1st April 2010 is not to be taken to grant planning permission for development of a kind mentioned in paragraph (3).

## **Enterprise zones**

**80.**—(1) Where an order designating an enterprise zone is made, or where a modified enterprise zone scheme is approved, that order or scheme is not to be taken to grant planning permission for development which—

- (a) is likely to have a significant effect on a European 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.

(2) Where such an order was made or such a scheme was approved before 1st April 2010, that order or scheme is not to be taken to grant planning permission for development of a kind mentioned in paragraph (1), whether or not the development authorised by the permission has been begun.

(3) Where an order designating an enterprise zone is made, or where a modified enterprise zone scheme is approved, that order or scheme is not to be taken to grant planning permission for development which is likely to have a significant effect on a European offshore marine site (either alone or in combination with other plans or projects).

(4) Where such an order was made or such a scheme was approved on or after 21st August 2007 and before 1st April 2010, that order or scheme is not to be taken to grant planning permission for development of a kind mentioned in paragraph (3).

## *Development consent under Planning Act 2008*

### **Grant of development consent**

**81.**—(1) The assessment provisions apply in relation to the making of an order granting development consent under the Planning Act 2008(**120**).

(2) Where those provisions apply, the competent authority may, if they consider that any adverse effects of the plan or project on the integrity of a European site or a European offshore marine site would be avoided if the order granting development consent included requirements under section 120 of the Planning Act 2008 (what may be included in order granting development consent), make an order subject to those requirements.

### **Development consent: review**

**82.**—(1) The review provisions apply to any order granting development consent under the Planning Act 2008 unless—

- (a) the development to which it related has been completed before the site becomes a European site or a European offshore marine site;
- (b) it included a requirement as to the time within which the development to which it related was to be begun and that time has expired without the development having been begun; or
- (c) the development consent was granted for a limited period and that period has expired.

(2) For the purpose of this regulation, in a case where the Panel or the Council made the order granting development consent, the Commission must carry out any review.

(3) The Commission must consult the Secretary of State for the purpose of any review under the review provisions.

(4) In any such review of an order granting development consent, the competent authority must—

- (a) consider whether any adverse effects could be overcome by imposing requirements under paragraph 5(4)(c), (d) or (e) of Schedule 6 to the Planning Act 2008 (changes to, and revocation of, orders granting development consent); and
  - (b) if they consider that those effects could be so overcome, impose those requirements by making such an order under paragraph 3(1) of Schedule 6 to that Act as may be required.
- (5) Any order made by the Commission under paragraph 3(1) of Schedule 6 to that Act, if not made on the application of the Secretary of State under paragraph 3(6) of that Schedule, is to be treated as so made.
- (6) Paragraph (5) has effect only where the Secretary of State has agreed to the making of such an order by the Commission.

### *Interpretation of Chapter 2*

#### **Interpretation of Chapter 2**

**83.**—(1) This Chapter, except regulations 81 and 82, is to be construed as one with the TCPA 1990.

(2) In regulations 81 and 82, the terms “the Commission”, “the Council”, “development”, “development consent” and “the Panel” have the meanings given by the Planning Act 2008(**121**).

### **CHAPTER 3**

#### **HIGHWAYS AND ROADS**

#### **Construction or improvement of highways or roads**

- 84.**—(1) The assessment provisions apply in relation to any plan or project—
- (a) by the appropriate authority to construct a new highway or to improve, within the meaning of the Highways Act 1980(**122**), an existing highway; or
  - (b) by a local highway authority to carry out within the boundaries of a road any works required for the improvement of the road.
- (2) The review provisions apply to any such plan or project as is mentioned in paragraph (1) unless—
- (a) the works have been completed before the site became a European site or a European offshore marine site; or
  - (b) the works were completed before 30th October 1994.

#### **Cycle tracks and other ancillary works**

**85.** Subsection (10) of section 3 of the Cycle Tracks Act 1984(**123**) (conversion of footpaths into cycle tracks) is not to be taken to deem planning permission to be granted for development which—

- (a) is likely to have a significant effect on a European 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,

whether or not the development authorised by the permission has been begun.

(121) See sections 64(2) and 235.

(122) 1980 c. 66; see definition of “improvement” in section 329(1).

(123) 1984 c. 38; section 3(10) was amended by the Planning (Consequential Provisions) Act 1990 (c. 11), paragraph 66 of Schedule 2.

## CHAPTER 4

### ELECTRICITY

#### Consents under Electricity Act 1989: application of assessment and review provisions

**86.**—(1) The assessment provisions apply in relation to the granting of—

- (a) consent under section 36 of the Electricity Act 1989<sup>(124)</sup> (consent required for construction etc. of generating stations) to construct, extend or operate a generating station in Great Britain; or
- (b) consent under section 37<sup>(125)</sup> of that Act (consent required for overhead lines) to install an electric line above ground.

(2) Where in such a case the competent authority consider that any adverse effects of the plan or project on the integrity of a European site or a European offshore marine site would be avoided if the consent were subject to conditions, the competent authority may grant consent subject to those conditions.

(3) The review provisions apply to a consent mentioned in paragraph (1) unless—

- (a) the works to which the consent relates—
  - (i) have been completed before the site became a European site or a European offshore marine site (as the case may be), or
  - (ii) were completed before 30th October 1994; or
- (b) the consent was granted—
  - (i) subject to a condition as to the time within which the works to which it relates were to be begun and that time has expired without those works having been begun, or
  - (ii) for a limited period and that period has expired.

(4) Where the consent is for, or includes, the operation of a generating station, the works are to be treated as completed when, in reliance on the consent, the generating station is first operated.

(5) Where on the review of such a consent the competent authority consider that any adverse effects on the integrity of a European site or a European offshore marine site of the carrying out or, as the case may be, the continuation of the plan or project would be avoided by a variation of the consent, the authority may vary the consent accordingly.

(6) In conjunction with the review of any such consent the competent authority must review any direction deeming planning permission to be granted for the plan or project and may vary or revoke it.

#### Consents under Electricity Act 1989: procedure on review

**87.**—(1) Where the competent authority decide in pursuance of regulation 86(3), (5) or (6) to revoke or vary a consent under the Electricity Act 1989 or a direction deeming planning permission to be granted, the authority must serve notice on—

- (a) the person to whom the consent was granted or, as the case may be, in whose favour the direction was made,
- (b) in the case of a consent under section 36 of the Electricity Act 1989, any other person proposing to operate the generating station in question, and

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<sup>(124)</sup> 1989 c. 29; section 36 was amended by the Energy Act 2004 (c. 20), section 93(1) and (3); the Planning Act 2008 (c. 29), paragraphs 31 and 32 of Schedule 2; the Marine and Coastal Access Act 2009 (c. 23), section 12(7)(a) and (8); and, in relation to Scotland, by S.I. 2006/1054, paragraph 1(1) and (2) of Schedule 1.

<sup>(125)</sup> Section 37 was amended by the Planning Act 2008 (c. 29), paragraphs 31 and 33 of Schedule 2.

(c) any other person who in the authority's opinion will be affected by the revocation or variation,  
informing them of the decision and specifying a period of not less than 28 days within which any person on whom the notice is served may make representations to the authority.

(2) The competent authority must also serve notice on—

- (a) the relevant planning authority within the meaning of paragraph 2(6) of Schedule 8<sup>(126)</sup> to the Electricity Act 1989 (consents under sections 36 and 37 of that Act), and
- (b) the appropriate nature conservation body,

informing them of the decision and inviting their representations within the specified period.

(3) The competent authority must consider whether to proceed with the revocation or variation, and must have regard to any representations made in accordance with paragraph (1) or (2).

(4) If within the specified period a person on whom notice was served under paragraph (1), or the relevant planning authority, so requires, the competent authority must before deciding whether to proceed with the revocation or variation give—

- (a) to that person or the relevant planning authority (as the case may be), and
- (b) to any other person on whom notice under paragraph (1) or (2) was required to be served,

an opportunity of appearing before, and being heard by, a person appointed by the competent authority for the purpose.

#### **Consents under Electricity Act 1989: effect of review**

**88.**—(1) The revocation or variation pursuant to regulation 86(3), (5) or (6) of a consent under the Electricity Act 1989 or a direction deeming planning permission to be granted takes effect upon the service of the notices required by regulation 87(1) or, where there is more than one such notice and those notices are served at different times, upon the service of the last such notice to be served.

(2) Where the competent authority decide not to proceed with the revocation or variation, the consent or direction has effect again as from the time of that decision, and thereafter has effect as if—

- (a) any period specified in the consent or direction for the taking of any action, being a period which had not expired prior to the date mentioned in paragraph (1), were extended by a period equal to that during which the revocation or variation had effect; and
- (b) there were substituted for any date specified in the consent or direction as being a date by which any action should be taken (“the specified date”), not being a date falling prior to the date mentioned in paragraph (1), such later date as postpones the specified date by a period equal to that during which the revocation or variation had effect.

(3) The revocation or variation of a consent or direction as mentioned in paragraph (1) does not affect anything done under the consent or direction prior to the revocation or variation taking effect.

#### **Consents under Electricity Act 1989: compensation**

**89.**—(1) Where a direction deeming planning permission to be granted is revoked or varied pursuant to regulation 86(6), that permission is to be treated—

<sup>(126)</sup> Paragraph 2(6) of Schedule 8 was amended by the Planning (Consequential Provisions) Act 1990 (c. 11), paragraph 83(1) of Schedule 2; the Local Government (Wales) Act 1994 (c. 19), paragraph 22 of Schedule 6 and Schedule 18; and the Environment Act 1995 (c. 25), paragraph 30(1), (3) and (6) of Schedule 10 and Schedule 24.

- (a) for the purposes of Part 4 of the TCPA 1990 (compensation for effects of certain orders, notices etc.) as having been revoked or modified by order under section 97(127) of that Act (power to revoke or modify planning permission); or
  - (b) for the purposes of Part 4 of the Town and Country Planning (Scotland) Act 1997(128) (compensation for effects of certain orders, notices etc.) as having been revoked or modified by order under section 65(129) of that Act (power to revoke or modify planning permission).
- (2) Where a consent under the Electricity Act 1989 is revoked or varied pursuant to regulation 86(3) or (5), Part 4 of the TCPA 1990 or Part 4 of the Town and Country Planning (Scotland) Act 1997 (as the case may be) applies as if—
- (a) the consent had been planning permission granted on an application under that Act and had been revoked or modified by order under section 97 of the TCPA 1990 or section 65 of the Town and Country Planning (Scotland) Act 1997; and
  - (b) that Part provided that the competent authority was the person liable to pay any compensation provided for by that Part.
- (3) Paragraph (2) does not confer any right to compensation for any expenditure, loss or damage for which compensation is payable by virtue of paragraph (1).
- (4) Where the competent authority decide not to proceed with the revocation or variation of a consent under the Electricity Act 1989 or a direction deeming planning permission to be granted, any claim for compensation by virtue of this regulation is limited to any loss or damage directly attributable to the consent or direction ceasing to have effect or being varied for the duration of the period between the revocation or variation taking effect under regulation 88(1) and the competent authority's decision not to proceed with it.
- (5) Where compensation is payable by virtue of this regulation, the question as to the amount of the compensation must be referred to and determined by the Upper Tribunal, or the Lands Tribunal for Scotland, unless and to the extent that in any particular case the competent authority have indicated in writing that such a reference and determination may be dispensed with.

## CHAPTER 5

### PIPE-LINES

#### **Authorisations under Pipe-lines Act 1962: application of assessment and review provisions**

**90.**—(1) The assessment provisions apply in relation to the granting of a pipe-line construction authorisation under the Pipe-lines Act 1962(130).

(2) Where in such a case the competent authority consider that any adverse effects of the plan or project on the integrity of a European site or a European offshore marine site would be avoided by granting an authorisation for the execution of works for the placing of the proposed pipe-line along a modified route, the competent authority may, subject to the provisions of Schedule 1(131) to the Pipe-lines Act 1962 (which relates to applications for pipe-line construction authorisations), grant such an authorisation.

(3) The review provisions apply to an authorisation mentioned in paragraph (1) unless—

- (a) the works to which the authorisation relates—

(127) Section 97 was amended by the Planning and Compensation Act 1991 (c. 34), paragraph 4 of Schedule 1 and Part 1 of Schedule 19.

(128) 1997 c. 8.

(129) Section 65 was amended by S.S.I. 2006/243.

(130) 1962 c. 58; see section 1, which relates to pipe-line construction authorisations.

(131) Schedule 1 was amended by the Petroleum Act 1987 (c. 12), section 25, and by S.I. 1992/449 and 1999/742.

- (i) have been completed before the site became a European site or a European offshore marine site (as the case may be), or
- (ii) were completed before 30th October 1994; or
- (b) the authorisation was granted—
  - (i) subject to a condition as to the time within which the works to which it relates were to be begun and that time has expired without those works having been begun, or
  - (ii) for a limited period and that period has expired.

(4) Where on the review of such an authorisation the competent authority consider that any adverse effects on the integrity of a European site or a European offshore marine site of the carrying out or, as the case may be, the continuation of the plan or project would be avoided by a variation of the authorisation, the authority may vary it accordingly.

(5) In conjunction with the review of any such authorisation the competent authority must review any direction deeming planning permission to be granted for the plan or project and may vary or revoke it.

#### **Authorisations under Pipe-lines Act 1962: procedure on review**

**91.—**(1) Where the competent authority decide in pursuance of regulation 90(3), (4) or (5) to revoke or vary an authorisation under the Pipe-lines Act 1962 or a direction deeming planning permission to be granted, the authority must serve notice on—

- (a) the person to whom the authorisation was granted or, as the case may be, in whose favour the direction was made, and
- (b) any other person who in the authority's opinion will be affected by the revocation or variation,

informing them of the decision and specifying a period of not less than 28 days within which any person on whom the notice is served may make representations to the authority.

(2) The competent authority must also serve notice on—

- (a) the local planning authority, and
- (b) the appropriate nature conservation body,

informing them of the decision and inviting their representations within the specified period.

(3) The competent authority must consider whether to proceed with the revocation or variation, and must have regard to any representations made in accordance with paragraph (1) or (2).

(4) If within the specified period a person on whom notice was served under paragraph (1), or the local planning authority, so requires, the competent authority must before deciding whether to proceed with the revocation or variation give—

- (a) to that person or the local planning authority (as the case may be), and
- (b) to any other person on whom notice under paragraph (1) or (2) was required to be served,

an opportunity of appearing before, and being heard by, a person appointed by the competent authority for the purpose.

#### **Authorisations under Pipe-lines Act 1962: effect of review**

**92.—**(1) The revocation or variation pursuant to regulation 90(3), (4) or (5) of an authorisation under the Pipe-lines Act 1962 or a direction deeming planning permission to be granted takes effect upon the service of the notices required by regulation 91(1) or, where there is more than one such notice and those notices are served at different times, upon the service of the last such notice to be served.



(2) Where the competent authority decide not to proceed with the revocation or variation, the authorisation or direction has effect again as from the time of that decision, and thereafter has effect as if—

- (a) any period specified in the authorisation or direction for the taking of any action, being a period which had not expired prior to the date mentioned in paragraph (1), were extended by a period equal to that during which the revocation or variation had effect; and
- (b) there were substituted for any date specified in the authorisation or direction as being a date by which any action should be taken (“the specified date”), not being a date falling prior to the date mentioned in paragraph (1), such later date as postpones the specified date by a period equal to that during which the revocation or variation had effect.

(3) The revocation or variation of an authorisation or direction as mentioned in paragraph (1) does not affect anything done under the authorisation or direction prior to the revocation or variation taking effect.

### **Authorisations under Pipe-lines Act 1962: compensation**

**93.**—(1) Where a direction deeming planning permission to be granted is revoked or varied pursuant to regulation 90(5), that permission is to be treated—

- (a) for the purposes of Part 4 of the TCPA 1990 (compensation for effects of certain orders, notices etc.) as having been revoked or modified by order under section 97(**132**) of that Act (power to revoke or modify planning permission); or
- (b) for the purposes of Part 4 of the Town and Country Planning (Scotland) Act 1997(**133**) (compensation for effects of certain orders, notices etc.) as having been revoked or modified by order under section 65(**134**) of that Act (power to revoke or modify planning permission).

(2) Where an authorisation under the Pipe-lines Act 1962 is revoked or varied pursuant to regulation 90(3) or (4), Part 4 of the TCPA 1990 or Part 4 of the Town and Country Planning (Scotland) Act 1997 (as the case may be) applies as if—

- (a) the authorisation had been planning permission granted on an application under that Act and had been revoked or modified by order under section 97 of the TCPA 1990 or section 65 of the Town and Country Planning (Scotland) Act 1997; and
- (b) that Part provided that the competent authority was the person liable to pay any compensation provided for by that Part.

(3) Paragraph (2) does not confer any right to compensation for any expenditure, loss or damage for which compensation is payable by virtue of paragraph (1).

(4) Where the competent authority decide not to proceed with the revocation or variation of an authorisation under the Pipe-lines Act 1962 or a direction deeming planning permission to be granted, any claim for compensation by virtue of this regulation is limited to any loss or damage directly attributable to the authorisation or direction ceasing to have effect or being varied for the duration of the period between the revocation or variation taking effect under regulation 92(1) and the competent authority’s decision not to proceed with it.

(5) Where compensation is payable by virtue of this regulation, the question as to the amount of the compensation must be referred to and determined by the Upper Tribunal, or the Lands Tribunal for Scotland, unless and to the extent that in any particular case the competent authority have indicated in writing that such a reference and determination may be dispensed with.

(132) Section 97 was amended by the Planning and Compensation Act 1991 (c. 34), paragraph 4 of Schedule 1 and Part 1 of Schedule 19.

(133) 1997 c. 8.

(134) Section 65 was amended by S.S.I. 2006/243.

## CHAPTER 6

### TRANSPORT AND WORKS

#### **Orders under Transport and Works Act 1992: application of assessment and review provisions**

**94.**—(1) The assessment provisions apply in relation to the making of an order under section 1 (orders as to railways, tramways etc.) or 3 (orders as to inland waterways etc.) of the Transport and Works Act 1992(**135**).

(2) Where in such a case the appropriate authority consider that any adverse effects of the plan or project on the integrity of a European site or a European offshore marine site would be avoided by making modifications to the proposals, the appropriate authority may make an order subject to those modifications.

(3) The review provisions apply to an order mentioned in paragraph (1) unless the works to which the order relates have been completed before the site became a European site or a European offshore marine site.

(4) Where on the review of such an order the appropriate authority consider that any adverse effects on the integrity of a European site or a European offshore marine site of the carrying out or, as the case may be, the continuation of the plan or project would be avoided by a variation of the order, the appropriate authority may vary it accordingly.

(5) In conjunction with the review of any such order the appropriate authority must review any direction deeming planning permission to be granted for the plan or project and may vary or revoke it.

(6) In relation to an order mentioned in paragraph (1) which has effect or would have effect in both England and Wales, for any reference in this Chapter to the appropriate authority substitute a reference to the Secretary of State.

#### **Orders under Transport and Works Act 1992: procedure on review**

**95.**—(1) Where the appropriate authority decide in pursuance of regulation 94(3), (4) or (5) to revoke or vary an order under the Transport and Works Act 1992 or a direction deeming planning permission to be granted, the authority must serve notice on—

- (a) the person (if any) on whose application the order was made or, as the case may be, in whose favour the direction was made, and
- (b) any other person who in the authority's opinion will be affected by the revocation or variation,

informing them of the decision and specifying a period of not less than 28 days within which any person on whom the notice is served may make representations to the appropriate authority.

(2) The appropriate authority must also serve notice on—

- (a) the local planning authority, and
- (b) the appropriate nature conservation body,

informing them of the decision and inviting their representations within the specified period.

(3) The appropriate authority must consider whether to proceed with the revocation or variation, and must have regard to any representations made in accordance with paragraph (1) or (2).

(4) If within the specified period a person on whom notice was served under paragraph (1), or the local planning authority, so requires, the appropriate authority must before deciding whether to proceed with the revocation or variation of the order or direction give—

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(135) 1992 c. 42; sections 1 and 3 were amended by the Planning Act 2008 (c. 29), paragraphs 51, 52 and 53 of Schedule 2.

- (a) to that person or the local planning authority (as the case may be), and
- (b) to any other person on whom notice under paragraph (1) or (2) was required to be served, an opportunity of appearing before, and being heard by, a person appointed by the appropriate authority for the purpose.

### **Orders under Transport and Works Act 1992: effect of review**

**96.**—(1) The revocation or variation pursuant to regulation 94(3), (4) or (5) of an order under the Transport and Works Act 1992 or a direction deeming planning permission to be granted takes effect upon the service of the notices required by regulation 95(1) or, where there is more than one such notice and those notices are served at different times, upon the service of the last such notice to be served.

(2) Where the appropriate authority decide not to proceed with the revocation or variation, the order or direction has effect again as from the time of that decision, and thereafter has effect as if—

- (a) any period specified in the order or direction for the taking of any action, being a period which had not expired prior to the date mentioned in paragraph (1), were extended by a period equal to that during which the revocation or variation had effect; and
- (b) there were substituted for any date specified in the order or direction as being a date by which any action should be taken (“the specified date”), not being a date falling prior to the date mentioned in paragraph (1), such later date as postpones the specified date by a period equal to that during which the revocation or variation had effect.

(3) The revocation or variation of an order or direction as mentioned in paragraph (1) does not affect anything done under the order or direction prior to the revocation or variation taking effect.

### **Orders under Transport and Works Act 1992: compensation**

**97.**—(1) Where a direction deeming planning permission to be granted is revoked or varied pursuant to regulation 94(5), that permission is to be treated for the purposes of Part 4 of the TCPA 1990 (compensation for effects of certain orders, notices etc.) as having been revoked or modified by order under section 97(136) of that Act (power to revoke or modify planning permission).

(2) Where an order under the Transport and Works Act 1992 is revoked or varied pursuant to regulation 94(3) or (4), Part 4 of the TCPA 1990 applies as if—

- (a) the order had been planning permission granted on an application under that Act and had been revoked or modified by order under section 97 of that Act; and
- (b) that Part provided that the appropriate authority was the person liable to pay any compensation provided for by that Part.

(3) Paragraph (2) does not confer any right to compensation for any expenditure, loss or damage for which compensation is payable by virtue of paragraph (1).

(4) Where the appropriate authority decide not to proceed with the revocation or variation of an order under the Transport and Works Act 1992 or a direction deeming planning permission to be granted, any claim for compensation by virtue of this regulation is limited to any loss or damage directly attributable to the order or direction ceasing to have effect or being varied for the duration of the period between the revocation or variation taking effect under regulation 96(1) and the appropriate authority’s decision not to proceed with it.

(5) Where compensation is payable by virtue of this regulation, the question as to the amount of the compensation must be referred to and determined by the Upper Tribunal unless and to the extent

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(136) Section 97 was amended by the Planning and Compensation Act 1991 (c. 34), paragraph 4 of Schedule 1 and Part 1 of Schedule 19.

that in any particular case the appropriate authority have indicated in writing that such a reference and determination may be dispensed with.

## CHAPTER 7

### ENVIRONMENTAL CONTROLS

#### Environmental permits

**98.**—(1) The assessment provisions apply in relation to the granting of an environmental permit under the Environmental Permitting (England and Wales) Regulations 2007(**137**).

(2) Where in such a case the competent authority consider that any adverse effects of the plan or project on the integrity of a European site or a European offshore marine site would be avoided if the permit were subject to conditions, they may grant a permit, or cause a permit to be granted, subject to those conditions.

(3) The review provisions apply to a permit described in paragraph (1).

(4) Where on the review of such a permit the competent authority consider that any adverse effects on the integrity of a European site or a European offshore marine site of the carrying out or, as the case may be, the continuation of activities authorised by it would be avoided by a variation of the permit, they may vary it, or cause it to be varied, accordingly.

(5) Where any question arises as to agreeing to a plan or project, or affirming a permit on review, under regulation 62 (considerations of overriding public interest), the competent authority must refer the matter to the appropriate authority which must determine the matter in accordance with that regulation and give directions to the competent authority accordingly.

#### Abstraction and works authorised under water legislation

**99.**—(1) The assessment provisions apply in relation to the granting of an authorisation by virtue of—

- (a) the granting of a licence under Chapter 2 of Part 2 of the WRA(**138**) (abstraction and impounding);
- (b) the making of an order under section 27A(**139**) of the WRA (variation of small quantity threshold);
- (c) the making of regulations under section 33A(**140**) of the WRA (power to provide for further exemptions), where those regulations relate to—
  - (i) a prescribed geographical area,
  - (ii) a prescribed source of supply (in the case of an exemption from the restriction on abstraction or the other restrictions imposed by section 24(**141**) of the WRA (restrictions on abstraction)), or
  - (iii) prescribed inland waters (in the case of an exemption from the restriction on impounding works);
- (d) any consent given under paragraph (2);
- (e) the making of an order under section 73(**142**) of the WRA (power to make ordinary and emergency drought orders) which has the effect of authorising—

(**137**) [S.I. 2007/3538](#).

(**138**) [1991 c. 57](#).

(**139**) Section 27A was inserted by the Water Act 2003 ([c. 37](#)), section 6(1).

(**140**) Section 33A was inserted by the Water Act 2003 ([c. 37](#)), section 9.

(**141**) Section 24 was amended by [S.I. 1996/593](#), Schedule 2; by the Environment Act 1995 ([c. 25](#)), paragraph 128 of Schedule 22; and by the Water Act 2003 ([c. 37](#)), section 60(1).

(**142**) Section 73 was amended by the Environment Act 1995 ([c. 25](#)), paragraphs 128 and 139 of Schedule 22.

- (i) an abstraction or additional abstraction, or
  - (ii) a discharge or additional discharge;
  - (f) the granting of a permit under section 79A(**143**) of that Act (drought permits);
  - (g) any consent given under section 166 of the WIA(**144**) (consents for certain discharges under section 165) or section 164(**145**) of the WRA (consents for certain discharges under section 163); or
  - (h) the making of an order under section 167(**146**) of the WIA (compulsory works orders) or section 168(**147**) of the WRA (compulsory works orders).
- (2) An exemption conferred by regulations under section 33A of the WRA, other than regulations referred to in paragraph (1)(c), does not apply in relation to any particular abstraction or impounding works unless the Environment Agency has given consent in writing to the abstraction or impounding works being carried out.
- (3) Where, in relation to any plan or project authorised by any means referred to in sub-paragraphs (a) to (h) of paragraph (1), the competent authority consider that any adverse effects of the plan or project on the integrity of a European site or a European offshore marine site would be avoided if the authorisation were subject to conditions, they may grant the authorisation, or cause it to be granted, subject to those conditions.
- (4) Where, by virtue of paragraph (1)(g), the assessment provisions apply in relation to the granting of an authorisation by virtue of a consent under section 166 of the WIA or section 164 of the WRA, the section in question has effect as if in each case—
- (a) in subsection (3), the words “and, subject to that subsection, where an application for any consent is required to be determined within the period specified in paragraph (a) above and is not so determined, the consent applied for shall be deemed to have been given unconditionally.” were omitted; and
  - (b) in paragraph (a) of that subsection, for the words “the period of seven days” there were substituted the words “the period of fourteen days”.
- (5) The review provisions apply to any authorisation mentioned in paragraph (1)(a), (b), (c), (d) or (h).
- (6) Where on the review of any such authorisation the competent authority consider that any adverse effects on the integrity of a European site or a European offshore marine site of the carrying out or, as the case may be, the continuation of the activities authorised by it would be avoided by a variation of the authorisation, they may vary it, or cause it to be varied, accordingly.
- (7) In this regulation—
- (a) “the WIA” means the Water Industry Act 1991(**148**); and
  - (b) “the WRA” means the Water Resources Act 1991(**149**).

## Marine works

**100.**—(1) The assessment provisions apply in relation to the granting of a licence, consent or other approval for marine works.

(**143**) Section 79A was inserted by the Environment Act 1995 (c. 25), paragraph 140 of Schedule 22, and amended by the Water Act 2003 (c. 37), section 64(3) and Part 3 of Schedule 9.

(**144**) 1991 c. 56; section 166 was amended by the Environment Act 1995 (c. 25), paragraph 118 of Schedule 22.

(**145**) Section 164 was amended by the Environment Act 1995 (c. 25), paragraph 128 of Schedule 22.

(**146**) Section 167 was amended by the Planning Act 2008 (c. 29), paragraph 50 of Schedule 2.

(**147**) Section 168 was amended by the Environment Act 1995 (c. 25), paragraph 128 of Schedule 22.

(**148**) 1991 c. 56.

(**149**) 1991 c. 57.

(2) Where the assessment provisions apply, the competent authority may, if they consider that any adverse effects of the plan or project on the integrity of a European site or a European offshore marine site would be avoided if the licence, consent or other approval were subject to conditions or requirements, grant the licence, consent or other approval subject to those conditions or requirements.

(3) The review provisions apply to any licence, consent or other approval for marine works.

(4) Where on the review of any such licence, consent or other approval the competent authority consider that any adverse effects on the integrity of a European site or a European offshore marine site of the carrying out or, as the case may be, the continuation of activities authorised by it would be avoided by a variation of the licence, consent or other approval, they may vary it accordingly.

(5) This regulation does not apply in relation to any application for a licence mentioned in paragraph (6)(a), or a consent mentioned in paragraph (6)(b), in respect of dredging where—

- (a) the Secretary of State has determined that the dredging would constitute a habitats project under the Environmental Impact Assessment and Natural Habitats (Extraction of Minerals by Marine Dredging) (England and Northern Ireland) Regulations 2007<sup>(150)</sup>; or
- (b) the Welsh Ministers have determined that the dredging would constitute a habitats project under the Environmental Impact Assessment and Natural Habitats (Extraction of Minerals by Marine Dredging) (Wales) Regulations 2007<sup>(151)</sup>.

(6) In this regulation, “marine works” means any activity or proposed activity requiring—

- (a) a licence under Part 2 of the Food and Environment Protection Act 1985<sup>(152)</sup> (deposits in the sea);
- (b) a consent under section 34 of the Coast Protection Act 1949<sup>(153)</sup> (restriction of works detrimental to navigation); or
- (c) an approval or consent for works involved in the construction of a harbour or involving the making of modifications to an existing harbour under—
  - (i) a local Act,
  - (ii) such an Act read together with a notice given and published under section 9 of the Harbours Transfer Act 1862<sup>(154)</sup> (power to Admiralty to retain authority over ports, etc. where dockyards, etc. are situate), or
  - (iii) an order made under section 14 (powers, on application of harbour authorities, or others, to make orders for securing harbour efficiency etc.) or 16 (powers, on application of intending undertakers, or others, to make orders conferring powers for improvement, construction, etc., of harbours) of the Harbours Act 1964<sup>(155)</sup>.

### **Derogations in relation to nitrate pollution prevention legislation**

**101.**—(1) The assessment provisions apply in relation to the granting of a derogation—

- (a) under Part 3A of the Nitrate Pollution Prevention Regulations 2008<sup>(156)</sup>; or
- (b) under Part 3A of the Nitrate Pollution Prevention (Wales) Regulations 2008<sup>(157)</sup>.

<sup>(150)</sup>S.I. 2007/1067.

<sup>(151)</sup>S.I. 2007/2610.

<sup>(152)</sup>1985 c. 48.

<sup>(153)</sup>1949 c. 74; section 34 was amended by the Merchant Shipping Act 1988 (c. 12), section 36, and the Statute Law Revision Act 1953 (c. 5).

<sup>(154)</sup>1862 c. 69; section 9 was amended by SR & O 1921/1804.

<sup>(155)</sup>1964 c. 40; sections 14 and 16 were amended by the Transport Act 1981 (c. 56), paragraphs 3 and 14 of Schedule 6 and Schedule 12; the Criminal Justice Act 1982 (c. 48), sections 37 and 46; the Transport and Works Act 1992 (c. 42), paragraphs 1 and 2 of Schedule 3; S.I. 2006/1177; the Planning Act 2008 (c. 29), paragraphs 8, 9 and 10 of Schedule 2; and S.I. 2009/1941.

<sup>(156)</sup>S.I. 2008/2349; Part 3A was inserted by S.I. 2009/3160.

<sup>(157)</sup>S.I. 2008/3143 (W.278); Part 3A was inserted by S.I. 2010/489 (W.55).

(2) Where the assessment provisions apply, the competent authority may, if they consider any adverse effects of the plan or project on the integrity of a European site or a European offshore marine site would be avoided if the derogation were subject to conditions, grant the derogation, subject to those conditions.

## CHAPTER 8

### LAND USE PLANS

#### *Land use plans*

#### **Assessment of implications for European sites and European offshore marine sites**

**102.**—(1) Where a land use plan—

- (a) is likely to have a significant effect on a European site 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,

the plan-making authority for that plan must, before the plan is given effect, make an appropriate assessment of the implications for the site in view of that site's conservation objectives.

(2) The plan-making authority must 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 specify.

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

(4) In the light of the conclusions of the assessment, and subject to regulation 103 (considerations of overriding public interest), the plan-making authority or, in the case of a regional strategy, the Secretary of State must give effect to the land use plan only after having ascertained that it will not adversely affect the integrity of the European site or the European offshore marine site (as the case may be).

(5) A plan-making authority must provide such information as the appropriate authority may reasonably require for the purposes of the discharge of the obligations of the appropriate authority under this Chapter.

(6) This regulation does not apply in relation to a site which is—

- (a) a European site by reason of regulation 8(1)(c), or
- (b) a European offshore marine site by reason of regulation 15(c) of the 2007 Regulations

(site protected in accordance with Article 5(4) of the Habitats Directive).

#### **Considerations of overriding public interest**

**103.**—(1) If the plan-making authority are satisfied that, there being no alternative solutions, the land use plan must be given effect for imperative reasons of overriding public interest (which, subject to paragraph (3), may be of a social or economic nature), they may give effect to the land use plan notwithstanding a negative assessment of the implications for the European site or the European offshore marine site (as the case may be).

(2) In relation to a regional strategy, paragraph (1) applies to the Secretary of State as it applies to a plan-making authority in the case of any other land use.

(3) 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
  - (b) any other reasons which the plan-making authority, having due regard to the opinion of the European Commission, consider to be imperative reasons of overriding public interest.
- (4) Where a plan-making authority other than the Secretary of State or the Welsh Ministers desire to obtain the opinion of the European Commission as to whether reasons are to be considered imperative reasons of overriding public interest, they may submit a written request to the appropriate authority—
- (a) identifying the matter on which an opinion is sought; and
  - (b) accompanied by any documents or information which may be required.
- (5) The appropriate authority—
- (a) may seek the opinion of the European Commission concerning the plan; and
  - (b) where such an opinion is received, must send it to the plan-making authority.
- (6) Where a plan-making authority other than the Secretary of State or the Welsh Ministers propose to give effect to a land use plan under this regulation notwithstanding a negative assessment of the implications for the site concerned—
- (a) they must notify the appropriate authority; and
  - (b) they must not give effect to the land use plan before the end of the period of 21 days beginning with the day notified by the appropriate authority as that on which their notification was received, unless the appropriate authority notify them that they may do so.
- (7) Without prejudice to any other power, the appropriate authority may give directions to the plan-making authority in any such case prohibiting them from giving effect to the land use plan, either indefinitely or during such period as may be specified in the direction.

#### **Co-ordination for land use plan prepared by more than one authority**

**104.**—(1) The following provisions apply where two or more local planning authorities prepare a joint local development document under section 28(**158**) (joint local development documents) or a joint local development plan under section 72 (joint local development plans) of the 2004 Planning Act.

(2) Nothing in paragraph (1) of regulation 102 (assessment of implications for European sites and European offshore marine sites) requires a local planning authority to assess any implications of a joint local development document or plan which would be more appropriately assessed under that provision by another local planning authority.

(3) The appropriate authority may issue guidance to local planning authorities for the purposes of regulation 102(1) as to the circumstances in which a local planning authority may or should adopt the reasoning or conclusions of another local planning authority as to whether a joint local planning document or plan—

- (a) is likely to have a significant effect on a European site or a European offshore marine site; or
  - (b) will adversely affect the integrity of a European site or a European offshore marine site.
- (4) The local planning authorities concerned must have regard to any such guidance.

(5) In determining whether a joint local development document or plan should be adopted under regulation 103 (considerations of overriding public interest), a local planning authority must seek and have regard to the views of the other local planning authorities concerned.

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(158) Section 28 was amended by the Local Democracy, Economic Development and Construction Act 2009 (c. 20), paragraphs 12 and 16 of Schedule 5.



## Compensatory measures

**105.** Where in accordance with regulation 103 (considerations of overriding public interest) a land use plan is given effect notwithstanding a negative assessment of the implications for a European site or a European offshore marine site, the appropriate authority must secure that any necessary compensatory measures are taken to ensure that the overall coherence of Natura 2000 is protected.

## *Planning Act 2008*

## National policy statements

**106.**—(1) This Chapter applies—

- (a) in relation to a national policy statement under Part 2 (national policy statements) of the Planning Act 2008<sup>(159)</sup> as it applies in relation to a land use plan, and
- (b) in relation to the Secretary of State when exercising powers under Part 2 of that Act as it applies in relation to a plan-making authority,

with the modifications specified in paragraphs (2) and (3).

(2) Any reference in this Chapter to giving effect to a land use plan, in relation to a national policy statement, is to be taken to be a reference to the designation of a statement as a national policy statement or an amendment of a national policy statement under Part 2 of the Planning Act 2008.

(3) Where this Chapter applies by virtue of paragraph (1)—

- (a) regulations 102(5), 103(4) to (7) and 104 do not apply; and
- (b) in regulation 105, for the reference to the appropriate authority substitute a reference to the Secretary of State.

## *Interpretation of Chapter 8*

## Interpretation of Chapter 8

**107.**—(1) In this Chapter—

“the 1999 Act” means the Greater London Authority Act 1999<sup>(160)</sup>;

“the 2004 Planning Act” means the Planning and Compulsory Purchase Act 2004<sup>(161)</sup>;

“the 2005 Order” means the Planning and Compulsory Purchase Act 2004 (Commencement No. 3 and Consequential and Transitional Provisions) (Wales) Order 2005<sup>(162)</sup>;

“the 2009 Act” means the Local Democracy, Economic Development and Construction Act 2009<sup>(163)</sup>;

“land use plan” means—

- (a) the regional strategy under Part 5 (regional strategy) of the 2009 Act;
- (b) the spatial development strategy under section 334 (the spatial development strategy) of the 1999 Act;

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<sup>(159)</sup>2008 c. 29.

<sup>(160)</sup>1999 c. 29.

<sup>(161)</sup>2004 c. 5.

<sup>(162)</sup>S.I. 2005/1229 (W.87) (C.56), amended by S.I. 2005/2722 (W.193) (C.110).

<sup>(163)</sup>2009 c. 20.

- (c) a local development document as provided for in Part 2 (local development) of the 2004 Planning Act other than a statement of community involvement under section 18(164) (statement of community involvement) of that Act;
- (d) a local development plan as provided for in Part 6 (Wales) of the 2004 Planning Act;
- (e) the Wales Spatial Plan under section 60(165) (Wales Spatial Plan) of the 2004 Planning Act;
- (f) an alteration or replacement of a structure plan, unitary development plan, local plan, minerals local plan, or waste local plan under Part 2(166) (development plans) of the TCPA 1990 to the extent permitted by Schedule 8 (transitional provisions) to the 2004 Planning Act; or
- (g) a unitary development plan as provided for in Part 2 of the TCPA 1990 to the extent permitted by article 4 (transitional provisions) of the 2005 Order(167);

“plan-making authority” means—

- (a) responsible regional authorities as defined in section 72 (responsible regional authorities) of the 2009 Act;
- (b) the Mayor of London when exercising powers under subsection (1) or (2) of section 341 (alteration or replacement) of the 1999 Act;
- (c) an authority which, by virtue of Part 1 (planning authorities) of the TCPA 1990 or an order under subsection (2) of section 29 (joint committees) of the 2004 Planning Act, is a local planning authority;
- (d) the Secretary of State when exercising powers under—
  - (i) section 21 (intervention by Secretary of State) or section 27 (Secretary of State’s default power) of the 2004 Planning Act, or
  - (ii) section 19 (approval of a unitary development plan), subsection (4) of section 35A(168) (calling in of proposal for approval by the Secretary of State) or section 45 (approval of proposals by the Secretary of State) of the TCPA 1990 to the extent permitted by Schedule 8 to the 2004 Planning Act; or
- (e) the Welsh Ministers when exercising powers under—
  - (i) section 60(3), section 65 (intervention by Assembly) or subsection (4) of section 71 (Assembly’s default power) of the 2004 Planning Act, or
  - (ii) section 19 of the TCPA 1990 to the extent permitted by article 4 of the 2005 Order; and

“regional strategy” has the same meaning as in section 70 (regional strategy) of the 2009 Act.

(2) References in this Chapter to giving effect to a land use plan are to—

- (a) the publication, under subsection (5) of section 78 (approval of revision by Secretary of State) of the 2009 Act, of a revision of a regional strategy;
- (b) the approval, under section 21(9) or 27(4) of the 2004 Planning Act, of a local development document;

(164) Section 18 was amended by the Planning Act 2008 (c. 29), section 180(1) and (4) and Schedule 13.

(165) Section 60 was amended by the Government of Wales Act 2006 (c. 32), paragraph 66 of Schedule 10 and Schedule 12.

(166) Sections 32 to 40 in Part 2 of the TCPA 1990 were substituted by the Planning and Compensation Act 1991 (c. 34), paragraph 17 of Schedule 4; Part 2 of the TCPA 1990 was repealed by the 2004 Planning Act, Schedule 9, subject to transitional provisions contained in Schedule 8 to that Act.

(167) Article 4 contains transitional provisions; it was revoked by S.I. 2005/2722 (W.193) (C.110), but that S.I. was amended by S.I. 2006/842 (W.77) with the effect that the transitional provisions in Article 4 of the 2005 Order continue to apply in relation to the local planning authorities in Wales listed in the Schedule to S.I. 2005/2722.

(168) Section 35A was inserted by the Planning and Compensation Act 1991 (c. 34), paragraph 17 of Schedule 4.

- (c) the adoption, under section 23 (adoption of local development documents) of the 2004 Planning Act, of a local development document other than a statement of community involvement under section 18 of that Act;
- (d) the publication, under section 341 of the 1999 Act, of alterations of the spatial development strategy or a new spatial development strategy to replace it;
- (e) the publication, under section 60 of the 2004 Planning Act, of a revision of the Wales Spatial Plan;
- (f) the adoption, under section 67 (adoption of local development plan) of the 2004 Planning Act, of a local development plan;
- (g) the approval, under section 65(9) or 71(4) of the 2004 Planning Act, of a local development plan;
- (h) the adoption, under section 35(1) (adoption of proposals), or approval under section 35A(4) of the TCPA 1990, of an alteration or replacement of a structure plan to the extent permitted by paragraph 2(2) of Schedule 8 to the 2004 Planning Act;
- (i) the adoption, under section 15(**169**) (adoption of unitary development plans by local planning authority) and that provision as applied by subsection (2) of section 21(**170**) (alteration or replacement of unitary development plans) of the TCPA 1990, of an alteration or replacement of a unitary development plan to the extent permitted by paragraph 4 of Schedule 8 to the 2004 Planning Act;
- (j) the approval, under section 19 and that provision as applied by section 21(2) of the TCPA 1990, of an alteration or replacement of a unitary development plan to the extent permitted by paragraph 4 of Schedule 8 to the 2004 Planning Act;
- (k) the adoption, under section 43(**171**) (adoption of proposals) or approval under section 45 of the TCPA 1990, of an alteration or replacement of a local plan, minerals local plan or waste local plan to the extent permitted by paragraph 9, 10 or 14 of Schedule 8 to the 2004 Planning Act;
- (l) the adoption, under section 15 of the TCPA 1990, of a unitary development plan to the extent permitted by article 4 of the 2005 Order; or
- (m) the approval, under section 19 of the TCPA 1990, of a unitary development plan to the extent permitted by article 4 of the 2005 Order.

## PART 7

### ENFORCEMENT

#### *Wildlife inspectors*

#### **Wildlife inspectors**

**108.**—(1) In this Part, “wildlife inspector” means a person authorised in writing under this regulation by the appropriate authority.

(2) An authorisation under paragraph (1) is subject to any conditions or limitations specified in it.

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(**169**) Section 15(1) was substituted by the Planning and Compensation Act 1991 (c. 34), paragraph 6 of Schedule 4.

(**170**) Section 21 was amended by the Planning and Compensation Act 1991 (c. 34), paragraph 12(2) of Schedule 4 and Schedule 19.

(**171**) Section 43 was amended by the Planning and Compensation Act 1991 (c. 34), paragraph 19(1) of Schedule 4.

*Powers of entry***Powers of entry: constables**

**109.**—(1) If a constable suspects with reasonable cause that any person is committing or has committed an offence specified in paragraph (4), the constable may, for the purposes of exercising the powers conferred by regulation 112 (constables' powers of search, etc.) or arresting a person in accordance with section 24 of the Police and Criminal Evidence Act 1984<sup>(172)</sup> (arrest without warrant: constables) for such an offence, enter any premises other than a dwelling.

(2) A constable may—

- (a) be accompanied by any other person that the constable considers necessary; and
- (b) bring any equipment or materials that the constable considers necessary.

(3) If a justice of the peace, on sworn information in writing, is satisfied that there are reasonable grounds for suspecting that an offence specified in paragraph (4) has been committed and that evidence of the offence may be found on any premises, the justice may by signed warrant authorise a constable to enter and search those premises for the purpose of obtaining that evidence.

(4) The offences specified for the purposes of this regulation are—

- (a) a species offence;
- (b) an offence under regulation 52 (introduction of new species from ships);
- (c) an offence under regulation 57 (false statements made for obtaining licence); and
- (d) an offence under regulation 116(1) or (2) (attempts and possession of means of committing offence).

**Powers of entry: wildlife inspectors**

**110.**—(1) A wildlife inspector may, at all reasonable hours, enter and inspect any premises other than a dwelling—

- (a) for the purpose of ascertaining whether a species offence is being or has been committed; or
- (b) for the purpose of verifying any statement or representation made, or document or information supplied, by an occupier of the premises in connection with an application for, or the holding of, a licence granted under regulation 53 (licences for certain activities relating to animals or plants).

(2) The power in paragraph (1) to enter and inspect premises includes power to board and inspect a ship within the marine area, subject to paragraphs (3) to (6).

(3) Paragraph (4) applies in relation to—

- (a) a third country ship;
- (b) a warship which is being used by the government of a State other than the United Kingdom (whether or not it is a third country ship); and
- (c) any other ship which is being used by the government of a State other than the United Kingdom for any non-commercial purpose.

(4) A wildlife inspector must not, in the exercise of the power in paragraph (1), board or inspect a ship to which this paragraph applies unless—

<sup>(172)</sup> 1984 c. 60; section 24 was substituted by the Serious Organised Crime and Police Act 2005 (c. 15), section 110(1).

- (a) in the case of a third country ship (other than a ship which is being used as mentioned in paragraph (3)(b) or (c)), the United Kingdom is entitled under international law to exercise that power without the consent of the flag state; or
  - (b) the Commissioners have given authority to exercise that power.
- (5) The Commissioners must not give their authority under paragraph (4)(b) unless the flag state has consented to the United Kingdom exercising that power (whether generally or in relation to the ship in question).
- (6) In giving their authority under paragraph (4)(b), the Commissioners must impose such conditions or limitations on the exercise of the power as may be necessary to give effect to any conditions or limitations imposed by the flag state.
- (7) A wildlife inspector must, if requested to do so, produce a duly authenticated authorisation document before entering any premises.
- (8) A wildlife inspector may be accompanied by a veterinary surgeon if the wildlife inspector has reasonable grounds for believing that such a person will be needed for the exercise of powers under regulation 114 (powers in relation to specimens and samples: wildlife inspectors).
- (9) In this regulation—
- “the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs;
  - “flag state”, in relation to a ship, means the State whose flag that ship is flying or is entitled to fly; and
  - “third country ship” means a ship which—
- (a) is flying the flag of, or is registered in, any State or territory (other than Gibraltar) which is not a member State; and
  - (b) is not registered in a member State.

### **Powers of entry: other authorised persons**

**111.**—(1) A person authorised in writing by the appropriate nature conservation body may, at all reasonable hours, enter any land except a dwelling—

- (a) to ascertain whether a special nature conservation order should be made under regulation 25 (power to make special nature conservation order), whether a stop notice should be served under paragraph (1) of regulation 26 (restriction on carrying out operations specified in order) or whether an offence under regulation 26(8) is being, or has been, committed on that land;
  - (b) to ascertain the amount of any compensation payable under regulation 28 (compensation for effect of stop notice) in respect of an interest in that land; or
  - (c) to affix a notice in accordance with regulation 26(3) or paragraph 2(5) of Schedule 1 (procedure in connection with special conservation orders).
- (2) An officer of the Valuation Office or a person authorised in writing by the appropriate nature conservation body may enter any land for the purpose of surveying it, or of estimating its value, in connection with any claim for compensation under regulation 32 (compensation for effect of byelaws) in respect of that or any other land.
- (3) A person authorised in writing by the authority having power to acquire land or an interest in land may enter that land for the purpose of surveying it in connection with the acquisition of that land or of any interest in that land, whether by agreement or compulsorily, in the exercise of any power conferred by these Regulations.
- (4) A person authorised under this regulation must, if requested to do so, produce a duly authenticated authorisation document before entering any land.

(5) A person authorised under paragraph (1) may not demand admission as of right to any land which is occupied unless either—

- (a) 24 hours' notice of the intended entry has been given to the occupier; or
- (b) the purpose of the entry is to ascertain whether an offence under regulation 26(8) is being, or has been, committed on that land.

(6) A person authorised under paragraph (2) or (3) may not demand admission as of right to any land which is occupied unless at least 14 days' notice in writing of the intended entry has been given to the occupier.

#### *Powers of search, etc.*

#### **Constables' powers of search, etc.**

**112.**—(1) If a constable suspects with reasonable cause that any person is committing or has committed an offence specified in paragraph (2), the constable may without warrant—

- (a) stop and search that person if the constable suspects with reasonable cause that evidence of the commission of the offence is to be found on that person;
  - (b) search or examine anything which that person may be using or which is in that person's possession if the constable suspects with reasonable cause that evidence of the commission of the offence is to be found on that thing; or
  - (c) seize and detain, for the purposes of proceedings in relation to an offence specified in paragraph (2), anything which may be evidence of the commission of the offence or may be liable to be forfeited under regulation 122 (forfeiture).
- (2) The offences specified for the purposes of this regulation are—
- (a) a species offence;
  - (b) an offence under regulation 52 (introduction of new species from ships);
  - (c) an offence under regulation 57 (false statements made for obtaining licence); and
  - (d) an offence under regulation 116(1) or (2) (attempts and possession of means of committing offence).

#### *Powers in relation to specimens and samples*

#### **Powers in relation to samples: constables**

**113.**—(1) If a constable suspects with reasonable cause that a specimen found in the exercise of powers conferred by this Part is one in respect of which an offence specified in paragraph (5) is being or has been committed, the constable may require a sample to be taken from the specimen.

(2) If a constable suspects with reasonable cause that an offence specified in paragraph (5) is being or has been committed in respect of any specimen ("the relevant specimen"), the constable may require any person to make available for the taking of a sample any other specimen in that person's possession or control which—

- (a) is alleged to be, or
- (b) the constable suspects with reasonable cause to be,

a specimen a sample from which will tend to establish the identity or ancestry of the relevant specimen.

(3) Where a sample from a live animal or plant is to be taken, any person who has possession or control of the animal or plant must give the person taking the sample such assistance as that person may reasonably require for that purpose.

(4) This regulation is subject to regulation 115 (restrictions on taking samples from live specimens).

(5) The offences specified for the purposes of this regulation are—

- (a) a species offence;
- (b) an offence under regulation 57 (false statements made for obtaining licence), where that offence relates to the obtaining of a licence under regulation 53 (licences for certain activities relating to animals or plants); and
- (c) an offence under regulation 116(1) or (2) (attempts and possession of means of committing offence).

### **Powers in relation to specimens and samples: wildlife inspectors**

**114.**—(1) The powers conferred by this regulation are exercisable where a wildlife inspector has entered premises for a purpose mentioned in paragraph (1)(a) or (b) of regulation 110 (powers of entry: wildlife inspectors).

(2) The wildlife inspector, or accompanying veterinary surgeon, may—

- (a) for any such purpose, examine any specimen; and
- (b) subject to paragraph (3) and regulation 115 (restrictions on taking samples from live specimens), take a sample from it.

(3) No sample may be taken under paragraph (2) from a live animal or plant except for the purpose of establishing its ancestry or identity.

(4) The wildlife inspector may require an occupier of the premises to give such assistance as is reasonable in the circumstances for the purpose of—

- (a) making an examination under paragraph (2)(a); or
- (b) taking a sample under paragraph (2)(b).

(5) The wildlife inspector may take and remove from the premises a specimen which is not a live animal or plant, if there are reasonable grounds for believing that it is evidence of a species offence.

### **Restrictions on taking samples from live specimens**

**115.**—(1) No sample may be taken by virtue of regulation 113 or 114 from a live animal except by a veterinary surgeon.

(2) No sample may be taken by virtue of those regulations from a live animal or plant unless the person taking it is satisfied on reasonable grounds that taking it will not cause lasting harm to the specimen.

## *Offences*

### **Attempts and possession of means of committing offence**

**116.**—(1) A person who attempts to commit an offence specified in paragraph (3) is guilty of an offence and punishable in the same manner as for that offence.

(2) A person who, for the purposes of committing an offence specified in paragraph (3), is in possession of anything capable of being used for committing such an offence, is guilty of an offence and punishable in the same manner as for that offence.

(3) The offences specified for the purposes of this regulation are—

- (a) a species offence; and
- (b) an offence under regulation 57 (false statements made for obtaining licence), where that offence relates to the obtaining of a licence under regulation 53 (licences for certain activities relating to animals or plants).

### **Obstruction of persons exercising powers of entry under regulation 111**

**117.** A person who intentionally obstructs a person exercising powers under regulation 111 (powers of entry: other authorised persons) commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### **Obstruction in connection with constables' powers to take samples**

**118.—**(1) A person who, without reasonable excuse, fails—

- (a) to make available any specimen in accordance with a requirement under paragraph (2) of regulation 113 (powers in relation to samples: constables), or
- (b) to give any assistance reasonably required under paragraph (3) of that regulation,

commits an offence.

(2) A person guilty of an offence under paragraph (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

### **Offences in connection with wildlife inspectors' enforcement powers**

**119.—**(1) A person who—

- (a) intentionally obstructs a wildlife inspector acting in the exercise of powers conferred by regulation 110 (powers of entry: wildlife inspectors) or paragraph (2) or (5) of regulation 114 (powers in relation to specimens and samples: wildlife inspectors), or
- (b) fails without reasonable excuse to give any assistance reasonably required under regulation 114(4),

commits an offence.

(2) A person who, with intent to deceive, falsely pretends to be a wildlife inspector, commits an offence.

(3) A person guilty of an offence under paragraph (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) A person guilty of an offence under paragraph (2) is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or to both; or
- (b) on conviction on indictment, to imprisonment not exceeding two years or to a fine, or to both.

### *Codes of practice*

#### **Codes of practice**

**120.—**(1) The appropriate authority may—

- (a) issue a code of practice in connection with any of the provisions of regulations 108 (wildlife inspectors), 110 (powers of entry: wildlife inspectors), 114 (powers in relation



to specimens and samples: wildlife inspectors), 115 (restrictions on taking samples from live specimens), 118 (obstruction in connection with constables' powers to take samples) and 119 (offences in connection with wildlife inspectors' enforcement powers); and

(b) revise or replace such a code.

(2) In discharging any function under the regulations specified in paragraph (1)(a)—

(a) a wildlife inspector authorised by the Secretary of State must have regard to any relevant provision of a code issued by the Secretary of State;

(b) a wildlife inspector authorised by the Welsh Ministers must have regard to any relevant provision of a code issued by them.

(3) But a wildlife inspector's failure to have regard to any provision of a code does not make that inspector liable to criminal or civil proceedings.

(4) A code—

(a) is admissible in evidence in any proceedings; and

(b) must be taken into account by any court in any case in which it appears to the court to be relevant.

#### *Miscellaneous*

#### **Advice and assistance from nature conservation bodies**

**121.**—(1) The appropriate nature conservation body may advise or assist any constable or wildlife inspector in, or in connection with, enforcement action in relation to an offence specified in paragraph (2).

(2) The offences specified for the purposes of this regulation are—

(a) a species offence;

(b) an offence under regulation 57 (false statements made for obtaining licence), where that offence relates to the obtaining of a licence under regulation 53 (licences for certain activities relating to animals or plants); and

(c) an offence under regulation 116(1) or (2) (attempts and possession of means of committing offence).

#### **Forfeiture**

**122.**—(1) The court by which a person is convicted of an offence specified in paragraph (3)—

(a) must order the forfeiture of any animal, plant or other thing in respect of which the offence was committed; and

(b) may order the forfeiture of any vehicle, animal, weapon or other thing which was used to commit the offence.

(2) In paragraph (1)(b) "vehicle" includes any aircraft, hovercraft or boat.

(3) The offences specified for the purposes of this regulation are—

(a) a species offence;

(b) an offence under regulation 57 (false statements made for obtaining licence), where that offence relates to the obtaining of a licence under regulation 53 (licences for certain activities relating to animals or plants); and

(c) an offence under regulation 116(1) or (2) (attempts and possession of means of committing offence).

**Proceedings for offences: venue and time limits**

**123.**—(1) For the purposes of conferring jurisdiction, an offence specified in paragraph (5) is deemed to have been committed in any place where the offender is found or to which the offender is first brought after the commission of the offence.

(2) Summary proceedings for such an offence may be commenced within the period of six months from the date on which the prosecutor first knows of evidence sufficient, in the prosecutor's opinion, to justify proceedings.

(3) But no such proceedings may be commenced more than two years after the commission of the offence.

(4) For the purposes of paragraph (2)—

(a) a certificate signed by or on behalf of the prosecutor and stating the date on which the prosecutor first knew of evidence sufficient to justify the proceedings is conclusive evidence of that fact; and

(b) a certificate stating that matter and purporting to be so signed is deemed to be so signed unless the contrary is proved.

(5) The offences specified for the purposes of this regulation are—

(a) a species offence;

(b) an offence under regulation 52 (introduction of new species from ships);

(c) an offence under regulation 57 (false statements made for obtaining licence); and

(d) an offence under regulation 116(1) or (2) (attempts and possession of means of committing offence).

**Offences by bodies corporate etc.**

**124.**—(1) If an offence under these Regulations committed by a body corporate (other than a limited liability partnership or a Scottish partnership) is proved—

(a) to have been committed with the consent or connivance of an officer, or

(b) to be attributable to any neglect on the part of an officer,

the officer, as well as the body corporate, is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) If the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with the member's functions of management as it applies to an officer of a body corporate.

(3) If an offence under these Regulations committed by a partnership (including a limited liability partnership and a Scottish partnership) is proved—

(a) to have been committed with the consent or connivance of a partner, or

(b) to be attributable to any neglect on the part of a partner,

the partner, as well as the partnership, is guilty of the offence and liable to be proceeded against and punished accordingly.

(4) If an offence under these Regulations committed by an unincorporated body (other than an unincorporated partnership) is proved—

(a) to have been committed with the consent or connivance of an officer of the body, or

(b) to be attributable to any neglect on the part of such an officer,

the officer, as well as the body, is guilty of the offence and liable to be proceeded against and punished accordingly.

(5) In this regulation—

- (a) “officer” includes a person purporting to act as an officer; and
- (b) “partner” includes a person purporting to act as a partner.

### **Application of criminal offences to the Crown**

**125.**—(1) No contravention by the Crown of any provision of these Regulations makes the Crown criminally liable, but the High Court may, on the application of any person appearing to the Court to have an interest, declare unlawful an act or omission of the Crown which constitutes such a contravention.

(2) Notwithstanding paragraph (1), these Regulations apply to persons in the public service of the Crown as they apply to any other person.

### *Interpretation of Part 7*

### **Interpretation of Part 7**

**126.** In this Part—

- (a) a “species offence” means an offence under—
  - (i) regulation 41 (protection of certain wild animals: offences),
  - (ii) regulation 43 (prohibition of certain methods of capturing or killing wild animals),
  - (iii) regulation 45 (protection of certain wild plants: offences), or
  - (iv) regulation 58 (offence of breaching licence condition); and
- (b) “premises” includes land (including buildings), movable structures, vehicles, vessels, aircraft and other means of transport.

## **PART 8**

### **FINAL PROVISIONS**

### **Powers of drainage authorities**

**127.**—(1) Where the appropriate nature conservation body or any other person enter into an agreement with a drainage authority for the doing by that authority of any work on land in a European site, no limitation imposed by law on the capacity of the drainage authority by virtue of its constitution operates so as to prevent the authority carrying out the agreement.

(2) In paragraph (1) “drainage authority” means the Environment Agency or an internal drainage board<sup>(173)</sup>.

### **Advisory role of the Joint Nature Conservation Committee**

**128.**—(1) The Joint Nature Conservation Committee may provide advice or make representations to any competent authority in relation to—

- (a) any question as to whether that authority is obliged to carry out an appropriate assessment in relation to a European offshore marine site under these Regulations;

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(173) See section 1 of the Land Drainage Act 1991 (c. 59).

- (b) any appropriate assessment on which that authority is obliged to consult the Committee under these Regulations;
- (c) any application made pursuant to regulation 75 (general development orders: approval of local planning authority) and sent to the Committee by that authority pursuant to regulation 75(3);
- (d) any decision of the Secretary of State in respect of which notice has been served on the Committee under paragraph (2)(b) of regulation 87 (consents under Electricity Act 1989: procedure on review) or 91 (authorisations under Pipe-lines Act 1962: procedure on review); and
- (e) any decision of the appropriate authority in respect of which notice has been served on the Committee under paragraph (2)(b) of regulation 95 (orders under Transport and Works Act 1992: procedure on review).

(2) The Joint Nature Conservation Committee may undertake, commission or support (whether by financial means or otherwise) such research and scientific work as they consider is required for the purposes of providing advice or making representations under this regulation.

#### **Advisory role of Natural England, the Countryside Council for Wales and Scottish Natural Heritage**

**129.**—(1) Natural England may—

- (a) provide advice and assistance, or make representations, to any competent authority on any matter which relates to England and is connected with the discharge of the competent authority's functions under these Regulations; and
- (b) undertake, commission or support (whether by financial means or otherwise) such research and scientific work as they consider is required for the purposes of providing advice or assistance or making representations under sub-paragraph (a).

(2) The Countryside Council for Wales may—

- (a) provide advice and assistance, or make representations, to any competent authority on any matter which relates to Wales and is connected with the discharge of the competent authority's functions under these Regulations; and
- (b) undertake, commission or support (whether by financial means or otherwise) such research and scientific work as they consider is required for the purposes of providing advice or assistance or making representations under sub-paragraph (a).

(3) Scottish Natural Heritage may—

- (a) provide advice and assistance, or make representations, to any competent authority on any matter which relates to Scotland and is connected with the discharge of the competent authority's functions under these Regulations; and
- (b) undertake, commission or support (whether by financial means or otherwise) such research and scientific work as they consider is required for the purposes of providing advice or assistance or making representations under sub-paragraph (a).

#### **Local inquiries**

**130.**—(1) The appropriate authority may cause a local inquiry to be held for the purposes of the exercise of any of their functions under these Regulations.

(2) The provisions of section 250(2) to (5) of the Local Government Act 1972<sup>(174)</sup> (which relate to evidence and costs in inquiries) apply in relation to an inquiry held under this regulation.

## Notices

**131.**—(1) Any notice required or authorised to be served under these Regulations to any person may be given by—

- (a) delivering it to the person;
- (b) leaving it at the person's proper address; or
- (c) sending it by post to the person at that address.

(2) Any such notice may—

- (a) in the case of a body corporate, be served on an officer of the body;
- (b) in the case of a limited liability partnership, Scottish partnership or unincorporated partnership, be served on a partner or a person having the control or management of the partnership business; and
- (c) in the case of an unincorporated body other than an unincorporated partnership, be served on an officer of that body.

(3) For the purposes of this regulation and section 7 of the Interpretation Act 1978<sup>(175)</sup> (service of documents by post) in its application to this regulation, the proper address of any person on whom a notice is to be served is—

- (a) in the case of a body corporate, the address of the registered or principal office of the body;
- (b) in the case of a limited liability partnership or a Scottish partnership, the address of the registered or principal office of the partnership;
- (c) in the case of an unincorporated partnership or any other unincorporated body, the address of the principal office of the partnership or body;
- (d) in the case of a person on whom the notice is served in reliance on paragraph (2), the proper address of the body corporate, partnership or other unincorporated body in question; and
- (e) in any other case, the last known address of the person in question.

(4) If a person on whom a notice is to be served under these Regulations has specified an address for service of such a notice, that address is also to be treated, for the purposes of this regulation and section 7 of the Interpretation Act 1978 in its application to this regulation, as that person's proper address.

(5) If the name or address of any occupier of premises on whom a notice is to be served under these Regulations cannot, after reasonable inquiry, be ascertained, the notice may be served by leaving it conspicuously affixed to a building or object on the premises.

(6) This regulation is subject to any provision of these Regulations, or to any direction given under these Regulations, which relates to the service of any notice under these Regulations.

(7) This regulation does not apply to the service of any notice required or authorised to be served under the Acquisition of Land Act 1981<sup>(176)</sup>, as applied by these Regulations (see regulation 34 (powers of compulsory acquisition)).

(8) In this regulation—

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<sup>(174)</sup>1972 c. 70; section 250 was amended by the Criminal Justice Act 1982 (c. 48), sections 37, 38 and 46; the Housing and Planning Act 1986 (c. 63), Part 3 of Schedule 12; and the Statute Law (Repeals) Act 1989 (c. 43).

<sup>(175)</sup>1978 c. 30.

<sup>(176)</sup>1981 c. 67.

- (a) “body corporate” does not include a limited liability partnership or a Scottish partnership; and
- (b) references to serving include references to similar expressions (such as giving or sending).

### Amendments of legislation

**132.** Schedule 6 (which makes amendments to legislation) has effect.

### Revocations

**133.—**(1) The 1994 Regulations are revoked as provided in paragraphs (2) and (3).

(2) The following provisions are revoked—

- (a) regulation 37(3)(**177**) (national policy statement under Part 2 of Planning Act 2008);
- (b) in paragraph (2)(d) of regulation 54 (grant of planning permission), the words “section 5(1) of the Pipe-lines Act 1962 or paragraph 7 of Schedule 8 to the Electricity Act 1989,”;
- (c) regulations 67A, 67B and 68(2)(**178**) (development consents under Planning Act 2008);
- (d) regulations 71 to 74 (consents under Electricity Act 1989);
- (e) regulations 75 to 78 (authorisations under Pipe-lines Act 1962); and
- (f) both regulations 85F(**179**) (national policy statement under Part 2 of Planning Act 2008).

(3) Provisions of the 1994 Regulations not specified in paragraph (2) are revoked so far as required so that those provisions, as they continue to have effect, extend to Scotland only.

(4) Schedule 7 (revocations) has effect as follows in relation to enactments other than the 1994 Regulations—

- (a) Part 1 specifies provisions of enactments which are revoked; and
- (b) Part 2 specifies provisions of enactments which are revoked so far as required so that those provisions, as they continue to have effect, extend to Scotland only.

### Transitional provisions

**134.—**(1) Any licence granted by Natural England under any of sub-paragraphs (a) to (d) of regulation 44(2) of the 1994 Regulations (grant of licences for certain purposes) before 1st April 2010, to the extent that it relates to the restricted English inshore region, is to have effect from that date as a licence granted by the Marine Management Organisation under regulation 53(1) of these Regulations (licences for certain activities relating to animals or plants) for a purpose specified in the corresponding sub-paragraph of paragraph (2) of that regulation.

(2) Any application to Natural England for a licence under any of sub-paragraphs (a) to (d) of regulation 44(2) of the 1994 Regulations, to the extent that it relates to the restricted English inshore region, and which was made, but not determined or withdrawn, before 1st April 2010, is to be treated as an application made to the Marine Management Organisation on or after 1st April 2010 under regulation 53(1) of these Regulations for a purpose specified in the corresponding sub-paragraph of paragraph (2) of that regulation.

(3) Any licence granted before 1st April 2010—

- (a) under regulation 37D(**180**) of the 1994 Regulations (licensing the introduction of new species),

(177) Regulation 37(3) was inserted by [S.I. 2009/2438](#).

(178) Regulations 67A and 67B were inserted, and regulation 68 was substituted, by [S.I. 2009/2438](#).

(179) Both regulations 85F were inserted by [S.I. 2009/2438](#), one applying in England and Wales and the other in Scotland.

(180) Regulation 37D was inserted by [S.I. 2007/1843](#).

- (b) under any of sub-paragraphs (a) to (d) of regulation 44(2) of the 1994 Regulations—
  - (i) by Natural England, to the extent that the licence relates to an area other than the restricted English inshore region, or
  - (ii) by the Countryside Council for Wales,
- (c) under any of sub-paragraphs (e) to (g) of regulation 44(2) of the 1994 Regulations, or
- (d) under regulation 44(2A)(**181**) of those Regulations,

is to have effect from that date as a licence granted under regulation 53(1) (for a purpose specified in the corresponding sub-paragraph of paragraph (2) of that regulation), regulation 53(4) or 54 of these Regulations (whichever is the corresponding provision).

(4) Any application—

- (a) for a licence under regulation 37D of the 1994 Regulations,
- (b) for a licence under any of sub-paragraphs (a) to (d) of regulation 44(2) of the 1994 Regulations—
  - (i) made to Natural England, to the extent that the licence relates to an area other than the restricted English inshore region, or
  - (ii) made to the Countryside Council for Wales,
- (c) for a licence under any of sub-paragraphs (e) to (g) of regulation 44(2) of the 1994 Regulations, or
- (d) for a licence under regulation 44(2A) of those Regulations,

which was made, but not determined or withdrawn, before 1st April 2010 is to be treated as an application made on or after 1st April 2010 under regulation 53(1) (for a purpose specified in the corresponding sub-paragraph of paragraph (2) of that regulation), regulation 53(4) or 54 of these Regulations (whichever is the corresponding provision).

(5) Any agreement previously entered into by Natural England or the Countryside Council for Wales under regulation 16 of the 1994 Regulations (management agreements), or having effect as if it had been entered into by either of those bodies under that provision, and which is in force immediately before 1st April 2010, has effect as if it were a management agreement entered into by Natural England or the Countryside Council for Wales (as the case may be) under regulation 16 (management agreements) of these Regulations.

(6) Nothing in this regulation prejudices the application of section 16 (general savings) or 17 (repeal and re-enactment) of the Interpretation Act 1978(**182**) to any case not provided for in this regulation.

1st March 2010

1st March 2010

*Huw Irranca-Davies*  
Parliamentary Under Secretary of State  
Department for Environment, Food and Rural  
Affairs  
*Jane Davidson*  
Minister for Environment, Sustainability and  
Housing One of the Welsh Ministers

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(**181**) Paragraph (2A) of regulation 44 was inserted by [S.I. 2007/1843](#).

(**182**) [1978 c. 30](#).

## SCHEDULE 1

Regulation 25(3)

## SPECIAL NATURE CONSERVATION ORDERS: PROCEDURE

*Coming into operation*

- 1.—(1) An original order or a restrictive amending order takes effect on its being made.
- (2) The appropriate authority must consider every such order, and the order ceases to have effect nine months after it is made unless—
- (a) that authority have previously given notice under paragraph 6 that the order has been considered and that it is not proposed to amend or revoke it; or
  - (b) the order has been revoked.
- (3) Subject to paragraphs 3(2) and 4(4), a revoking order, or an amending order which is not restrictive, does not take effect until confirmed by the appropriate authority.
- (4) An amending or revoking order requiring confirmation is to be treated as being revoked if the appropriate authority give notice under paragraph 6 that it is not to be confirmed.

*Publicity for orders*

- 2.—(1) The appropriate authority must, where an order has been made, give notice setting out the order (or describing its general effect) and stating that it has taken effect or, as the case may be, that it has been made and requires confirmation.
- (2) The notice must—
- (a) name a place in the area in which the land to which the order relates is situated where a copy of the order may be inspected free of charge at all reasonable hours; and
  - (b) specify the time (not being less than 28 days from the date of the first publication of the notice) within which, and the manner in which, representations or objections with respect to the order may be made.
- (3) The notice must be given—
- (a) by publication in the London Gazette and also at least one local newspaper circulating in the area in which the land to which the order relates is situated;
  - (b) by serving an equivalent notice—
    - (i) on every owner and occupier of that land (subject to sub-paragraph (4)); and
    - (ii) on the local planning authority within whose area the land is situated.
- (4) The appropriate authority may, in any particular case, direct that it is not necessary to comply with sub-paragraph (3)(b)(i).
- (5) Where the appropriate authority give a direction under paragraph (4) in the case of an order specifying any operation carried out, or proposed to be carried out, on any land—
- (a) in addition to publication the notice must be addressed to “The owners and any occupiers” of the land (describing it), describing details of the operation and the details of the European site to which the order relates; and
  - (b) a copy or copies of the notice must be affixed to some conspicuous object or objects on the land.



### *Unopposed orders*

3.—(1) Where an order has taken effect immediately and no representations or objections are duly made in respect of it, or any so made are withdrawn, the appropriate authority must, as soon as practicable after considering the order, decide either to take no action on it or to make an order amending or revoking it.

(2) Where an amending or revoking order is made under sub-paragraph (1)—

- (a) it takes effect immediately;
- (b) it does not require confirmation; and
- (c) it is not necessary to consider any representation or objection made in respect of it.

(3) Where an order requiring confirmation (in accordance with paragraph 1(3)) is made and no representations or objections are duly made in respect of it, or any so made are withdrawn, the appropriate authority may confirm the order (with or without modifications).

### *Opposed orders*

4.—(1) If any representation or objection duly made with respect to an order is not withdrawn, the appropriate authority must, as soon as practicable (in the case of an order having immediate effect) or (in the case of an order requiring confirmation) before confirming the order—

- (a) cause a local inquiry to be held; or
- (b) afford any person by whom a representation or objection has been duly made and not withdrawn an opportunity of being heard by a person appointed by the appropriate authority for the purpose.

(2) On considering any representations or objections duly made and the report of any person appointed to hold the inquiry or to hear representations or objections, the appropriate authority—

- (a) if the order has already taken effect, must decide either to take no action on the order or to make an order amending or revoking it as appropriate in the light of the report, representations or objections; and
- (b) if the order requires confirmation, may confirm it (with or without modifications).

(3) The provisions of section 250(2) to (5) of the Local Government Act 1972<sup>(183)</sup> (which relate to evidence and costs in inquiries) apply in relation to an inquiry held under this paragraph.

(4) Where an amending or revoking order is made under sub-paragraph (2)(a)—

- (a) it takes effect immediately;
- (b) it does not require confirmation; and
- (c) it is not necessary to consider any representation or objection made in respect of it.

### *Restriction on power to amend orders or confirm them with modifications*

5. The appropriate authority may not, by virtue of paragraph 3(1) or 4(2), amend an order which has taken effect, or confirm any other order with modifications, so as to extend the area to which the order applies.

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<sup>(183)</sup> 1972 c. 70; section 250 was amended by the Criminal Justice Act 1982 (c. 48), sections 37, 38 and 46; the Housing and Planning Act 1986 (c. 63), Part 3 of Schedule 12; and the Statute Law (Repeals) Act 1989 (c. 43).

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

### *Notice of final decision on order*

6.—(1) The appropriate authority must, as soon as practicable after making an order under paragraph 3(1) or 4(2)(a), give notice—

- (a) setting out the order (or describing its effect) and stating that it has taken effect; and
- (b) naming a place in the area in which the land to which the order relates is situated where a copy of the order may be inspected free of charge at all reasonable hours.

(2) The appropriate authority must give notice of any of the following decisions as soon as practicable after making the decision—

- (a) a decision under paragraph 3(1) or 4(2)(a) to take no action on an order which has already taken effect;
- (b) a decision to confirm or not to confirm an order requiring confirmation under this Schedule.

(3) A notice under this paragraph of a decision to confirm an order must—

- (a) set out the order as confirmed (or describe its general effect) and state the day on which the order took effect; and
- (b) name a place in the area in which the land to which the order relates is situated where a copy of the order as confirmed may be inspected free of charge at all reasonable hours.

(4) Any notice under this paragraph must be given by publishing it in accordance with paragraph 2(3)(a) and serving a copy of it on any person on whom a notice was required to be served under paragraph 2(3)(b).

### *Proceedings for questioning validity of orders*

7.—(1) This paragraph applies to any order which has taken effect and as to which the appropriate authority have given notice under paragraph 6 of a decision to take no action or to amend the order in accordance with paragraph 4 (“the relevant notice”).

(2) If any person is aggrieved by an order to which this paragraph applies and desires to question its validity on the ground that it is not within the powers of regulation 25 (power to make special nature conservation order), or that any of the requirements of this Schedule have not been complied with in relation to it, that person may within six weeks from the date of the relevant notice make an application to the High Court.

(3) On any such application the High Court may, if satisfied that the order is not within those powers or that the interests of the applicant have been substantially prejudiced by a failure to comply with any of those requirements, quash the order, or any provision of the order, either generally or in so far as it affects the interests of the applicant.

(4) Except as provided by this paragraph, the validity of an order may not be questioned in any legal proceedings whatsoever.

### *Interpretation*

8. In this Schedule—

“amending order” and “revoking order” mean an order which amends or, as the case may be, revokes a previous order;

“order” means an order under regulation 25 (special nature conservation order);

“original order” means an order other than an amending or revoking order; and

“restrictive”, in relation to an amending order, means extending the area to which a previous order applies.

## SCHEDULE 2

Regulation 40(1)

## EUROPEAN PROTECTED SPECIES OF ANIMALS

Common name	Scientific name
Bats, Horseshoe (all species)	Rhinolophidae
Bats, Typical (all species)	Vespertilionidae
Butterfly, Large Blue	Maculinea arion
Cat, Wild	Felis silvestris
Dolphins, porpoises and whales (all species)	Cetacea
Dormouse	Muscardinus avellanarius
Frog, Pool	Rana lessonae
Lizard, Sand	Lacerta agilis
Moth, Fisher’s Estuarine	Gortyna borelii lunata
Newt, Great Crested (or Warty)	Triturus cristatus
Otter, Common	Lutra lutra
Snail, Lesser Whirlpool Ram’s-horn	Anisus vorticulus
Snake, Smooth	Coronella austriaca
Sturgeon	Acipenser sturio
Toad, Natterjack	Bufo calamita
Turtles, Marine	Caretta caretta
	Chelonia mydas
	Lepidochelys kempii
	Eretmochelys imbricata
	Dermochelys coriacea

NOTE. The common name or names given in the first column of this Schedule are included by way of guidance only; in the event of any dispute or proceedings, the common name or names must not be taken into account.

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

## SCHEDULE 3

Regulation 42(8)(a)

## EXCLUDED POPULATIONS OF CERTAIN SPECIES

(1)Common name	(2)Scientific name	(3) Excluded countries and areas
Beaver, Eurasian	Castor fiber	Estonia, Finland, Latvia, Lithuania, Poland and Sweden
Hamster, Common (or Black bellied)	Cricetus cricetus	Hungary
Wolf, Grey	Canis lupus	Bulgaria, Estonia, Greece north of the 39th parallel, Latvia, Lithuania, Poland, Slovakia, Spain north of the River Duero, and the reindeer management area in Finland as defined in paragraph 2 of Finnish Act No. 848/90 of 14th September 1990 on reindeer management(184)
Lynx, Eurasian	Lynx lynx	Estonia
Viper, Seoane's	Vipera seoanni	Spain

NOTE: The common name or names given in the first column to this Schedule are included by way of guidance only; in the event of any dispute or proceedings, the common name or names must not be taken into account.

## SCHEDULE 4

Regulation 43(1)(a)

## ANIMALS WHICH MAY NOT BE CAPTURED OR KILLED IN CERTAIN WAYS

Common name	Scientific name
Barbel	Barbus barbus
Grayling	Thymallus thymallus
Hare, Mountain	Lepus timidus
Lamprey, River	Lampetra fluviatilis
Marten, Pine	Martes martes
Polecat	Mustela putorius (otherwise known as Putorius putorius)
Salmon, Atlantic	Salmo salar (only in fresh water)
Seal, Bearded	Erignathus barbatus

NOTE: The common name or names given in the first column of this Schedule are included by way of guidance only; in the event of any dispute or proceedings, the common name or names must not be taken into account.

(184) A copy of this Finnish Act can be obtained from the Wildlife Species Conservation Division, Defra, Temple Quay House, 2 The Square, Temple Quay, Bristol BS1 6EB.

Common name	Scientific name
Seal, Common	Phoca vitulina
Seal, Grey	Halichoerus grypus
Seal, Harp	Phoca groenlandica (otherwise known as Pagophilus groenlandicus)
Seal, Hooded	Cystophora cristata
Seal, Ringed	Phoca hispida (otherwise known as Pusa hispida)
Shad, Allis	Alosa alosa
Shad, Twaite	Alosa fallax
Vendace	Coregonus albula
Whitefish	Coregonus lavaretus

NOTE. The common name or names given in the first column of this Schedule are included by way of guidance only; in the event of any dispute or proceedings, the common name or names must not be taken into account.

## SCHEDULE 5

Regulation 44(1)

## EUROPEAN PROTECTED SPECIES OF PLANTS

Common name	Scientific name
Dock, Shore	Rumex rupestris
Fern, Killarney	Trichomanes speciosum
Gentian, Early	Gentianella anglica
Lady's-slipper	Cypripedium calceolus
Marshwort, Creeping	Apium repens
Naiad, Slender	Najas flexilis
Orchid, Fen	Liparis loeselii
Plantain, Floating-leaved water	Luronium natans
Saxifrage, Yellow Marsh	Saxifraga hirculus

NOTE. The common name or names given in the first column of this Schedule are included by way of guidance only; in the event of any dispute or proceedings, the common name or names must not be taken into account.

## SCHEDULE 6

Regulation 132

## AMENDMENTS OF LEGISLATION

## PART 1

## PRIMARY LEGISLATION

**Amendment of the Harbours Act 1964**

1. In the Harbours Act 1964(**185**), in Part 1 of Schedule 3 (procedure for making harbour revision and empowerment orders), in paragraph 1 (interpretation), for paragraph (j) of the definition of “sensitive area”(**186**) substitute—

“(j) a European site within the meaning of the Conservation of Habitats and Species Regulations 2010 (see regulation 8);”.

**Amendment of the Conservation of Seals Act 1970**

2. In the Conservation of Seals Act 1970(**187**), in subsection (4A)(**188**) of section 10 (power to grant licences), for “regulation 41 of the Conservation (Natural Habitats, &c) Regulations 1994” substitute “regulation 43 of the Conservation of Habitats and Species Regulations 2010”.

**Amendment of the Highways Act 1980**

3. In the Highways Act 1980(**189**), in section 105A(**190**) (environmental impact assessments), in subsection (6)(i)(**191**), for “regulation 10 of the Conservation (Natural Habitats etc) Regulations 1994” substitute “the Conservation of Habitats and Species Regulations 2010 (see regulation 8)”.

**Amendment of the Constitutional Reform Act 2005**

4. In the Constitutional Reform Act 2005(**192**), in Part 3 of Schedule 14(**193**) (appointments by the Lord Chancellor: offices to which paragraph 2(2)(d) of Schedule 12 applies), in the column entitled “enactment”, for the entry “Regulation 32(3)(a) of the Conservation (Natural Habitats, &c) Regulations 1994 ([SI 1994/2716](#))” substitute “Regulation 34(3) of the Conservation of Habitats and Species Regulations 2010 ([S.I. 2010/490](#))”.

**Amendment of the Marine Act**

5.—(1) The Marine Act is amended as follows.

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(**185**) 1964 c. 40.

(**186**) The definition of “sensitive area” was amended by [S.I. 1999/3445](#); the Countryside and Rights of Way Act 2000 ([c. 37](#)), paragraph 3 of Schedule 10, paragraph 4 of Schedule 15 and Part 3 of Schedule 16; the Nature Conservation (Scotland) Act 2004 ([asp 6](#)), paragraph 1 of Schedule 7; the Transport and Works (Scotland) Act 2007 ([asp 8](#)), section 25(1) and (5)(a)(ii) and (iii); and [S.S.I. 2008/202](#).

(**187**) 1970 c. 30.

(**188**) Subsection (4A) was inserted, in relation to England and Wales, by [S.I. 2007/1843](#) (subsection (4A) was inserted in relation to Scotland by [S.S.I. 2007/80](#)).

(**189**) 1980 c. 66.

(**190**) Section 105A was inserted by [S.I. 1988/1241](#) and substituted by [S.I. 1999/369](#).

(**191**) Subsection (6) was amended by the Countryside and Rights of Way Act 2000 ([c. 37](#)), paragraph 5 of Schedule 10, paragraph 5 of Schedule 15 and Part 3 of Schedule 16.

(**192**) 2005 c. 4.

(**193**) There are amendments to Part 3 of Schedule 14 not relevant to these Regulations.

(2) In section 12 (certain consents under section 36 of the Electricity Act 1989), subsection (5) (c) is omitted.

(3) In subsection (9) of section 123 (creation of network of conservation sites), in paragraph (a) of the definition of “European marine site”—

(a) after “within the meaning of” insert “— (i)”; and

(b) after “, or” insert—

“(ii) the Conservation of Habitats and Species Regulations 2010 ([S.I. 2010/490](#)) (see regulation 8), or”.

(4) In subsection (6)(d) of section 158 (byelaws: supplementary provision), for “the Conservation (Natural Habitats, &c) Regulations 1994 ([S.I. 1994/2716](#))” substitute “the Conservation of Habitats and Species Regulations 2010 ([S.I. 2010/490](#)) (see regulation 8)”.

(5) In subsection (2) of section 237 (enforcement of nature conservation legislation)—

(a) omit paragraphs (c) and (d); and

(b) after paragraph (h) add—

“(i) regulations 41, 43, 45, 52, 57, 58 and 116(1) and (2) of the Conservation of Habitats and Species Regulations 2010 ([S.I. 2010/490](#));

(j) any byelaws or orders made by virtue of regulation 30 or 38 of those Regulations.

(6) Paragraph 4 of Schedule 11 (amendment of the 1994 Regulations) is omitted.

## PART 2

### SUBORDINATE LEGISLATION

#### **Amendment of the 1994 Regulations**

**6.** In the 1994 Regulations, in regulation 3(**194**) (implementation of Directive), after paragraph (4) add—

“(5) This regulation does not apply in relation to functions which relate to reserved matters (within the meaning of Schedule 5 to the Scotland Act 1998).”.

#### **Amendment of the 2007 Regulations**

**7.—**(1) The 2007 Regulations are amended as follows.

(2) In paragraph (2) of regulation 2(**195**) (interpretation)—

(a) after the definition of “the 1994 Regulations” insert—

““the 2010 Regulations” means the Conservation of Habitats and Species Regulations 2010(**196**);”; and

(b) in paragraph (a) of the definition of “management scheme”, for “or regulation 29 of the Conservation (Natural Habitats, &c) Regulations (Northern Ireland) 1995” substitute “, regulation 29 of the Conservation (Natural Habitats, &c) Regulations (Northern Ireland) 1995 or regulation 36 of the 2010 Regulations”.

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(**194**) There are amendments to regulation 3 not relevant to these Regulations.

(**195**) There are amendments to regulation 2 not relevant to these Regulations.

(**196**) [S.I. 2010/490](#).

(3) In paragraph (12) of regulation 19~~(197)~~ (management schemes for European offshore marine sites), for “or the Conservation (Natural Habitats, &c) Regulations (Northern Ireland) 1995.” substitute “, the Conservation (Natural Habitats, &c) Regulations (Northern Ireland) 1995 or the 2010 Regulations.”.

(4) In regulation 25~~(198)~~ (protection of European offshore marine sites and European sites)—

(a) in paragraph (7), for “1994” substitute “Conservation” (in both places); and

(b) after paragraph (7) insert—

“(7A) In paragraph (7) “the Conservation Regulations” means either the 1994 Regulations or the 2010 Regulations (as the case may be).”.

(5) In regulation 27~~(199)~~ (review of existing decisions and consents), for paragraph (8) substitute—

“(8) Regulations 87 and 88 of the 2010 Regulations (consents under Electricity Act 1989~~(200)~~; procedure on review and effect of review) apply in relation to any decision under paragraph (4) revoking or modifying a consent granted under section 36~~(201)~~ or 37~~(202)~~ of the Electricity Act 1989 as they apply in relation to a decision pursuant to regulation 86 of the 2010 Regulations revoking or varying any such consent, but with the modifications specified in paragraphs (9) and (10).

(9) In regulation 87—

(a) in paragraph (1)—

(i) for “86(3), (5) or (6)” substitute “86(3) or (5)”,

(ii) omit “or a direction deeming planning permission to be granted”,

(iii) in sub-paragraph (a), omit “or, as the case may be, in whose favour the direction was made”, and

(iv) in sub-paragraph (b), omit “in the case of a consent under section 36 of the Electricity Act 1989,”;

(b) omit paragraph (2)(a); and

(c) in paragraph (4)—

(i) omit “, or the relevant planning authority,”; and

(ii) in sub-paragraph (a), omit “or the relevant planning authority (as the case may be)”.

(10) In regulation 88—

(a) in paragraph (1)—

(i) for “86(3), (5) or (6)” substitute “86(3) or (5)”, and

(ii) omit “or a direction deeming planning permission to be granted”; and

(b) in paragraphs (2) and (3), omit “or direction” (in all places).”.

~~(197)~~ There are amendments to regulation 19 not relevant to these Regulations.

~~(198)~~ There are amendments to regulation 25 not relevant to these Regulations.

~~(199)~~ There are amendments to regulation 27 not relevant to these Regulations.

~~(200)~~ 1989 c. 29.

~~(201)~~ Section 36 was amended by the Energy Act 2004 (c. 20), section 93(1) and (3); the Planning Act 2008 (c. 29), paragraphs 31 and 32 of Schedule 2; the Marine and Coastal Access Act 2009 (c. 23), section 12(7)(a) and (8); and, in relation to Scotland, by S.I. 2006/1054, paragraph 1(1) and (2) of Schedule 1.

~~(202)~~ Section 37 was amended by the Planning Act 2008 (c. 29), paragraphs 31 and 33 of Schedule 2.



## SCHEDULE 7

Regulation 133(4)

## REVOCATIONS

## PART 1

## REVOCATIONS

Title	S.I. number	Extent of revocation
The National Park Authorities (Wales) Order	<a href="#">1995/2803</a>	Paragraph 20 of Schedule 5, and article 18 in so far as it relates to that paragraph
Local Government Reorganisation (Wales) (Consequential Amendments) Order 1996	<a href="#">1996/525</a>	Paragraph 18 of the Schedule, and article 3 in so far as it relates to that paragraph
The National Park Authorities (England) Order	<a href="#">1996/1243</a>	Paragraph 14 of Schedule 5, and article 18 in so far as it relates to that paragraph
Conservation (Natural Habitats, &c.) (Amendment) (England) Regulations 2000	<a href="#">2000/192</a>	The whole Regulations
Pollution Prevention and Control (England and Wales) Regulations 2000	<a href="#">2000/1973</a> (203)	Paragraph 37 of Schedule 10, and regulation 39 in so far as it relates to that paragraph
The New Forest National Park Authority (Establishment) Order	<a href="#">2005/421</a>	Paragraph 11 of Schedule 3, and article 16 in so far as it relates to that paragraph
Serious Organised Crime and Police Act 2005 (Powers of Arrest) (Consequential Amendments) Order 2005	<a href="#">2005/3389</a>	Article 9
Town and Country Planning (Application of Subordinate Legislation to the Crown) Order 2006	<a href="#">2006/1282</a>	Article 15
Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007	<a href="#">2007/1843</a>	In regulation 5, paragraphs (2)(b) and (c), (2)(d) (in respect of the definitions of “premises” and “sample” only), (2)(e), (3) (in respect of the insertion of paragraph (2A) only), (4), (5), (7) to (21), (23)(b) and (e), (24)(a), (29)(a), (31), (36), (41),

(203) [S.I. 2000/1973](#) was revoked by [S.I. 2007/3538](#), but regulation 72(9) of [S.I. 2007/3538](#) contains a saving in relation to amendments to enactments made by [S.I. 2000/1973](#).

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

Title	S.I. number	Extent of revocation
		(42), (43), (46), (48), (50), (55) to (60) and (62)
Environmental Permitting (England and Wales) Regulations 2007	<a href="#">2007/3538</a>	Paragraph 35 of Schedule 21, and regulation 73 in so far as it relates to that paragraph
Conservation (Natural Habitats, &c.) (Amendment) (England and Wales) Regulations 2008	<a href="#">2008/2172</a>	Regulations 2 and 3
Conservation (Natural Habitats, &c.) (Amendment) (England and Wales) Regulations 2009	<a href="#">2009/6</a>	The whole Regulations
Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009	<a href="#">2009/1307</a>	Paragraphs 48, 49 and 52 of Schedule 2, and article 5(3) in so far as it relates to those paragraphs
Conservation (Natural Habitats, &c.) (Amendment) (No. 2) Regulations 2009	<a href="#">2009/2438</a>	The whole Regulations, except for regulation 6(2) in so far as it relates to regulation 68(1)(b) of the 1994 Regulations
Nitrate Pollution Prevention (Amendment) Regulations 2009	<a href="#">2009/3160</a>	Regulation 11
Nitrate Pollution Prevention (Amendment) (Wales) Regulations 2010	<a href="#">2010/489</a>	Regulation 11

## PART 2

### REVOCATIONS NOT EXTENDING TO SCOTLAND

Title	S.I. number	Extent of revocation
Conservation (Natural Habitats, &c.) (Amendment) Regulations 1997	<a href="#">1997/3055</a>	The whole Regulations
Communications Act 2003 (Consequential Amendments) Order 2003	<a href="#">2003/2155</a>	Paragraph 36 of Schedule 1, and article 3(1) in so far as it relates to that paragraph
Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007	<a href="#">2007/1843</a>	In regulation 5, paragraphs (2) (a), (2)(d) (except in respect of the definitions of “premises” and “sample”), (3) (in respect of the insertion of paragraph (2B) only), (6), (22), (23)(a), (c) and (d), (24)(b), (25) to (27), (29)(c)

Title	S.I. number	Extent of revocation
		and (d), (30), (33) to (35), (37) to (39), (44), (45) and (61)
Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009	<a href="#">2009/1307</a>	Paragraphs 46, 47, 50 and 51 of Schedule 2, and article 5(3) in so far as it relates to those paragraphs
Conservation (Natural Habitats, &c.) (Amendment) (No. 2) Regulations 2009	<a href="#">2009/2438</a>	Regulation 6(2) in so far as it relates to regulation 68(1)(b) of the 1994 Regulations

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations consolidate the Conservation (Natural Habitats, &c.) Regulations 1994<sup>(204)</sup> (“the 1994 Regulations”). They also implement aspects of the Marine and Coastal Access Act 2009<sup>(205)</sup> (“the Marine Act”).

These Regulations extend to England and Wales (including the adjacent territorial sea). They also extend to Scotland (including the adjacent territorial sea) to a limited degree. They revoke the 1994 Regulations except (generally) as they extend to Scotland. In addition, in respect of reserved matters, these Regulations replace the 1994 Regulations as they extend to Scotland.

These Regulations transpose Council Directive [92/43/EEC](#) on the conservation of natural habitats and of wild fauna and flora<sup>(206)</sup> (“the Habitats Directive”).

### ***Part 1 – Introductory and general provisions***

Regulation 9 provides that public bodies must exercise their nature conservation functions so as to comply with the Habitats Directive.

### ***Part 2 – Conservation of natural habitats and habitats of species***

Regulations 10 to 15 make provision for the selection, designation, registration and notification of sites to be protected under the Habitats Directive (“European sites”). Regulations 16 to 18 make provision for management agreements for European sites. Regulations 19 to 34 make provision in respect of European sites for (i) control of damaging operations, (ii) special nature conservation orders and restoration orders, (iii) byelaws and (iv) compulsory purchase. Regulations 35 to 38 make provision for the protection of European marine sites.

<sup>(204)</sup>[S.I. 1994/2716](#).

<sup>(205)</sup>[2009 c. 23](#).

<sup>(206)</sup>[OJ No L 206, 22.7.1992, p. 7, last amended by Council Directive \[2006/105/EC\]\(#\) \(OJ No L 363, 20.12.2006, p. 368\).](#)

***Part 3 – Protection of species***

Part 3 provides for the protection of certain wild animals and plants. In particular, regulation 41 makes it an offence, subject to exceptions, deliberately to capture, kill or disturb those animals or to trade in them. Regulation 45 makes it an offence, subject to exceptions, to pick, collect, cut or destroy those plants or to trade in them. (These offences correspond to offences in the 1994 Regulations).

***Part 4 – Additional protection of habitats and wild animals and plants***

Regulation 48 imposes a duty on the Secretary of State and Welsh Ministers to make arrangements for the surveillance of the conservation status of natural habitats and species protected under the Habitats Directive. Regulation 50 requires them to make arrangements to establish a system to monitor the incidental capture and killing of animals listed in Annex IV(a) to the Habitats Directive.

Regulation 52 makes it an offence deliberately to introduce from a ship into the sea new species that are not native to Great Britain. (This corresponds to an offence in the 1994 Regulations).

***Part 5 – Licences***

Part 5 provides for the licensing of certain activities relating to animals and plants. The offences under Part 3 do not apply to anything done in accordance with a licence. Regulation 56(2)(a)(i) transfers certain licensing functions from Natural England to the Marine Management Organisation in respect of the territorial sea seaward of mean low water mark.

***Part 6 – Assessment of plans and projects***

Regulations 60 to 67 require the effect on a European site to be considered before the granting of consents or authorisations of a kind specified in regulations 68 to 101, including the grant of planning permission, consents under the Electricity Act 1989, authorisations under the Pipe-lines Act 1962, orders under the Transport and Works Act 1992, environmental permits, abstraction licences and marine works. Regulation 61 provides that a competent authority may not authorise a plan or project that may adversely affect the integrity of a European site, subject to the exceptions set out in regulation 62 (considerations of overriding public interest).

Chapter 8 of Part 6 sets out similar requirements in relation to land-use plans and national policy statements.

***Part 7 – Enforcement***

Part 7 sets out the enforcement powers of wildlife inspectors and constables. It also sets out certain further offences, including the offence of intentionally obstructing a wildlife inspector (regulation 119). (Again, these offences correspond to offences in the 1994 Regulations).

***Part 8 – Final provisions***

Regulation 132 and paragraph 5 of Schedule 6 amend the Marine Act. Paragraph 5(5) extends the powers conferred by that Act on marine enforcement officers in respect of the 1994 Regulations to offences under regulations 57, 58 and 116 of these Regulations.

An impact assessment prepared during the passage of the Marine Act can be found on the Department for Environment, Food and Rural Affairs' website at [www.defra.gov.uk](http://www.defra.gov.uk). An impact assessment has not been produced for this instrument as no impact on business or the private or voluntary sector is foreseen.