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STATUTORY INSTRUMENTS

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**1994 No. 2716**

**WILDLIFE  
COUNTRYSIDE**

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

*Made* - - - - 20th October 1994

*Coming into force* - - 30th October 1994

The Secretary of State for the Environment, as respects England, the Secretary of State for Wales, as respects Wales, and the Secretary of State for Scotland, as respects Scotland, being designated<sup>(1)</sup> Ministers for the purposes of section 2(2) of the European Communities Act 1972<sup>(2)</sup> in relation to measures relating to the conservation of natural habitats and of wild fauna and flora, in exercise of the powers conferred upon them by the said section 2 and of all other powers enabling them in that behalf, hereby make the following Regulations, a draft of which has been laid before and approved by a resolution of each House of Parliament:—

**Modifications etc. (not altering text)**

- C1** Regulations applied (with modifications) by S.I. 1995/2803, **Sch. 5 para. 20** (as inserted (E.W.) (1.4.1996) by [The National Park Authorities \(Wales\) \(Amendment\) Order 1996](#) (S.I. 1996/534), art. 1, **Sch. para. 2**)
- C2** Regulations: certain functions transferred (1.7.1999 immediately after the coming into force of [Scotland Act 1998](#) (c. 46), s. 53) by [The National Assembly for Wales \(Transfer of Functions\) Order 1999](#) (S.I. 1999/672), arts. 1(2), 2, **Sch. 1**
- C3** Regulations applied (with modifications) (24.3.2005) by [The New Forest National Park Authority \(Establishment\) Order 2005](#) (S.I. 2005/421), art. 1, **Sch. 3 para. 11**
- C4** Regulations applied (with modifications) (12.6.2006) by [The Town and Country Planning \(Application of Subordinate Legislation to the Crown\) \(Scotland\) Order 2006](#) (S.S.I. 2006/270), arts. 1(1), **15**

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(1) S.I.1992/2870.  
(2) 1972 c. 68.

*Status: Point in time view as at 12/01/2010.*

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

## PART I

### INTRODUCTORY PROVISIONS

#### Citation and commencement

1.—(1) These Regulations may be cited as the Conservation (Natural Habitats, &c.) Regulations 1994.

(2) These Regulations shall come into force on the tenth day after that on which they are made.

#### Commencement Information

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

#### Interpretation and application **E+W**

2.—(1) In these Regulations—

[<sup>F1</sup>“the 2007 Regulations” means the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007;]

<sup>F2</sup> ...

[<sup>F3</sup>“British fishery limits” has the meaning given by the Fishery Limits Act 1976;]

“competent authority” shall be construed in accordance with regulation 6;

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

[<sup>F3</sup>“the EC Treaty” means the Treaty establishing the European Community;]

“enactment” includes a local enactment and an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978(3);

[<sup>F3</sup>“European offshore marine site” means a European offshore marine site within the meaning of regulation 15 (meaning of European offshore marine site) of the 2007 Regulations;]

“European site” has the meaning given by regulation 10 and “European marine site” means a European site which consists of, or so far as it consists of, marine areas;

“functions” includes powers and duties;

[<sup>F4</sup>“the Habitats Directive” has the meaning given by paragraph (2A);]

“land” includes land covered by water and as respects Scotland includes salmon fishings;

“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;

“local planning authority” means—

- (a) in England and Wales, except as otherwise provided, any authority having any function as a local planning authority or mineral planning authority under the Town and Country Planning Act 1990(4), and

(3) 1978 c. 30.

(4) 1990 c. 8.

(b) in Scotland, a planning authority within the meaning of section 172(1) of the Local Government (Scotland) Act 1973<sup>(5)</sup>;

“management agreement” means an agreement entered into, or having effect as if entered into, under regulation 16;

“marine area” means any land covered (continuously or intermittently) by tidal waters or any part of the sea in or adjacent to Great Britain up to the seaward limit of territorial waters;

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

“nature conservation body”, and “appropriate nature conservation body” in relation to England, Wales or Scotland, have the meaning given by regulation 4;

“occupier”, for the purposes of Part III (protection of species), includes, in relation to any land other than the foreshore, any person having any right of hunting, shooting, fishing or taking game or fish;

[<sup>F3</sup>“the offshore marine area” means—

- (a) any part of the seabed and subsoil situated in any area designated under section 1(7) of the Continental Shelf Act 1964; and
- (b) any part of the waters within British fishery limits (except the internal waters of, and the territorial sea adjacent to, the United Kingdom, the Channel Islands and the Isle of Man);]

[<sup>F3</sup>“offshore marine installation” means any artificial island, installation or structure (other than a ship) which is situated—

- (a) in any part of the waters in any area designated under section 1(7) of the Continental Shelf Act 1964; or
- (b) in any part of the waters in any area designated under section 84(4) of the Energy Act 2004;]

“planning authority”, in Scotland, means a planning authority within the meaning of section 172(1) of the Local Government (Scotland) Act 1973;

[<sup>F3</sup>“premises” includes land (including buildings), movable structures, vehicles, vessels, aircraft and other means of transport;]

“the register” means the register of European sites in Great Britain provided for by regulation 11;

“relevant authorities”, in relation to marine areas and European marine sites, shall be construed in accordance with regulation 5;

[<sup>F3</sup>“sample” means a sample of blood, tissue or other biological material;]

“statutory undertaker ” has the same meaning as in the National Parks and Access to the Countryside Act 1949<sup>(6)</sup>;

[<sup>F5</sup>“the Wild Birds Directive” has the meaning given by paragraph (2A);]

(2) Unless the context otherwise requires, expressions used in these Regulations and in the Habitats Directive have the same meaning as in that Directive.

The following expressions, in particular, are defined in Article 1 of that Directive—

“priority natural habitat types” and “priority species”;

“site” and “site of Community importance”;

(5) 1973 c. 65.

(6) 1949 c. 97.

*Status: Point in time view as at 12/01/2010.*

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

“special area of conservation”.

[<sup>F6</sup>(2A) In these Regulations—

(a) subject to sub-paragraph (b)—

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

(ii) “the Wild Birds Directive” means Council Directive 79/409/EEC on the conservation of wild birds;

(b) any reference to any Annex to the Habitats Directive is a reference to that Annex as amended from time to time.

(2B) Any reference to a numbered provision of these Regulations is—

(a) in relation to England and Wales, to the provision of that number which has effect in England and Wales; and

(b) in relation to Scotland, to the provision of that number which has effect in Scotland.]

(3) In these Regulations, unless otherwise indicated—

(a) any reference to a numbered regulation or Schedule is to the regulation or Schedule in these Regulations which bears that number, and

(b) any reference in a regulation or Schedule to a numbered paragraph is to the paragraph of that regulation or Schedule which bears that number.

(4) Subject to regulation 68 (which provides for Part IV to be construed as one with the Town and Country Planning Act 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.

(5) For the purposes of these Regulations the territorial waters of the United Kingdom adjacent to Great Britain shall be treated as part of Great Britain and references to England, Wales and Scotland shall be construed as including the adjacent territorial waters.

For the purposes of this paragraph—

(a) territorial waters include any waters landward of the baselines from which the breadth of the territorial sea is measured; and

(b) any question as to whether territorial waters are to be treated as adjacent to England, Wales or Scotland shall be determined by the Secretary of State <sup>F7</sup>....

#### Extent Information

**E1** This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

#### Textual Amendments

**F1** Words in reg. 2(1) inserted (21.8.2007) by The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007 (S.I. 2007/1843), regs. 2(1), 5(2)(a) (with reg. 9)

**F2** Words in reg. 2(1) omitted (30.1.2009) by virtue of The Conservation (Natural Habitats, &c.) (Amendment) (England and Wales) Regulations 2009 (S.I. 2009/6), regs. 1(1), 3

**F3** Words in reg. 2(1) inserted (21.8.2007) by The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007 (S.I. 2007/1843), regs. 2(1), 5(2)(d) (with reg. 9)

**F4** Words in reg. 2(1) substituted (E.W.) (21.8.2007) by The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007 (S.I. 2007/1843), regs. 2(1), 5(2)(c) (with reg. 9)

**F5** Words in reg. 2(1) substituted (E.W.) (21.8.2007) by The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007 (S.I. 2007/1843), regs. 2(1), 5(2)(e) (with reg. 9)

- F6** Reg. 2(2A)(2B) inserted (E.W.) (21.8.2007) by The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007 (S.I. 2007/1843), regs. 2(1), **5(3)** (with reg. 9)
- F7** Words in reg. 2(5)(b) omitted (E.W.) (21.8.2007) by virtue of The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007 (S.I. 2007/1843), regs. 2(1), **5(4)** (with reg. 9)

#### Commencement Information

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

## Interpretation and application **S**

### 2.—(1) In these Regulations—

[<sup>F230</sup>“the 2004 Act” means the Nature Conservation (Scotland) Act 2004;]

[<sup>F1</sup>“the 2007 Regulations” means the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007;]

“agriculture Minister” means the Minister of Agriculture, Fisheries and Food or the Secretary of State;

[<sup>F3</sup>“British fishery limits” has the meaning given by the Fishery Limits Act 1976;]

“competent authority” shall be construed in accordance with regulation 6;

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

[<sup>F3</sup>“the EC Treaty” means the Treaty establishing the European Community;]

“enactment” includes a local enactment and an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978(3);

[<sup>F3</sup>“European offshore marine site” means a European offshore marine site within the meaning of regulation 15 (meaning of European offshore marine site) of the 2007 Regulations;]

“European site” has the meaning given by regulation 10 and “European marine site” means a European site which consists of, or so far as it consists of, marine areas;

“functions” includes powers and duties;

[<sup>F231</sup>“the Habitats Directive” means Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora as amended from time to time;]

[<sup>F232</sup>“land” includes buildings and other structures, land covered with water, and any right or interest in or over land;]

“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;

“local planning authority” means—

- (a) in England and Wales, except as otherwise provided, any authority having any function as a local planning authority or mineral planning authority under the Town and Country Planning Act 1990(4), and

(3) 1978 c. 30.

(4) 1990 c. 8.

*Status: Point in time view as at 12/01/2010.*

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

(b) in Scotland, a planning authority within the meaning of section 172(1) of the Local Government (Scotland) Act 1973<sup>(5)</sup>;

“management agreement” means an agreement entered into, or having effect as if entered into, under regulation 16;

“marine area” means any land covered (continuously or intermittently) by tidal waters or any part of the sea in or adjacent to Great Britain up to the seaward limit of territorial waters;

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

[<sup>F233</sup>“natural feature” in relation to land means—

- (a) any of its flora or fauna, or
- (b) any natural habitat existing on that land;]

“nature conservation body”, and “appropriate nature conservation body” in relation to England, Wales or Scotland, have the meaning given by regulation 4;

[<sup>F3</sup>“the offshore marine area” means—

- (a) any part of the seabed and subsoil situated in any area designated under section 1(7) of the Continental Shelf Act 1964; and
- (b) any part of the waters within British fishery limits (except the internal waters of, and the territorial sea adjacent to, the United Kingdom, the Channel Islands and the Isle of Man);]

[<sup>F3</sup>“offshore marine installation” means any artificial island, installation or structure (other than a ship) which is situated—

- (a) in any part of the waters in any area designated under section 1(7) of the Continental Shelf Act 1964; or
- (b) in any part of the waters in any area designated under section 84(4) of the Energy Act 2004;]

“planning authority”, in Scotland, means a planning authority within the meaning of section 172(1) of the Local Government (Scotland) Act 1973;

“the register” means the register of European sites in Great Britain provided for by regulation 11;

“relevant authorities”, in relation to marine areas and European marine sites, shall be construed in accordance with regulation 5;

(6);

[<sup>F234</sup>“statutory undertaker” has the meaning given in section 58(1) of the 2004 Act;]

“the Wild Birds Directive” means Council Directive [79/409/EEC](#)<sup>(7)</sup> on the conservation of wild birds [<sup>F235</sup>as last amended by the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded].

[<sup>F236</sup>(1A) An animal shall not be treated as bred in captivity for the purposes of Part III of these Regulations unless its parents were lawfully held in captivity—

(5) 1973 c. 65.

(6) 1949 c. 97.

(7) O.J. No. L103, 25.4.79 p.1.

- (a) where the animal is of a viviparous species, when it was born;
- (b) where the animal is of an oviparous species, when the egg was laid.

(1B) The reference in paragraph (1A) to “lawfully” means without any contravention of these Regulations or Part I of the Wildlife and Countryside Act 1981.]

(2) Unless the context otherwise requires, expressions used in these Regulations and in the Habitats Directive have the same meaning as in that Directive.

The following expressions, in particular, are defined in Article 1 of that Directive—

- “priority natural habitat types” and “priority species”;
- “site” and “site of Community importance”;
- and
- “special area of conservation”.

[<sup>F237</sup>(2B) Any reference to a numbered provision of these Regulations is—

- (a) in relation to England and Wales, to the provision of that number which has effect in England and Wales; and
- (b) in relation to Scotland, to the provision of that number which has effect in Scotland.]
- (3) In these Regulations, unless otherwise indicated—
  - (a) any reference to a numbered regulation or Schedule is to the regulation or Schedule in these Regulations which bears that number, and
  - (b) any reference in a regulation or Schedule to a numbered paragraph is to the paragraph of that regulation or Schedule which bears that number.

(4) Subject to regulation 68 (which provides for Part IV to be construed as one with the Town and Country Planning Act 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.

(5) For the purposes of these Regulations the territorial waters of the United Kingdom adjacent to Great Britain shall be treated as part of Great Britain and references to England, Wales and Scotland shall be construed as including the adjacent territorial waters.

For the purposes of this paragraph—

- (a) territorial waters include any waters landward of the baselines from which the breadth of the territorial sea is measured; and
- (b) any question as to whether territorial waters are to be treated as adjacent to England, Wales or Scotland shall be determined by the Secretary of State or, for any purpose in relation to which the Minister of Agriculture, Fisheries and Food has responsibility, by the Secretary of State and that Minister acting jointly.

#### Textual Amendments

- F1** Words in [reg. 2\(1\)](#) inserted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), [regs. 2\(1\)](#), **5(2)(a)** (with [reg. 9](#))
- F3** Words in [reg. 2\(1\)](#) inserted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), [regs. 2\(1\)](#), **5(2)(d)** (with [reg. 9](#))
- F230** Words in [reg. 2\(1\)](#) inserted (S.) (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), [regs. 1\(1\)](#), **4(a)(i)** (with [regs. 20, 21](#))
- F231** Words in [reg. 2\(1\)](#) substituted (S.) (15.2.2007) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2007 \(S.S.I. 2007/80\)](#), [regs. 2](#), **5(a)**
- F232** Words in [reg. 2\(1\)](#) substituted (S.) (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), [regs. 1\(1\)](#), **4(a)(iii)** (with [regs. 20, 21](#))

*Status: Point in time view as at 12/01/2010.*

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

- F233** Words in reg. 2(1) inserted (S.) (29.11.2004) by The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2004 (S.S.I. 2004/475), regs. 1(1), **4(a)(iv)** (with regs. 20, 21)
- F234** Words in reg. 2(1) substituted (S.) (29.11.2004) by The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2004 (S.S.I. 2004/475), regs. 1(1), **4(a)(v)** (with regs. 20, 21)
- F235** Words in reg. 2(1) inserted (S.) (29.11.2004) by The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2004 (S.S.I. 2004/475), regs. 1(1), **4(a)(vi)** (with regs. 20, 21)
- F236** Reg. 2(1A)(1B) inserted (S.) (29.11.2004) by The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2004 (S.S.I. 2004/475), regs. 1(1), **4(b)** (with regs. 20, 21)
- F237** Reg. 2(2B) inserted (S.) (21.8.2007) by The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007 (S.I. 2007/1843), regs. 2(1), **5(3)** (with reg. 9)

### Implementation of Directive **E+W**

3.—(1) These Regulations make provision for the purpose of implementing, for Great Britain, [<sup>F8</sup>the Habitats Directive.]

(2) The Secretary of State <sup>F9</sup>... and the nature conservation bodies shall exercise their functions under the enactments relating to nature conservation so as to secure compliance with the requirements of the Habitats Directive.

Those enactments include—

- Part III of the National Parks and Access to the Countryside Act 1949<sup>(8)</sup>,
- section 49A of the Countryside (Scotland) Act 1967<sup>(9)</sup> (management agreements),
- section 15 of the Countryside Act 1968<sup>(10)</sup> (areas of special scientific interest),
- Part I and sections 28 to 38 of the Wildlife and Countryside Act 1981<sup>(11)</sup>,
- sections 131 to 134 of the Environmental Protection Act 1990<sup>(12)</sup>,
- sections 2, 3, 5, 6, 7 and 11 of the Natural Heritage (Scotland) Act 1991<sup>(13)</sup>, and these Regulations.

(3) In relation to marine areas any competent authority having functions relevant to marine conservation shall exercise those functions so as to secure compliance with the requirements of the Habitats Directive.

This applies, in particular, to functions under the following enactments—

- the Sea Fisheries Acts within the meaning of section 1 of the Sea Fisheries (Wildlife Conservation) Act 1992<sup>(14)</sup>,
- the Dockyard Ports Regulation Act 1865<sup>(15)</sup>,
- section 2(2) of the Military Lands Act 1900<sup>(16)</sup> (provisions as to use of sea, tidal water or shore),
- the Harbours Act 1964<sup>(17)</sup>,

<sup>(8)</sup> 1949 c. 97; Part III was amended by paragraph 1 of Schedule 1 to the Nature Conservancy Council Act 1973 (c. 54).

<sup>(9)</sup> 1967 c. 86; section 49A was inserted by section 9 of the Countryside (Scotland) Act 1981 (c. 44).

<sup>(10)</sup> 1968 c. 41; section 15 was amended by paragraph 9 of Schedule 1 to the Nature Conservancy Council Act 1973 (c. 54) and section 73(8) of the Wildlife and Countryside Act 1981 (c. 69).

<sup>(11)</sup> 1981 c. 69; relevant amendments have been made by the Wildlife and Countryside (Amendment) Act 1985 (c. 31), the Wildlife and Countryside (Service of Notices) Act 1985 (c. 59) and the Wildlife and Countryside (Amendment) Act 1991 (c. 39).

<sup>(12)</sup> 1990 c. 43.

<sup>(13)</sup> 1991 c. 28.

<sup>(14)</sup> 1992 c. 36.

<sup>(15)</sup> 1865 c. 125.

<sup>(16)</sup> 1900 c. 56; the power conferred by section 2(2) was extended by section 7 of the Lands Powers (Defence) Act 1958 (c. 30).

<sup>(17)</sup> 1964 c. 40; relevant amendments were made by Part III of the Docks and Harbours Act 1966 (c. 28), Schedule 6 to the Transport Act 1981 (c. 56) and section 63 of, and Schedule 3 to, the Transport and Works Act 1992 (c. 42).



Part II of the Control of Pollution Act 1974<sup>(18)</sup>,  
sections 36 and 37 of the Wildlife and Countryside Act 1981<sup>(19)</sup> (marine nature reserves),  
sections 120 to 122 of the Civic Government (Scotland) Act 1982<sup>(20)</sup> (control of the seashore,  
adjacent waters and inland waters),  
the Water Resources Act 1991<sup>(21)</sup>,  
the Land Drainage Act 1991<sup>(22)</sup>, and  
<sup>[F10]</sup>the Planning Act 2008,<sup>]</sup>  
these Regulations.

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

#### Extent Information

**E2** This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

#### Textual Amendments

**F8** Words in [reg. 3\(1\)](#) substituted (30.1.1998) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 1997 \(S.I. 1997/3055\)](#), [regs. 1, 2\(3\)](#)

**F9** Words in [reg. 3\(2\)](#) omitted (E.W.) (21.8.2007) by virtue of [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), [regs. 2\(1\), 5\(5\)](#) (with [reg. 9](#))

**F10** Words in [reg. 3](#) inserted (1.10.2009) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) \(No. 2\) Regulations 2009 \(S.I. 2009/2438\)](#), [regs. 1\(1\), 4](#)

#### Commencement Information

**I3** [Reg. 3](#) in force at 30.10.1994, see [reg. 1\(2\)](#)

## Implementation of Directive **S**

**3.—(1)** These Regulations make provision for the purpose of implementing, for Great Britain, <sup>[F238]</sup>the Habitats Directive.]

(2) The Secretary of State, the Minister of Agriculture, Fisheries and Food and the nature conservation bodies shall exercise their functions under the enactments relating to nature conservation so as to secure compliance with the requirements of the Habitats Directive.

Those enactments include—

Part III of the National Parks and Access to the Countryside Act 1949<sup>(8)</sup>,  
section 49A of the Countryside (Scotland) Act 1967<sup>(9)</sup> (management agreements),  
section 15 of the Countryside Act 1968<sup>(10)</sup> (areas of special scientific interest),

<sup>(18)</sup> 1974 c. 40.

<sup>(19)</sup> 1981 c. 69.

<sup>(20)</sup> 1982 c. 45.

<sup>(21)</sup> 1991 c. 57.

<sup>(22)</sup> 1991 c. 59.

<sup>(8)</sup> 1949 c. 97; Part III was amended by paragraph 1 of Schedule 1 to the Nature Conservancy Council Act 1973 (c. 54).

<sup>(9)</sup> 1967 c. 86; section 49A was inserted by section 9 of the Countryside (Scotland) Act 1981 (c. 44).

<sup>(10)</sup> 1968 c. 41; section 15 was amended by paragraph 9 of Schedule 1 to the Nature Conservancy Council Act 1973 (c. 54) and section 73(8) of the Wildlife and Countryside Act 1981 (c. 69).

*Status: Point in time view as at 12/01/2010.*

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

Part I and sections [<sup>F239</sup>35 to 37] of the Wildlife and Countryside Act 1981(11), sections 131 to 134 of the Environmental Protection Act 1990(12), sections 2, 3, 5, 6, 7 and 11 of the Natural Heritage (Scotland) Act 1991(13), and these Regulations.

[<sup>F240</sup>Part 2 of the 2004 Act]

[<sup>F241</sup>Part 1 of the Land Reform (Scotland) Act 2003 (asp 2) (access rights).]

(3) In relation to marine areas any competent authority having functions relevant to marine conservation shall exercise those functions so as to secure compliance with the requirements of the Habitats Directive.

This applies, in particular, to functions under the following enactments—

the Sea Fisheries Acts within the meaning of section 1 of the Sea Fisheries (Wildlife Conservation) Act 1992(14),

the Dockyard Ports Regulation Act 1865(15),

section 2(2) of the Military Lands Act 1900(16) (provisions as to use of sea, tidal water or shore),

the Harbours Act 1964(17),

Part II of the Control of Pollution Act 1974(18),

sections 36 and 37 of the Wildlife and Countryside Act 1981(19) (marine nature reserves),

sections 120 to 122 of the Civic Government (Scotland) Act 1982(20) (control of the seashore, adjacent waters and inland waters),

the Water Resources Act 1991(21),

the Land Drainage Act 1991(22),

[<sup>F10</sup>the Planning Act 2008,]

[<sup>F242</sup>Part 1 of the Water Environment and Water Services (Scotland) Act 2003 ,the Water Environment (Controlled Activities) (Scotland) Regulations 2005], and these Regulations.

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

#### Textual Amendments

**F10** Words in [reg. 3](#) inserted (1.10.2009) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) \(No. 2\) Regulations 2009 \(S.I. 2009/2438\)](#), [regs. 1\(1\), 4](#)

- (11) 1981 c. 69; relevant amendments have been made by the Wildlife and Countryside (Amendment) Act 1985 (c. 31), the Wildlife and Countryside (Service of Notices) Act 1985 (c. 59) and the Wildlife and Countryside (Amendment) Act 1991 (c. 39).
- (12) 1990 c. 43.
- (13) 1991 c. 28.
- (14) 1992 c. 36.
- (15) 1865 c. 125.
- (16) 1900 c. 56; the power conferred by section 2(2) was extended by section 7 of the Lands Powers (Defence) Act 1958 (c. 30).
- (17) 1964 c. 40; relevant amendments were made by Part III of the Docks and Harbours Act 1966 (c. 28), Schedule 6 to the Transport Act 1981 (c. 56) and section 63 of, and Schedule 3 to, the Transport and Works Act 1992 (c. 42).
- (18) 1974 c. 40.
- (19) 1981 c. 69.
- (20) 1982 c. 45.
- (21) 1991 c. 57.
- (22) 1991 c. 59.

- F238** Words in reg. 3(1) substituted (30.1.1998) by The Conservation (Natural Habitats, &c.) (Amendment) Regulations 1997 (S.I. 1997/3055), regs. 1, **2(3)**
- F239** Words in reg. 3(2) substituted (S.) (29.11.2004) by The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2004 (S.S.I. 2004/475), regs. 1(1), **5(a)** (with regs. 20, 21)
- F240** Words in reg. 3(2) inserted (S.) (29.11.2004) by The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2004 (S.S.I. 2004/475), regs. 1(1), **5(b)** (with regs. 20, 21)
- F241** Words in reg. 3(2) inserted (S.) (9.2.2005) by Land Reform (Scotland) Act 2003 (asp 2), s. 100(3), **Sch. 2 para. 15; S.S.I. 2005/17, art. 2(b)**
- F242** Words in reg. 3(3) inserted (S.) (15.2.2007) by The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2007 (S.S.I. 2007/80), regs. 2, **6**

### [<sup>F11</sup>Nature conservation bodies

4.—(1) Subject to paragraph (2), in these Regulations “nature conservation body” means Natural England, the Countryside Council for Wales or Scottish Natural Heritage; and references to “the appropriate nature conservation body”, in relation to England, Wales or Scotland shall be construed accordingly.

(2) [<sup>F12</sup>In Parts IV and IVA][<sup>F12</sup>In regulations 37A and 41A and in Parts IV and IVA] of these Regulations, “nature conservation body” also includes the Joint Nature Conservation Committee, and references to “the appropriate nature conservation body” in relation to a European offshore marine site shall be construed as meaning the Joint Nature Conservation Committee.]

### Textual Amendments

- F11** Reg. 4 substituted (21.8.2007) by The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007 (S.I. 2007/1843), regs. 2(1), **5(6)** (with reg. 9)
- F12** Words in reg. 4(2) substituted (E.W.) (30.1.2009) by The Conservation (Natural Habitats, &c.) (Amendment) (England and Wales) Regulations 2009 (S.I. 2009/6), regs. 1(1), **4**

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

5. 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, [<sup>F13</sup>county borough council,] district council, London borough council or, in Scotland, a regional, islands or district council;
- (c) the National Rivers Authority, a water undertaker or sewerage undertaker, or an internal drainage board;
- (d) a navigation authority within the meaning of the Water Resources Act 1991(**23**);
- (e) a harbour authority within the meaning of the Harbours Act 1964(**24**);
- (f) a lighthouse authority;
- (g) a river purification board or a district salmon fishery board;
- (h) a local fisheries committee constituted under the Sea Fisheries Regulation Act 1966(**25**) or any authority exercising the powers of such a committee [<sup>F14</sup>; and]

(23) The expression “navigation authority” is defined in section 221(1) of that Act.

(24) The expression “harbour authority” is defined in section 57 of that Act.

(25) 1966 c. 38.

*Status: Point in time view as at 12/01/2010.*

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

[<sup>F15</sup>(i) a National Park authority.]

#### Extent Information

**E3** This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

#### Textual Amendments

**F13** Words in [reg. 5\(b\)](#) inserted (E.W.) (1.4.1996) by [The Local Government Reorganisation \(Wales\) \(Consequential Amendments\) Order 1996 \(S.I. 1996/525\)](#), arts. 1, 3, **Sch. para. 18(1)**

**F14** Word in [reg. 5\(h\)](#) substituted (E.W.) (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(7)(a)** (with [reg. 9](#))

**F15** [Reg. 5\(i\)](#) inserted (E.W.) (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(7)(b)** (with [reg. 9](#))

#### Commencement Information

**I4** [Reg. 5](#) in force at 30.10.1994, see [reg. 1\(2\)](#)

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

5. 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, district council, London borough council or, in Scotland, a regional, islands or district council;
- (c) the National Rivers Authority, a water undertaker or sewerage undertaker, or an internal drainage board;
- (d) a navigation authority within the meaning of the Water Resources Act 1991(**23**);
- (e) a harbour authority within the meaning of the Harbours Act 1964(**24**);
- (f) a lighthouse authority;
- (g) [<sup>F243</sup>the Scottish Environment Protection Agency] or a district salmon fishery board;
- (h) a local fisheries committee constituted under the Sea Fisheries Regulation Act 1966(**25**) or any authority exercising the powers of such a committee;
- [<sup>F244</sup>(i) a National Park authority established by order under section 6 of the National Parks (Scotland) Act 2000.]

#### Textual Amendments

**F243** Words in [reg. 5\(g\)](#) substituted (S.) (1.4.1996) by [The Environment Act 1995 \(Consequential and Transitional Provisions\) \(Scotland\) Regulations 1996 \(S.I. 1996/973\)](#), [reg. 1](#), **Sch. para. 18**

**F244** [Reg. 5\(i\)](#) inserted (S.) (15.2.2007) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2007 \(S.S.I. 2007/80\)](#), regs. 2, 7

(23) The expression “navigation authority” is defined in section 221(1) of that Act.

(24) The expression “harbour authority” is defined in section 57 of that Act.

(25) 1966 c. 38.

## Competent authorities generally

6.—(1) For the purposes of these Regulations the expression “competent authority” includes any Minister, government department, public or statutory undertaker, public body of any description or person holding a public office.

The expression also includes any person exercising any function of a competent authority in the United Kingdom.

(2) In paragraph (1)—

- (a) “public body” includes any local authority, joint board or joint committee; and
- (b) “public office” means—
  - (a) an office under Her Majesty,
  - (b) an office created or continued in existence by a public general Act of Parliament, or
  - (c) an office the remuneration in respect of which is paid out of money provided by Parliament [<sup>F16</sup>or money paid out of the Scottish Consolidated Fund].

(3) In paragraph (2)(a)—

“local authority”—

- (a) in relation to England, means a county council, district council or London borough council, the Common Council of the City of London, the sub-treasurer of the Inner Temple, the under treasurer of the Middle Temple or a parish council,
  - (b) in relation to Wales, means a county council, [<sup>F17</sup>county borough,] council or community council, and
  - (c) in relation to Scotland, means a regional, islands or district council;
- “joint board” and “joint committee” in relation to England and Wales mean—
- (a) a joint or special planning board constituted for a National Park by order under paragraph 1 or 3 of Schedule 17 to the Local Government Act 1972(26), or a joint planning board within the meaning of section 2 of the Town and Country Planning Act 1990, and
  - (b) a joint committee appointed under section 102(1)(b) of the Local Government Act 1972, and in relation to Scotland have the same meaning as in the Local Government (Scotland) Act 1973(27).

### Textual Amendments

- F16** Words in reg. 6(2)(c) inserted (1.7.1999) by [The Scotland Act 1998 \(Consequential Modifications\) \(No.2\) Order 1999 \(S.I. 1999/1820\)](#), art. 1(2), **Sch. 2 para. 155** (with art. 5)
- F17** Words in reg. 6(3) substituted (1.4.1996) by [The Local Government Reorganisation \(Wales\) \(Consequential Amendments\) Order 1996 \(S.I. 1996/525\)](#), arts. 1, 3, **Sch. para. 18(2)**

### Modifications etc. (not altering text)

- C5** Reg. 6(3) applied (with modifications) (E.) (4.6.1996) by [The National Park Authorities \(England\) Order 1996 \(S.I. 1996/1243\)](#), arts. 1, 18, **Sch. 5 para. 14**

### Commencement Information

- I5** Reg. 6 in force at 30.10.1994, see [reg. 1\(2\)](#)

(26) 1972 c. 70.

(27) 1973 c. 65; the expressions “joint board” and “joint committee” are defined in section 235(1) of the Act.

*Status: Point in time view as at 12/01/2010.*

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

## PART II

### CONSERVATION OF NATURAL HABITATS AND HABITATS OF SPECIES

#### *European sites*

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

7.—(1) On the basis of the criteria set out in Annex III (Stage 1) to the Habitats Directive, and relevant scientific information, the Secretary of State shall propose a list of sites indicating with respect to each site—

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

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

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

(3) Where appropriate the Secretary of State may propose modification of the list in the light of the results of the surveillance referred to in Article 11 of the Habitats Directive.

(4) The list shall be transmitted to the Commission on or before 5th June 1995, 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),

provided in a format established by the Commission.

#### **Commencement Information**

**I6** Reg. 7 in force at 30.10.1994, see [reg. 1\(2\)](#)

#### **Adoption of list of sites: designation of special areas of conservation**

8.—(1) Once a site of Community importance in Great Britain has been adopted in accordance with the procedure laid down in paragraph 2 of Article 4 of the Habitats Directive, the Secretary of State shall designate that site as a special area of conservation as soon as possible and within six years at most.

(2) The Secretary of State shall 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 in Annex I to the Habitats Directive, or
  - (ii) a species in Annex II to the Directive,
 and for the coherence of Natura 2000; and
- (b) the threats of degradation or destruction to which those sites are exposed.

**Commencement Information**

**I7** Reg. 8 in force at 30.10.1994, see [reg. 1\(2\)](#)

**[<sup>F18</sup> Consultation as to inclusion of site omitted from the list **E+W**]**

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

- (a) the Secretary of State and the Commission agree, within the six-month period mentioned in Article 5(2) of the Habitats Directive, that the site should be selected as a site of Community importance, or
- (b) the Council, acting on a proposal from the Commission in pursuance of Article 5(2) of the Habitats Directive, decides that the site should be so selected,

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).]

**Extent Information**

**E4** This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

**Textual Amendments**

**F18** [Reg. 9](#) substituted (E.W.) (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(8)** (with [reg. 9](#))

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

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

- (a) the Secretary of State agrees that the site should be added to the list transmitted in accordance with regulation 7, or
- (b) the Council, acting on a proposal from the Commission in pursuance of paragraph 2 of Article 5 of the Habitats Directive, so decides,

the site shall be treated as added to the list as from the date of that agreement or decision.

**Meaning of “European site” in these Regulations **S****

**10.—(1)** 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 in respect of which consultation has been initiated under Article 5(1) of the Habitats Directive, during the consultation period or pending a decision of the Council under Article 5(3), <sup>F19</sup> ...

*Status: Point in time view as at 12/01/2010.*

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

- (d) an area classified pursuant to Article 4(1) or (2) of the Wild Birds Directive <sup>F20</sup>, or
- (e) a site <sup>F21</sup>... included in a list of sites proposed under regulation 7(1).]

(2) Sites which are European sites by virtue only of paragraph (1)(c) are not within <sup>F22</sup>regulation] 48 (which <sup>F23</sup>relates] to the approval of certain plans and projects); but this is without prejudice to their protection under other provisions of these Regulations.

#### Extent Information

- E5** This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

#### Textual Amendments

- F19** Word in reg. 10(1)(c) omitted (S.) (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), **6(a)** (with regs. 20, 21)
- F20** Reg. 10(1)(e) and word inserted (S.) (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), **6(b)** (with regs. 20, 21)
- F21** Words in reg. 10(1)(e) omitted (S.) (15.2.2007) by virtue of [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2007 \(S.S.I. 2007/80\)](#), regs. 2, **8**
- F22** Word in reg. 10(2) substituted (S.) (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), **6(c)(i)** (with regs. 20, 21)
- F23** Word in reg. 10(2) substituted (S.) (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), **6(c)(ii)** (with regs. 20, 21)

#### Commencement Information

- I8** Reg. 10 in force at 30.10.1994, see [reg. 1\(2\)](#)

### Meaning of “European site” in these Regulations **E+W**

**10.**—(1) 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 in respect of which consultation has been initiated under Article 5(1) of the Habitats Directive, during the consultation period or pending a decision of the Council under Article 5(3), or
- (d) an area classified pursuant to Article 4(1) or (2) of the Wild Birds Directive, or
- <sup>F245</sup>(e) a site in Great Britain which has been proposed to the Commission by a devolved administration or the Secretary of State as a site eligible for designation as a special area of conservation for the purposes of meeting the United Kingdom’s obligations under Article 4(1) of the Habitats Directive, 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) Sites which are European sites by virtue only of paragraph (1)(c) are not within regulations 20(1) and (2), 24 and 48 (which relate to the approval of certain plans and projects); but this is without prejudice to their protection under other provisions of these Regulations.



[<sup>F246</sup>(3) In this regulation, “a devolved administration” means the Welsh Ministers or the Scottish Ministers.]

#### Textual Amendments

**F245** Reg. 10(1)(e) substituted (E.W.) (21.8.2007) by The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007 (S.I. 2007/1843), regs. 2(1), **5(9)(a)** (with reg. 9)

**F246** Reg. 10(3) inserted (E.W.) (21.8.2007) by The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007 (S.I. 2007/1843), regs. 2(1), **5(9)(b)** (with reg. 9)

### Register of European sites

#### Duty to compile and maintain register of European sites **E+W**

**11.**—(1) The Secretary of State shall compile and maintain, in such form as he thinks fit, a register of European sites in Great Britain.

(2) He shall include in the register—

- (a) special areas of conservation, as soon as they are designated by him;
- (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); and
- (d) areas classified by him pursuant to Article 4(1) or (2) of the Wild Birds Directive, as soon as they are so classified or, if they have been classified before the commencement of these Regulations, as soon as practicable after commencement; and

[<sup>F24</sup>(e) any site in England or Wales which has been proposed to the Commission by the Welsh Ministers or the Secretary of State as a site eligible for designation as a special area of conservation for the purposes of meeting the United Kingdom’s obligations under Article 4(1) of the Habitats Directive, until such time as paragraph (i) or (ii) of regulation 10(1) (e) applies.]

(3) He may, if appropriate, amend the entry in the register relating to a European site.

(4) He shall remove the relevant entry—

- (a) if a special area of conservation is declassified by the Commission under Article 9 of the Habitats Directive; or
- (b) if a site otherwise ceases to fall within any of the categories listed in paragraph (2) above.

(5) He shall keep a copy of the register available for public inspection at all reasonable hours and free of charge.

#### Extent Information

**E6** This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

*Status: Point in time view as at 12/01/2010.*

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

#### Textual Amendments

**F24** Reg. 11(2)(e) substituted (E.W.) (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(10)** (with reg. 9)

#### Commencement Information

**I9** Reg. 11 in force at 30.10.1994, see [reg. 1\(2\)](#)

### Duty to compile and maintain register of European sites **S**

**11.**—(1) The Secretary of State shall compile and maintain, in such form as he thinks fit, a register of European sites in Great Britain.

(2) He shall include in the register—

- (a) special areas of conservation, as soon as they are designated by him;
- (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); and
- (d) areas classified by him pursuant to Article 4(1) or (2) of the Wild Birds Directive, as soon as they are so classified or, if they have been classified before the commencement of these Regulations, as soon as practicable after commencement [<sup>F247</sup>]; and
- (e) any site in Scotland included in a list of sites proposed under regulation 7(1).]

(3) He may, if appropriate, amend the entry in the register relating to a European site.

(4) He shall remove the relevant entry—

- (a) if a special area of conservation is declassified by the Commission under Article 9 of the Habitats Directive; or
- (b) if a site otherwise ceases to fall within any of the categories listed in paragraph (2) above.

(5) He shall keep a copy of the register available for public inspection at all reasonable hours and free of charge.

#### Textual Amendments

**F247** Reg. 11(2)(e) and word inserted (S.) (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), **7** (with regs. 20, 21)

### Notification to appropriate nature conservation body

**12.**—(1) The Secretary of State shall notify the appropriate nature conservation body as soon as may be after including a site in the register, amending an entry in the register or removing an entry from the register.

(2) Notification of the inclusion of a site in the register shall be accompanied by a copy of the register entry.

(3) Notification of the amendment of an entry in the register shall be accompanied by a copy of the amended entry.

(4) Each nature conservation body shall keep copies of the register entries relating to European sites in their area available for public inspection at all reasonable hours and free of charge.

**Commencement Information**

**I10** Reg. 12 in force at 30.10.1994, see [reg. 1\(2\)](#)

**Notice to landowners, relevant authorities, &c.**

**13.**—(1) As soon as practicable after a nature conservation body receive notification under regulation 12 they shall give notice to—

- (a) every owner or occupier of land within the site,
- (b) every local planning authority in whose area the site, or any part of it, is situated, and
- (c) such other persons or bodies as the Secretary of State may direct.

(2) Notice of the inclusion of a site in the register, or of the amendment of an entry in the register, shall be accompanied by a copy of so much of the relevant register entry as relates to land owned or occupied by or, as the case may be, to land within the area of, the person or authority to whom the notice is given.

(3) The Secretary of State may give directions as to the form and content of notices to be given under this regulation.

**Commencement Information**

**I11** Reg. 13 in force at 30.10.1994, see [reg. 1\(2\)](#)

**Local registration: England and Wales**

**14.** An entry in the register relating to a European site in England and Wales is a local land charge.

**Commencement Information**

**I12** Reg. 14 in force at 30.10.1994, see [reg. 1\(2\)](#)

**Local registers: Scotland**

**15.**—(1) A planning authority in Scotland shall keep available at their principal office for free public inspection a register of all the European sites of which they have been given notice under regulation 13(1)(b).

(2) A planning authority in Scotland may keep available at any other of their offices for free public inspection such part of the register referred to in paragraph (1) as appears to them to relate to that part of their area in which such office is situated.

(3) A planning authority shall supply to any person, on payment of such reasonable fee as they may determine, a copy, certified by the proper officer of the authority to be a true copy, of any entry in the register kept by them under paragraph (1).

**Commencement Information**

**I13** Reg. 15 in force at 30.10.1994, see [reg. 1\(2\)](#)

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*Status: Point in time view as at 12/01/2010.*

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

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## *Management agreements*

### **Management agreements**

**16.**—(1) The appropriate nature conservation body may enter into an agreement (a “management agreement”) with every owner, lessee and occupier of land forming part of a European site, or land adjacent to such a site, for the management, conservation, restoration or protection of the site, or any part of it.

(2) A management agreement may impose such restrictions as may be expedient for the purposes of the agreement on the exercise of rights over the land by the persons who can be bound by the agreement.

(3) A management agreement—

- (a) may provide for the management of the land in such manner, the carrying out thereon of such work and the doing thereon of such other things as may be expedient for the purposes of the agreement;
- (b) may provide for any of the matters mentioned in sub-paragraph (a) being carried out, or for the costs thereof being defrayed, either by the said owner or other persons or by the appropriate nature conservation body, or partly in one way and partly in another;
- (c) may contain such other provisions as to the making of payments by the appropriate nature conservation body, and in particular for the payment by them of compensation for the effect of the restrictions mentioned in paragraph (2), as may be specified in the agreement.

(4) Where land in England and Wales is subject to a management agreement, the appropriate nature conservation body shall, as respects the enforcement of the agreement against persons other than the original contracting party, have the like rights as if—

- (a) they had at all material times been the absolute owners in possession of ascertained land adjacent to the land subject to the agreement and capable of being benefited by the agreement, and
- (b) the management agreement had been expressed to be for the benefit of that adjacent land;

and section 84 of the Law of Property Act 1925(28) (which enables the [<sup>F25</sup>Upper Tribunal] to discharge or modify restrictive covenants) shall not apply to the agreement.

(5) A management agreement affecting land in Scotland may be registered either—

- (a) in a case where the land affected by the agreement is registered in that register, in the Land Register of Scotland, or
- (b) in any other case, in the General Register of Sasines;

and, on being so recorded, it shall be enforceable at the instance of the appropriate nature conservation body against any person having an interest in the land and against any person deriving title from him:

Provided that a management agreement shall not be so enforceable against a third party who has *bona fide* onerously acquired right (whether completed by infertment or not) to his interest in the land prior to the agreement being recorded as aforesaid, or against any person deriving title from such third party.

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(28) 1925 c. 20; by virtue of section 28(1) of the Law of Property Act 1969 (c. 59) section 84 has effect as set out in Schedule 3 to that Act.

#### Textual Amendments

**F25** Words in [reg. 16\(4\)](#) substituted (1.6.2009) by [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 1, [Sch. 2 para. 46](#) (with [Sch. 5](#))

#### Commencement Information

**I14** Reg. 16 in force at 30.10.1994, see [reg. 1\(2\)](#)

### Continuation in force of existing agreement, &c.

17.—(1) [<sup>F26</sup>Any agreement previously entered into under—

- (a) section 16 of the National Parks and Access to the Countryside Act 1949(**29**) (nature reserves),
- (b) section 15 of the Countryside Act 1968(**30**) (areas of special scientific interest), or
- (c) section 49A of the Countryside (Scotland) Act 1967(**31**) (management agreements),

in relation to land which on or after the commencement of these Regulations becomes land within a European site, or adjacent to such a site, shall have effect as if entered into under regulation 16 above.

Regulation 32(1)(b) (power of compulsory acquisition in case of breach of agreement) shall apply accordingly.]

(2) [<sup>F26</sup>Any other thing done or deemed to have been done under any provision of Part III or VI of the National Parks and Access to the Countryside Act 1949, or under section 49A of the Countryside (Scotland) Act 1967, in respect of any land prior to that land becoming land within a European site, or adjacent to such a site, shall continue to have effect as if done under the corresponding provision of these Regulations.]

For the purposes of this paragraph Part III of the 1949 Act shall be deemed to include section 15 of the Countryside Act 1968 and anything done or deemed to be done under that section and to which this paragraph applies shall have effect as if done or deemed to be done under section 16 of the 1949 Act.

(3) Any reference in an outlying enactment to a nature reserve within the meaning of section 15 of the National Parks and Access to the Countryside Act 1949 shall be construed as including a European site.

For this purpose an “outlying enactment” means an enactment not contained in, or in an instrument made under, the National Parks and Access to the Countryside Act 1949 or the Wildlife and Countryside Act 1981(**32**).

#### Textual Amendments

**F26** [Reg. 17\(1\)\(2\)](#) omitted (S.) (29.11.2004) by virtue of [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), **8** (with regs. 20, 21)

#### Commencement Information

**I15** Reg. 17 in force at 30.10.1994, see [reg. 1\(2\)](#)

(29) 1949 c. 97; section 16 was amended by paragraph 1 of Schedule 1 to the Nature Conservancy Council Act 1973 (c. 54).

(30) 1968 c. 41; section 15 was amended by paragraph 9 of Schedule 1 to the Nature Conservancy Council Act 1973 (c. 54).

(31) 1967 c. 86; section 49A was inserted by section 9 of the Countryside (Scotland) Act 1981 (c. 44).

(32) 1981 c. 69.

*Status: Point in time view as at 12/01/2010.*

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

[<sup>F27</sup>Control of potentially damaging operations]

**Textual Amendments**

- F27** Regs. 18-22 substituted (S.) for regs. 18-22 and cross-headings (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), **9** (with regs. 20, 21)

**Notification of potentially damaging operations** **E+W**

**18.**—(1) Any notification in force in relation to a European site under section 28 of the Wildlife and Countryside Act 1981 (areas of special scientific interest) specifying—

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

shall have effect for the purposes of these Regulations.

(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 any of the matters mentioned in paragraph (1)(a) or (b).

(3) Notice of any amendment shall be given—

- (a) to every owner and occupier of land within the site who in the opinion of the appropriate nature conservation body may be affected by the amendment, and
- (b) to the local planning authority;

and the amendment shall come into force in relation to an owner or occupier upon such notice being given to him.

(4) The provisions of—

- (a) section 28(11) of the Wildlife and Countryside Act 1981 (notification to be local land charge in England and Wales), and
- (b) section 28(12) to (12B)(**33**) of that Act (local registration of notification in Scotland),

apply, with the necessary modifications, in relation to an amendment of a notification under this regulation as in relation to the original notification.

**Extent Information**

- E7** This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

**Commencement Information**

- I16** Reg. 18 in force at 30.10.1994, see [reg. 1\(2\)](#)

[<sup>F248</sup>Offence of intentional or reckless damage to a European site] **S**

**18.**—(1) Any person who intentionally or recklessly damages any natural feature by reason of which land is a European site is, subject to paragraph (2), guilty of an offence.

(33) Subsections (12) to (12B) were substituted by section 2(8) of the Wildlife and Countryside (Amendment) Act 1985 (c. 31).

- (2) Any person who does anything which would, but for this paragraph, amount to an offence under paragraph (1) is not guilty of the offence if it is shown that—
- (a) the act was the incidental result of a lawful operation,
  - (b) the person who carried out the lawful operation—
    - (i) took reasonable precautions for the purpose of avoiding carrying out the act, or
    - (ii) did not foresee, and could not reasonably have foreseen, that the act would be an incidental result of the carrying out of the lawful operation, and
  - (c) that person took such steps as were reasonably practicable in all the circumstances to minimise the damage caused.
- (3) Any person guilty of an offence under paragraph (1) is liable—
- (a) on summary conviction, to a fine not exceeding level 5 on the standard scale,
  - (b) on conviction on indictment, to a fine.]

#### Textual Amendments

**F248** Regs. 18-22 substituted (S.) for regs. 18-22 and cross-headings (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), 9 (with regs. 20, 21)

#### Restriction on carrying out operations specified in notification **E+W**

**19.**—(1) The owner or occupier of any land within a European site shall not carry out, or cause or permit to be carried out, on that land any operation specified in a notification in force in relation to the site under regulation 18, 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 the land on which it is proposed to carry it out, and
  - (b) one of the conditions specified in paragraph (2) is fulfilled.
- (2) Those 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 expired from the giving of the notice under paragraph (1)(a).
- (3) 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.
- (4) For the purposes of paragraph (3) it is a reasonable excuse for a person to carry out an operation—
- (a) that 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) that the operation was authorised by a planning permission granted on an application under Part III of the Town and Country Planning Act 1990(34) or Part III of the Town and Country Planning (Scotland) Act 1972(35).

(34) 1990 c. 8.

(35) 1972 c. 52.

*Status: Point in time view as at 12/01/2010.*

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

(5) The appropriate nature conservation body has power to enforce this regulation; but nothing in this paragraph shall be construed as authorising the institution of proceedings in Scotland for an offence.

(6) Proceedings in England and Wales for an offence under this regulation shall not, without the consent of the Director of Public Prosecutions, be taken by a person other than the appropriate nature conservation body.

#### Extent Information

**E8** This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

#### Commencement Information

**I17** Reg. 19 in force at 30.10.1994, see [reg. 1\(2\)](#)

### [<sup>F248</sup> Application of Chapters 2, 3 and 4 of Part 2 of the 2004 Act **S**

**19.**—(1) Subject to paragraph (2) and regulations 20 to 22, the following provisions of Part 2 of the 2004 Act apply, for the purposes of these Regulations, in relation to European sites—

- (a) Chapter 2 (nature conservation orders) and schedule 2 (nature conservation orders and related orders: procedure);
- (b) Chapter 3 (land management orders) and schedule 3 (land management orders and related orders: procedure); and
- (c) in Chapter 4—
  - (i) section 39 (acquisition of land by SNH);
  - (ii) section 40 (restoration orders);
  - (iii) section 41 (signs, etc.);
  - (iv) section 43 (powers of investigation etc.: police);
  - (v) section 44 (powers of entry: authorised persons) and schedule 4 (powers of entry of authorised persons: further provision); and
  - (vi) section 46 (offences: penalties and time limits);

(2) For the purposes of these Regulations, any reference in the provisions referred to in paragraph (1)(a) to (c)—

- (a) to a “natural feature” shall be construed as if it was a reference to a “natural feature” within the meaning of regulation 2 of these Regulations;
- (b) to a “site of special scientific interest” shall be construed as if it was a reference to a European site;
- (c) to the 2004 Act or any Part thereof, shall be construed as if it was a reference to these Regulations;
- (d) to a term defined in the 2004 Act shall, unless the context otherwise requires, bear the same meaning as in that Act.]



### Textual Amendments

**F248** Regs. 18-22 substituted (S.) for regs. 18-22 and cross-headings (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), **9** (with regs. 20, 21)

### Supplementary provisions as to consents **E+W**

**20.**—(1) Where it appears to the appropriate nature conservation body that an application for consent under regulation 19(2)(a) relates to an operation which is or forms part of a plan or project which—

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

they shall make an appropriate assessment of the implications for the 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) The above provisions do not apply in relation to a site which is a European site by reason only of regulation 10(1)(c) (site protected in accordance with Article 5(4)).

(4) Where in any case, whether in pursuance of this regulation or otherwise, 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 shall notify the Secretary of State.

(5) They shall take such steps as are requisite to secure that any such notification is given at least one month before the expiry of the period mentioned in regulation 19(2)(c) (period after which operation may be carried out in absence of consent).

### Extent Information

**E9** This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

### Commencement Information

**I18** Reg. 20 in force at 30.10.1994, see [reg. 1\(2\)](#)

### <sup>F248</sup>Chapter 2 of Part 2 of the 2004 Act **S**

**20.** The provisions of Chapter 2 of Part 2 of the 2004 Act apply for the purposes of these Regulations as if—

- (a) in section 23 (nature conservation orders)—
  - (i) in subsection (2)(a) for “special interest,” there was substituted—  
“significance in relation to the objectives of—
    - (i) Council Directive [92/43/EEC](#) on the conservation of natural habitats and of wild fauna and flora as last amended by the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of

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- Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded; and
- (ii) Council Directive [79/409/EEC](#) on the conservation of wild birds as last amended by that Act”;
- (ii) the reference to “international obligation” in subsection (2)(b) included the obligations set out in the Directives referred to in subsection (2)(a) of that section; and
- (iii) in subsection (3)(b) for the words from “special interest” to “features,” there was substituted “significance in relation to the objectives of the Directives referred to in subsection (2)(a)”;
- (b) in section 27 (offences in relation to nature conservation orders) the reference to “£40,000” was a reference to “level 5 on the standard scale”.]

#### Textual Amendments

**F248** Regs. 18-22 substituted (S.) for regs. 18-22 and cross-headings (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), **9** (with regs. 20, 21)

#### Provision as to existing notices and consents **E+W**

**21.**—(1) Any notice or consent previously given under section 28(5)(a) or (6)(a) of the Wildlife and Countryside Act 1981 in relation to land which on or after the commencement of these Regulations becomes land within a European site shall have effect, subject as follows, as if given under regulation 19(1)(a) or (2)(a) above.

(2) The appropriate nature conservation body shall 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 shall 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 the modification or withdrawal shall come into force in relation to an owner or occupier upon such notice being given to him.

(4) The modification or withdrawal of a consent shall 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 covered by a consent by reason of the consent being modified or withdrawn, the period after which in accordance with regulation 19(2)(c) the operation may be carried out in the absence of consent shall be four months from the giving of notice of the modification or withdrawal under paragraph (3) above.

(6) Regulation 20(4) and (5) (provisions as to notification of Secretary of State) apply 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;
- (b) for the reference to the period specified in regulation 19(2)(c) substitute a reference to the period specified in paragraph (5) above.

#### Extent Information

**E10** This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

#### Commencement Information

**I19** Reg. 21 in force at 30.10.1994, see [reg. 1\(2\)](#)

#### <sup>F248</sup>Chapter 3 of Part 2 of the 2004 Act **S**

**21.** The provisions of Chapter 3 of Part 2 of the 2004 Act apply for the purposes of these Regulations as if—

- (a) any reference to a “management agreement” included a reference to a management agreement entered into under regulation 16 of these Regulations;
- (b) in section 29(2)(b) (proposals for land management orders) for “specified in an SSSI notification” there was substituted “ by reason of which land is a European site ”;
- (c) in section 36(3)(a) (offences in relation to land management orders) the reference to “£40,000” was a reference to “level 5 on the standard scale”.]

#### Textual Amendments

**F248** Regs. 18-22 substituted (S.) for regs. 18-22 and cross-headings (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), **9** (with regs. 20, 21)

<sup>F28</sup>*Special nature conservation orders*]

#### Textual Amendments

**F28** Regs. 18-22 substituted (S.) for regs. 18-22 and cross-headings (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), **9** (with regs. 20, 21)

#### Power to make special nature conservation order **E+W**

**22.**—<sup>F29</sup>(1) The Secretary of State 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 Secretary of State 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 <sup>F30</sup>[specifying operations on land] in England and Wales is a local land charge.

(5) A special nature conservation order in relation to land in Scotland shall be registered either—

- (a) in a case where the land affected by the order is registered in that Register, in the Land Register of Scotland; or
- (b) in any other case, in the appropriate Division of the General Register of Sasines.

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(6) A report submitted by a nature conservation body to the Secretary of State under paragraph 20 of Schedule 6 to the Environmental Protection Act 1990<sup>(36)</sup> or section 10(2) of the Natural Heritage (Scotland) Act 1991<sup>(37)</sup> shall set out particulars of any land in their area as respects which a special nature conservation order has come into operation during the year to which the report relates.

[<sup>F31</sup>(7) 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 shall specify the operation by reference to the place where it is being, or is proposed to be, carried out.]

#### Extent Information

**E11** This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

#### Textual Amendments

**F29** Reg. 22(1) substituted (E.W.) (1.10.2009) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) \(No. 2\) Regulations 2009 \(S.I. 2009/2438\)](#), regs. 1(1), **10(1)(a)** (with reg. 12)

**F30** Words in reg. 22(4) substituted (E.W.) (1.10.2009) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) \(No. 2\) Regulations 2009 \(S.I. 2009/2438\)](#), regs. 1(1), **10(1)(b)** (with reg. 12)

**F31** Reg. 22(7) inserted (E.W.) (1.10.2009) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) \(No. 2\) Regulations 2009 \(S.I. 2009/2438\)](#), regs. 1(1), **10(1)(c)** (with reg. 12)

#### Commencement Information

**I20** Reg. 22 in force at 30.10.1994, see [reg. 1\(2\)](#)

### [<sup>F248</sup>Chapter 4 of Part 2 of the 2004 Act **S**

**22.** The provisions of Chapter 4 of Part 2 of the 2004 Act referred to in regulation 19(1)(c) apply for the purposes of these Regulations as if—

- (a) any reference to “protected natural feature” was a reference to a natural feature—
  - (i) by reason of which the land is a European site; or
  - (ii) by reason of which a nature conservation order has effect;
- (b) in section 40 (restoration orders)—
  - (i) in subsection (1)(b), the reference to “19(3)” was omitted; and
  - (ii) in subsection (4)(a), the reference to “£40,000” was a reference to “level 5 on the standard scale”;
- (c) in section 41(1) (signs etc.) for the words from “any land” to the end there was substituted “a European site”;
- (d) in section 43 (powers of investigation etc.: police) the references to “this Part” in each place where they occur were references to regulations 18 to 22 of these Regulations; and
- (e) in section 44 (powers of entry: authorised persons)—
  - (i) in subsection (i)—
    - (a) paragraphs (a) and (j) were omitted;
    - (b) in paragraphs (c) and (d), the reference to “management agreement” included a reference to a management agreement entered into under regulation 16 of these Regulations;

<sup>(36)</sup> 1990 c. 43.

<sup>(37)</sup> 1991 c. 28.

- (c) in paragraph (f), for the words from “section 19(1)” to “20” there were substituted references to regulations 18 to 22 of these Regulations;
- (d) in paragraph (l), the reference to “section 48(10)” was a reference to regulation 108 of these Regulations; and
- (ii) in subsection (2)(c), the reference to “section 48(10)” was a reference to regulation 108 of these Regulations.]

#### Textual Amendments

**F248** Regs. 18-22 substituted (S.) for regs. 18-22 and cross-headings (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), 9 (with regs. 20, 21)

#### [<sup>F32</sup>Restriction on carrying out operations specified in order

**23.**—[<sup>F33</sup>(1) No person to whom notice is given in accordance with this regulation shall 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 (1A) and the consent condition specified in paragraph (2) are fulfilled.

(1A) 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 notice is given, 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 notice is given, 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.]

(2) [<sup>F34</sup>The consent condition is]—

- (a) that the operation is carried out with the written consent of the appropriate nature conservation body; [<sup>F35</sup>or]
- (b) that the operation is carried out in accordance with the terms of a management agreement.

[<sup>F36</sup>(2A) A consent under paragraph (2)(a) may be given—

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

specified in the consent.

(2B) In respect of any land within a European site in respect of which a special nature conservation order is made, the Secretary of State may serve a notice on any person carrying out, or proposing to carry out, any operation of a kind specified in that order which appears to the Secretary of State 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.

(2C) The notice served under paragraph (2B) shall specify—

- (a) details of the operation;

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

(2D) Where the identity of a person carrying out, or proposing to carry out, the operation is not reasonably ascertainable, the Secretary of State may, instead of serving a notice under paragraph (2B), publish a notice in 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.]

(3) A person who, without reasonable excuse, contravenes paragraph (1) 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.

(4) For the purposes of paragraph (3) it is a reasonable excuse for a person to carry out an operation—

- (a) that 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) that the operation was authorised by a planning permission granted on an application under Part III of the Town and Country Planning Act 1990 or Part III of the Town and Country Planning (Scotland) Act 1972.]

#### Textual Amendments

- F32** Regs. 23-27 revoked (S.) (29.11.2004) by The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2004 (S.S.I. 2004/475), regs. 1(1), **22(a)** (with regs. 20, 21)
- F33** Reg. 23(1)(1A) substituted for reg. 23(1) (1.10.2009) by The Conservation (Natural Habitats, &c.) (Amendment) (No. 2) Regulations 2009 (S.I. 2009/2438), regs. 1(1), **10(2)(a)** (with reg. 12)
- F34** Words in reg. 23(2) substituted (1.10.2009) by The Conservation (Natural Habitats, &c.) (Amendment) (No. 2) Regulations 2009 (S.I. 2009/2438), regs. 1(1), **10(2)(b)(i)** (with reg. 12)
- F35** Word in reg. 23(2) inserted (1.10.2009) by The Conservation (Natural Habitats, &c.) (Amendment) (No. 2) Regulations 2009 (S.I. 2009/2438), regs. 1(1), **10(2)(b)(ii)** (with reg. 12)
- F36** Reg. 23(2A)-(2D) inserted (1.10.2009) by The Conservation (Natural Habitats, &c.) (Amendment) (No. 2) Regulations 2009 (S.I. 2009/2438), regs. 1(1), **10(2)(c)** (with reg. 12)

#### Commencement Information

- I21** Reg. 23 in force at 30.10.1994, see **reg. 1(2)**

#### [<sup>F32</sup>Supplementary provisions as to consents

**24.**—(1) Where it appears to the appropriate nature conservation body that an application for consent under regulation 23(2)(a) relates to an operation which is or forms part of a plan or project which—

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

they shall make an appropriate assessment of the implications for the 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 in accordance with paragraph (2) they shall give reasons for their decision.

(4) [<sup>F37</sup>A person to whom notice is given] may—

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

by notice in writing to the appropriate nature conversation body require them to refer the matter forthwith to the Secretary of State.

(5) If on the matter being referred to the Secretary of State he is 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), he 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) other reasons which in the opinion of the European Commission are imperative reasons of overriding public interest.

(7) Where the Secretary of State directs the appropriate nature conservation body to give consent under this regulation, he shall 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 only of regulation 10(1)(c) (site protected in accordance with Article 5(4)).]

#### Textual Amendments

**F32** Regs. 23-27 revoked (S.) (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), **22(a)** (with regs. 20, 21)

**F37** Words in [reg. 24\(4\)](#) substituted (1.10.2009) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) \(No. 2\) Regulations 2009 \(S.I. 2009/2438\)](#), regs. 1(1), **10(3)** (with reg. 12)

#### Commencement Information

**I22** Reg. 24 in force at 30.10.1994, see [reg. 1\(2\)](#)

#### [<sup>F32</sup>[<sup>F38</sup>**Compensation for effect of notice**

**25.**—(1) Where the Secretary of State has given notice to any person under regulation 23, the appropriate nature conservation body shall pay compensation to any person having at the time at which notice is given an interest in land comprised in an agricultural unit comprising land to which the notice relates who, on a claim made to the appropriate nature conservation body within the time and in the manner required prescribed by regulations , shows that the value of that person's interest is less than it would have been if notice had not been given.

(2) For this purpose an “agricultural unit” means land which is occupied as a unit for agricultural purposes, including any dwelling-house or other building occupied by the same person for the purpose of farming the land.

(3) No claim for compensation shall be made under this regulation in respect of an order unless the Secretary of State has given notice under paragraph 6(1) or (2) of Schedule 1 of the giving of notice under regulation 23.]]

*Status: Point in time view as at 12/01/2010.*

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

#### Textual Amendments

- F32** Regs. 23-27 revoked (S.) (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), **22(a)** (with regs. 20, 21)
- F38** Reg. 25 substituted (1.10.2009) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) \(No. 2\) Regulations 2009 \(S.I. 2009/2438\)](#), regs. 1(1), **10(4)** (with reg. 12)

#### Commencement Information

- I23** Reg. 25 in force at 30.10.1994, see [reg. 1\(2\)](#)

### [<sup>F32</sup>Restoration where order contravened

**26.**—(1) Where a person is convicted of an offence under regulation 23, the court by which he is convicted may, in addition to dealing with him in any other way, make an order requiring him 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.

(2) An order under this regulation made on conviction on indictment shall be treated for the purposes of section 30 of the Criminal Appeal Act 1968(**38**) (effect of appeals on orders for the restitution of property) as an order for the restitution of property.

(3) In the case of an order under this regulation made by a magistrates' court the period specified in the order shall not begin to run—

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

(4) At any time before an order under this regulation has been complied with or fully complied with, the court by which it was made may, on the application of the person against whom it was made, discharge or vary the order if it appears to the court that a change in circumstances has made compliance or full compliance with the order impracticable or unnecessary.

(5) If a person fails without reasonable excuse to comply with an order under this regulation, he commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale; and if the failure continues after conviction, he may be proceeded against for a further offence from time to time until the order is complied with.

(6) If, within the period specified in an order under this regulation, 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 against whom the order was made any expenses reasonably incurred by them in doing so.

(7) In the application of this regulation to Scotland—

- (a) paragraphs (2) and (3) shall not apply, and
- (b) for the purposes of any appeal or review, an order under this regulation is a sentence.]

#### Textual Amendments

- F32** Regs. 23-27 revoked (S.) (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), **22(a)** (with regs. 20, 21)

(38) 1968 c. 19; section 30 was substituted by paragraph 28 of Schedule 15 to the Criminal Justice Act 1988 (c. 33).



#### Commencement Information

**I24** Reg. 26 in force at 30.10.1994, see [reg. 1\(2\)](#)

#### [<sup>F32</sup>Continuation in force of existing orders, &c.

**27.**—(1) Where an order is in force under section 29 of the Wildlife and Countryside Act 1981(**39**) (special protection for certain areas of special scientific interest) in relation to land which on or after the commencement of these Regulations becomes land within a European site, the order shall have effect as if made under regulation 22 above.

(2) Any notice previously given under section 29(4)(a)(**40**) (notice by owner or occupier of proposal to carry out operation) shall have effect as if given under regulation 23(1)(a) and, if the appropriate nature conservation body have neither given nor refused consent, shall be dealt with under these Regulations.

(3) Any consent previously given under section 29(5)(a) shall be reviewed by the appropriate nature conservation body as regards its compatibility with the conservation objectives of the site, and may be modified or withdrawn.

(4) Notice of any such modification or withdrawal of consent shall 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 the modification or withdrawal shall come into force in relation to an owner or occupier upon such notice being given to him.

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

(6) Section 29(5)(c), (6) and (7) shall cease to apply and the carrying out, or continuation, of any operation on land within a European site which is not otherwise authorised in accordance with these Regulations shall be subject to the prohibition in regulation 23(1).]

#### Textual Amendments

**F32** Regs. 23-27 revoked (S.) (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), **22(a)** (with regs. 20, 21)

#### Commencement Information

**I25** Reg. 27 in force at 30.10.1994, see [reg. 1\(2\)](#)

#### [<sup>F39</sup>Interpretation

**27A.**—(1) In regulations 23 to 25 and 91, references to the giving of notice by the Secretary of State to a person under regulation 23 are to the service of a notice on a person under regulation 23(2B) or the publication and affixing of a notice under regulation 23(2D), and where a notice is published and affixed under regulation 23(2D) any person carrying out an operation specified in the notice shall be taken to be a person to whom notice is given under regulation 23(1).

(2) In regulations 22 to 25, 89 and Schedule 1, references to the Secretary of State shall be taken to be, in relation to Wales, references to the Welsh Ministers.]

(39) 1981 c. 69.

(40) Section 29(4)(a) was amended by paragraph 11(9) and (10) of Schedule 9 to the Environmental Protection Act 1990 (c. 43).

*Status: Point in time view as at 12/01/2010.*

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

### Textual Amendments

**F39** Reg. 27A inserted (E.W.) (1.10.2009) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) \(No. 2\) Regulations 2009 \(S.I. 2009/2438\)](#), regs. 1(1), **10(5)** (with reg. 12)

## Byelaws

### Power to make byelaws

**28.**—(1) The appropriate nature conservation body may make byelaws for the protection of a European site under section 20 of the National Parks and Access to the Countryside Act 1949<sup>(41)</sup> (byelaws for protection of nature reserves).

(2) Without prejudice to the generality of paragraph (1), byelaws under that section as it applies by virtue of this regulation may make provision of any of the following kinds.

(3) They may—

- (a) provide for prohibiting or restricting the entry into, or movement within, the site of persons, vehicles, boats and 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;
- (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.

(4) They 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 requisite for the protection of the site.

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

(7) This regulation does not apply in relation to a European marine site (but see regulation 36).

### Commencement Information

**I26** Reg. 28 in force at 30.10.1994, see [reg. 1\(2\)](#)

<sup>(41)</sup> 1949 c. 97; section 20 was amended by paragraph 1 of Schedule 1 to the Nature Conservancy Council Act 1973 (c. 54), paragraph 28(1) of Schedule 4 to the Telecommunications Act 1984 (c. 12) and paragraph 13(1) of Schedule 25 to the Water Act 1989 (c. 15).

### Byelaws: limitation on effect

**29.** Byelaws under section 20 of the National Parks and Access to the Countryside Act 1949 as it applies by virtue of regulation 28 shall not interfere with—

- (a) the exercise by any person of a right vested in him as owner, lessee or occupier of land in the European site, or in any such surrounding or adjoining area as is mentioned in paragraph (4) of that regulation;
- (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, a district salmon fishery board or the Commissioners appointed under the Tweed Fisheries Act 1969<sup>(42)</sup>; or
- [<sup>F40</sup>(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.]

#### Textual Amendments

**F40** Reg. 29(e) substituted (17.9.2003) by [The Communications Act 2003 \(Consequential Amendments\) Order 2003 \(S.I. 2003/2155\)](#), art. 1(1), [Sch. 1 para. 36](#)

#### Commencement Information

**I27** Reg. 29 in force at 30.10.1994, see [reg. 1\(2\)](#)

### Compensation for effect of byelaws

**30.** Where the exercise of any right vested in a person, whether by reason of his 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 byelaws under section 20 of the National Parks and Access to the Countryside Act 1949 as it applies by virtue of regulation 28, he shall be entitled to receive from the appropriate nature conservation body compensation in respect thereof.

#### Commencement Information

**I28** Reg. 30 in force at 30.10.1994, see [reg. 1\(2\)](#)

### Continuation in force of existing byelaws

**31.** Any byelaws in force under section 20 of the National Parks and Access to the Countryside Act 1949 in relation to land which on or after the commencement of these Regulations becomes land within a European site, or adjacent to such a site, shall have effect as if made under the said section 20 as it applies by virtue of regulation 28 and shall be construed as if originally so made.

#### Commencement Information

**I29** Reg. 31 in force at 30.10.1994, see [reg. 1\(2\)](#)

(42) 1969 c.xxiv.

*Status: Point in time view as at 12/01/2010.*

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

### *Powers of compulsory acquisition*

#### [<sup>F41</sup>Powers of compulsory acquisition

**32.**—(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.

(2) Such a breach as is mentioned in paragraph (1)(b) shall not 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 the remedying thereof.

(3) Any dispute arising whether there has been such a breach of a management agreement shall be determined—

- (a) in the case of land in England and Wales, by an arbitrator appointed by the Lord Chancellor;
- (b) in the case of land in Scotland, by an arbiter appointed by the Lord President of the Court of Session.]

#### **Textual Amendments**

**F41** Reg. 32 revoked (S.) (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), **22(b)** (with regs. 20, 21)

#### **Commencement Information**

**I30** Reg. 32 in force at 30.10.1994, see [reg. 1\(2\)](#)

### *Special provisions as to European marine sites*

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

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

This power is exercisable subject to the obtaining of any necessary consent under section 34 of the Coast Protection Act 1949(**43**) (restriction of works detrimental to navigation).

(2) As soon as possible after a site becomes a European marine site, the appropriate nature conservation body shall 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.

(43) 1949 c. 74; section 34 was amended by section 36(1) to (4) of the Merchant Shipping Act 1988 (c. 12).

**Commencement Information**

**I31** Reg. 33 in force at 30.10.1994, see [reg. 1\(2\)](#)

**Management scheme for European marine site**

**34.**—(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) shall 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 shall be sent by the relevant authority or authorities concerned to the appropriate nature conservation body.

**Commencement Information**

**I32** Reg. 34 in force at 30.10.1994, see [reg. 1\(2\)](#)

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

**35.**—(1) The relevant Minister 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 Minister is required before the scheme is established; and
- (e) require any relevant authority to supply to the Minister such information concerning the establishment of the scheme as may be specified in the direction.

(3) The relevant Minister 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 shall be in writing and may be varied or revoked by a further direction.

(5) In this regulation “the relevant Minister” means, in relation to a site in England, the Secretary of State and the Minister of Agriculture, Fisheries and Food acting jointly and in any other case the Secretary of State.

**Extent Information**

**E12** This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

**Commencement Information**

**I33** Reg. 35 in force at 30.10.1994, see [reg. 1\(2\)](#)

*Status: Point in time view as at 12/01/2010.*

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

## Direction to establish or amend management scheme **E+W**

**35.**—(1) The relevant Minister 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 Minister is required before the scheme is established; and
- (e) require any relevant authority to supply to the Minister such information concerning the establishment of the scheme as may be specified in the direction.

(3) The relevant Minister 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 shall be in writing and may be varied or revoked by a further direction.

[<sup>F249</sup>(5) In this regulation “the relevant Minister” means the Secretary of State.]

### Textual Amendments

**F249** Reg. 35(5) substituted (E.W.) (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(11)** (with reg. 9)

## [<sup>F42</sup>Byelaws for protection of European marine site][<sup>F42</sup>Protection of European marine sites]

**36.**—[<sup>F42</sup>(1) The MMO may make byelaws for the protection of a European marine site in England under section 129 of the Marine and Coastal Access Act 2009 (byelaws for protection of marine conservation zones).

(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).

(3) The provisions of Chapter 1 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) of this regulation, in relation to byelaws made by virtue of paragraph (1) of this regulation or (as the case may be) orders made by virtue of paragraph (2) of this regulation.

(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 of 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 shall 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).]

**Textual Amendments**

**F42** Reg. 36 substituted (E.W.) (12.1.2010 for specified purposes) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), s. 146, [Sch. 11 para. 4](#)

**Commencement Information**

**I34** Reg. 36 in force at 30.10.1994, see [reg. 1\(2\)](#)

*Miscellaneous***Nature conservation policy in planning contexts**

**37.**—(1) For the purposes of the planning enactments mentioned below, policies in respect of the conservation of the natural beauty and amenity of the land shall be taken to include policies encouraging the management of features of the landscape which are of major importance for wild flora and fauna.

Such features 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.

(2) The enactments referred to in paragraph (1) are—

- (a) in the Town and Country Planning Act 1990<sup>(44)</sup>, section 12(3A) (unitary development plans), section 31(3) (structure plans) and section 36(3)<sup>(45)</sup> (local plans);
- (b) in the Town and Country Planning (Scotland) Act 1972<sup>(46)</sup>, section 5(3)(a) (structure plans) and section 9(3)(a) (local plans)<sup>(47)</sup>.

[<sup>F43</sup>(3) Where the Secretary of State considers it necessary, the Secretary of State shall include in a national policy statement under Part 2 of the Planning Act 2008 policy that encourages the management of such features of the landscape (as mentioned in the second paragraph of paragraph (1)) which are of major importance for wild fauna and flora.]

**Textual Amendments**

**F43** Reg. 37(3) inserted (1.10.2009) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) \(No. 2\) Regulations 2009 \(S.I. 2009/2438\)](#), regs. 1(1), 5

**Commencement Information**

**I35** Reg. 37 in force at 30.10.1994, see [reg. 1\(2\)](#)

**[<sup>F44</sup>Surveillance of conservation status of habitats and species E+W**

**37A.**—(1) The Secretary of State (in relation to England) and the Welsh Ministers (in relation to Wales) shall make arrangements [<sup>F45</sup>: in accordance with paragraphs (3A) to (3C)] for the surveillance

(44) 1990 c. 8.

(45) Section 12(3A) was inserted, and sections 31(3) and 36(3) were substituted, by paragraphs 2(1), 16 and 17 respectively of Schedule 4 to the Planning and Compensation Act 1991 (c. 34).

(46) 1972 c. 52.

(47) The relevant passages in sections 5(3)(a) and 9(3)(a) were inserted by paragraphs 3 and 4 of Schedule 13 to the Planning and Compensation Act 1991 (c. 34).

*Status: Point in time view as at 12/01/2010.*

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

of the conservation status of natural habitats of Community interest and species of Community interest, and in particular priority natural habitat types and priority species.

- (2) The Secretary of State shall, from time to time—
- (a) consult the devolved administrations about the arrangements he has made under paragraph (1);
  - (b) provide the devolved administrations with such information as he considers appropriate that has been derived from the surveillance arranged by him under paragraph (1); and
  - (c) review the arrangements he has made under paragraph (1) and, if he thinks it appropriate, revise those arrangements.
- (3) The Welsh Ministers shall, from to time—
- (a) consult the Secretary of State and the other devolved administrations about the arrangements they have made under paragraph (1);
  - (b) provide the Secretary of State and the other devolved administrations with such information as they consider appropriate that has been derived from the surveillance arranged by them under paragraph (1); and
  - (c) review the arrangements they have made under paragraph (1) and, if they think it appropriate, revise those arrangements.

- <sup>F46</sup>(3A) The appropriate nature conservation body shall—
- (a) assess how and to what extent surveillance of the conservation status of each relevant habitat and species needs 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 Secretary of State or the Welsh Ministers as to the need for such surveillance.
- (3B) The Secretary of State (in England) and the Welsh Ministers (in Wales) shall ensure that the necessary surveillance is carried out on an ongoing basis.
- (3C) 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 Secretary of State, the Welsh Ministers or a nature conservation body.
- (3D) In paragraph (3A), a “relevant” habitat or species means a habitat or species in England or Wales of a type referred to in paragraph (1).]
- (4) In this regulation “the devolved administrations” means the Welsh Ministers, the Department of the Environment in Northern Ireland and the Scottish Ministers.]

#### Extent Information

- E13** This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

#### Textual Amendments

- F44** Regs. 37A-37E inserted (E.W.) (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(12)** (with reg. 9)
- F45** Words in [reg. 37A\(1\)](#) inserted (30.1.2009) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) \(England and Wales\) Regulations 2009 \(S.I. 2009/6\)](#), regs. 1(1), **5(a)**



**F46** Reg. 37A(3A)-(3D) inserted (30.1.2009) by The Conservation (Natural Habitats, &c.) (Amendment) (England and Wales) Regulations 2009 (S.I. 2009/6), regs. 1(1), **5(b)**

## <sup>F250</sup> Surveillance of conservation status of habitats and species **S**

**37A.**—(1) The Scottish Ministers shall make arrangements [<sup>F251</sup>in accordance with paragraphs (5) to (7)] for the carrying out of surveillance of the conservation status of natural habitats of Community interest and species of Community interest, and in particular priority natural habitat types and priority species.

(2) Where, in the case of any species of wild fauna and flora listed in Annex V to the Habitats Directive, the Scottish Ministers consider that the results of surveillance under paragraph (1) makes it necessary to do so, they shall make arrangements for ensuring that the taking in the wild of specimens of such species, and their exploitation, is compatible with their being maintained at favourable conservation status.

(3) The arrangements to be made under paragraph (2) shall include arrangements for the carrying out of surveillance of the conservation status of the species in question, for the purpose of establishing whether the taking in the wild of specimens of such species, and their exploitation, is compatible with their being maintained at favourable conservation status.

(4) The Scottish Ministers shall, from time to time, review the arrangements they have made under paragraphs (1), (2) or (3) and if they think it appropriate, revise those arrangements.

<sup>F252</sup>(5) The arrangements made by the Scottish Ministers under paragraph (1) shall ensure that Scottish Natural Heritage implements a strategy for the surveillance of the conservation status of relevant habitats and species in Scotland.

(6) In implementing that strategy Scottish Natural Heritage shall—

- (a) assess how and to what extent surveillance of the conservation status of relevant habitats and species needs to be carried out, having regard to—
  - (i) whether a habitat or species is a priority natural habitat type or a priority species; and
  - (ii) the conservation status of the habitat or species; and
- (b) ensure that surveillance is carried out on an ongoing basis.

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

- (a) Scottish Natural Heritage; or
- (b) any other body or person pursuant to an agreement with Scottish Natural Heritage, provided that Scottish Natural Heritage is satisfied as to the standards and methods of surveillance used by that body or person.

(8) In paragraphs (5) and (6) a relevant habitat or species means a habitat or species of a type referred to in paragraph (1).]]

### Textual Amendments

**F250** Reg. 37A inserted (S.) (15.2.2007) by The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2007 (S.S.I. 2007/80), regs. 2, **9**

**F251** Words in reg. 37A(1) inserted (26.1.2009) by The Conservation (Natural Habitats, &c.) Amendment (No. 2) (Scotland) Regulations 2008 (S.S.I. 2008/425), regs. 1(1), **3(a)**

**F252** Reg. 37A(5)-(8) inserted (26.1.2009) by The Conservation (Natural Habitats, &c.) Amendment (No. 2) (Scotland) Regulations 2008 (S.S.I. 2008/425), regs. 1(1), **3(b)**

*Status: Point in time view as at 12/01/2010.*

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

## **[<sup>F47</sup>Protection of certain animals and plants from exploitation**

**37B.**—[<sup>F48</sup>(1) The Secretary of State shall, as required in the light of information derived from surveillance arranged under regulation 37A or otherwise arranged for the purpose of Article 11 of the Habitats Directive, ensure that measures are taken in England for the purpose mentioned in paragraph (2).]

(2) The purpose referred to in paragraph (1) is to ensure that—

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

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

(3) [<sup>F49</sup>Where measures are required under paragraph (1), the Secretary of State shall] make arrangements (in England) 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.

[<sup>F50</sup>(4) The Welsh Ministers shall, as required in the light of information derived from surveillance arranged under regulation 37A or otherwise arranged for the purpose of Article 11 of the Habitats Directive, ensure that measures are taken in Wales for the purpose mentioned in paragraph (5).]

(5) The purpose referred to in paragraph (4) is to ensure that—

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

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

(6) [<sup>F51</sup>Where measures are required under paragraph (4), the Welsh Ministers shall] make arrangements (in Wales) 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.

### **Textual Amendments**

- F47** Reg. 37A- 37E inserted (E.W.) (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(12)** (with reg. 9)
- F48** Reg. 37B(1) substituted (30.1.2009) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) \(England and Wales\) Regulations 2009 \(S.I. 2009/6\)](#), regs. 1(1), **6(a)**
- F49** Words in reg. 37B(3) substituted (30.1.2009) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) \(England and Wales\) Regulations 2009 \(S.I. 2009/6\)](#), regs. 1(1), **6(b)**
- F50** Reg. 37B(4) substituted (30.1.2009) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) \(England and Wales\) Regulations 2009 \(S.I. 2009/6\)](#), regs. 1(1), **6(c)**
- F51** Words in reg. 37B(6) substituted (30.1.2009) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) \(England and Wales\) Regulations 2009 \(S.I. 2009/6\)](#), regs. 1(1), **6(d)**

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

**37C.**—(1) Subject to regulation 37D, it is an offence for any person on board a ship in any relevant part of the coastal sea deliberately to introduce into those waters, other than in accordance with paragraph (3), any live animal or plant of a kind having a natural range that 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 Secretary of State (in relation to England) and the Welsh Ministers (in relation to Wales) 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 shall 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 shall 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) Regulations 101 and 102(1) apply in relation to an offence under this regulation as if the references in those regulations to an offence under Part III of these Regulations included a reference to an offence under this regulation.

(9) Section 14 of the Wildlife and Countryside Act 1981 shall not apply in relation to any act which is an offence under this regulation.

(10) In this regulation—

“the coastal sea” means any part of the sea within the seawards limits of the territorial waters of the United Kingdom adjacent to England or Wales;

“sea” includes any area submerged at mean high water springs and also includes, so far as the tide flows at mean high water springs, an estuary or arm of the sea and the waters of any channel, creek, bay or river; and

“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.

#### Textual Amendments

**F47** Reg. 37A- 37E inserted (E.W.) (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(12)** (with reg. 9)

#### Licensing the introduction of new species

**37D.**—(1) Regulation 37C does not apply to—

*Status: Point in time view as at 12/01/2010.*

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

- (a) anything done in England which is done under and in accordance with the terms of a licence granted by the Secretary of State; or
  - (b) anything done in Wales which is done under and in accordance with the terms of a licence granted by the Welsh Ministers.
- (2) The Secretary of State and the Welsh Ministers 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.
- (3) A licence under this regulation—
- (a) may be, to any degree, general or specific;
  - (b) may be subject to compliance with any specified conditions;
  - (c) may be granted either to persons of a class or to a particular person;
  - (d) may be modified or revoked at any time by the Secretary of State (if it was granted by him) or by the Welsh Ministers (if it was granted by them); and
  - (e) is valid for the period stated in the licence.
- (4) For the purposes of a licence under this regulation 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.
- (5) The Secretary of State and the Welsh Ministers may charge for a licence under this regulation such reasonable sum as they may determine.

#### Textual Amendments

**F47** [Reg. 37A- 37E](#) inserted (E.W.) (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(12)** (with reg. 9)

#### False statements made for obtaining a licence under regulation 37D

**37E.**—(1) A person commits an offence if, for the purposes of obtaining, whether for himself or another, the grant of a licence under regulation 37D, he—

- (a) makes a statement or representation, or furnishes a document or information, which he knows to be false in a material particular, or
- (b) recklessly makes a statement or representation, or furnishes 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.

(3) Regulations 101 and 102 of these Regulations apply in relation to an offence under this regulation as if the references in those regulations to an offence under Part III of these Regulations included an offence under this regulation.]

#### Textual Amendments

**F47** [Reg. 37A- 37E](#) inserted (E.W.) (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(12)** (with reg. 9)

## PART III

### PROTECTION OF SPECIES

#### *Protection of animals*

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

**38.** The species of animals listed in Annex IV(a) to the Habitats Directive whose natural range includes any area in Great Britain are listed in Schedule 2 to these Regulations.

References in these Regulations to a “European protected species” of animal are to any of those species.

#### **Commencement Information**

**I36** Reg. 38 in force at 30.10.1994, see [reg. 1\(2\)](#)

#### **[<sup>F52</sup>Protection of certain wild animals E+W**

**39.—**(1) A person commits an offence if he—

- (a) deliberately captures, injures or kills any wild animal of a European protected species;
- (b) deliberately disturbs wild animals of any such species <sup>F53</sup>...
- (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.

[<sup>F54</sup>(1A) 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.]

(2) It is an offence for any person—

- (a) to have in his possession or 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 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) any part of, or anything derived from, such an animal or any such part of an animal.

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*Status: Point in time view as at 12/01/2010.*

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

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(4) Paragraphs (1) and (2) apply regardless of the stage of the life of the animal in question.

(5) Subject to paragraph (6), a person shall not be guilty of an offence under paragraph (2) if he shows that the animal or part of the animal in question, or the animal or part of the animal from which the part or the thing in question is derived, was lawfully taken from the wild.

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

(a) in respect of the offences in paragraph (2)(a) and (b) if—

(i) the animal in question is an animal of a European protected species or of the species *Gortyna borelii lunata* (Fisher's estuarine moth), *Lacerta vivipara pannonica* (viviparous lizard) or *Lycaena dispar* (the large copper butterfly), or the part or 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 transported by the defendant, for the purpose of sale or exchange; or

(b) in respect of the offences in paragraph (2)(c) and (d), if the animal is an animal of any of the species referred to in sub-paragraph (a), or the part or thing in question is derived from such an animal.

(7) For the purposes of paragraph (5) an animal, or part of an animal, shall be 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 EC Treaty 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 shall not be guilty of an offence under paragraph (2) if he shows that the animal, or the animal from which the part or thing in question is derived—

(a) is of a species listed in the second column of Schedule 2A 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) Unless the contrary is shown, in any proceedings for an offence under paragraph (1) the animal in question is to be presumed to have been a wild animal.

(10) In any proceedings for an offence under paragraph (2), where it is alleged that an animal or a part of an animal was taken from the wild, it is to be presumed, unless the contrary is shown, that that animal or part of an animal was taken from the wild.

(11) 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.

[<sup>F55</sup>(12) 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 Secretary of State (in relation to England) or the Welsh Ministers (in relation to Wales); or

(b) the appropriate nature conservation body, with the approval of the Secretary of State (in relation to England) or the Welsh Ministers (in relation to Wales).

(13) In proceedings for an offence under paragraph (1)(b) or (d), a court shall take into account any relevant guidance published under paragraph (12).]

<sup>F56</sup>(14) .....

<sup>F56</sup>(15) .....

<sup>F56</sup>(16) .....

(17) In deciding upon the sentence for a person convicted of an offence under paragraph (1)(d), the court shall 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.

(18) For the purposes of any proceedings for an offence under paragraph (2), the common names given in parentheses in paragraphs (6) and (8) shall be disregarded.

(19) In this regulation—

“the implementation date” means—

- (a) where the relevant State became a member State before 10th June 1994, the 10th June 1994; and
- (b) in any other case, the date on which the relevant State became a member State; and

“relevant State” means the State in whose territory the animal, or part of it, was taken from the wild.]

**Extent Information**

**E14** This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

**Textual Amendments**

**F52** Reg. 39 substituted (E.W.) (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(13)** (with reg. 9)

**F53** Words in reg. 39(1)(b) omitted (30.1.2009) by virtue of [The Conservation \(Natural Habitats, &c.\) \(Amendment\) \(England and Wales\) Regulations 2009 \(S.I. 2009/6\)](#), regs. 1(1), **7(a)**

**F54** Reg. 39(1A) inserted (30.1.2009) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) \(England and Wales\) Regulations 2009 \(S.I. 2009/6\)](#), regs. 1(1), **7(b)**

**F55** Reg. 39(12)(13) substituted (30.1.2009) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) \(England and Wales\) Regulations 2009 \(S.I. 2009/6\)](#), regs. 1(1), **7(c)**

**F56** Reg. 39(14)-(16) omitted (30.1.2009) by virtue of [The Conservation \(Natural Habitats, &c.\) \(Amendment\) \(England and Wales\) Regulations 2009 \(S.I. 2009/6\)](#), regs. 1(1), **7(d)**

<sup>F253</sup>**Protection of wild animals of European protected species** **S**

**39.—(1)** It is an offence—

- (a) deliberately or recklessly to capture, injure or kill a wild animal of a European protected species;
- (b) deliberately or recklessly—
  - (i) to harass a wild animal or group of wild animals of a European protected species;
  - (ii) to disturb such an animal while it is occupying a structure or place which it uses for shelter or protection;
  - (iii) to disturb such an animal while it is rearing or otherwise caring for its young;

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*Status: Point in time view as at 12/01/2010.*

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

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- (iv) to obstruct access to a breeding site or resting place of such an animal, or otherwise to deny the animal use of the breeding site or resting place;
  - (v) to disturb such an animal in a manner that is, or in circumstances which are, likely to significantly affect the local distribution or abundance of the species to which it belongs; ...
  - (vi) to disturb such an animal in a manner that is, or in circumstances which are, likely to impair its ability to survive, breed or reproduce, or rear or otherwise care for its young; [<sup>F254</sup>or
  - (vii) to disturb such an animal while it is migrating or hibernating;]
  - (c) deliberately or recklessly to take or destroy the eggs of such an animal; or
  - (d) to damage or destroy a breeding site or resting place of such an animal.
- (2) Subject to the provisions of this Part, it is an offence to deliberately or recklessly disturb any dolphin, porpoise or whale (cetacean).
- (3) It is an offence for any person—
- (a) on or after 1st May 2007 to possess or control;
  - (b) on or after 1st May 2007 to transport;
  - (c) to sell or exchange; or
  - (d) to offer for sale or exchange,
- anything to which paragraph (4) applies.
- (4) This paragraph 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 part of such an animal.
- (5) The offences in paragraph (1), (2) and (3) apply to all stages of the life of the animals to which they apply.
- (6) Subject to paragraph (7), a person shall not be guilty of an offence under paragraph (3) if that person 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.
- (7) The defence under paragraph (6) does not apply—
- (a) in respect of the offences in paragraph (3)(a) or (b) if—
    - (i) the animal in question is an animal of a European protected species, or the part or thing in question is derived from such an animal; and
    - (ii) the animal, part or thing in question was in the defender's possession, or transported by the defender, for the purpose of sale or exchange;
  - (b) in respect of the offences in paragraph (3)(c) or (d), if the animal is an animal of a European protected species, or the part or thing in question is derived from such an animal.
- (8) For the purposes of paragraph (6) an animal, or part of an animal, shall be 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 to which the Habitats Directive applies without contravention of the law of that member State and before the implementation date; or



- (b) it was taken from the wild elsewhere without contravention of the law of the country or territory from where it was taken.
- (9) A person shall not be guilty of an offence under paragraph (3) if that person shows that the animal, or the animal from which the part or thing in question is derived—
  - (a) is of a species listed in the second column of the table in Schedule 2A 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* and was not from a naturally occurring population;
  - (c) is of the species *Ovis gmelini musimon* and was not from a naturally occurring population in Corsica or Sardinia; or
  - (d) is of the species *Coregonus oxyrinchus* and either was from Finland or was not from an anadromous population.
- (10) Subject to the provisions of this Part, it is an offence to knowingly cause or permit to be done an act which is made unlawful by any of the provisions of this regulation.
- (11) Unless the contrary is shown, in any proceedings—
  - (a) for an offence under paragraph (1) or (2), the animal in question shall be presumed to have been a wild animal; and
  - (b) for an offence under paragraph (3) (as the case may be)—
    - (i) the animal or part of the animal in question shall be presumed to have been taken from the wild; or
    - (ii) the part or thing in question shall be presumed to be from an animal or part of an animal taken from the wild.
- (12) ... 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.
- (13) .....
- (14) In this regulation—
  - “the implementation date” means—
    - (a) where the relevant State became a member State before 10th June 1994, 10th June 1994; and
    - (b) in any other case, the date on which the relevant State became a member State; and
  - “relevant State” means the State in whose territory the animal, or part of it, was taken from the wild.]

**Textual Amendments**

**F253** Reg. 39 substituted (S.) (15.2.2007) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2007 \(S.S.I. 2007/80\)](#), regs. 2, **10** (with reg. 31)

**F254** Reg. 39(1)(b)(vii) and word inserted (26.1.2009) by [The Conservation \(Natural Habitats, &c.\) Amendment \(No. 2\) \(Scotland\) Regulations 2008 \(S.S.I. 2008/425\)](#), regs. 1(1), **4(b)**

**[<sup>F57</sup> Further defence to the offences in regulation 39 **E+W****

**40.**—(1) A person shall not be guilty of the offence under regulation 39(1) of deliberately capturing a wild animal of a European protected species, or an offence under regulation 39(2)(a) or regulation 39(2)(b), if he shows that the act in question—

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*Status: Point in time view as at 12/01/2010.*

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

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- (a) was in relation to an animal that had been disabled otherwise than by his 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 shall not be guilty of an offence under regulation 39(1)(a), regulation 39(2)(a) or regulation 39(2)(b) if he shows that the act in question—
- (a) was in relation to an animal that had been seriously disabled otherwise than by his 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 shall not be guilty of the offence under regulation 39(1) of deliberately injuring a wild animal of a European protected species if he shows that this was done solely—
- (a) for the purpose of taking a sample by virtue of—
    - (i) section 18C, 18E or 19XA of the 1981 Act;
    - (ii) regulation 101A or 101E of these Regulations;
    - (iii) regulation 9(3) or (5) of the 1997 Regulations; or
    - (iv) regulation 56(2) of the 2007 Regulations; or
  - (b) for the purpose of taking a sample to be used in evidence in any criminal proceedings in respect of the following offences (wherever the offence was committed)—
    - (i) an offence under section 9, 11 or 17 of the 1981 Act or an offence under section 18 of that Act which relates to an offence under section 9 or 11;
    - (ii) an offence under regulation 39, 41 or 46 of these Regulations or an offence under regulation 100 of these Regulations which relates to an offence under regulation 39 or 41;
    - (iii) an offence under the 1997 Regulations or an offence of attempting to commit such an offence; or
    - (iv) an offence under regulation 39, 41 or 51 of the 2007 Regulations, an offence of attempting to commit an offence under regulation 39 or 41 of those Regulations, or an offence under regulation 64 of those Regulations which relates to an offence under regulation 39 or 41 of those Regulations.
- (4) A person shall not be guilty of an offence under regulation 39(2)(a) or (b) if he shows that the act in question was done solely for one or more of the purposes of—
- (a) investigating whether any of the following offences is being or has been committed (wherever the offence was committed)—
    - (i) an offence under section 9, 11 or 17 of the 1981 Act or an offence under section 18 of that Act which relates to an offence under section 9 or 11;
    - (ii) an offence under regulation 39, 41, or 46 of these Regulations or an offence under regulation 100 of these Regulations which relates to an offence under regulation 39 or 41;
    - (iii) an offence under the 1997 Regulations or an offence of attempting to commit such an offence; or

- (iv) an offence under regulation 39, 41 or 51 of the 2007 Regulations, an offence of attempting to commit an offence under regulation 39 or 41 of those Regulations, or an offence under regulation 64 of those Regulations which relates to an offence under regulation 39 or 41 of those Regulations;
- (b) bringing, conducting, or giving evidence in, any criminal proceedings in respect of any such offence; or
- (c) giving effect to an order under—
  - (i) section 21(6) of the 1981 Act;
  - (ii) regulation 103 of these Regulations; or
  - (iii) regulation 11 of the 1997 Regulations.

[<sup>F58</sup>(4A) 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 (4B).

(4B) 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.]

(5) In this regulation—

“the 1981 Act” means the Wildlife and Countryside Act 1981; and

“the 1997 Regulations” means the Control of Trade in Endangered Species (Enforcement) Regulations 1997.]

#### Extent Information

**E15** This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

#### Textual Amendments

**F57** Reg. 40 substituted (E.W.) (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(14)** (with reg. 9)

**F58** Reg. 40(4A)(4B) inserted (30.1.2009) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) \(England and Wales\) Regulations 2009 \(S.I. 2009/6\)](#), regs. 1(1), **8**

#### [<sup>F255</sup>Exceptions from regulation 39 **S**

**40.**—(1) A person shall not be guilty of an offence under regulation 39(1)(a) or (b), (2), or (3) (a) or (b), if that person shows that what was done—

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

(2) A person shall not be guilty of the offence under regulation 39(1)(a) of deliberately or recklessly capturing a wild animal of a European protected species, or an offence under regulation 39(3)(a) or (b), if that person shows that what was done—

*Status: Point in time view as at 12/01/2010.*

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

- (a) was in relation to an animal that had been disabled otherwise than by that person's unlawful act; and
  - (b) was done solely for one or more of the purposes of—
    - (i) tending it and releasing it when no longer disabled; or
    - (ii) releasing it after it had been tended,
 and was done in a manner or in circumstances unlikely to cause the animal unnecessary suffering.
- (3) A person shall not be guilty of an offence by reason of any act made unlawful by regulation 39 if that person shows that the act was carried out in relation to an animal bred and, at the time the act was carried out, lawfully held in captivity.
- <sup>F256</sup>(4) The exceptions to regulation 39 in paragraphs (1) and (2) shall not apply where it is shown that—
- (a) there was a satisfactory alternative to what was done; or
  - (b) what was done was detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range.]]

#### Textual Amendments

**F255** Reg. 40 substituted (S.) (15.2.2007) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2007 \(S.S.I. 2007/80\)](#), regs. 2, **11**

**F256** Reg. 40(4) inserted (26.1.2009) by [The Conservation \(Natural Habitats, &c.\) Amendment \(No. 2\) \(Scotland\) Regulations 2008 \(S.S.I. 2008/425\)](#), regs. 1(1), **5**

#### Prohibition of certain methods of taking or killing wild animals **E+W**

- 41.**—(1) This regulation applies in relation to the [<sup>F59</sup>capturing] or killing of a wild animal—
- (a) of any of the species listed in Schedule 3 to these Regulations (which shows the species listed in Annex V(a) to the Habitats Directive, and to which Article 15 applies, whose natural range includes any area of Great Britain), or
  - (b) of a European protected species, where the [<sup>F59</sup>capturing] or killing of such animals is permitted in accordance with these Regulations.
- (2) It is an offence to use for the purpose of [<sup>F60</sup>capturing] or killing any such wild animal—
- (a) any of the means listed in paragraph (3) or (4) below, <sup>F61</sup>...
  - (b) any form of [<sup>F60</sup>capturing] or killing from the modes of transport listed in paragraph (5) [<sup>F62</sup>below, or]
- <sup>F63</sup>(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 3 to these Regulations or any European protected species of animal.]
- (3) The prohibited means of [<sup>F64</sup>capturing] or killing of mammals are—
- (a) blind or mutilated animals used 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 [<sup>F65</sup>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 [<sup>F66</sup>to imprisonment for a term not exceeding six months or] to a fine not exceeding level 5 on the standard scale [<sup>F67</sup>, or to both].

#### Extent Information

- E16** This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

#### Textual Amendments

- F59** Word in reg. 41(1) substituted (E.W.) (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(15)(a)** (with reg. 9)
- F60** Word in reg. 41(2) substituted (E.W.) (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(15)(b)** (with reg. 9)
- F61** Word in reg. 41(2)(a) omitted (E.W.) (21.8.2007) by virtue of [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(15)(c)** (with reg. 9)
- F62** Word in reg. 41(2)(b) substituted (E.W.) (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(15)(d)** (with reg. 9)
- F63** Reg. 41(2)(c) inserted (E.W.) (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(15)(e)** (with reg. 9)
- F64** Word in reg. 41(3) substituted (E.W.) (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(15)(f)** (with reg. 9)
- F65** Word in reg. 41(4) substituted (E.W.) (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(15)(g)** (with reg. 9)
- F66** Words in reg. 41(6) inserted (E.W.) (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(15)(h)(i)** (with reg. 9)
- F67** Words in reg. 41(6) inserted (E.W.) (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(15)(h)(ii)** (with reg. 9)

*Status: Point in time view as at 12/01/2010.*

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

### Commencement Information

**I37** Reg. 41 in force at 30.10.1994, see [reg. 1\(2\)](#)

## Prohibition of certain methods of taking or killing wild animals **S**

- 41.**—(1) This regulation applies in relation to the taking or killing of a wild animal—
- (a) of any of the species listed in Schedule 3 to these Regulations (which shows the species listed in Annex V(a) to the Habitats Directive, and to which Article 15 applies, whose natural range includes any area of Great Britain), or
  - (b) of a European protected species, where the taking or killing of such animals is permitted in accordance with these Regulations.
- (2) It is an offence to use for the purpose of taking or killing any such wild animal—
- (a) any of the means listed in paragraph (3) or (4) below, ...
  - (b) any form of taking or killing from the modes of transport listed in paragraph (5) below <sup>[F257]</sup>, or
  - (c) any other means of taking 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 3 to these Regulations or any European protected species of animal.]
- (3) The prohibited means of taking or killing of mammals are—
- (a) blind or mutilated animals used 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 taking 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 [<sup>F258</sup>to imprisonment for a term not exceeding six months or] to a fine not exceeding level 5 on the standard scale [<sup>F259</sup>, or to both].

#### Textual Amendments

**F257** Reg. 41(2)(c) and word inserted (S.) (15.2.2007) by The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2007 (S.S.I. 2007/80), regs. 2, **12(b)**

**F258** Words in reg. 41(6) inserted (S.) (29.11.2004) by The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2004 (S.S.I. 2004/475), regs. 1(1), **12(a)** (with regs. 20, 21)

**F259** Words in reg. 41(6) inserted (S.) (29.11.2004) by The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2004 (S.S.I. 2004/475), regs. 1(1), **12(b)** (with regs. 20, 21)

#### [<sup>F68</sup>Monitoring incidental capture and killing **E+W**

**41A.**—(1) The Secretary of State shall make arrangements [<sup>F69</sup>in accordance with paragraphs (4A) to (4C)] to establish a system to monitor—

- (a) the incidental capture of animals of the species listed in Annex IV(a) to the Habitats Directive, and
- (b) the incidental killing of such animals,

which (in either case) takes place in England.

(2) The Secretary of State shall from time to time—

- (a) consult the devolved administrations about the arrangements he has made under paragraph (1);
- (b) provide the devolved administrations with such information as he considers appropriate derived from the monitoring arranged by him under paragraph (1); and
- (c) review the arrangements he has made under paragraph (1) and, if he thinks it appropriate, revise those arrangements.

(3) The Welsh Ministers shall make arrangements [<sup>F69</sup>in accordance with paragraphs (4A) to (4C)] to establish a system to monitor—

- (a) the incidental capture of animals of the species listed in Annex IV(a) to the Habitats Directive, and
- (b) the incidental killing of such animals,

which (in either case) takes place in Wales.

(4) The Welsh Ministers shall from time to time—

- (a) consult the Secretary of State and the other devolved administrations about the arrangements it has made under paragraph (3);
- (b) provide the Secretary of State and the other devolved administrations with such information as it considers appropriate derived from the monitoring arranged by it under paragraph (3); and
- (c) review the arrangements it has made under paragraph (3) and, if it thinks it appropriate, revise those arrangements.

[<sup>F70</sup>(4A) The appropriate nature conservation body shall, in relation to the species of animals listed in Annex IV(a) to the Habitats Directive which are found in England or in Wales (as the case may be)—

*Status: Point in time view as at 12/01/2010.*

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

- (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 is aware as a result of the surveillance carried out under regulation 37A, 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 Secretary of State or the Welsh Ministers as to the need for such monitoring.
- (4B) The Secretary of State (in England) and the Welsh Ministers (in Wales) shall ensure that the necessary monitoring of incidental capture and killing is carried out.
- (4C) 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 Secretary of State, the Welsh Ministers or a nature conservation body; or
    - (ii) a condition of a licence or other authorisation granted by a competent authority.]
- (5) In this regulation “the devolved administrations” means the Welsh Ministers, the Department of the Environment in Northern Ireland and the Scottish Ministers.]

#### Extent Information

**E17** This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

#### Textual Amendments

**F68** Reg. 41A- 41B inserted (E.W.) (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(16)** (with reg. 9)

**F69** Words in reg. 41A(1)(3) inserted (30.1.2009) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) \(England and Wales\) Regulations 2009 \(S.I. 2009/6\)](#), regs. 1(1), **9(a)**

**F70** Reg. 41A(4A)-(4C) inserted (30.1.2009) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) \(England and Wales\) Regulations 2009 \(S.I. 2009/6\)](#), regs. 1(1), **9(b)**

#### [<sup>F260</sup>Monitoring incidental capture or killing S

**41A.**—(1) Scottish Natural Heritage must make arrangements in accordance with paragraphs (2) to (5) for monitoring the incidental capture or killing (a “monitoring system”) of animals of the species listed in Annex IV(a) to the Habitats Directive.

(2) Scottish Natural Heritage must, from time to time, review the monitoring system and, if they think it appropriate, revise it.

(3) In light of the information gathered from the monitoring system, Scottish Natural Heritage must—



- (a) make arrangements for the carrying out of such research, or
  - (b) where appropriate, advise the Scottish Ministers on such conservation measures
- as appears or appear to Scottish Natural Heritage to be necessary to ensure that such incidental capture or killing does not have a significant negative impact on the species in question.
- (4) In implementing that monitoring system Scottish Natural Heritage must, in relation to the species of animal listed in Annex IV(a) to the Habitats Directive which are found in Scotland—
- (a) identify the risks of incidental capture or 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 Scottish Natural Heritage is aware as a result of the surveillance carried out under regulation 37A, the monitoring carried out under this regulation, or otherwise;
  - (c) assess to what extent monitoring of incidental capture or 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) ensure that monitoring of incidental capture or killing is carried out.
- (5) Monitoring for the purposes of this regulation may be carried out by—
- (a) Scottish Natural Heritage; or
  - (b) any other body or person—
    - (i) pursuant to an agreement with Scottish Natural Heritage, provided that Scottish Natural Heritage is satisfied as to the standards and methods of monitoring used by that body or person; or
    - (ii) as a condition of a licence or other authorisation granted by a competent authority.
- (6) The Scottish Ministers may, from time to time, give directions to Scottish Natural Heritage as to the exercise of its functions under paragraphs (1) to (5).]

#### Textual Amendments

**F260** Reg. 41A substituted (26.1.2009) by [The Conservation \(Natural Habitats, &c.\) Amendment \(No. 2\) \(Scotland\) Regulations 2008 \(S.S.I. 2008/425\)](#), regs. 1(1), 6

#### [<sup>F71</sup>Protection from incidental capture and killing

**41B.**—[<sup>F72</sup>(1) The Secretary of State shall (in England), as required in the light of information derived from monitoring arranged under regulation 41A or otherwise arranged for the purpose of Article 12(4) of the Habitats Directive, make arrangements for further research for, or ensure that conservation measures are taken for, the purpose specified in paragraph (2).]

(2) The purpose referred to in paragraph (1) is to ensure that any incidental capture or incidental killing of animals of a species listed in Annex IV(a) to the Habitats Directive which takes place in England does not have a significant negative impact on that species.

[<sup>F73</sup>(3) The Welsh Ministers shall (in Wales), as required in the light of information derived from monitoring arranged under regulation 41A or otherwise arranged for the purpose of Article 12(4)

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of the Habitats Directive, make arrangements for further research for, or ensure that conservation measures are taken for, the purpose specified in paragraph (4).]

(4) The purpose referred to in paragraph (3) is to ensure that any incidental capture or incidental killing of animals of a species listed in Annex IV(a) to the Habitats Directive which takes place in Wales does not have a significant negative impact on that species.]

#### Textual Amendments

- F71** Regs. 41A, 41B inserted (E.W.) (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(16)** (with reg. 9)
- F72** Reg. 41B(1) substituted (30.1.2009) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) \(England and Wales\) Regulations 2009 \(S.I. 2009/6\)](#), regs. 1(1), **10(a)**
- F73** Reg. 41B(3) substituted (30.1.2009) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) \(England and Wales\) Regulations 2009 \(S.I. 2009/6\)](#), regs. 1(1), **10(b)**

### *Protection of plants*

#### European protected species of plants

**42.** The species of plants listed in Annex IV(b) to the Habitats Directive whose natural range includes any area in Great Britain are listed in Schedule 4 to these Regulations.

References in these Regulations to a “European protected species” of plant are to any of those species.

#### Commencement Information

- I38** Reg. 42 in force at 30.10.1994, see [reg. 1\(2\)](#)

#### [<sup>F74</sup>Protection of certain wild plants **E+W**]

**43.—**(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 have in his possession or 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—
- (a) to 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) to any part of, or anything derived from, such a plant or such a part of a plant.

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

- (5) A person shall not be guilty of the offence under paragraph (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—
    - (i) section 18C, 18E or 19XA of the 1981 Act;
    - (ii) regulation 101A or 101E of these Regulations;
    - (iii) regulation 9(3) or (5) of the 1997 Regulations; or
    - (iv) regulation 56(2) of the 2007 Regulations; or
  - (b) for the purpose of taking a sample to be used in evidence in any criminal proceedings in respect of any of the following offences (wherever the offence was committed)—
    - (i) an offence under section 13 or 17 of the 1981 Act or an offence under section 18 of that Act which relates to an offence under section 13;
    - (ii) an offence under regulation 43 or regulation 46 of these Regulations or an offence under regulation 100 of these Regulations which relates to an offence under regulation 43;
    - (iii) an offence under the 1997 Regulations or an offence of attempting to commit such an offence; or
    - (iv) an offence under regulation 43 or 51 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 which relates to an offence under regulation 43 of those Regulations.
- (6) A person shall not be guilty of an offence under paragraph (2)(a) or (b), if he shows that the act in question was done solely for one or more of the purposes of—
- (a) investigating whether any of the following offences is being or has been committed (wherever the offence was committed)—
    - (i) an offence under section 13 or 17 of the 1981 Act or an offence under section 18 of that Act which relates to an offence under section 13;
    - (ii) an offence under regulation 43 or regulation 46 of these Regulations or an offence under regulation 100 of these Regulations which relates to an offence under regulation 43;
    - (iii) an offence under the 1997 Regulations or an offence of attempting to commit such an offence; or
    - (iv) an offence under regulation 43 or 51 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 which relates to an offence under regulation 43 of those Regulations; or
  - (b) bringing, conducting, or giving evidence in, any criminal proceedings in respect of any such offence; or
  - (c) giving effect to an order under—
    - (i) section 21(6) of the 1981 Act;
    - (ii) regulation 103 of these Regulations; or
    - (iii) regulation 11 of the 1997 Regulations.
- (7) Subject to paragraph (8), a person shall not be guilty of an offence under paragraph (2) if he shows that the plant or part of the plant in question, or the plant or part of the plant from which the part or thing in question is derived, was lawfully taken in the wild.
- (8) The defence in paragraph (7) does not apply—

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

- (a) in the case of the offences in paragraph (2)(a) and (b), if—
- (i) the plant in question is of a European protected species, or the part or 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 the case of the offences in paragraph (2)(c) and (d), if the plant in question is of a European protected species, or the part or thing in question is derived from such a plant.
- (9) For the purposes of paragraph (7) a plant, or part of a plant, shall be 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 EC Treaty applies, without contravention of the law of that member State and before the implementation date; or
  - (b) it was taken in the wild elsewhere.
- (10) Unless the contrary is shown, in any proceedings for an offence under paragraph (1) the plant in question shall be presumed to have been a wild plant.
- (11) 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 to be presumed, unless the contrary is shown, that that plant or part of a plant was taken in the wild.
- (12) 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.
- (13) In this regulation—
- “the 1981 Act” means the Wildlife and Countryside Act 1981;
- “the 1997 Regulations” means the Control of Trade in Endangered Species (Enforcement) Regulations 1997;
- “the implementation date”—
- (a) where the relevant State became a member State before 10th June 1994, means 10th June 1994; and
  - (b) in any other case, means the date on which the relevant State became a member State; and
- “relevant State” means the State in whose territory the plant, or part of it, was taken in the wild.]

#### **Extent Information**

**E18** This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

#### **Textual Amendments**

**F74** [Reg. 43](#) substituted (E.W.) (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(17)** (with reg. 9)

### [<sup>F261</sup> **Protection of certain wild plants** **S**]

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

- (2) It is an offence for any person—
- (a) on or after 1st May 2007 to possess or control;

- (b) on or after 1st May 2007 to transport;
  - (c) to sell or exchange; or
  - (d) to offer for sale or exchange,
- anything to which paragraph (3) applies.
- (3) This paragraph 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 IV(b) to the Habitats Directive; and
  - (b) anything derived from such a plant or part of such a plant.
- (4) The offences in paragraphs (1) and (2) apply to all stages of the biological cycle of the plants to which they apply.
- (5) Subject to paragraph (6), a person shall not be guilty of an offence under paragraph (2) if that person 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.
- (6) The defence under paragraph (5) does not apply—
- (a) in the case of the offences in paragraph (2)(a) or (b) if—
    - (i) the plant in question is a plant of a European protected species, or the part or thing in question is derived from such a plant; and
    - (ii) the plant, part or thing in question was in the defender's possession or control, or transported by the defender, for the purpose of sale or exchange;
  - (b) in the case of the offences in paragraph (2)(c) or (d) if the plant in question is a plant of a European protected species, or the part or thing in question is derived from such a plant.
- (7) For the purposes of paragraph (5) a plant, or part of a plant, shall be 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 to which the Habitats Directive applies without contravention of the law of that member State and before the implementation date; or
  - (b) it was taken in the wild elsewhere without contravention of the law of the country or territory in which it was taken.
- (8) Subject to the provisions of this Part, any person who knowingly causes or permits to be done an act which is made unlawful by any of the provisions of this regulation shall be guilty of an offence.
- (9) Unless the contrary is shown, in any proceedings—
- (a) for an offence under paragraph (1), the plant in question shall be presumed to have been a wild plant; and
  - (b) for an offence under paragraph (2) (as the case may be)—
    - (i) the plant or part of the plant in question shall be presumed to have been taken in the wild; or
    - (ii) the part or thing in question shall be presumed to be from a plant or part of a plant taken in the wild.
- (10) 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.
- (11) In this regulation—

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

“the implementation date” means—

- (a) where the relevant State became a member State before 10th June 1994, 10th June 1994; and
- (b) in any other case, the date on which the relevant State became a member State; and

“relevant State” means the State in whose territory the plant, or part of it, was taken in the wild.]

#### Textual Amendments

**F261** Reg. 43 substituted (S.) (15.2.2007) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2007 \(S.S.I. 2007/80\)](#), regs. 2, 14 (with reg. 31)

### *Power to grant licences*

#### Grant of licences for certain purposes **S**

44.—(1) Regulations 39, 41 and 43 do not apply to anything done for any of the following purposes under and in accordance with the terms of a licence granted by the appropriate authority.

(2) The purposes referred to in paragraph (1) are—

- (a) scientific [<sup>F75</sup>, research] or educational purposes;
- (b) ringing or marking, or examining any ring or mark on, wild animals;
- (c) conserving wild animals [<sup>F76</sup>, including wild birds,] or wild plants or introducing them to particular areas;
- [<sup>F77</sup>(ca) conserving natural habitats;]
- (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.

[<sup>F78</sup>(2A) Subject to paragraph (2B), the appropriate authority may grant a licence to permit the taking or the possession or control of certain specimens of any of the species listed in Annex IV to the Habitats Directive notwithstanding that the licence is for a purpose not falling within paragraph (2).

(2B) The appropriate authority shall only grant a licence under paragraph (2A) where it is satisfied that the grant of the licence would be compatible with the restrictions in Article 16(1)(e) of the Habitats Directive.

(2C) Regulations 39, 41 and 43 do not apply to anything done under and in accordance with the terms of a licence granted by the appropriate authority under paragraph (2A).]

(3) The appropriate authority shall 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.

(4) For the purposes of this regulation “the appropriate authority” means—

(a) in the case of a licence under any of sub-paragraphs (a) to (d) of paragraph (2), the appropriate nature conservation body; and

[<sup>F79</sup>(b) in the case of any other licence granted under this regulation, the Scottish Ministers.]

[<sup>F80</sup>(5) The Scottish Ministers shall from time to time consult with the nature conservation bodies as to the exercise of the Scottish Ministers' functions under this regulation; and they shall not grant a licence of any description unless they have been advised by the appropriate nature conservation body as to the circumstances in which, in the opinion of the appropriate nature conservation body, licences of that description should be granted.]

#### Extent Information

**E19** This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

#### Textual Amendments

- F75** Word in reg. 44(2)(a) inserted (S.) (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), **14(a)** (with regs. 20, 21)
- F76** Words in reg. 44(2)(c) inserted (S.) (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), **14(b)** (with regs. 20, 21)
- F77** Reg. 44(2)(ca) inserted (S.) (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), **14(c)** (with regs. 20, 21)
- F78** Reg. 44(2A)-(2C) inserted (S.) (15.2.2007) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2007 \(S.S.I. 2007/80\)](#), regs. 2, **15(a)**
- F79** Reg. 44(4)(b) substituted (S.) (15.2.2007) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2007 \(S.S.I. 2007/80\)](#), regs. 2, **15(b)**
- F80** Reg. 44(5) substituted (S.) (15.2.2007) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2007 \(S.S.I. 2007/80\)](#), regs. 2, **15(c)**

#### Commencement Information

**I39** Reg. 44 in force at 30.10.1994, see [reg. 1\(2\)](#)

### Grant of licences for certain purposes **E+W**

**44.**—(1) Regulations 39, 41 and 43 do not apply to anything done for any of the following purposes under and in accordance with the terms of a licence granted by the appropriate authority.

(2) The purposes referred to in paragraph (1) 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.

[<sup>F262</sup>(2A) Subject to paragraph (2B), the appropriate authority 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

*Status: Point in time view as at 12/01/2010.*

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

Annex II(b) (other than any bryophyte) or Annex IV to the Habitats Directive notwithstanding that the licence is for a purpose not falling within paragraph (2).

(2B) The appropriate authority may only grant a licence under paragraph (2A) if it is 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”).

(2C) Regulations 39, 41 and 43 do not apply to anything done under and in accordance with the terms of a licence granted by the appropriate authority under paragraph (2A).]

(3) The appropriate authority shall 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.

(4) For the purposes of this regulation “the appropriate authority” means—

- (a) in the case of a licence under any of sub-paragraphs (a) to (d) of paragraph (2), the appropriate nature conservation body; ...
- (b) in the case of a licence under any of sub-paragraphs (e) to (g) of that paragraph, [F263the Secretary of State (in relation to England) or the Welsh Ministers (in relation to Wales)] [F264]; and]

[F265(c) in the case of a licence granted under paragraph (2A), the Secretary of State (in relation to England) or the Welsh Ministers (in relation to Wales).]

[F266(5) The Secretary of State shall from time to time consult with Natural England as to the exercise of the Secretary of State’s functions under this regulation, and shall not grant a licence of any description unless Natural England has advised as to the circumstances in which, in its opinion, licences of that description should be granted.

(6) The Welsh Ministers shall from time to time consult with the Countryside Council for Wales as to the exercise of the Welsh Ministers’ functions under this regulation, and shall not grant a licence of any description unless the Countryside Council for Wales has advised as to the circumstances in which, in its opinion, licences of that description should be granted.]

#### Textual Amendments

- F262** Reg. 44(2A)-(2C) inserted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(18)(a)** (with reg. 9)
- F263** Words in reg. 44(4)(b) substituted (30.1.2009) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) \(England and Wales\) Regulations 2009 \(S.I. 2009/6\)](#), regs. 1(1), **11(a)**
- F264** Word in reg. 44(4)(b) substituted (E.W.) (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(18)(c)** (with reg. 9)
- F265** Reg. 44(4)(c) inserted (E.W.) (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(18)(d)** (with reg. 9)
- F266** Reg. 44(5)(6) substituted for reg. 44(5) (30.1.2009) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) \(England and Wales\) Regulations 2009 \(S.I. 2009/6\)](#), regs. 1(1), **11(b)**

#### Licences: supplementary provisions **E+W**

45.—(1) [F81Subject to the provisions of this regulation, a licence] under regulation 44—

- (a) may be, to any degree, general or specific;



- (b) 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.

[<sup>F82</sup>(1A) A licence under regulation 44(2A) may only be granted to such persons as are named in the licence.]

(2) For the purposes of a licence under regulation 44 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.

(3) A licence under regulation 44 may be modified or revoked at any time by the appropriate authority; but otherwise shall be valid for the period stated in the licence.

(4) A licence under regulation 44 which authorises any person to kill wild animals shall specify the area within which and the methods by which the wild animals may be killed and shall not be granted for a period of more than two years.

[<sup>F83</sup>(4A) A licence granted under regulation 44(2A) shall specify—

- (a) the species or subspecies of animal or plant to which the licence relates;
- (b) the maximum number of specimens which the person authorised by the licence may take or have in his possession or under his control, or which particular specimens that person may take or have in his possession or under his control;
- (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.]

(5) It shall be a defence in proceedings for an offence under section 8(b) of the Protection of Animals Act 1911(<sup>48</sup>) or section 7(b) of the Protection of Animals (Scotland) Act 1912(<sup>49</sup>) (which restrict 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 under regulation 44, and
- (b) any conditions specified in the licence were complied with.

(6) The appropriate authority may charge for a licence under regulation 44 such reasonable sum (if any) as they may determine.

#### Extent Information

**E20** This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

#### Textual Amendments

**F81** Words in reg. 45(1) substituted (E.W.) (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(19)(a)** (with reg. 9)

**F82** [Reg. 45\(1A\)](#) inserted (E.W.) (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(19)(b)** (with reg. 9)

(48) 1911 c. 27; section 8 was amended by section 1 of the Protection of Animals (Amendment) Act 1927 (c. 27).

(49) 1912 c. 14.

*Status: Point in time view as at 12/01/2010.*

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

**F83** Reg. 45(4A) inserted (21.8.2007) by The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007 (S.I. 2007/1843), regs. 2(1), **5(19)(c)** (with reg. 9)

#### Commencement Information

**I40** Reg. 45 in force at 30.10.1994, see **reg. 1(2)**

### Licences: supplementary provisions **S**

**45.—**(1) [<sup>F267</sup>Subject to the provisions of this regulation,] A licence under regulation 44—

- (a) may be, to any degree, general or specific;
- (b) 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.

(2) For the purposes of a licence under regulation 44 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.

(3) A licence under regulation 44 may be modified or revoked at any time by the appropriate authority; but otherwise shall be valid for the period stated in the licence.

(4) A licence under regulation 44 which authorises any person to kill wild animals shall specify the area within which and the methods by which the wild animals may be killed and shall not be granted for a period of more than two years.

[<sup>F268</sup>(4A) A licence granted under regulation 44(2A) shall specify—

- (a) the species of animal or plant the specimens of which the person authorised by the licence may take or possess or control;
- (b) the maximum number of specimens which the person authorised by the licence may take or possess or control, or which particular specimens that person may take or possess or control; 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 it authorises any person to take specimens, the area from which they may be taken.]

(5) It shall be a defence in proceedings for an offence under section 8(b) of the Protection of Animals Act 1911(**48**) or section 7(b) of the Protection of Animals (Scotland) Act 1912(**49**) (which restrict 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 under regulation 44, and
- (b) any conditions specified in the licence were complied with.

(6) The appropriate authority may charge for a licence under regulation 44 such reasonable sum (if any) as they may determine.

(48) 1911 c. 27; section 8 was amended by section 1 of the Protection of Animals (Amendment) Act 1927 (c. 27).

(49) 1912 c. 14.

#### Textual Amendments

- F267** Words in [reg. 45\(1\)](#) inserted (S.) (15.2.2007) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2007 \(S.S.I. 2007/80\)](#), regs. 2, **16(a)**
- F268** [Reg. 45\(4A\)](#) inserted (S.) (15.2.2007) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2007 \(S.S.I. 2007/80\)](#), regs. 2, **16(b)**

#### False statements made for obtaining licence **E+W**

**46.—(1)** A person commits an offence who, for the purposes of obtaining, whether for himself or another, the grant of a licence under regulation 44—

- (a) makes a statement or representation, or furnishes a document or information, which he knows to be false in a material particular, or
- (b) recklessly makes a statement or representation, or furnishes 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 [<sup>F84</sup>to imprisonment for a term not exceeding six months or] to a fine not exceeding level [<sup>F85</sup>5] on the standard scale [<sup>F86</sup>, or to both].

#### Extent Information

- E21** This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

#### Textual Amendments

- F84** Words in [reg. 46\(2\)](#) inserted (E.W.) (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(20)(a)** (with [reg. 9](#))
- F85** Word in [reg. 46\(2\)](#) substituted (E.W.) (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(20)(b)** (with [reg. 9](#))
- F86** Words in [reg. 46\(2\)](#) inserted (E.W.) (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(20)(c)** (with [reg. 9](#))

#### Commencement Information

- I41** [Reg. 46](#) in force at 30.10.1994, see [reg. 1\(2\)](#)

#### False statements made for obtaining licence **S**

**46.—(1)** A person commits an offence who, for the purposes of obtaining, whether for himself or another, the grant of a licence under regulation 44—

- (a) makes a statement or representation, or furnishes a document or information, which he knows to be false in a material particular, or
- (b) recklessly makes a statement or representation, or furnishes 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 [<sup>F269</sup>to imprisonment for a term not exceeding six months or] to a fine not exceeding level [<sup>F270</sup>5 ] on the standard scale [<sup>F271</sup>, or to both].

*Status: Point in time view as at 12/01/2010.*

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

#### Textual Amendments

- F269** Words in [reg. 46\(2\)](#) inserted (S.) (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), **15(a)** (with regs. 20, 21)
- F270** Word in [reg. 46\(2\)](#) substituted (S.) (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), **15(b)** (with regs. 20, 21)
- F271** Words in [reg. 46\(2\)](#) inserted (S.) (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), **15(c)** (with regs. 20, 21)

#### [<sup>F87</sup>Offence of breaching licence condition **S**

**46A.**—(1) It is an offence for any person authorised by virtue of a licence granted under regulation 44 on or after 15th May 2007 to contravene, or fail to comply with, any condition imposed on the grant of a licence.

- (2) A person shall not be guilty of an offence under paragraph (1) if that person shows that—
- (a) that person 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 that person's control.

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

#### Extent Information

- E22** This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

#### Textual Amendments

- F87** [Reg. 46A](#) inserted (S.) (15.2.2007) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2007 \(S.S.I. 2007/80\)](#), regs. 2, **17**

#### [<sup>F272</sup>Offence of breaching licence condition **E+W**

**46A.**—(1) It is an offence for any person authorised by virtue of a licence to which this paragraph applies to contravene or fail to comply with any condition which the licence requires him to comply with.

- (2) Paragraph (1) applies to a licence granted under regulation 44 on or after 21st August 2007.
- (3) A person shall not be guilty of an offence under paragraph (1) if he shows that—
- (a) he 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 his 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.]

### Textual Amendments

**F272** Reg. 46A inserted (E.W.) (21.11.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(21)** (with reg. 9)

## PART IV

### ADAPTATION OF PLANNING AND OTHER CONTROLS

### Modifications etc. (not altering text)

**C6** Pt. 4 applied (with modifications) (E.W.) (7.6.2006) by [The Town and Country Planning \(Application of Subordinate Legislation to the Crown\) Order 2006 \(S.I. 2006/1282\)](#), arts. 1, **15**

### *Introductory*

### Application of provisions of this Part **E+W**

**47.**—(1) The requirements of—

- (a) regulations 48 and 49 (requirement to consider effect on European sites [<sup>F88</sup>in Great Britain and European offshore marine sites]), and
- (b) regulations 50 and 51 (requirement to review certain existing decisions and consents, &c.),

apply, subject to and in accordance with the provisions of regulations 54 to 85, in relation to the matters specified in those provisions.

(2) Supplementary provision is made by—

- (a) regulation 52 (co-ordination where more than one competent authority involved), and
- (b) regulation 53 (compensatory measures where plan or project is agreed to notwithstanding a negative assessment of the implications for a European site [<sup>F89</sup>in Great Britain or European offshore marine site]).

[<sup>F90</sup>(3) Nothing in these Regulations requires an appropriate assessment of any plan or project to be carried out on or in any part of the waters or on or in any part of the seabed or subsoil comprising the offshore marine area, or on or in relation to an offshore marine installation.]

### Extent Information

**E23** This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

### Textual Amendments

- F88** Words in reg. 47(1)(a) inserted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(22)(a)** (with reg. 9)
- F89** Words in reg. 47(2)(b) inserted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(22)(b)** (with reg. 9)
- F90** Reg. 47(3) inserted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(22)(c)** (with reg. 9)

*Status: Point in time view as at 12/01/2010.*

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

### Commencement Information

**I42** Reg. 47 in force at 30.10.1994, see [reg. 1\(2\)](#)

### Application of provisions of this Part **S**

**47.**—(1) The requirements of ... regulations 48 [<sup>F273</sup>, 48A] and 49 (requirement to consider effect on European sites [<sup>F88</sup>in Great Britain and European offshore marine sites]), and ... regulations 50 and 51 (requirement to review certain existing decisions and consents, [<sup>F274</sup>&c.) apply—

[<sup>F275</sup>(a)] subject to and in accordance with the provisions of regulations [<sup>F276</sup>53A] to 85, in relation to the matters specified in those provisions [<sup>F277</sup>, and

(b) in relation to all other plans and projects.]

(2) Supplementary provision is made by—

(a) regulation 52 (co-ordination where more than one competent authority involved), and

(b) regulation 53 (compensatory measures where plan or project is agreed to notwithstanding a negative assessment of the implications for a European site [<sup>F89</sup>in Great Britain or European offshore marine site]).

[<sup>F90</sup>(3) Nothing in these Regulations requires an appropriate assessment of any plan or project to be carried out on or in any part of the waters or on or in any part of the seabed or subsoil comprising the offshore marine area, or on or in relation to an offshore marine installation.]

[<sup>F278</sup>(3A) This Part does not apply to any plan or project to which the Environmental Impact Assessment and Natural Habitats (Extraction of Minerals by Marine Dredging) (Scotland) Regulations 2007 apply.]

### Textual Amendments

**F88** Words in [reg. 47\(1\)\(a\)](#) inserted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), [regs. 2\(1\)](#), **5(22)(a)** (with [reg. 9](#))

**F89** Words in [reg. 47\(2\)\(b\)](#) inserted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), [regs. 2\(1\)](#), **5(22)(b)** (with [reg. 9](#))

**F90** [Reg. 47\(3\)](#) inserted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), [regs. 2\(1\)](#), **5(22)(c)** (with [reg. 9](#))

**F273** Word in [reg. 47\(1\)](#) inserted (29.6.2007) by [The Conservation \(Natural Habitats, &c.\) Amendment \(No. 2\) \(Scotland\) Regulations 2007 \(S.S.I. 2007/349\)](#), [regs. 1\(1\)](#), **2(2)(b)**

**F274** Words in [reg. 47\(1\)](#) substituted (29.6.2007) by [The Conservation \(Natural Habitats, &c.\) Amendment \(No. 2\) \(Scotland\) Regulations 2007 \(S.S.I. 2007/349\)](#), [regs. 1\(1\)](#), **2(2)(d)**

**F275** Word in [reg. 47\(1\)](#) inserted (29.6.2007) by [The Conservation \(Natural Habitats, &c.\) Amendment \(No. 2\) \(Scotland\) Regulations 2007 \(S.S.I. 2007/349\)](#), [regs. 1\(1\)](#), **2(2)(e)**

**F276** Word in [reg. 47\(1\)](#) substituted (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), [regs. 1\(1\)](#), **16(a)** (with [regs. 20, 21](#))

**F277** [Reg. 47\(1\)\(b\)](#) and word inserted (29.6.2007) by [The Conservation \(Natural Habitats, &c.\) Amendment \(No. 2\) \(Scotland\) Regulations 2007 \(S.S.I. 2007/349\)](#), [regs. 1\(1\)](#), **2(2)(f)**

**F278** [Reg. 47\(3A\)](#) inserted (23.11.2007) by [The Environmental Impact Assessment and Natural Habitats \(Extraction of Minerals by Marine Dredging\) \(Scotland\) Regulations 2007 \(S.S.I. 2007/485\)](#), [regs. 1\(1\)](#), **24(1)** (with [reg. 3](#))

### General provisions for protection of European sites

#### Assessment of implications for European site **E+W**

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

- (a) is likely to have a significant effect on a European site in Great Britain [<sup>F91</sup>or a European offshore marine site] (either alone or in combination with other plans or projects), and
- (b) is not directly connected with or necessary to the management of the site,

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

(2) A person applying for any such consent, permission or other authorisation shall provide such information as the competent authority may reasonably require for the purposes of the assessment [<sup>F92</sup>or to enable them to determine whether an appropriate assessment is required].

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

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

(5) In the light of the conclusions of the assessment, and subject to regulation 49, the authority shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site [<sup>F93</sup>or European offshore marine site (as the case may be)].

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

[<sup>F94</sup>(7) This regulation does not apply in relation to a site which is—

- (a) a European site by reason of regulation 10(1)(c); or
- (b) a European offshore marine site by reason of regulation 15(c) of the 2007 Regulations.]

[<sup>F95</sup>(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.]

#### Extent Information

**E24** This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

#### Textual Amendments

- F91** Words in [reg. 48\(1\)\(a\)](#) inserted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), [regs. 2\(1\)](#), **5(23)(a)** (with [reg. 9](#))
- F92** Words in [reg. 48\(2\)](#) inserted (E.W.) (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), [regs. 2\(1\)](#), **5(23)(b)** (with [reg. 9](#))
- F93** Words in [reg. 48\(5\)](#) inserted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), [regs. 2\(1\)](#), **5(23)(c)** (with [reg. 9](#))

*Status: Point in time view as at 12/01/2010.*

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

- F94** Reg. 48(7) substituted (21.8.2007) by The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007 (S.I. 2007/1843), regs. 2(1), **5(23)(d)** (with reg. 9)
- F95** Reg. 48(8) inserted (21.8.2007) by The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007 (S.I. 2007/1843), regs. 2(1), **5(23)(e)** (with reg. 9)

#### Commencement Information

- I43** Reg. 48 in force at 30.10.1994, see **reg. 1(2)**

### Assessment of implications for European site **S**

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

- (a) is likely to have a significant effect on a European site in Great Britain [<sup>F91</sup>or a European offshore marine site] (either alone or in combination with other plans or projects), and
- (b) is not directly connected with or necessary to the management of the site,

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

(2) A person applying for any such consent, permission or other authorisation shall provide such information as the competent authority may reasonably require for the purposes of the assessment [<sup>F279</sup>or to enable the competent authority to determine whether an appropriate assessment is required].

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

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

(5) In the light of the conclusions of the assessment, and subject to regulation 49, the authority shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site [<sup>F93</sup>or European offshore marine site (as the case may be)].

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

[<sup>F94</sup>(7) This regulation does not apply in relation to a site which is—

- (a) a European site by reason of regulation 10(1)(c); or
- (b) a European offshore marine site by reason of regulation 15(c) of the 2007 Regulations.]

#### Textual Amendments

- F91** Words in reg. 48(1)(a) inserted (21.8.2007) by The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007 (S.I. 2007/1843), regs. 2(1), **5(23)(a)** (with reg. 9)
- F93** Words in reg. 48(5) inserted (21.8.2007) by The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007 (S.I. 2007/1843), regs. 2(1), **5(23)(c)** (with reg. 9)
- F94** Reg. 48(7) substituted (21.8.2007) by The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007 (S.I. 2007/1843), regs. 2(1), **5(23)(d)** (with reg. 9)
- F279** Words in reg. 48(2) inserted (S.) (15.2.2007) by The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2007 (S.S.I. 2007/80), regs. 2, **18**



## [F96] Directions as regards plans and projects

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

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

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

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

(3) Where the Scottish Ministers are satisfied that—

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

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

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

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

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

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

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

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

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

### Textual Amendments

**F96** Reg. 48A inserted (S.) (29.6.2007) by [The Conservation \(Natural Habitats, &c.\) Amendment \(No. 2\) \(Scotland\) Regulations 2007 \(S.S.I. 2007/349\)](#), regs. 1(1), **2(3)**

## Considerations of overriding public interest **E+W**

**49.**—(1) If they are satisfied that, there being no alternative solutions, the plan or project must be carried out for imperative reasons of overriding public interest (which, subject to paragraph (2),

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may be of a social or economic nature), the competent authority may agree to the plan or project notwithstanding a negative assessment of the implications for the site.

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

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

[<sup>F97</sup>(b) any other reasons which the competent authority, having due regard to the opinion of the European Commission, considers to be imperative reasons of overriding public interest]

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

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

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

(4) The Secretary of State may thereupon, if he thinks fit, seek the opinion of the Commission; and if he does so, he shall upon receiving the Commission's opinion transmit it to the authority.

(5) Where an authority other than the Secretary of State propose to agree to a plan or project under this regulation notwithstanding a negative assessment of the implications for [<sup>F98</sup>the site concerned], they shall notify the Secretary of State.

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

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

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

#### Textual Amendments

**F97** Reg. 49(2)(b) substituted (E.W.) (21.8.2007) by The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007 (S.I. 2007/1843), regs. 2(1), **5(24)(a)** (with reg. 9)

**F98** Words in reg. 49(5) substituted (21.8.2007) by The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007 (S.I. 2007/1843), regs. 2(1), **5(24)(b)** (with reg. 9)

#### Commencement Information

**I44** Reg. 49 in force at 30.10.1994, see **reg. 1(2)**

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

**49.**—(1) If they are satisfied that, there being no alternative solutions, the plan or project must be carried out for imperative reasons of overriding public interest (which, subject to paragraph (2), may be of a social or economic nature), the competent authority may agree [<sup>F280</sup>, subject to paragraph (1A),] to the plan or project notwithstanding a negative assessment of the implications for the site.

[<sup>F281</sup>(1A) A competent authority other than the Scottish Ministers or the Secretary of State shall consult the Scottish Ministers for the purpose of satisfying itself under paragraph (1), and shall have regard to the opinion of the Scottish Ministers.]

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

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

[<sup>F282</sup>(b) any other imperative reasons of overriding public interest, provided that the competent authority has had regard to the opinion of the European Commission in satisfying itself that there are such reasons.]

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

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

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

(4) The Secretary of State may thereupon, if he thinks fit, seek the opinion of the Commission; and if he does so, he shall upon receiving the Commission's opinion transmit it to the authority.

(5) Where an authority other than the Secretary of State propose to agree to a plan or project under this regulation notwithstanding a negative assessment of the implications for [<sup>F98</sup>the site concerned], they shall notify the Secretary of State.

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

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

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

[<sup>F283</sup>(7) A competent authority shall comply with any direction given to it under paragraph (6).]

#### Textual Amendments

**F98** Words in reg. 49(5) substituted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(24)(b)** (with reg. 9)

**F280** Words in reg. 49(1) inserted (S.) (29.6.2007) by [The Conservation \(Natural Habitats, &c.\) Amendment \(No. 2\) \(Scotland\) Regulations 2007 \(S.S.I. 2007/349\)](#), regs. 1(1), **2(4)(a)**

**F281** Reg. 49(1A) inserted (S.) (29.6.2007) by [The Conservation \(Natural Habitats, &c.\) Amendment \(No. 2\) \(Scotland\) Regulations 2007 \(S.S.I. 2007/349\)](#), regs. 1(1), **2(4)(b)**

**F282** Reg. 49(2)(b) substituted (S.) (15.2.2007) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2007 \(S.S.I. 2007/80\)](#), regs. 2, **19**

**F283** Reg. 49(7) inserted (S.) (29.6.2007) by [The Conservation \(Natural Habitats, &c.\) Amendment \(No. 2\) \(Scotland\) Regulations 2007 \(S.S.I. 2007/349\)](#), regs. 1(1), **2(4)(c)**

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

**50.**—(1) Where before the date on which a site becomes a European site [<sup>F99</sup>or a European offshore marine site] or, if later, the commencement of these Regulations, a competent authority have decided to undertake, or have given any consent, permission or other authorisation for, a plan or project to which regulation 48(1) would apply if it were to be reconsidered as of that date, the

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authority shall as soon as reasonably practicable, review their decision or, as the case may be, the consent, permission or other authorisation, and shall affirm, modify or revoke it.

(2) They shall for that purpose make an appropriate assessment of the implications for the site in view of that site's conservation objectives; and the provisions of regulation 48(2) to (4) [<sup>F100</sup>and regulation 48A] shall apply, with the appropriate modifications, in relation to such a review.

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

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

#### Textual Amendments

**F99** Words in reg. 50(1) inserted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(25)** (with reg. 9)

**F100** Words in reg. 50(2) inserted (S.) (29.6.2007) by [The Conservation \(Natural Habitats, &c.\) Amendment \(No. 2\) \(Scotland\) Regulations 2007 \(S.S.I. 2007/349\)](#), regs. 1(1), **2(5)**

#### Commencement Information

**I45** Reg. 50 in force at 30.10.1994, see [reg. 1\(2\)](#)

#### Consideration on review

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

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

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

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

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

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

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

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

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

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

#### Commencement Information

**I46** Reg. 51 in force at 30.10.1994, see [reg. 1\(2\)](#)

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

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

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

(2) [<sup>F101</sup>Subject to regulation 48A,] Nothing in regulation 48(1) or 50(2) requires a competent authority to assess any implications of a plan or project which would be more appropriately assessed under that provision by another competent authority.

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

- (a) is likely to have a significant effect on a European site [<sup>F102</sup>or a European offshore marine site], or
- (b) will adversely affect the integrity of a European site [<sup>F102</sup>or a European offshore marine site];

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

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

### Textual Amendments

**F101** Words in [reg. 52\(2\)](#) inserted (S.) (29.6.2007) by [The Conservation \(Natural Habitats, &c.\) Amendment \(No. 2\) \(Scotland\) Regulations 2007 \(S.S.I. 2007/349\)](#), regs. 1(1), **2(6)**

**F102** Words in [reg. 52\(3\)\(a\)\(b\)](#) inserted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(26)** (with reg. 9)

### Commencement Information

**I47** Reg. 52 in force at 30.10.1994, see [reg. 1\(2\)](#)

## Compensatory measures

53. Where in accordance with regulation 49 (considerations of overriding public interest)—

- (a) a plan or project is agreed to, notwithstanding a negative assessment of the implications for a European site [<sup>F103</sup>or European offshore marine site], or
- (b) a decision, or a consent, permission or other authorisation, is affirmed on review, notwithstanding such an assessment,

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

### Textual Amendments

**F103** Words in [reg. 53](#) inserted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(27)** (with reg. 9)

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### Commencement Information

**I48** Reg. 53 in force at 30.10.1994, see [reg. 1\(2\)](#)

### [<sup>F104</sup>Control of operations requiring consent

**53A.**—(1) Regulations 48 and 49 (requirement to consider effect on [<sup>F105</sup>European sites in Great Britain and European offshore marine sites]) apply in relation to the granting of any consent under—

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

(2) Where in such a case SNH considers that any adverse effects of the plan or project on the integrity of a European site [<sup>F106</sup>or European offshore marine site] would be avoided if the consent were subject to conditions, it may grant consent subject to those conditions.

(3) Where, in any case, whether in pursuance of sections 13(4) or 16(3) of the 2004 Act or otherwise, in light of the conclusions of an appropriate assessment made under regulation 48(1), SNH has not given consent for an operation, but it considers that there is a risk that the operation may nevertheless be carried out, it shall notify Scottish Ministers.]

### Textual Amendments

**F104** Reg. 53A inserted (S.) (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), **16(b)** (with regs. 20, 21)

**F105** Words in [reg. 53A\(1\)](#) substituted (S.) (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(28)(a)** (with reg. 9)

**F106** Words in [reg. 53A\(2\)](#) inserted (S.) (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(28)(b)** (with reg. 9)

## Planning

### Grant of planning permission

**54.**—(1) Regulations 48 and 49 (requirement to consider effect on [<sup>F107</sup>European sites in Great Britain and European offshore marine sites] ) apply, in England and Wales, in relation to—

- (a) granting planning permission on an application under Part III of the Town and Country Planning Act 1990(**50**);
- (b) 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(**51**) of that Act in respect of such an application;
- (c) granting planning permission under—
  - (i) section 141(2)(a) of that Act (action by Secretary of State in relation to purchase notice),
  - (ii) section 177(1)(a)(**52**) of that Act (powers of Secretary of State on appeal against enforcement notice), or

(50) 1990 c. 8.

(51) Section 78 was amended by section 17(2) of the Planning and Compensation Act 1991 (c. 34).

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

- (iii) section 196(5)(53) of that Act as originally enacted (powers of Secretary of State on reference or appeal as to established use certificate);
- (d) directing under section 90(1), (2) or (2A)(54) of that Act (development with government authorisation), or under section 5(1) of the Pipe-lines Act 1962(55), that planning permission shall be deemed to be granted;
- (e) making—
  - (i) an order under section 102(56) of that Act (order requiring discontinuance of use or removal of buildings or works), including an order made under that section by virtue of section 104 (powers of Secretary of State), which grants planning permission, or
  - (ii) an order under paragraph 1 of Schedule 9(57) to that Act (order requiring discontinuance of mineral working), including an order made under that paragraph by virtue of paragraph 11 of that Schedule (default powers of Secretary of State), which grants planning permission,or confirming any such order under section 103 of that Act;
- (f) directing under—
  - (i) section 141(3) of that Act (action by Secretary of State in relation to purchase notice), or
  - (ii) section 35(5) of the Planning (Listed Buildings and Conservation Areas) Act 1990(58) (action by Secretary of State in relation to listed building purchase notice), that if an application is made for planning permission it shall be granted.
- (2) Regulations 48 and 49 (requirement to consider effect on [<sup>F108</sup>European sites in Great Britain and European offshore marine sites] ) apply, in Scotland, in relation to—
  - (a) granting planning permission on an application under Part III of the Town and Country Planning (Scotland) Act 1972(59);
  - (b) granting planning permission, or upholding a decision of the 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 33 (appeals) of that Act in respect of such an application;
  - (c) granting planning permission under—
    - (i) section 172(2) of that Act (action by Secretary of State in relation to purchase notice),
    - (ii) section 85(5)(60) of that Act (powers of Secretary of State on appeal against enforcement notice), or
    - (iii) section 91(3)(61) of that Act as originally enacted (powers of Secretary of State on reference or appeal as to established use certificate);

(53) Section 196(5) was repealed by paragraph 33(e) of Schedule 7 to the Planning and Compensation Act 1991 (c. 34), but that repeal does not apply to appeals arising out of applications made under section 192(1) (as originally enacted) before 27th July 1992.

(54) Section 90(2A) was inserted by section 16(1) of the Transport and Works Act 1992 (c. 42).

(55) 1962 c. 58.

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

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

(58) 1990 c. 9.

(59) 1972 c. 52.

(60) Section 85(5) was amended by paragraph 20 of Schedule 13 to, and Part IV of Schedule 19 to the Planning and Compensation Act 1991 (c. 34).

(61) Section 91(3) was repealed by paragraph 26(b) of Schedule 13 to the Planning and Compensation Act 1991 (c. 34), but that repeal does not apply to appeals arising out of applications made under section 90(2) (as originally enacted) before 25th September 1992.

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- (d) directing under section 37(1)(**62**) (development with government authorisation) of that Act, or under section 5(1) of the Pipe-lines Act 1962 or paragraph 7 of Schedule 8 to the Electricity Act 1989(**63**), that planning permission shall be deemed to be granted;
- (e) making an order under section 49(**64**) of that Act (order requiring discontinuance of use or removal of buildings or works), including an order made under that section by virtue of section 260 (default powers of Secretary of State), which grants planning permission, or confirming any such order;
- (f) directing under—
  - (i) section 172(3) of that Act (powers of Secretary of State in relation to purchase notice), or
  - (ii) paragraph 2(6) of Schedule 17 to that Act (powers of Secretary of State in relation to listed building purchase notice),
 that if an application is made for planning permission it shall be granted.

(3) Where regulations 48 and 49 apply, the competent authority may, if they consider that any adverse effects of the plan or project on the integrity of a European site [<sup>F109</sup>or 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.

(4) Where regulations 48 and 49 apply, [<sup>F110</sup>outline planning permission][<sup>F110</sup>planning permission in principle] shall not be granted unless the competent authority are satisfied (whether by reason of the conditions and limitations to which the [<sup>F110</sup>outline planning permission][<sup>F110</sup>planning permission in principle] is to be made subject, or otherwise) that no development likely adversely to affect the integrity of a European site [<sup>F111</sup>or European offshore marine site] could be carried out under the permission, whether before or after obtaining [<sup>F112</sup>approval of any reserved matters][<sup>F112</sup>any approval, consent or agreement required by a condition imposed on the grant of the permission].

[<sup>F113</sup>In this paragraph “outline planning permission” and “reserved matters” have the same meaning as in section 92 of the Town and Country Planning Act 1990 or section 39 of the Town and Country Planning (Scotland) Act 1972.] [<sup>F113</sup>In this paragraph “planning permission in principle” has the same meaning as in section 59 of the Town and Country Planning (Scotland) Act 1997].

#### Textual Amendments

- F107** Words in reg. 54(1) substituted (E.W.) (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(29)(a)** (with reg. 9)
- F108** Words in reg. 54(2) substituted (S.) (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(29)(b)** (with reg. 9)
- F109** Words in reg. 54(3) inserted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(29)(c)** (with reg. 9)
- F110** Words in reg. 54(4) substituted (S.) (3.8.2009) by [The Planning etc. \(Scotland\) Act 2006 \(Development Management and Appeals\) \(Saving, Transitional and Consequential Provisions\) Order 2009 \(S.S.I. 2009/222\)](#), arts. 1(1), **14(2)(a)**
- F111** Words in reg. 54(4) inserted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(29)(d)** (with reg. 9)

(62) Section 37(1) was amended by Part I of Schedule 4 to the Local Government and Planning (Scotland) Act 1982 (c. 43).

(63) 1989 c. 29; paragraph 7 is repealed insofar as it extends to England and Wales by Part II of Schedule 1 to the Planning (Consequential Provisions) Act 1990 (c. 11).

(64) Section 49 was amended by section 172(2) of the Local Government (Scotland) Act 1973 (c. 65), sections 26 and 35 of the Town and Country Planning (Minerals) Act 1981 (c. 36) and paragraph 5 of Schedule 8, and paragraph 16 of Schedule 13, to the Planning and Compensation Act 1991 (c. 34).



**F112** Words in reg. 54(4) substituted (S.) (3.8.2009) by The Planning etc. (Scotland) Act 2006 (Development Management and Appeals) (Saving, Transitional and Consequential Provisions) Order 2009 (S.S.I. 2009/222), arts. 1(1), **14(2)(b)**

**F113** Words in reg. 54(4) substituted (S.) (3.8.2009) by The Planning etc. (Scotland) Act 2006 (Development Management and Appeals) (Saving, Transitional and Consequential Provisions) Order 2009 (S.S.I. 2009/222), arts. 1(1), **14(2)(c)**

#### Commencement Information

**I49** Reg. 54 in force at 30.10.1994, see reg. 1(2)

### Planning permission: duty to review

**55.**—(1) Subject to the following provisions of this regulation, regulations 50 and 51 (requirement to review certain decisions and consents, &c.) apply to any planning permission or deemed planning permission, unless—

- (a) the development to which it related has been completed, or
- (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) Regulations 50 and 51 do not apply to planning permission granted or deemed to have been granted—

- (a) by a development order (but see regulations 60 to 64 below);
- (b) by virtue of the adoption of a simplified planning zone scheme or of alterations to such a scheme (but see regulation 65 below);
- (c) by virtue of the taking effect of an order designating an enterprise zone under Schedule 32 to the Local Government, Planning and Land Act 1980<sup>(65)</sup>, or by virtue of the approval of a modified enterprise zone scheme (but see regulation 66 below).

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

- (a) a direction under section 90(1) of the Town and Country Planning Act 1990 or section 37(1) of the Town and Country Planning (Scotland) Act 1972 in respect of development for which an authorisation has been granted under section 1 or 3 of the Pipe-lines Act 1962<sup>(66)</sup>,
- (b) a direction under section 5(1) of the Pipe-lines Act 1962,
- (c) a direction under section 90(1) of the Town and Country Planning Act 1990 or section 37(1) of the Town and Country Planning (Scotland) Act 1972 in respect of development for which a consent has been given under section 36 or 37 of the Electricity Act 1989,
- (d) a direction under section 90(2) of the Town and Country Planning Act 1990 or paragraph 7 of Schedule 8 to the Electricity Act 1989, or
- (e) a direction under section 90(2A) of the Town and Country Planning Act 1990 (which relates to development in pursuance of an order under section 1 or 3 of the Transport and Works Act 1992<sup>(67)</sup>),

<sup>(65)</sup> 1980 c. 65.

<sup>(66)</sup> 1962 c. 58.

<sup>(67)</sup> 1992 c. 42.

*Status: Point in time view as at 12/01/2010.*

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

shall be reviewed in accordance with the following provisions of this Part 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 Town and Country Planning Act 1990 or section 37(1) of the Town and Country Planning (Scotland) Act 1972, the local planning authority shall—

- (a) identify any such permission which they consider falls to be reviewed under regulations 50 and 51, and
- (b) refer the matter to the government department which made the direction;

and the department shall, if it agrees that the planning permission does fall to be so reviewed, thereupon review the direction in accordance with those regulations.

(5) Save as otherwise expressly provided, regulations 50 and 51 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 Secretary of State falls to be reviewed under regulations 50 and 51—

- (a) it shall be reviewed by the local planning authority, and
- (b) the power conferred by section 97 of the Town and Country Planning Act 1990 or section 42 of the Town and Country Planning (Scotland) Act 1972 (revocation or modification of planning permission) shall be exercisable by that authority as in relation to planning permission granted on an application under Part III of that Act.

In a non-metropolitan county in England <sup>F114</sup>... the function of reviewing any such planning permission shall be exercised by the district planning authority unless it relates to a county matter (within the meaning of Schedule 1 to the Town and Country Planning Act 1990) in which case it shall be exercised by the county planning authority.

#### Textual Amendments

**F114** Words in [reg. 55\(6\)](#) omitted (E.W.) (1.4.1996) by virtue of [The Local Government Reorganisation \(Wales\) \(Consequential Amendments\) Order 1996 \(S.I. 1996/525\)](#), arts. 1, 3, [Sch. para. 18\(4\)](#)

#### Commencement Information

**I50** Reg. 55 in force at 30.10.1994, see [reg. 1\(2\)](#)

### Planning permission: consideration on review

**56.**—(1) In reviewing any planning permission or deemed planning permission in pursuance of regulations 50 and 51, the competent authority shall, in England and Wales—

- (a) consider whether any adverse effects could be overcome by planning obligations under section 106(**68**) of the Town and Country Planning Act 1990 being entered into, and
- (b) if they consider that those effects could be so overcome, invite those concerned to enter into such obligations;

and so far as the adverse effects are not thus overcome the authority shall make such order under section 97 of that Act (power to revoke or modify planning permission), or under section 102 of or paragraph 1 of Schedule 9 to that Act (order requiring discontinuance of use, &c.), as may be required.

(2) In reviewing any planning permission or deemed planning permission in pursuance of regulations 50 and 51, the competent authority shall, in Scotland—

(68) Section 106 was substituted by section 12(1) of the Planning and Compensation Act 1991 (c. 34).

- (a) consider whether any adverse effects could be overcome by an agreement under section 50 (agreements regulating development or use of land) of the Town and Country Planning (Scotland) Act 1972 being entered into, and
- (b) if they consider that those effects could be so overcome, invite those concerned to enter into such an agreement;

and so far as the adverse effects are not thus overcome, the authority shall make such order under section 42 of that Act<sup>(69)</sup> (power to revoke or modify planning permission), or under section 49 of that Act<sup>(70)</sup> (orders requiring discontinuance of use, &c.) as may be required.

(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 [<sup>F115</sup>or European offshore marine site], they nevertheless need not proceed under regulations 50 and 51 if and so long as they consider that there is no likelihood of the development being carried out or continued.

#### Textual Amendments

**F115** Words in reg. 56(3) inserted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(30)** (with reg. 9)

#### Commencement Information

**I51** Reg. 56 in force at 30.10.1994, see [reg. 1\(2\)](#)

### Effect of orders made on review: England and Wales

**57.**—(1) An order under section 97 of the Town and Country Planning Act 1990<sup>(71)</sup> (power to revoke or modify planning permission) made pursuant to regulation 55 shall take effect upon service of the notices required by section 98(2) of that Act 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 Secretary of State determines not to confirm such an order, the order shall cease to have effect from the time of that determination, and the permission revoked or modified by the order shall thereafter have effect as if the order had never been made, and—

- (a) 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) above, shall be extended by a period equal to that during which the order had effect; and
- (b) there shall be substituted for any date specified in the permission as being a date by which any action should be taken, not being a date falling prior to the date upon which the order took effect under paragraph (1) above, such date as post-dates the specified date by a period equal to that during which the order had effect.

(3) An order under section 102 of, or under paragraph 1 of Schedule 9 to, the Town and Country Planning Act 1990 (order requiring discontinuance of use, &c.) made pursuant to regulation 55 shall insofar as it requires the discontinuance of a use of land or imposes conditions upon the continuance of a use of land, take effect upon service of the notices required by section 103(3) or, where there is more than one such notice and those notices are served at different times, upon service of the last such notice to be served.

<sup>(69)</sup> Section 42 was amended by section 172(2) of the Local Government (Scotland) Act 1973 (c. 65) and sections 26 and 35 of the Town and Country Planning (Minerals) Act 1981 (c. 36).

<sup>(70)</sup> Section 49 was amended by section 172(2) of the Local Government (Scotland) Act 1973 (c. 65), sections 26 and 35 of the Town and Country Planning (Minerals) Act 1981 (c. 36) and paragraph 5 of Schedule 8, and paragraph 16 of Schedule 13 to the Planning and Compensation Act 1991 (c. 34).

<sup>(71)</sup> 1990 c. 8.

*Status: Point in time view as at 12/01/2010.*

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

(4) Where the Secretary of State determines not to confirm any such order, the order shall cease to have effect from the time of that determination and the use which by the order was discontinued or upon whose continuance conditions were imposed—

- (a) may thereafter be continued as if the order had never been made, and
- (b) shall be treated for the purposes of the Town and Country Planning Act 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 (power to revoke or modify planning permission) made in pursuance of regulation 55 shall 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 under paragraph 1 of Schedule 9 to, that Act (order requiring discontinuance of use, &c.) made in pursuance of regulation 55 shall not affect anything done prior to the site becoming a European site [<sup>F116</sup>or European offshore marine site] or, if later, the commencement of these Regulations.

#### Textual Amendments

**F116** Words in [reg. 57\(6\)](#) inserted (E.W.) (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), [regs. 2\(1\), 5\(31\)](#) (with [reg. 9](#))

#### Commencement Information

**I52** Reg. 57 in force at 30.10.1994, see [reg. 1\(2\)](#)

### Effect of orders made on review: Scotland

**58.**—(1) An order under section 42 of the Town and Country Planning (Scotland) Act 1972 (power to revoke or modify planning permission) made pursuant to regulation 55 shall take effect upon service of the notices required by subsection (3) of that section 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 Secretary of State determines not to confirm such an order, the order shall cease to have effect from the time of that determination, and the permission revoked or modified by the order shall thereafter have effect as if the order had never been made, and—

- (a) 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) above, shall be extended by a period equal to that during which the order had effect; and
- (b) there shall be substituted for any date specified in the permission as being a date by which any action should be taken, not being a date falling prior to that date upon which the order took effect under paragraph (1) above, such date as post-dates the specified date by a period equal to that during which the order had effect.

(3) An order under section 49 of the Town and Country Planning (Scotland) Act 1972 (order requiring discontinuance of use, &c.) made pursuant to regulation 55 shall, insofar as it requires the discontinuance of a use of land or imposes conditions upon the continuance of a use of land, take effect upon service of the notices required by subsection (5) of that section or, where there is more than one such notice and those notices are served at different times, upon service of the last such notice to be served.

(4) Where the Secretary of State determines not to confirm any such order, the order shall cease to have effect from the time of that determination and the use which by the order was discontinued or upon whose continuance conditions were imposed—

- (a) may thereafter be continued as if the order had never been made, and
- (b) shall be treated for the purposes of the Town and Country Planning (Scotland) Act 1972 as if it had continued without interruption throughout the period during which the order had effect.

(5) An order under section 42 of that Act (power to modify or revoke planning permission) made in pursuance of regulation 55 shall not affect so much of the development authorised by the permission as was carried out prior to the site becoming a European site or, if later, the commencement of these Regulations.

(6) An order under section 49 of that Act (order requiring discontinuance of use, &c.) made in pursuance of regulation 55 above shall not affect any use made of the land prior to the site becoming a European site [<sup>F117</sup>or European offshore marine site] or, if later, the commencement of these Regulations.

#### Textual Amendments

**F117** Words in [reg. 58\(6\)](#) inserted (S.) (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), [regs. 2\(1\), 5\(32\)](#) (with [reg. 9](#))

#### Commencement Information

**I53** [Reg. 58](#) in force at 30.10.1994, see [reg. 1\(2\)](#)

### Planning permission: supplementary provisions as to compensation

**59.** –

- (1) Where the Secretary of State determines not to confirm–
- (a) an order under section 97 of the Town and Country Planning Act 1990 (revocation or modification of planning permission) which has taken effect under regulation 57(1), or
  - (b) an order under section 42 of the Town and Country Planning (Scotland) Act 1972 (revocation or modification of planning permission) which has taken effect under regulation 58(1),

and claim for compensation under section 107 of the Act of 1990 or section 153 of the Act of 1972 shall be 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 Secretary of State determining not to confirm the order.

- (2) Where the Secretary of State determines not to confirm–
- (a) an order under section 102 of the Town and Country Planning Act 1990 (order requiring discontinuance of use, &c.) which has taken effect under regulation 57(3) above, or
  - (b) an order under section 49 of the Town and Country Planning (Scotland) Act 1972 (order requiring discontinuance of use, &c.) which has taken effect under regulation 58(3) above,

any claim for compensation under section 115 of the Act of 1990 or section 159 of the Act of 1972 shall be 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 Secretary of State determining not to confirm the order.

- (3) Where compensation is payable in respect of–
- (a) an order under section 97 of the Town and Country Planning Act 1990, or
  - (b) any order mentioned in section 115(1) of that Act (compensation in respect of orders under s.102, &c.), or to which that section applies by virtue of section 115(5),

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and the order has been made pursuant to regulation 50, the question as to the amount of the compensation shall be referred, by the authority liable to pay the compensation, to and be determined by the [<sup>F118</sup>Upper Tribunal] unless and to the extent that in any particular case the Secretary of State has indicated in writing that such a reference and determination may be dispensed with.

(4) Where compensation is payable in respect of—

- (a) an order under section 42 of the Town and Country Planning (Scotland) Act 1972 (revocation or modification of planning permission), or
- (b) any order mentioned in section 153(1) of that Act (compensation in respect of orders under s.49),

and the order has been made pursuant to regulation 50, the question as to the amount of the compensation shall be referred, by the authority liable to pay the compensation, to and be determined by the Lands Tribunal for Scotland unless and to the extent that in any particular case the Secretary of State has indicated in writing that such a reference and determination may be dispensed with.

#### Textual Amendments

**F118** Words in [reg. 59\(3\)](#) substituted (1.6.2009) by [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 1, **Sch. 2 para. 47** (with [Sch. 5](#))

#### Commencement Information

**I54** [Reg. 59](#) in force at 30.10.1994, see [reg. 1\(2\)](#)

### General development orders

**60.**—(1) It shall be a condition of any planning permission granted by a general development order, whether made before or after the commencement of these Regulations, that development which—

- (a) is likely to have a significant effect on a European site in Great Britain [<sup>F119</sup>or a European offshore marine site] (either alone or in combination with other plans or projects), and
- (b) is not directly connected with or necessary to the management of the site,

shall not be begun until the developer has received written notification of the approval of the local planning authority under regulation 62.

(2) It shall be a condition of any planning permission granted by a general development order made before the commencement of these Regulations that development which—

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

and which was begun but not completed before the commencement of these Regulations, shall not be continued until the developer has received written notification of the approval of the local planning authority under regulation 62.

(3) Nothing in this regulation shall affect anything done before the commencement of these Regulations.

#### Textual Amendments

**F119** Words in [reg. 60\(1\)\(a\)](#) inserted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(33)** (with [reg. 9](#))

**Modifications etc. (not altering text)**

- C7** Reg. 60 excluded (31.10.2002) by [The Felixstowe Dock and Railway Harbour Revision Order 2002 \(S.I. 2002/2618\)](#), arts. 1, **17**
- C8** Reg. 60 excluded (30.8.2004) by [The Associated British Ports \(Immingham Outer Harbour\) Harbour Revision Order 2004 \(S.I. 2004/2190\)](#), arts. 1, **18** (with art. 20)
- C9** Reg. 60 excluded (12.10.2006) by [The Humber Sea Terminal \(Phase III\) Harbour Revision Order 2006 \(S.I. 2006/2604\)](#), arts. 1(1), **19(1)** (with art. 19(2))

**Commencement Information**

- I55** Reg. 60 in force at 30.10.1994, see [reg. 1\(2\)](#)

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

**61.**—(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 whether the development is likely to have such an effect as is mentioned in regulation 60(1)(a) or (2)(a).

The application shall give details of the development which is intended to be carried out.

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

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

(4) If they consider that they have insufficient information to reach either of those conclusions, they shall 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.

(5) The opinion of the appropriate nature conservation body, notified in accordance with paragraph (3), that the development is not likely to have such an effect as is mentioned in regulation 60(1)(a) or (2)(a) shall be conclusive of that question for the purpose of reliance on the planning permission granted by a general development order.

**Commencement Information**

- I56** Reg. 61 in force at 30.10.1994, see [reg. 1\(2\)](#)

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

**62.**—(1) Where it is intended to carry out development in reliance upon the permission granted by a general development order, application may be made in writing to the local planning authority for their approval.

(2) The application shall—

(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 61, and

(ii) any fee required to be paid.

*Status: Point in time view as at 12/01/2010.*

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

(3) For the purposes of their consideration of the application the local planning authority shall assume that the development is likely to have such an effect as is mentioned in regulation 60(1)(a) or (2)(a).

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

(5) If in their representations the appropriate nature conservation body state their opinion that the development is not likely to have such an effect as is mentioned in regulation 60(1)(a) or (2)(a), the local planning authority shall send a copy of the representations to the applicant; and the sending of that copy shall have the same effect as a notification by the appropriate nature conservation body of its opinion under regulation 61(3).

(6) In any other case [<sup>F120</sup>in which the application has been sent to the appropriate nature conservation body,] the local planning authority shall, 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 [<sup>F121</sup>or European offshore marine site] in view of that site's conservation objectives.

In the light of the conclusions of the assessment the authority shall approve the development only after having ascertained that it will not adversely affect the integrity of the site.

#### Textual Amendments

**F120** Words in reg. 62(6) inserted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(34)(a)** (with reg. 9)

**F121** Words in reg. 62(6) inserted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(34)(b)** (with reg. 9)

#### Commencement Information

**I57** Reg. 62 in force at 30.10.1994, see [reg. 1\(2\)](#)

### General development orders: supplementary

**63.**—(1) The local planning authority for the purposes of regulations 60 to 62 shall be the authority to whom an application for approval under regulation 62 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—

- (a) £25 in the case of applications made before 3rd January 1995, and
- (b) £30 in the case of applications made on or after that date.

(3) Approval required by regulation 60 shall be treated—

- (a) for the purposes of the provisions of the Town and Country Planning Act 1990(**72**), or the Town and Country Planning (Scotland) Act 1972(**73**), 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 made, as approval required by a condition attached to a grant of planning permission.

(72) 1990 c. 8.

(73) 1972 c. 52.



### Commencement Information

**I58** Reg. 63 in force at 30.10.1994, see [reg. 1\(2\)](#)

### Special development orders

**64.**—(1) A special development order made after the commencement of these Regulations may not grant planning permission for development which—

- (a) is likely to have a significant effect on a European site in Great Britain (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;

and any such order made before the commencement of these Regulations shall, on and after that date, cease to have effect to grant such permission, whether or not the development authorised by the permission has been begun.

(2) Nothing in [<sup>F122</sup>paragraph (1)] shall affect anything done before the commencement of these Regulations.

[<sup>F123</sup>(3) A special development order made on or after 21st August 2007 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).]

### Textual Amendments

**F122** Words in [reg. 64\(2\)](#) substituted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), [regs. 2\(1\)](#), [5\(35\)\(a\)](#) (with [reg. 9](#))

**F123** [Reg. 64\(3\)](#) inserted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), [regs. 2\(1\)](#), [5\(35\)\(b\)](#) (with [reg. 9](#))

### Commencement Information

**I59** Reg. 64 in force at 30.10.1994, see [reg. 1\(2\)](#)

### [<sup>F124</sup>Local development orders

**64A.** A local development order made on or after 21st August 2007 may not grant planning permission for development which—

- (a) is likely to have a significant effect on a European site in Great Britain 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.]

### Textual Amendments

**F124** [Reg. 64A](#) inserted (E.W.) (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), [regs. 2\(1\)](#), [5\(36\)](#) (with [reg. 9](#))

### Simplified planning zones

**65.** The adoption or approval of a simplified planning zone scheme after the commencement of these Regulations shall not have effect to grant planning permission for development which—

*Status: Point in time view as at 12/01/2010.*

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

- (a) is likely to have a significant effect on a European site in Great Britain (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;

and every simplified planning zone scheme already in force shall cease to have effect to grant such permission, whether or not the development authorised by the permission has been begun.

#### Commencement Information

**I60** Reg. 65 in force at 30.10.1994, see [reg. 1\(2\)](#)

#### [<sup>F125</sup>Simplified planning zones and European offshore marine sites

**65A.** The adoption or approval of a simplified planning zone scheme on or after 21st August 2007 shall not have effect 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).]

#### Textual Amendments

**F125** Reg. 65A inserted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(37)** (with reg. 9)

#### Enterprise zones

**66.** An order designating an enterprise zone, or the approval of a modified scheme, if made or given after the commencement of these Regulations, shall not have effect to grant planning permission for development which—

- (a) is likely to have a significant effect on a European site in Great Britain (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;

and where the order or approval was made or given before that date, the permission granted by virtue of the taking effect of the order or the modifications shall, from that date, cease to have effect to grant planning permission for such development, whether or not the development authorised by the permission has been begun.

#### Commencement Information

**I61** Reg. 66 in force at 30.10.1994, see [reg. 1\(2\)](#)

#### [<sup>F126</sup>Enterprise zones and European offshore marine sites

**66A.** An order designating an enterprise zone, or the approval of a modified scheme, if made or given on or after 21st August 2007, shall not have effect 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).]

### Textual Amendments

**F126** Reg. 66A inserted (21.8.2007) by The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007 (S.I. 2007/1843), regs. 2(1), **5(38)** (with reg. 9)

### Simplified planning zones and enterprise zones: supplementary provisions as to compensation

**67.**—(1) Where in England and Wales—

- (a) planning permission is withdrawn by regulation 65 or 66, and
- (b) development authorised by the permission had been begun but not completed before the commencement of these Regulations, and
- (c) on an application made under Part III of the Town and Country Planning Act 1990 before the end of the period of 12 months beginning with the date of commencement of these Regulations, planning permission for the development is refused or is granted subject to conditions other than those imposed by the scheme,

section 107(1)(a) of that Act (compensation in respect of abortive expenditure) shall apply as if the permission granted by the scheme had been granted by the local planning authority under Part III of that Act and had been revoked or modified by an order under section 97 of that Act.

(2) Where in Scotland—

- (a) planning permission is withdrawn by regulation 65 or 66, and
- (b) development authorised by the permission had been begun but not completed before the commencement of these Regulations, and
- (c) on an application made under Part III of the Town and Country Planning (Scotland) Act 1972 before the end of the period of 12 months beginning with the date of commencement of these Regulations, planning permission for the development is refused or is granted subject to conditions other than those imposed by the scheme,

section 153(1)(a) of that Act (compensation in respect of abortive expenditure) shall apply as if the permission granted by the scheme had been granted by the local planning authority under Part III of that Act and had been revoked or modified by an order under section 42 of that Act.

(3) Paragraphs (1) and (2) above do not apply in relation to planning permission for the development of operational land by statutory undertakers.

### Commencement Information

**I62** Reg. 67 in force at 30.10.1994, see **reg. 1(2)**

### [<sup>F127</sup>Grant of development consent

**67A.**—(1) Regulation 48 (assessment of implications for European site) and, with the exception of paragraph (1A), regulation 49 (considerations of overriding public interest) apply in relation to the making of an order granting development consent under the Planning Act 2008.

(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 European offshore marine site would be avoided if the order granting development consent includes requirements under section 120 of the Planning Act 2008, make an order subject to those requirements.]

*Status: Point in time view as at 12/01/2010.*

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

### Textual Amendments

**F127** Regs. 67A, 67B inserted (1.10.2009) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) \(No. 2\) Regulations 2009 \(S.I. 2009/2438\)](#), regs. 1(1), **6(1)**

### [<sup>F127</sup>Development consent: review

**67B.**—(1) Regulations 50 (review of existing decisions and consents, &c) and 51 (consideration on review) apply, with the modification specified in paragraph (2), 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) Regulation 50(2) applies as if the words “and regulation 48A” were omitted.

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

(4) The Commission shall consult the Secretary of State for the purpose of any review under regulations 50 and 51.

(5) In reviewing any order granting development consent in pursuance of regulations 50 and 51, the competent authority shall—

- (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, 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 (changes to, and revocation of, orders granting development consent) to the Planning Act 2008 as may be required.

(6) Any order made by the Commission under paragraph 3(1) of Schedule 6 to the Planning Act 2008 shall, if not made on the application of the Secretary of State under paragraph 3(6) of that Schedule, be treated as so made.

(7) Paragraph (6) shall only have effect where the Secretary of State has agreed to the making of such an order by the Commission.]

### Textual Amendments

**F127** Regs. 67A, 67B inserted (1.10.2009) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) \(No. 2\) Regulations 2009 \(S.I. 2009/2438\)](#), regs. 1(1), **6(1)**

### [<sup>F128</sup>Interpretation

**68.**—(1) Regulations 54 to 67 shall be construed—

- (a) in England and Wales, as one with the Town and Country Planning Act 1990; and
- (b) in Scotland, as one with the Town and Country Planning (Scotland) Act 1997 .

(2) In regulations 67A and 67B, the terms “the Commission”, “the Council”, “development”, “development consent” and “the Panel” shall have the meanings given by the Planning Act 2008.]

**Textual Amendments**

**F128** Reg. 68 substituted (1.10.2009) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) \(No. 2\) Regulations 2009 \(S.I. 2009/2438\)](#), regs. 1(1), **6(2)**

**Commencement Information**

**I63** Reg. 68 in force at 30.10.1994, see [reg. 1\(2\)](#)

*Highways and roads*

**Construction or improvement of highways or roads**

**69.**—(1) Regulations 48 and 49 (requirement to consider effect on [<sup>F129</sup>European sites in Great Britain and European offshore marine sites]) apply in relation to any plan or project—

- (a) by the Secretary of State—
  - (i) to construct a new highway or to improve, within the meaning of the Highways Act 1980(**74**), an existing highway, or
  - (ii) to construct a new road or to improve, within the meaning of the Roads (Scotland) Act 1984(**75**), an existing road; or
- (b) by a local highway authority or local roads authority, to carry out within the boundaries of a road any works required for the improvement of the road.

(2) Regulations 50 and 51 (requirement to review certain decisions and consents, &c.) apply to any such plan or project as is mentioned in paragraph (1) unless the works have been completed before the site became a European site [<sup>F130</sup>or European offshore marine site] or, if later, the commencement of these Regulations.

**Textual Amendments**

**F129** Words in [reg. 69\(1\)](#) substituted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(39)(a)** (with [reg. 9](#))

**F130** Words in [reg. 69\(2\)](#) inserted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(39)(b)** (with [reg. 9](#))

**Commencement Information**

**I64** Reg. 69 in force at 30.10.1994, see [reg. 1\(2\)](#)

**[<sup>F131</sup>Core and other paths**

**69A.**—(1) Regulations 48 and 49 (requirement to consider effect on [<sup>F132</sup>European sites in Great Britain and European offshore marine sites]) apply in relation to a local authority’s proposal—

- (a) to draw up or change a plan for core paths under section 17 of the Land Reform (Scotland) Act 2003 (asp 2);
- (b) to enter a path agreement under section 21 of that Act;
- (c) to create or maintain a path delineated under such an agreement;

**(74)** 1980 c. 66; the expression “improvement” is defined in section 329(1) of the Act.

**(75)** 1984 c. 54; the expression “improvement” is defined in section 151(1) of the Act.

*Status: Point in time view as at 12/01/2010.*

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

- (d) as to how any such path is to be created or maintained;
  - (e) to make a path order under section 22 of that Act;
  - (f) as to how any path delineated under such an order is to be created or maintained.
- (2) Regulations 50 and 51 (requirement to review certain decisions) apply to any decision by a local authority in relation to any of the things mentioned in paragraph (1).]

#### Textual Amendments

- F131** S. 69A inserted (S.) (9.2.2005) by [Land Reform \(Scotland\) Act 2003 \(asp 2\)](#), s. 100(3), **Sch. 2 para. 16**; [S.S.I. 2005/17](#), **art. 2(b)**
- F132** Words in s. 69A substituted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(40)** (with reg. 9)

#### Cycle tracks and other ancillary works

**70.** As from the commencement of these Regulations, section 3(10) of the Cycle Tracks Act 1984(**76**) and section 152(4) of the Roads (Scotland) Act 1984 shall cease to have effect to deem planning permission to be granted for development which—

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

#### Commencement Information

- I65** Reg. 70 in force at 30.10.1994, see [reg. 1\(2\)](#)

### *Electricity*

#### Consents under Electricity Act 1989: application of general requirements

**71.**—(1) Regulations 48 and 49 (requirement to consider effect on [<sup>F133</sup>European sites in Great Britain and European offshore marine sites]) apply in relation to the granting of—

- (a) consent under section 36 of the Electricity Act 1989(**77**) to construct, extend or operate a generating station [<sup>F134</sup>in Great Britain], or
- (b) consent under section 37 of that Act to install an electric line above ground.

(2) Where in such a case the Secretary of State considers that any adverse effects of the plan or project on the integrity of a [<sup>F135</sup>or European offshore marine site] would be avoided if the consent were subject to conditions, he may grant consent subject to those conditions.

(3) Regulations 50 and 51 (requirement to review existing decisions and consents, &c.) apply to such a consent as is mentioned in paragraph (1) unless—

- (a) the works to which the consent relates have been completed before the site became a European site [<sup>F136</sup>in Great Britain] or, if later, the commencement of these Regulations,  
<sup>F137</sup> ...

(76) 1984 c. 38.

(77) 1989 c. 29.

- (b) the consent was granted 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 them having been begun,<sup>F138</sup> ...
- (c) it was granted for a limited period and that period has expired [<sup>F139</sup>, or]
- [<sup>F140</sup>(d) the works to which the consent relates have been completed before the site became a European offshore marine site.]

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

(4) Where on the review of such a consent the Secretary of State considers that any adverse effects on the integrity of a European site [<sup>F141</sup>or 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, he may vary the consent accordingly.

(5) In conjunction with the review of any such consent the Secretary of State shall review any direction deeming planning permission to be granted for the plan or project and may vary or revoke it.

[<sup>F142</sup>(6) In this regulation and in regulations 72, 73 and 74, references to the Electricity Act 1989 are to that Act as it had effect on 1st April 2006.]

#### Textual Amendments

- F133** Words in [reg. 71\(1\)](#) substituted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(41)(a)(i)** (with [reg. 9](#))
- F134** Words in [reg. 71\(1\)\(a\)](#) inserted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(41)(a)(ii)** (with [reg. 9](#))
- F135** Words in [reg. 71\(2\)](#) inserted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(41)(b)** (with [reg. 9](#))
- F136** Words in [reg. 71\(3\)\(a\)](#) inserted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(41)(c)(i)** (with [reg. 9](#))
- F137** Word in [reg. 71\(3\)\(a\)](#) omitted (21.8.2007) by virtue of [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(41)(c)(ii)** (with [reg. 9](#))
- F138** Word in [reg. 71\(3\)\(b\)](#) omitted (21.8.2007) by virtue of [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(41)(d)** (with [reg. 9](#))
- F139** Word in [reg. 71\(3\)\(c\)](#) substituted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(41)(e)** (with [reg. 9](#))
- F140** [Reg. 71\(3\)\(d\)](#) inserted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(41)(f)** (with [reg. 9](#))
- F141** Words in [reg. 71\(4\)](#) inserted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(41)(g)** (with [reg. 9](#))
- F142** [Reg. 71\(6\)](#) inserted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(41)(h)** (with [reg. 9](#))

#### Commencement Information

- I66** [Reg. 71](#) in force at 30.10.1994, see [reg. 1\(2\)](#)

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

**72.**—(1) Where the Secretary of State decides in pursuance of regulation 71 to revoke or vary a consent under the Electricity Act 1989, or a direction deeming planning permission to be granted, he shall serve notice on—

*Status: Point in time view as at 12/01/2010.*

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

(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

(c) any other person who in his 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 him.

(2) The Secretary of State shall also serve notice on—

- (a) the relevant planning authority within the meaning of paragraph 2(6) of Schedule 8 to the Electricity Act 1989, and
- (b) the appropriate nature conservation body,

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

(3) The Secretary of State shall consider whether to proceed with the revocation or variation, and shall have regard to any representations made to him 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 Secretary of State shall before deciding whether to proceed with the revocation or variation give—

- (a) to them, 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 Secretary of State for the purpose.

#### **Commencement Information**

**I67** Reg. 72 in force at 30.10.1994, see [reg. 1\(2\)](#)

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

**73.**—(1) The revocation or variation pursuant to regulation 71 of a consent under section 36 or 37 of the Electricity Act 1989, or a direction deeming planning permission to be granted, shall take effect upon service of the notices required by regulation 72(1) or, where there is more than one such notice and those notices are served at different times, from the date on which the last of them was served.

(2) Where the Secretary of State decides not to proceed with the revocation or variation, the consent or direction shall have effect again from the time of that decision, and shall thereafter have 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, not being a date falling prior to that date mentioned in paragraph (1), such date as post-dates the specified date by a period equal to that during which the revocation or variation had effect;

(3) The revocation or variation pursuant to regulation 71 of a consent under section 36 or 37 of the Electricity Act 1989, or a direction deeming planning permission to be granted, shall not affect anything done under the consent or direction prior to the revocation or variation taking effect.



**Commencement Information**

**I68** Reg. 73 in force at 30.10.1994, see [reg. 1\(2\)](#)

**Consents under Electricity Act 1989: compensation for revocation or variation**

**74.**—(1) Where a direction deeming planning permission to be granted is revoked or varied pursuant to regulation 71, that permission shall be treated—

- (a) for the purposes of Part IV of the Town and Country Planning Act 1990 (compensation) as having been revoked or modified by order under section 97 of that Act, or
- (b) for the purposes of Part VIII of the Town and Country Planning (Scotland) Act 1972 (compensation) as having been revoked or modified by order under section 42 of that Act.

(2) Where a consent under section 36 or 37 of the Electricity Act 1989 is revoked or varied pursuant to regulation 71, Part IV of the Town and Country Planning Act 1990 or Part VIII of the Town and Country Planning (Scotland) Act 1972 (compensation) shall apply 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 1990 Act or section 42 of the 1972 Act; and
- (b) each of those Parts provided that the Secretary of State was the person liable to pay any compensation provided for by that Part.

This paragraph shall not have effect to confer any right to compensation for any expenditure, loss or damage for which compensation is payable by virtue of paragraph (1) above.

(3) Where the Secretary of State decides not to proceed with the revocation or variation of a consent under section 36 or 37 of the Electricity Act 1989, or a direction deeming planning permission to be granted, any claim for compensation by virtue of this regulation shall be 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 73(1) and the Secretary of State deciding not to proceed with it.

(4) Where compensation is payable by virtue of this regulation, the question as to the amount of the compensation shall be referred to and determined by the [<sup>F143</sup>Upper Tribunal or (in the application of these Regulations to Scotland)] the Lands Tribunal for Scotland, unless and to the extent that in any particular case the Secretary of State has indicated in writing that such a reference and determination may be dispensed with.

**Textual Amendments**

**F143** Words in [reg. 74\(4\)](#) substituted (1.6.2009) by [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 1, [Sch. 2 para. 48](#) (with Sch. 5)

**Commencement Information**

**I69** Reg. 74 in force at 30.10.1994, see [reg. 1\(2\)](#)

*Status: Point in time view as at 12/01/2010.*

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

## Pipe-lines

### Authorisations under the Pipe-lines Act 1962: application of general requirements

75.—(1) Regulations 48 and 49 (requirement to consider effect on [<sup>F144</sup>European sites in Great Britain and European offshore marine sites]) apply in relation to the granting of a pipe-line construction or diversion authorisation under the Pipe-lines Act 1962(78).

(2) Where in such a case the Secretary of State considers that any adverse effects of the plan or project on the integrity of a European site [<sup>F145</sup>or European offshore marine site] would be avoided by granting an authorisation for the execution of works for the placing of the proposed pipe-line or, as the case may be, the portion of the pipe-line to be diverted, along a modified route, he may, subject to the provisions of Schedule 1 to the Pipe-lines Act 1962, grant such an authorisation.

(3) Regulation 50 and 51 (requirement to review existing decisions and consents, &c.) apply to a pipe-line construction or diversion authorisation under the Pipe-lines Act 1962 unless—

- (a) the works to which the authorisation relates have been completed before the site became a European site [<sup>F146</sup>in Great Britain] or, if later, the commencement of these Regulations,<sup>F147</sup> ...
- (b) the authorisation was granted 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 them having been begun,<sup>F148</sup> ...
- (c) it was granted for a limited period and that period has expired [<sup>F149</sup>, or]

[<sup>F150</sup>(d) the works to which the consent relates have been completed before the site became a European offshore marine site.]

(4) Where on the review of such an authorisation the Secretary of State considers that any adverse effects on the integrity of a European site [<sup>F151</sup>or 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, he may vary it accordingly.

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

#### Textual Amendments

- F144** Words in reg. 75(1) substituted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(42)(a)** (with reg. 9)
- F145** Words in reg. 75(2) inserted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(42)(b)** (with reg. 9)
- F146** Words in reg. 75(3)(a) inserted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(42)(c)(i)** (with reg. 9)
- F147** Word in reg. 75(3)(a) omitted (21.8.2007) by virtue of [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(42)(c)(ii)** (with reg. 9)
- F148** Word in reg. 75(3)(b) omitted (21.8.2007) by virtue of [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(42)(d)** (with reg. 9)
- F149** Word in reg. 75(3)(c) substituted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(42)(e)** (with reg. 9)
- F150** Reg. 75(3)(d) inserted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(42)(f)** (with reg. 9)

**F151** Words in [reg. 75\(4\)](#) inserted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), [regs. 2\(1\), 5\(42\)\(g\)](#) (with [reg. 9](#))

**Commencement Information**

**I70** [Reg. 75](#) in force at 30.10.1994, see [reg. 1\(2\)](#)

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

**76.**—(1) Where the Secretary of State decides in pursuance of regulation 75 to revoke or vary an authorisation under the Pipe-lines Act 1962, or a direction deeming planning permission to be granted, he shall 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 his 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 serviced may make representations to him.

(2) The Secretary of State shall 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 Secretary of State shall consider whether to proceed with the revocation or variation, and shall have regard to any representations made to him 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 Secretary of State shall before deciding whether to proceed with the revocation or variation give—

- (a) to them, 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 Secretary of State for the purpose.

**Commencement Information**

**I71** [Reg. 76](#) in force at 30.10.1994, see [reg. 1\(2\)](#)

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

**77.**—(1) The revocation or variation pursuant to regulation 75 of an authorisation under the Pipe-lines Act 1962, or of a direction deeming planning permission to be granted, shall take effect upon service of the notices required by regulation 76(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 Secretary of State decides not to proceed with the revocation or variation, the authorisation or direction shall have effect again from the time of that decision, and shall thereafter have 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

*Status: Point in time view as at 12/01/2010.*

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

- (b) there were substituted for any date specified in the authorisation or direction as being a date by which any action should be taken, not being a date falling prior to that date mentioned in paragraph (1), such date as post-dates the specified date by a period equal to that during which the revocation or variation had effect.

(3) The revocation or variation pursuant to regulation 75 of an authorisation under the Pipe-lines Act 1962, or a direction deeming planning permission to be granted, shall not affect anything done under the authorisation or direction prior to the revocation or variation taking effect.

#### Commencement Information

**I72** Reg. 77 in force at 30.10.1994, see [reg. 1\(2\)](#)

#### Authorisations under the Pipe-lines Act 1962: compensation for revocation or variation

**78.**—(1) Where a direction deeming planning permission to be granted is revoked or varied pursuant to regulation 75, that permission shall be treated—

- (a) for the purposes of Part IV of the Town and Country Planning Act 1990<sup>(79)</sup> (compensation) as having been revoked or modified by order under section 97 of that Act, or
- (b) for the purposes of Part VIII of the Town and Country Planning (Scotland) Act 1972<sup>(80)</sup> (Compensation) as having been revoked or modified by order under section 42 of that Act.

(2) Where an authorisation under the Pipe-lines Act 1962 is revoked or varied pursuant to regulation 75, Part IV of the Town and Country Planning Act 1990 or Part VIII of the Town and Country Planning (Scotland) Act 1972 (compensation) shall apply 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 1990 Act or section 42 of the 1972 Act; and
- (b) each of those Parts provided that the Secretary of State was the person liable to pay any compensation provided for by that Part.

This paragraph shall not have effect to confer any right to compensation for any expenditure, loss or damage for which compensation is payable by virtue of paragraph (1) above.

(3) Where the Secretary of State decides 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 shall be 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 77(1) and the Secretary of State deciding not to proceed with it.

(4) Where compensation is payable by virtue of this regulation, the question as to the amount of the compensation shall be referred to and determined by the [<sup>F152</sup>Upper Tribunal or (in the application of these Regulations to Scotland)] the Lands Tribunal for Scotland, unless and to the extent that in any particular case the Secretary of State has indicated in writing that such a reference and determination may be dispensed with.

<sup>(79)</sup> 1990 c. 8.

<sup>(80)</sup> 1972 c. 52.

#### Textual Amendments

**F152** Words in [reg. 78\(4\)](#) substituted (1.6.2009) by [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 1, [Sch. 2 para. 49](#) (with [Sch. 5](#))

#### Commencement Information

**I73** Reg. 78 in force at 30.10.1994, see [reg. 1\(2\)](#)

### *Transport and works*

#### **Orders under the Transport and Works Act 1992: application of general requirements** **S**

**79.**—(1) Regulations 48 and 49 (requirement to consider effect on European site) apply in relation to the making of an order under section 1 or 3 of the Transport and Works Act 1992(**81**).

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

(3) Regulations 50 and 51 (requirement to review existing decisions and consents, &c.) apply to an order under section 1 or 3 of the Transport and Works Act 1992 unless the works to which the order relates have been completed before the site became a European site.

(4) Where on the review of such an order the Secretary of State considers that any adverse effects on the integrity of a European 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, he may vary it accordingly.

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

#### Commencement Information

**I74** Reg. 79 in force at 30.10.1994, see [reg. 1\(2\)](#)

#### **Orders under the Transport and Works Act 1992: application of general requirements** **E**

**+W**

**79.**—(1) Regulations 48 and 49 (requirement to consider effect on [<sup>F284</sup>European sites in Great Britain and European offshore marine sites]) apply in relation to the making of an order under section 1 or 3 of the Transport and Works Act 1992(**81**).

(2) Where in such a case the Secretary of State considers that any adverse effects of the plan or project on the integrity of a European site [<sup>F285</sup>or European offshore marine site] would be avoided by making modifications to the proposals, he may make an order subject to those modifications.

(3) Regulations 50 and 51 (requirement to review existing decisions and consents, &c.) apply to an order under section 1 or 3 of the Transport and Works Act 1992 unless the works to which the order relates have been completed before the site became a European site [<sup>F286</sup>or a European offshore marine site].

(4) Where on the review of such an order the Secretary of State considers that any adverse effects on the integrity of a European site [<sup>F287</sup>or European offshore marine site] of the carrying out or, as

(81) 1992 c. 42.

(81) 1992 c. 42.

*Status: Point in time view as at 12/01/2010.*

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

the case may be, the continuation of the plan or project would be avoided by a variation of the order, he may vary it accordingly.

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

#### Textual Amendments

- F284** Words in [reg. 79\(1\)](#) substituted (E.W.) (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(43)(a)** (with [reg. 9](#))
- F285** Words in [reg. 79\(2\)](#) inserted (E.W.) (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(43)(b)** (with [reg. 9](#))
- F286** Words in [reg. 79\(3\)](#) inserted (E.W.) (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(43)(c)** (with [reg. 9](#))
- F287** Words in [reg. 79\(4\)](#) inserted (E.W.) (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(43)(d)** (with [reg. 9](#))

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

**80.**—(1) Where the Secretary of State decides in pursuance of regulation 79 to revoke or vary an order the Transport and Works Act 1992, or a direction deeming planning permission to be granted, he shall 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 his 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 him.

(2) The Secretary of State shall 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 Secretary of State shall consider whether to proceed with the revocation or variation, and shall have regard to any representations made to him 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 Secretary of State shall before deciding whether to proceed with the revocation or variation of the order or direction give—

- (a) to them,
- (b) to any other person on whom notice under paragraph (1) and (2) was required to be served,

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

#### Commencement Information

- I75** Reg. 80 in force at 30.10.1994, see [reg. 1\(2\)](#)

### **Order under the Transport and Works Act 1992: effect of review**

**81.**—(1) The revocation or variation pursuant to regulation 79 of an order under the Transport and Works Act 1992, or of a direction deeming planning permission to be granted, shall take effect upon service of the notices required by regulation 80(1) or, where there is more than one such notice and those notices are served at different times, upon the service of the last notice to be served.

(2) Where the Secretary of State decides not to proceed with the revocation or variation, the order or direction shall have effect again from the time of that decision, and shall thereafter have 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, not being a date falling prior to that date mentioned in paragraph (1), such date as post-dates the specified date by a period equal to that during which the revocation or variation had effect.

(3) The revocation or variation pursuant to regulation 79 of an order under section 1 or 3 of the Transport and Works Act 1992, or of a direction deeming planning permission to be granted, shall not affect anything done under the order or direction prior to the revocation or variation taking effect.

#### **Commencement Information**

**I76** Reg. 81 in force at 30.10.1994, see [reg. 1\(2\)](#)

### **Orders under the Transport and Works Act 1992: compensation for revocation or variation**

**82.**—(1) Where a direction deeming planning permission to be granted is revoked or varied pursuant to regulation 79, that permission shall be treated for the purposes of Part IV of the Town and Country Planning Act 1990 (compensation) as having been revoked or modified by order under section 97 of that Act.

(2) Where an order under section 1 or 3 of the Transport and Works Act 1992 is revoked or varied pursuant to regulation 79, Part IV of the Town and Country Planning Act 1990 shall apply 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 Secretary of State was the person liable to pay any compensation provided for by that Part.

This paragraph shall not have effect to confer any right to compensation for any expenditure, loss or damage for which compensation is payable by virtue of paragraph (1) above.

(3) Where the Secretary of State decides not to proceed with the revocation or variation of an order under section 1 or 3 of the Transport and Works Act 1992, or a direction deeming planning permission to be granted, any claim for compensation by virtue of this regulation shall be 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 81(1) and the Secretary of State deciding not to proceed with it.

(4) Where compensation is payable by virtue of this regulation, the question as to the amount of the compensation shall be referred to and determined by the [<sup>F153</sup>Upper Tribunal] unless and to the extent that in any particular case the Secretary of State has indicated in writing that such a reference and determination may be dispensed with.

*Status: Point in time view as at 12/01/2010.*

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

#### Textual Amendments

**F153** Words in [reg. 82\(4\)](#) substituted (1.6.2009) by [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 1, **Sch. 2 para. 50** (with [Sch. 5](#))

#### Commencement Information

**I77** [Reg. 82](#) in force at 30.10.1994, see [reg. 1\(2\)](#)

### *Environmental controls*

#### Authorisations under Part I of the Environmental Protection Act 1990

[<sup>F154</sup>**83.**—<sup>F155</sup>(1) .....

<sup>F155</sup>(2) .....

(3) Regulations 50 and 51 (requirement to review existing decisions and consents, &c.) apply to any [<sup>F156</sup>authorisation under Part I of the Environmental Protection Act 1990].

(4) Where on the review of such an authorisation the competent authority consider that any adverse effects on the integrity of a European 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 authorisation, they may vary it, or cause it to be varied, accordingly.

(5) Where any question arises as to <sup>F157</sup>... affirming an authorisation on review, under regulation 49 (considerations of overriding public interest), the competent authority shall refer the matter to the Secretary of State who shall determine the matter in accordance with that regulation and give directions to the authority accordingly.]

#### Textual Amendments

**F154** [Regs. 83, 84](#) omitted (E.W.) (6.4.2008) by virtue of [The Environmental Permitting \(England and Wales\) Regulations 2007 \(S.I. 2007/3538\)](#), [reg. 1\(1\)\(b\)](#), **Sch. 21 para. 35(2)** (with [regs. 69-72](#))

**F155** [Reg. 83\(1\)\(2\)](#) omitted (21.8.2007) by virtue of [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), [regs. 2\(1\)](#), **5(44)(a)** (with [reg. 9](#))

**F156** Words in [reg. 83\(3\)](#) substituted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), [regs. 2\(1\)](#), **5(44)(b)** (with [reg. 9](#))

**F157** Words in [reg. 83\(5\)](#) omitted (21.8.2007) by virtue of [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), [regs. 2\(1\)](#), **5(44)(c)** (with [reg. 9](#))

#### Commencement Information

**I78** [Reg. 83](#) in force at 30.10.1994, see [reg. 1\(2\)](#)

#### Licences under Part II of the Environmental Protection Act 1990

[<sup>F154</sup>**84.**—(1) Regulations 48 and 49 (requirement to consider effect on [<sup>F158</sup>European sites in Great Britain and European offshore marine sites]) apply in relation to—

- (a) the granting of a waste management licence under Part II of the Environmental Protection Act 1990 [<sup>F159</sup>, and]
- (b) the passing of a resolution under section 54 of that Act (provisions as to land occupied by disposal authorities themselves). <sup>F160</sup>...



<sup>F161</sup>(c) .....

(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 [<sup>F162</sup>or European offshore marine site] would be avoided by making any licence subject to conditions, they may grant a licence, or cause a licence to be granted, or, as the case may be, pass a resolution, subject to those conditions.

(3) Regulations 50 and 51 (requirement to review existing decisions and consents, &c.) apply to any such licence or resolution as is mentioned in paragraph (1).

(4) Where on the review of such a licence or resolution the competent authority consider that any adverse effects on the integrity of a European site [<sup>F163</sup>or 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 licence or resolution, they may vary it, or cause it to be varied, accordingly.]

#### Textual Amendments

- F154** Regs. 83, 84 omitted (E.W.) (6.4.2008) by virtue of [The Environmental Permitting \(England and Wales\) Regulations 2007 \(S.I. 2007/3538\)](#), reg. 1(1)(b), **Sch. 21 para. 35(2)** (with regs. 69-72)
- F158** Words in reg. 84(1) substituted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(45)(a)(i)** (with reg. 9)
- F159** Words in reg. 84(1)(a) inserted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(45)(a)(ii)** (with reg. 9)
- F160** Word in reg. 84(1)(b) omitted (21.8.2007) by virtue of [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(45)(a)(iii)** (with reg. 9)
- F161** Reg. 84(1)(c) omitted (21.8.2007) by virtue of [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(45)(a)(iv)** (with reg. 9)
- F162** Words in reg. 84(2) inserted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(45)(b)** (with reg. 9)
- F163** Words in reg. 84(4) inserted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(45)(c)** (with reg. 9)

#### Commencement Information

- I79** Reg. 84 in force at 30.10.1994, see [reg. 1\(2\)](#)

### <sup>F164</sup><sup>F165</sup>**Environmental permits under the Environmental Permitting (England and Wales) Regulations 2007** **E+W**

**84A.**—(1) Regulations 48 and 49 (requirement to consider effect on [<sup>F166</sup>European sites in Great Britain and European offshore marine sites]) apply in relation to the granting of [<sup>F167</sup>an environmental permit under the Environmental Permitting (England and Wales) Regulations 2007].

(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 [<sup>F168</sup>or 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) Regulations 50 and 51 (requirement to review existing decisions and consents, etc.) apply to any such permit as is mentioned 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 [<sup>F169</sup>or 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.

*Status: Point in time view as at 12/01/2010.*

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

(5) Where any question arises as to agreeing to a plan or project, or affirming a permit on review, under regulation 49 (considerations of overriding public interest), the competent authority shall refer the matter to the Secretary of State who shall determine the matter in accordance with that regulation and give directions to the authority accordingly.]

#### Extent Information

**E25** This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

#### Textual Amendments

- F164** Reg. 84A inserted (E.W.) (1.8.2000) by [The Pollution Prevention and Control \(England and Wales\) Regulations 2000 \(S.I. 2000/1973\)](#), reg. 1(1), **Sch. 10 para. 37** (with regs. 1(3), 5)
- F165** Reg. 84A heading substituted (6.4.2008) by [The Environmental Permitting \(England and Wales\) Regulations 2007 \(S.I. 2007/3538\)](#), reg. 1(1)(b), **Sch. 21 para. 35(3)(a)** (with regs. 69-72)
- F166** Words in reg. 84A(1) substituted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(46)(a)** (with reg. 9)
- F167** Words in reg. 84A(1) substituted (6.4.2008) by [The Environmental Permitting \(England and Wales\) Regulations 2007 \(S.I. 2007/3538\)](#), reg. 1(1)(b), **Sch. 21 para. 35(3)(b)** (with regs. 69-72)
- F168** Words in reg. 84A(2) inserted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(46)(b)** (with reg. 9)
- F169** Words in reg. 84A(4) inserted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(46)(c)** (with reg. 9)

### <sup>F288</sup>Permits under the Pollution Prevention and Control (Scotland) Regulations 2000 **S**

**84A.**—(1) Regulations 48 and 49 (requirement to consider effect on [<sup>F289</sup>European sites in Great Britain and European offshore marine sites]) apply in relation to the granting of a permit under the Pollution Prevention and Control (Scotland) Regulations 2000.

(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 [<sup>F290</sup>or 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) Regulations 50 and 51 (requirement to review existing decisions and consents, &c.) apply to any such permit as is mentioned 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 [<sup>F291</sup>or 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, of affirming a permit on review, under regulation 49 (considerations of overriding public interest), the competent authority shall refer the matter to the Scottish Ministers who shall determine the matter in accordance with that regulation and give directions to the authority accordingly.]

#### Textual Amendments

- F288** Reg. 84A inserted (S.) (28.9.2000) by [The Pollution Prevention and Control \(Scotland\) Regulations 2000 \(S.S.I. 2000/323\)](#), reg. 1(1), **sch. 10 para. 12** (with reg. 34)
- F289** Words in reg. 84A(1) substituted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(47)(a)** (with reg. 9)

**F290** Words in reg. 84A(2) inserted (21.8.2007) by The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007 (S.I. 2007/1843), regs. 2(1), 5(47)(b) (with reg. 9)

**F291** Words in reg. 84A(4) inserted (21.8.2007) by The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007 (S.I. 2007/1843), regs. 2(1), 5(47)(c) (with reg. 9)

## [<sup>F170</sup> **Abstraction and works authorised under water legislation** **E+W**]

**84B.**—(1) Regulations 48 and 49 (requirement to consider effect on European sites in Great Britain and European offshore marine sites) 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 (abstraction and impounding);
- (b) the making of an order under section 27A of the WRA (variation of small quantity threshold);
- (c) the making of regulations under section 33A 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 of the WRA); 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 of the WRA (power to make ordinary and emergency drought orders) which has the effect of authorising—
  - (i) an abstraction or additional abstraction; or
  - (ii) a discharge or additional discharge;
- (f) the granting of a permit under section 79A of that Act (drought permits);
- (g) any consent given under section 166 of the WIA (consents for certain discharges under section 165) or section 164 of the WRA (consents for certain discharges under section 163); or
- (h) the making of an order under section 167 of the WIA (compulsory works orders) or section 168 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), shall not apply in relation to any particular abstraction or impounding works unless the 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 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), regulations 48 and 49 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 shall have 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

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

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) Regulations 50 (requirement to review existing decisions and consents, etc) and 51 (consideration on review) 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 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—

“the Agency” means the Environment Agency;

“the WIA” means the Water Industry Act 1991; and

“the WRA” means the Water Resources Act 1991.]

#### Extent Information

**E26** This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

#### Textual Amendments

**F170** [Reg. 84B](#) inserted (E.W.) (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(48)** (with reg. 9)

### [<sup>F292</sup> **Abstraction and works authorised under water legislation** **S**]

**84B.**—(1) Regulations 48 and 49 apply in relation to—

- (a) the grant of an authorisation under regulation 8 (registration) or 9 (water use licence);
- (b) the variation under regulation 19 (variation of authorisation) in accordance with either regulation 20 (procedure for variation) or regulation 21 (request for variation), as the case may be, or the partial variation under regulation 25(4) (determination of application for surrender) of an authorisation; and
- (c) the determination of an appeal under regulation 47 (determination of appeals) against a decision of the Scottish Environment Protection Agency referred to in regulation 46(a), (b), (c), (d), (e), (ee) or (g),

of the Water Environment (Controlled Activities) (Scotland) Regulations 2005 (“the 2005 Regulations”).

(2) In a case referred to in paragraph (1), where the competent authority considers that any adverse effects of the plan or project on the integrity of a European site [<sup>F293</sup> or European offshore marine site] would be avoided if the grant or variation of the authorisation were subject to conditions or, as the case may be, further conditions, it may grant or vary the authorisation subject to those conditions.

(3) Regulations 50 and 51 apply to authorisations under regulation 8 or 9 of the 2005 Regulations.

(4) Where on the review of an authorisation under regulation 8 or 9 of the 2005 Regulations, the competent authority considers that any adverse effects on the integrity of a European site [<sup>F294</sup> or European offshore marine site] of the carrying out or, as the case may be, the continuation of the

activity authorised would be avoided by a variation of the authorisation, it may vary the authorisation, or cause it to be varied, accordingly.]

#### Textual Amendments

- F292** Reg. 84B inserted (S.) (15.2.2007) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2007 \(S.S.I. 2007/80\)](#), regs. 2, **20**
- F293** Words in reg. 84B(2) inserted (S.) (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(49)(a)** (with reg. 9)
- F294** Words in reg. 84B(4) inserted (S.) (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(49)(b)** (with reg. 9)

#### [<sup>F171</sup> Marine works

**84C.**—(1) Regulations 48 (assessment of implications for European site) and 49 (considerations of overriding public interest) apply in relation to the granting of a licence, consent or other approval for marine works.

(2) Where regulations 48 and 49 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 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) Regulations 50 (review of existing decisions and consents, &c) and 51 (consideration on review) apply to any such licence, consent of other approval mentioned in paragraph (1).

(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 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 shall 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; 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.

(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;
- (b) a consent under section 34 of the Coast Protection Act 1949;
- (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; or
  - (iii) an order made under section 14 or 16 of the Harbours Act 1964.

(7) For the purposes of any provision in regulations 49 to 53 which is applied by this regulation and which confers a function on the Secretary of State, any reference to the Secretary of State in

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

that provision is to be taken to be a reference to the Welsh Ministers, if the function 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 paragraph (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).
- (8) In paragraph (7), “authorisation” means any licence, consent or other approval.]

**Textual Amendments**

**F171** Reg. 84C inserted (E.W.) (1.10.2009) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) \(No. 2\) Regulations 2009 \(S.I. 2009/2438\)](#), regs. 1(1), **9**

**[<sup>F172</sup>Derogations under the Nitrate Pollution Prevention Regulations 2008**

**84D.**—(1) Regulations 48 (assessment of implications for European site) and 49 (considerations of overriding public interest) apply in relation to the granting of a derogation under Part 3A of the Nitrate Pollution Prevention Regulations 2008.

(2) Where regulations 48 and 49 apply, the competent authority may, if they consider any adverse effects of the plan or project on the integrity of a European site or European offshore marine site would be avoided if the derogation were subject to conditions, grant the derogation, subject to those conditions.]

**Textual Amendments**

**F172** Reg. 84D inserted (28.12.2009) by [The Nitrate Pollution Prevention \(Amendment\) Regulations 2009 \(S.I. 2009/3160\)](#), regs. 1(b), **11(2)**

**Discharge consents under water pollution legislation S**

**85.**—(1) Regulations 48 and 49 (requirement to consider effect on European site) apply in relation to the giving of consent under—

- (a) Chapter II of Part III to the Water Resources Act 1991(**82**) (control of pollution of water resources), <sup>F173</sup> ...
- <sup>F173</sup>(b) .....

(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 would be avoided by making any consent subject to conditions, they may give consent, or cause it to be given, subject to those conditions.

(3) Regulations 50 and 51 (requirement to review existing decisions and consents, &c.) apply to any such consent as is mentioned in paragraph (1).

(82) 1991 c. 57.

(4) Where on the review of such a consent the competent authority consider that any adverse effects on the integrity of a European 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 consent, they may vary it, or cause it to be varied, accordingly.

#### Extent Information

**E27** This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

#### Textual Amendments

**F173** Reg. 85(1)(b) and word omitted (S.) (15.2.2007) by virtue of [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2007 \(S.S.I. 2007/80\)](#), regs. 2, 21

#### Commencement Information

**I80** Reg. 85 in force at 30.10.1994, see [reg. 1\(2\)](#)

### Discharge consents under water pollution legislation **E+W**

**85.**—(1) Regulations 48 and 49 (requirement to consider effect on [<sup>F295</sup>European sites in Great Britain and European offshore marine sites]) apply in relation to the giving of consent under—

- (a) Chapter II of Part III to the Water Resources Act 1991(**82**) (control of pollution of water resources) [<sup>F296</sup>.]
- (b) .....

(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 [<sup>F297</sup> or European offshore marine site] would be avoided by making any consent subject to conditions, they may give consent, or cause it to be given, subject to those conditions.

(3) Regulations 50 and 51 (requirement to review existing decisions and consents, &c.) apply to any such consent as is mentioned in paragraph (1).

(4) Where on the review of such a consent the competent authority consider that any adverse effects on the integrity of a European site [<sup>F298</sup> or 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 consent, they may vary it, or cause it to be varied, accordingly.

#### Textual Amendments

**F295** Words in [reg. 85\(1\)](#) substituted (E.W.) (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(50)(a)(i)** (with [reg. 9](#))

**F296** [Reg. 85\(1\)\(a\)](#): full stop substituted word (E.W.) (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(50)(a)(ii)** (with [reg. 9](#))

**F297** Words in [reg. 85\(2\)](#) inserted (E.W.) (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(50)(b)** (with [reg. 9](#))

**F298** Words in [reg. 85\(4\)](#) inserted (E.W.) (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(50)(c)** (with [reg. 9](#))

*Status: Point in time view as at 12/01/2010.*

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

## [<sup>F174</sup>PART IVA

### [<sup>F175</sup>APPROPRIATE ASSESSMENTS FOR LAND USE PLANS ] [<sup>F175</sup>APPROPRIATE ASSESSMENTS FOR LAND USE PLANS FOR ENGLAND AND WALES]

#### Textual Amendments

- F174** Pt. 4A inserted (S.) (15.2.2007) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2007 \(S.S.I. 2007/80\)](#), reg. 2, **sch. 1**
- F175** Pt. 4A inserted (E.W.) (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), 5(55), **Sch. 1** (with reg. 9)

#### Interpretation **S**

**85A.**—(1) In this Part—

“the 1997 Planning Act” means the Town and Country Planning (Scotland) Act 1997;

[<sup>F176</sup>“land use plan” means a strategic development plan or local development plan or supplementary guidance as provided for in Part 2 of the 1997 Planning Act;]

“plan making authority” means—

- (a) a planning authority;
- (b) the Loch Lomond and the Trossachs National Park Authority and the Cairngorms National Park Authority;
- (c) [<sup>F177</sup>the Scottish Ministers when exercising powers under section 13 (approval or rejection of strategic development plans), 20 (constitution of local development plans) or section [<sup>F178</sup>23B] (default powers of the Scottish Ministers) of the 1997 Planning Act];

“planning authority” has the meaning given in section 1 of the 1997 Planning Act.

(2) References in this Part to giving effect to a land use plan are to—

- (a) the adoption by a planning authority, the Loch Lomond and the Trossachs National Park Authority or the Cairngorms National Park Authority of [<sup>F179</sup>a local development plan under section 20] of the 1997 Planning Act;

[ the adoption of supplementary guidance under section 22 of the 1997 Planning Act;]

<sup>F180</sup>(aa)

- (b) the approval by the Scottish Ministers of [<sup>F181</sup>a strategic development plan under section 13 or a local development plan under section 20] of the 1997 Planning Act.

#### Extent Information

- E28** This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

#### Textual Amendments

- F176** Words in reg. 85A(1) substituted (S.) (28.2.2009) by [The Planning etc. \(Scotland\) Act 2006 \(Development Planning\) \(Saving, Transitional and Consequential Provisions\) Order 2008 \(S.S.I. 2008/427\)](#), arts. 1(1), **8(2)(a)**



- F177** Words in reg. 85A(1) substituted (S.) (28.2.2009) by The Planning etc. (Scotland) Act 2006 (Development Planning) (Saving, Transitional and Consequential Provisions) Order 2008 (S.S.I. 2008/427), arts. 1(1), **8(2)(b)**
- F178** Word in reg. 85A(1) substituted (S.) (16.11.2009) by The Town and Country Planning (Miscellaneous Amendments) (Scotland) (No. 2) Regulations 2009 (S.S.I. 2009/343), regs. 1, **2(2)**
- F179** Words in reg. 85A(2)(a) substituted (S.) (28.2.2009) by The Planning etc. (Scotland) Act 2006 (Development Planning) (Saving, Transitional and Consequential Provisions) Order 2008 (S.S.I. 2008/427), arts. 1(1), **8(3)(a)**
- F180** Reg. 85A(2)(aa) inserted (S.) (28.2.2009) by The Planning etc. (Scotland) Act 2006 (Development Planning) (Saving, Transitional and Consequential Provisions) Order 2008 (S.S.I. 2008/427), arts. 1(1), **8(3)(b)**
- F181** Words in reg. 85A(2)(b) substituted (S.) (28.2.2009) by The Planning etc. (Scotland) Act 2006 (Development Planning) (Saving, Transitional and Consequential Provisions) Order 2008 (S.S.I. 2008/427), arts. 1(1), **8(3)(c)**

## <sup>F299</sup> Interpretation **E+W**

**85A.**—(1) This Part extends to England and Wales only.

(2) In this Part—

“the 1990 Act” means the Town and Country Planning Act 1990;

“the 1999 Act” means the Greater London Authority Act 1999;

“the 2004 Planning Act” means the Planning and Compulsory Purchase Act 2004;

“the 2005 Order” means the Planning and Compulsory Purchase Act 2004 (Commencement No.3 and Consequential, Transitional and Saving Provisions) (Wales) Order 2005;

“land use plan” means—

- (a) the regional spatial strategy under Part 1 (regional functions) of the 2004 Planning Act;
- (b) the spatial development strategy under section 334 (the spatial development strategy) of the 1999 Act;
- (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 (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 (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 (development plans) of the 1990 Act 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 1990 Act to the extent permitted by section 122(3) (regulations and orders) of the 2004 Planning Act and article 4 of the 2005 Order;

“plan-making authority” means—

- (a) a regional planning body recognised by the Secretary of State under section 2(1) (regional planning bodies) of the 2004 Planning Act;
- (b) the Mayor of London when exercising powers under section 341(1) or (2) (alteration or replacement) of the 1999 Act;

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*Status: Point in time view as at 12/01/2010.*

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

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- (c) an authority which, by virtue of Part 1 (planning authorities) of the 1990 Act or an order under section 29(2) (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(1) (approval of a unitary development plan by the Secretary of State), section 35A(4) (calling in of proposal for approval by the Secretary of State) or section 45(1) (approval of proposals by the Secretary of State) of the 1990 Act 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 section 71(4) (Assembly's default power) of the 2004 Planning Act; or
    - (ii) under section 19(1) of the 1990 Act to the extent permitted by section 122(3) of the 2004 Planning Act and article 4 of the 2005 Order.
- (3) References in this Part to giving effect to a land use plan are to—
- (a) the publication, under section 9(6) (RSS: further procedure) of the 2004 Planning Act, of a revision of a regional spatial strategy;
  - (b) the approval, under section 21(9) or section 27(4) of the 2004 Planning Act, of a local development document;
  - (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 (statement of community involvement) of that Act;
  - (d) the publication, under section 341 (alteration or replacement) 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 (Wales Spatial Plan) 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 section 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 1990 Act, 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(1) (adoption of unitary development plans by local planning authority) and that provision as applied by section 21(2) (alteration or replacement) of the 1990 Act, of an alteration or replacement of a unitary development plan to the extent permitted by paragraph 4(1) of Schedule 8 to the 2004 Planning Act;
  - (j) the approval, under section 19(1) and that provision as applied by section 21(2) of the 1990 Act, of an alteration or replacement of a unitary development plan to the extent permitted by paragraph 4(1) of Schedule 8 to the 2004 Planning Act;
  - (k) the adoption, under section 43(1) (adoption of proposals) or approval under section 45(1) of the 1990 Act, of an alteration or replacement of a local plan or a minerals local plan or waste local plan to the extent permitted by paragraph 9(1), 10(1) or 14 of Schedule 8 to the 2004 Planning Act;

- (l) the adoption, under section 15(1) of the 1990 Act, of a unitary development plan to the extent permitted by section 122(3) of the 2004 Planning Act and article 4 of the 2005 Order; or
- (m) the approval, under section 19(1) of the 1990 Act, of a unitary development plan to the extent permitted by section 122(3) of the 2004 Planning Act and article 4 of the 2005 Order.]

#### Extent Information

**E33** This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

#### Textual Amendments

**F299** Pt. 4A inserted (E.W.) (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), 5(55), [Sch. 1](#) (with reg. 9)

### Assessment of implications for European site **S**

**85B.**—(1) Where a land use plan—

- (a) is likely to have a significant effect on a European site in Great Britain [<sup>F182</sup>or a European offshore marine site] (either alone or in combination with other plans or projects); and
- (b) is not directly connected with or necessary to the management of the site,

the plan-making authority for that land use plan shall, 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 shall for the purposes of the assessment consult the appropriate nature conservation body and have regard to any representations made by that body within such reasonable time as the authority may specify.

(3) The plan-making authority shall, if it considers it appropriate, take the opinion of the general public, and in doing so, shall take such steps for that purpose as it considers appropriate.

(4) In the light of the conclusions of the assessment, and subject to regulation 85C (considerations of overriding public interest), the plan-making authority shall give effect to the land use plan only after having ascertained that it will not adversely affect the integrity of the European site [<sup>F183</sup>or the European offshore marine site (as the case may be)].

(5) A plan-making authority other than the Scottish Ministers shall provide such information as the Scottish Ministers may reasonably require—

- (a) to enable the Scottish Ministers to determine whether an assessment under paragraph (1) is required; or
- (b) for the purposes of an assessment under paragraph (1).

[<sup>F184</sup>(6) This regulation does not apply in relation to a site which is—

- (a) a European site by reason of regulation 10(1)(c); or
- (b) a European offshore marine site by reason of regulation 15(c) of the 2007 Regulations.]

#### Extent Information

**E28** This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

*Status: Point in time view as at 12/01/2010.*

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

### Textual Amendments

- F182** Words in reg. 85B(2) inserted (S.) (21.8.2007) by virtue of [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(51)(a)** (with reg. 9)
- F183** Words in reg. 85B(4) inserted (S.) (21.8.2007) by virtue of [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(51)(b)** (with reg. 9)
- F184** Reg. 85B(6) substituted (S.) (21.8.2007) by virtue of [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(51)(c)** (with reg. 9)

### <sup>F299</sup> **Assessment of implications for European sites and European offshore marine sites** **E** **+W**

**85B.**—(1) Where a land use plan—

- (a) is likely to have a significant effect on a European site in Great Britain 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 shall, 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 shall for the purposes of the assessment consult the appropriate nature conservation body and have regard to any representations made by that body within such reasonable time as the authority specifies.

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

(4) In the light of the conclusions of the assessment, and subject to regulation 85C (considerations of overriding public interest), the plan-making authority or, in the case of a regional spatial strategy, the Secretary of State shall 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 shall provide such information as the Secretary of State or the Welsh Ministers may reasonably require for the purposes of the discharge of the obligations of the Secretary of State or the Welsh Ministers under this Part.]

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

- (a) a European site by reason of regulation 10(1)(c); or
- (b) a European offshore marine site by reason of regulation 15(c) of the 2007 Regulations.

### Extent Information

- E33** This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

### Textual Amendments

- F299** Pt. 4A inserted (E.W.) (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), 5(55), **Sch. 1** (with reg. 9)

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

**85C.**—(1) If the plan making authority is 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 (2), may be of a social or economic nature), it may give effect to the land use plan notwithstanding a negative assessment of the implications for the European site [<sup>F185</sup>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 of overriding public interest provided the competent authority has had regard to the opinion of the European Commission in satisfying themselves that there are such reasons.

(3) Where a plan-making authority, other than the Scottish Ministers, desires to obtain the opinion of the European Commission as to whether reasons are to be considered imperative reasons of overriding public interest, it shall submit a written request to the Scottish Ministers—

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

(4) The Scottish Ministers may seek the opinion of the European Commission and shall transmit the opinion to the plan-making authority.

(5) Where a plan-making authority other than the Scottish Ministers proposes to give effect to a land use plan under this regulation notwithstanding a negative assessment of the implications for [<sup>F186</sup>the site concerned], it shall notify the Scottish Ministers.

(6) Having notified the Scottish Ministers under paragraph (5), the authority in question shall not give effect to the land use plan before the end of the period of 21 days beginning with the day notified to it by the Scottish Ministers as that on which the notification was received by them, unless the Scottish Ministers notify the authority that it may do so.

(7) Without prejudice to any other power, the Scottish Ministers may give directions to the plan making authority prohibiting it from giving effect to the land use plan, either indefinitely or during such period as may be specified in the direction.

#### Extent Information

**E28** This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

#### Textual Amendments

**F185** Words in reg. 85C(1) inserted (S.) (21.8.2007) by virtue of [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(52)(a)** (with reg. 9)

**F186** Words in reg. 85C(5) substituted (S.) (21.8.2007) by virtue of [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(52)(b)** (with reg. 9)

#### <sup>F300</sup>Considerations of overriding public interest **E+W**

**85C.**—(1) If the plan-making authority is 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).

*Status: Point in time view as at 12/01/2010.*

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

(2) In relation to a regional spatial strategy under Part 1 (regional functions) of the 2004 Planning Act, 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 imperative reasons of overriding public interest, provided that the competent authority has had due regard to the opinion of the European Commission in satisfying themselves that there are such reasons.

(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 shall submit a written request to the Secretary of State for a plan relating to England and to the Welsh Ministers for a plan relating to Wales—

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

(5) The Secretary of State may, if he thinks fit, seek the opinion of the European Commission for—

- (a) a plan relating to England; or
- (b) at the request of the Welsh Ministers, a plan relating to Wales.

(6) The Secretary of State shall send any opinion obtained under paragraph (5) to—

- (a) in the case of a plan relating to England, the plan-making authority, and
- (b) in the case of a plan relating to Wales, the Welsh Ministers.

(7) The Welsh Ministers shall, upon receiving the opinion, transmit it to the plan-making authority.

(8) 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, they shall notify—

- (a) the Secretary of State, if the plan relates to England; or
- (b) the Welsh Ministers, if the plan relates to Wales.

(9) The plan-making authority shall not give effect to the land use plan before the end of the period of 21 days beginning with the day notified by the Secretary of State or the Welsh Ministers as that on which their notification was received, unless—

- (a) the Secretary of State, in relation to a plan relating to England, or
- (b) the Welsh Ministers, in relation to a plan relating to Wales,

notifies them that they may do so.

(10) Without prejudice to any other power, the Secretary of State (in relation to a plan relating to England), or the Welsh Ministers (in relation to a plan relating to Wales), may give directions to the 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.]

#### **Extent Information**

**E33** This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

**Textual Amendments**

**F300** Pt. 4A inserted (E.W.) (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), 5(55), **Sch. 1** (with reg. 9)

**Co-ordination for land use plan prepared by more than one planning authority** **S**

**85D.**—(1) This regulation applies where two or more planning authorities prepare [<sup>F187</sup>a strategic development plan under section 4 or a joint local development plan under section 16] of the 1997 Planning Act.

(2) Nothing in regulation 85B(1) requires a planning authority to assess any implications of [<sup>F188</sup>a strategic development plan or a joint local development plan] which would be more appropriately assessed under that provision by another planning authority.

(3) The Scottish Ministers may issue guidance to planning authorities for the purposes of regulation 85B(1) as to the circumstances in which a planning authority may or should adopt the reasoning or conclusions of another planning authority as to whether [<sup>F189</sup>a strategic development plan or a joint local development plan]—

- (a) is likely to have a significant effect on a European site [<sup>F190</sup>or a European offshore marine site], or
- (b) will adversely affect the integrity of a European site [<sup>F191</sup>or a European offshore marine site].

(4) The planning authorities involved shall have regard to any guidance issued under paragraph (3) in discharging their functions under regulation 85B(1).

(5) In determining whether [<sup>F192</sup>a strategic development plan or a joint local development plan] should be adopted under regulation 85C(1) a planning authority shall seek and have regard to the views of other planning authorities involved.

**Extent Information**

**E28** This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

**Textual Amendments**

**F187** Words in reg. 85D(1) substituted (S.) (28.2.2009) by [The Planning etc. \(Scotland\) Act 2006 \(Development Planning\) \(Saving, Transitional and Consequential Provisions\) Order 2008 \(S.S.I. 2008/427\)](#), arts. 1(1), **8(4)(a)**

**F188** Words in reg. 85D(2) substituted (S.) (28.2.2009) by [The Planning etc. \(Scotland\) Act 2006 \(Development Planning\) \(Saving, Transitional and Consequential Provisions\) Order 2008 \(S.S.I. 2008/427\)](#), arts. 1(1), **8(4)(b)**

**F189** Words in reg. 85D(3) substituted (S.) (28.2.2009) by [The Planning etc. \(Scotland\) Act 2006 \(Development Planning\) \(Saving, Transitional and Consequential Provisions\) Order 2008 \(S.S.I. 2008/427\)](#), arts. 1(1), **8(4)(b)**

**F190** Words in reg. 85D(3)(a) inserted (S.) (21.8.2007) by virtue of [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(53)** (with reg. 9)

**F191** Words in reg. 85D(3)(b) inserted (S.) (21.8.2007) by virtue of [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(53)** (with reg. 9)

**F192** Words in reg. 85D(5) substituted (S.) (28.2.2009) by [The Planning etc. \(Scotland\) Act 2006 \(Development Planning\) \(Saving, Transitional and Consequential Provisions\) Order 2008 \(S.S.I. 2008/427\)](#), arts. 1(1), **8(4)(c)**

*Status: Point in time view as at 12/01/2010.*

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

### [<sup>F301</sup>Co-ordination for land use plan prepared by more than one authority **E+W**]

**85D.**—(1) The following provisions apply where two or more local planning authorities prepare a joint local development document under section 28 (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 85B (assessment of implications for European site or European offshore marine site) 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 Secretary of State (in relation to England) and the Welsh Ministers (in relation to Wales) may issue guidance to local planning authorities for the purposes of regulation 85B(1) as to the circumstances in which an authority may or should adopt the reasoning or conclusions of another authority as to whether a joint local planning document or plan—

- (a) is likely to have a significant effect on a European site or European offshore marine site, or
- (b) will adversely affect the integrity of a European site or European offshore marine site.

(4) The local planning authorities concerned shall have regard to any such guidance.

(5) In determining whether a joint local development document or plan should be adopted under regulation 85C (considerations of overriding public interest), a local planning authority shall seek and have regard to the views of the other local planning authorities concerned.]

#### Extent Information

**E33** This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

#### Textual Amendments

**F301** Pt. 4A inserted (E.W.) (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), 5(55), **Sch. 1** (with reg. 9)

### Compensatory measures **S**

**85E.** Where in accordance with regulation 85C a land use plan is given effect, notwithstanding a negative assessment of the implications for a European site [<sup>F193</sup> or a European offshore marine site], the Scottish Ministers shall secure that any necessary compensatory measures are taken to ensure that the overall coherence of Natura 2000 is protected.]

#### Extent Information

**E28** This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

#### Textual Amendments

**F193** Words in reg. 85E inserted (S.) (21.8.2007) by virtue of [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(54)** (with reg. 9)



**[<sup>F302</sup>Co-ordination for land use plan prepared by more than one authority E+W**

**85E.**—(1) The following provisions apply where two or more local planning authorities prepare a joint local development document under section 28 (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 85B (assessment of implications for European site or European offshore marine site) 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 Secretary of State (in relation to England) and the Welsh Ministers (in relation to Wales) may issue guidance to local planning authorities for the purposes of regulation 85B(1) as to the circumstances in which an authority may or should adopt the reasoning or conclusions of another authority as to whether a joint local planning document or plan—

- (a) is likely to have a significant effect on a European site or European offshore marine site, or
- (b) will adversely affect the integrity of a European site or European offshore marine site.

(4) The local planning authorities concerned shall have regard to any such guidance.

(5) In determining whether a joint local development document or plan should be adopted under regulation 85C (considerations of overriding public interest), a local planning authority shall seek and have regard to the views of the other local planning authorities concerned.]

**Extent Information**

**E33** This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

**Textual Amendments**

**F302** Pt. 4A inserted (E.W.) (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), 5(55), **Sch. 1** (with reg. 9)

**[<sup>F194</sup>National Policy Statements S**

**85F.**—(1) This Part applies—

- (a) in relation to a national policy statement under Part 2 (national policy statements) of the Planning Act 2008 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 the Planning Act 2008 as it applies in relation to a plan-making authority,

with the modifications specified in paragraphs (2) to (4).

(2) Any reference in this Part to giving effect to a land use plan shall, in relation to a national policy statement, 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) Regulations 85B(5), 85C(3) to (7) and 85D do not apply.

(4) Regulation 85E applies as if, for the words “Scottish Ministers”, there were substituted “Secretary of State”.]

**Extent Information**

**E29** This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

*Status: Point in time view as at 12/01/2010.*

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

#### Textual Amendments

**F194** Reg. 85F inserted (S.) (1.10.2009) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) \(No. 2\) Regulations 2009 \(S.I. 2009/2438\)](#), regs. 1(1), 8

#### [<sup>F303</sup> National Policy Statements **E+W**

**85F.**—(1) This Part applies—

- (a) in relation to a national policy statement under Part 2 (national policy statements) of the Planning Act 2008 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 the Planning Act 2008 as it applies in relation to a plan-making authority,

with the modifications specified in paragraphs (2) to (4).

(2) Any reference in this Part to giving effect to a land use plan shall, in relation to a national policy statement, 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) Regulations 85B(5), 85C(4) to (10) and 85D do not apply.

(4) Regulation 85E (compensatory measures) applies as if the words “(where the plan relates to England) and the Welsh Ministers (where the plan relates to Wales)” were omitted.]

#### Extent Information

**E34** This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

#### Textual Amendments

**F303** Reg. 85F inserted (E.W.) (1.10.2009) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) \(No. 2\) Regulations 2009 \(S.I. 2009/2438\)](#), regs. 1(1), 7

## PART V

### SUPPLEMENTARY PROVISIONS

#### *Supplementary provisions as to management agreements*

#### **Powers of limited owners, &c. to enter into management agreements**

**86.**—(1) In the case of settled land in England and Wales—

- (a) the tenant for life may enter into a management agreement relating to the land, or any part of it, either for consideration or gratuitously;
- (b) the Settled Land Act 1925(**83**) shall apply as if the power conferred by sub- paragraph (a) had been conferred by that Act; and
- (c) for the purposes of section 72 of that Act (which relates to the mode of giving effect to a disposition by a tenant for life and to the operation thereof), and of any other relevant statutory provision, entering into a management agreement shall be treated as a disposition.

The above provisions of this paragraph shall be construed as one with the Settled Land Act 1925.

(2) Section 28 of the Law of Property Act 1925<sup>(84)</sup> (which confers the powers of a tenant for life on trustees for sale) shall apply as if the power of a tenant for life under paragraph (1)(a) above had been conferred by the Settled Land Act 1925.

(3) A university or college to which the Universities and College Estates Act 1925<sup>(85)</sup> applies may enter into a management agreement relating to any land belonging to it in England and Wales either for consideration or gratuitously.

That Act shall apply as if the power conferred by this paragraph had been conferred by that Act.

(4) In the case of glebe land or other land belonging to an ecclesiastical benefice—

- (a) the incumbent of the benefice, and
- (b) in the case of land which is part of the endowment of any other ecclesiastical corporation, the corporation,

may with the consent of the Church Commissioners enter into a management agreement either for consideration or gratuitously.

The Ecclesiastical Leasing Acts shall apply as if the power conferred by this paragraph had been conferred by those Acts, except that the consent of the patron of an ecclesiastical benefice shall not be requisite.

(5) In the case of any land in Scotland, any person being—

- (a) the liferenter, or
- (b) the heir of entail,

in possession of the land shall have power to enter into a management agreement relating to the land or any part of it.

(6) The Trusts (Scotland) Act 1921<sup>(86)</sup> shall have effect as if among the powers conferred on trustees by section 4 of that Act (which relates to the general powers of trustees) there were included a power to enter into management agreements relating to the trust estate or any part of it.

#### **Commencement Information**

**181** Reg. 86 in force at 30.10.1994, see [reg. 1\(2\)](#)

#### *Supplementary provisions as to potentially damaging operations*

#### **[<sup>F195</sup> Carrying out of operation after expiry of period**

**87.**—(1) If before the expiry of the period of four months referred to in regulation 19(2)(c) the relevant person agrees in writing with the appropriate nature conservation body that, subject as follows, the condition specified in that provision shall not apply in relation to the operation in question, then, subject as follows, regulation 19(2) shall as from the date of the agreement have effect in relation to the operation (as regards both the owner or the occupier of the land in question) as if sub-paragraph (c) were omitted.

(2) 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 he wishes to terminate the agreement, then as from the giving of the notice regulation 19(2) shall have effect in relation to

<sup>(84)</sup> 1925 c. 20.

<sup>(85)</sup> 1925 c. 24.

<sup>(86)</sup> 1921 c. 58.

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

the operation in question (as regards both the owner and the occupier of the land in question) as if paragraph (c) specified the condition that one month, or any longer period specified in the notice, has expired from the giving of the notice under this paragraph.

- (3) In paragraphs (1) and (2) above “the relevant person”–
- (a) in a case where the notice under regulation 19(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.

#### Textual Amendments

**F195** Regs. 87-93 revoked (S.) (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), **22(c)** (with regs. 20, 21)

#### Commencement Information

**I82** Reg. 87 in force at 30.10.1994, see [reg. 1\(2\)](#)

### Duties of agriculture Ministers with respect to European sites

**88.**—(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 Minister responsible for determining the application–

- (a) shall, so far as may be consistent with the purposes of the grant provisions, so exercise his functions thereunder as to further the conservation of the flora, fauna, or geological or physiological 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, shall not make the grant except after considering the objection and, in the case of land in England, after consulting with the Secretary of State.

(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 shall, within three months of their receiving notice of the Minister’s decision, offer to enter into, in the terms of a draft submitted to the applicant, a management agreement–

- (a) imposing restrictions as respects those activities, and
- (b) providing for the making by them of payments to the applicant.

(3) In this regulation–

“farm capital grant” means–

- (a) a grant under a scheme made under section 29 of the Agriculture Act 1970<sup>(87)</sup>, or
- (b) a grant under regulations made under section 2(2) of the European Communities Act 1972<sup>(88)</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

<sup>(87)</sup> 1970 c. 40; section 29 was amended by section 15(1) of the Agriculture (Miscellaneous Provisions) Act 1976 (c. 55).

<sup>(88)</sup> 1972 c. 68.

in connection with that business, being expenditure of a capital nature or incurred in connection with expenditure of a capital nature; and

“grant provisions” means—

- (i) in the case of such a grant as is mentioned in paragraph (a) above, the scheme under which the grant is made and section 29 of the Agriculture Act 1970, and
- (ii) in the case of such a grant as is mentioned in paragraph (b) above, the regulations under which the grant is made and the Community instrument in pursuance of which the regulations were made.

#### Textual Amendments

**F195** Regs. 87-93 revoked (S.) (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), **22(c)** (with regs. 20, 21)

#### Commencement Information

**I83** Reg. 88 in force at 30.10.1994, see [reg. 1\(2\)](#)

### Payments under certain agreements offered by authorities

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

- (a) a person who has given notice under regulation 19(1)(a) or [<sup>F196</sup>23(1A)(a)(ii) or (b)], or
- (b) a person whose application for a farm capital grant within the meaning of regulation 88 has been refused in consequence of an objection by that body.

(2) Subject to paragraph (3), the said payments shall be of such amounts as may be determined by the offeror in accordance with guidance given—

- (a) in England, by <sup>F197</sup>... the Secretary of State, or
- (b) in Wales or Scotland, by the Secretary of State.

(3) If the offeree so requires within one month of receiving the offer, the determination of those amounts shall be referred to an arbitrator to be appointed, in default of agreement, by the Secretary of State.

(4) Where the amounts determined by the arbitrator exceed those determined by the offeror, the offeror shall—

- (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 offeror, withdraw the offer.

(5) In the application of this regulation in Scotland references to an arbitrator shall be construed as references to an arbiter.

#### Textual Amendments

**F195** Regs. 87-93 revoked (S.) (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), **22(c)** (with regs. 20, 21)

**F196** Words in [reg. 89\(1\)\(a\)](#) substituted (1.10.2009) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) \(No. 2\) Regulations 2009 \(S.I. 2009/2438\)](#), regs. 1(1), **11(1)** (with [reg. 12](#))

**F197** Words in [reg. 89\(2\)\(a\)](#) omitted (E.W.) (21.8.2007) by virtue of [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(56)** (with [reg. 9](#))

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#### Commencement Information

**I84** Reg. 89 in force at 30.10.1994, see [reg. 1\(2\)](#)

#### Powers of entry

**90.**—(1) A person authorised in writing by the appropriate nature conservation body may, at any reasonable time and (if required to do so) upon producing evidence that he is so authorised, enter any land—

- (a) to ascertain whether a special nature conservation order should be made <sup>F198</sup>..., or if an offence under regulation 23 is being, or has been, committed on that land; <sup>F198</sup>...
- (b) to ascertain the amount of any compensation payable under regulation 25 in respect of an interest in that land [<sup>F199</sup>; or]

[<sup>F200</sup>(c) to affix a notice in accordance with regulation 23(2D) or paragraph 2(4) of Schedule 1.]

But nothing in this paragraph shall authorise any person to enter a dwelling.

(2) A person shall 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 if an offence under regulation 23 is being, or has been, committed on that land.

(3) A person who intentionally obstructs a person in the exercise of his powers under this regulation commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

#### Textual Amendments

**F195** Regs. 87-93 revoked (S.) (29.11.2004) by The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2004 (S.S.I. 2004/475), regs. 1(1), **22(c)** (with regs. 20, 21)

**F198** Words in reg. 90(1)(a) omitted (1.10.2009) by virtue of The Conservation (Natural Habitats, &c.) (Amendment) (No. 2) Regulations 2009 (S.I. 2009/2438), regs. 1(1), **11(2)(a)** (with reg. 12)

**F199** Word in reg. 90(1)(b) substituted (1.10.2009) by The Conservation (Natural Habitats, &c.) (Amendment) (No. 2) Regulations 2009 (S.I. 2009/2438), regs. 1(1), **11(2)(b)** (with reg. 12)

**F200** Reg. 90(1)(c) inserted (1.10.2009) by The Conservation (Natural Habitats, &c.) (Amendment) (No. 2) Regulations 2009 (S.I. 2009/2438), regs. 1(1), **11(2)(c)** (with reg. 12)

#### Commencement Information

**I85** Reg. 90 in force at 30.10.1994, see [reg. 1\(2\)](#)

#### Compensation: amount and assessment

**91.**—(1) The following provisions have effect as to compensation under [<sup>F201</sup>regulation 25 (compensation for effect of notice)].

(2) The amount of the compensation shall be the difference between the value of the interest in question and what it would have been had [<sup>F202</sup>notice not been given].

(3) For this purpose—

- (a) an interest in land shall be valued as at the time when [<sup>F203</sup>notice is given]; and

(b) where a person, by reason of his having more than one interest in land, makes more than one claim in respect of the same [<sup>F204</sup>restriction having effect by virtue of notice being given under regulation 23], his various interests shall be valued together.

(4) Section 10 of the Land Compensation Act 1973(89) (mortgages, trusts for sale and settlements) or section 10 of the Land Compensation (Scotland) Act 1973(90) apply in relation to compensation under regulation 25(1) as in relation to compensation under Part I of that Act.

(5) For the purposes of assessing compensation under regulation 25(1), the rules set out in section 5 of the Land Compensation Act 1961(91) or section 12 of the Land Compensation (Scotland) Act 1963(92) 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.

#### Textual Amendments

**F195** Regs. 87-93 revoked (S.) (29.11.2004) by The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2004 (S.S.I. 2004/475), regs. 1(1), **22(c)** (with regs. 20, 21)

**F201** Words in reg. 91(1) substituted (1.10.2009) by The Conservation (Natural Habitats, &c.) (Amendment) (No. 2) Regulations 2009 (S.I. 2009/2438), regs. 1(1), **11(3)(a)** (with reg. 12)

**F202** Words in reg. 91(2) substituted (1.10.2009) by The Conservation (Natural Habitats, &c.) (Amendment) (No. 2) Regulations 2009 (S.I. 2009/2438), regs. 1(1), **11(3)(b)** (with reg. 12)

**F203** Words in reg. 91(3)(a) substituted (1.10.2009) by The Conservation (Natural Habitats, &c.) (Amendment) (No. 2) Regulations 2009 (S.I. 2009/2438), regs. 1(1), **11(3)(c)** (with reg. 12)

**F204** Words in reg. 91(3)(b) substituted (1.10.2009) by The Conservation (Natural Habitats, &c.) (Amendment) (No. 2) Regulations 2009 (S.I. 2009/2438), regs. 1(1), **11(3)(d)** (with reg. 12)

#### Commencement Information

**I86** Reg. 91 in force at 30.10.1994, see **reg. 1(2)**

#### Compensation: other supplementary provisions

**92.**—(1) The following provisions have effect in relation to compensation under regulation 25 (compensation for effect of [<sup>F205</sup>notice]).

(2) The compensation shall carry interest, at the rate for the time being prescribed under section 32 of the Land Compensation Act 1961 or section 40 of the Land Compensation (Scotland) Act 1963(93), from the date of the claim until payment.

(3) Except in so far as may be provided by regulations, any question of disputed compensation shall be referred to and determined [<sup>F206</sup>by the Upper Tribunal] or the Lands Tribunal for Scotland.

(4) In relation to the determination of any such question, the provisions of [<sup>F207</sup>section] 4 of the Land Compensation Act 1961 or sections 9 and 11 of the Land Compensation (Scotland) Act 1963 (procedure and costs) shall apply, subject to any necessary modifications and to the provisions of any regulations.

(89) 1973 c. 26.

(90) 1973 c. 56.

(91) 1961 c. 33.

(92) 1963 c. 51.

(93) 1963 c. 51.

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#### Textual Amendments

- F195** Regs. 87-93 revoked (S.) (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), **22(c)** (with regs. 20, 21)
- F205** Word in reg. 92(1) substituted (1.10.2009) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) \(No. 2\) Regulations 2009 \(S.I. 2009/2438\)](#), regs. 1(1), **11(4)** (with reg. 12)
- F206** Words in reg. 92(3) substituted (1.6.2009) by [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 1, **Sch. 2 para. 51(a)** (with Sch. 5)
- F207** Word in reg. 92(4) substituted (1.6.2009) by [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 1, **Sch. 2 para. 51(b)** (with Sch. 5)

#### Commencement Information

- I87** Reg. 92 in force at 30.10.1994, see [reg. 1\(2\)](#)

#### Compensation: procedural provisions

**93.**—(1) The power to make regulations under section 30 of the Wildlife and Countryside Act 1981(**94**) (provisions as to compensation where order made under section 29 of that Act) shall be exercisable so as to make provision for the purposes of these Regulations corresponding to those for which provision may be made under that section.

(2) The references in regulation 25 to matters being prescribed by regulations, and in regulation 92(3) and (4) to matters being provided by regulations, are to their being so prescribed or provided.

(3) Any regulations in force under section 30 on the commencement of these Regulations shall have effect for the purposes of these Regulations as if made under that section as applied by this regulation.]

#### Textual Amendments

- F195** Regs. 87-93 revoked (S.) (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), **22(c)** (with regs. 20, 21)

#### Commencement Information

- I88** Reg. 93 in force at 30.10.1994, see [reg. 1\(2\)](#)

#### *Supplementary provisions as to byelaws*

#### Procedure for making byelaws, penalties, &c.

**94.**—(1) Sections 236 to 238 of the Local Government Act 1972(**95**) or sections 201 to 204 of the Local Government (Scotland) Act 1973(**96**) (procedure, &c. for byelaws; offences against byelaws; evidence of byelaws) apply to all byelaws made under section 20 of the National Parks and Access to the Countryside Act 1949(**97**) as it applies by virtue of regulation 28 as if the appropriate nature conservation body were a local authority within the meaning of that Act.

(94) 1981 c. 69.

(95) 1972 c. 70.

(96) 1973 c. 65.

(97) 1949 c. 97.



(2) In relation to byelaws so made the confirming authority for the purposes of the said section 236 or section 201 shall be the Secretary of State.

(3) The appropriate nature conservation body shall have power to enforce byelaws made by them: Provided that nothing in this paragraph shall be construed as authorising the institution of proceedings in Scotland for an offence.

**Commencement Information**

**189** Reg. 94 in force at 30.10.1994, see [reg. 1\(2\)](#)

**Powers of entry**

**95.**—(1) For the purpose of surveying land, or of estimating its value, in connection with any claim for compensation payable under regulation 30 in respect of that or any other land, an officer of the Valuation Office or person duly authorised in writing by the authority from whom the compensation is claimed may enter upon the land.

(2) A person authorised under this regulation to enter upon any land shall, if so required, produce evidence of his authority before entering.

(3) A person shall not under this regulation 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.

(4) A person who intentionally obstructs a person in the exercise of his powers under this regulation commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

**Commencement Information**

**190** Reg. 95 in force at 30.10.1994, see [reg. 1\(2\)](#)

**Compensation: England and Wales**

**96.**—(1) The following provisions have effect as to compensation under regulation 30 (compensation for effect of byelaws) in respect of land in England and Wales.

(2) Any dispute arising on a claim for any such compensation shall be determined by the [<sup>F208</sup>Upper Tribunal].

(3) For the purposes of any such reference to the [<sup>F208</sup>Upper Tribunal], section 4 of the Land Compensation Act 1961 (which relates to 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 of that Act (which provides rules for valuation 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 shall 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;

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

- (c) a mortgagee shall not be entitled to any such compensation in respect of his interest as such; and
- (d) any compensation payable in respect of the interest subject to the mortgage shall be paid to the mortgagee or, where there is more than one mortgagee, to the first mortgagee, and shall in either case be applied by him as if it were proceeds of sale.

#### Textual Amendments

**F208** Words in [reg. 96\(2\)\(3\)](#) substituted (1.6.2009) by [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 1, [Sch. 2 para. 52](#) (with [Sch. 5](#))

#### Commencement Information

**I91** Reg. 96 in force at 30.10.1994, see [reg. 1\(2\)](#)

### Compensation: Scotland

**97.—(1)** The following provisions have effect as to compensation under regulation 30 (compensation for effect of byelaws) in respect of land in Scotland.

(2) Any dispute arising on a claim for any such compensation shall be determined by the Lands Tribunal for Scotland.

(3) For the purposes of any such reference to the Lands Tribunal for Scotland section 8 of the Land Compensation (Scotland) Act 1963 (which relates to expenses) 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 12 of that Act (which provides rules for valuation 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 heritable security—

- (a) any such compensation in respect of the depreciation of that interest shall be calculated as if the interest were not subject to the heritable security;
- (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 creditor in a heritable security 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) a creditor in a heritable security shall not be entitled to any such compensation in respect of his interest as such; and
- (d) any compensation payable in respect of the interest subject to the heritable security shall be paid to the creditor or, where there is more than one creditor in a heritable security, to the creditor whose heritable security has priority over any other heritable securities secured on the land, and shall in either case be applied by him as if it were proceeds of sale.

#### Commencement Information

**I92** Reg. 97 in force at 30.10.1994, see [reg. 1\(2\)](#)

*Supplementary provisions as to compulsory acquisition*

**[<sup>F209</sup>Supplementary provisions as to acquisition of land**

**98.**—(1) The powers of compulsory acquisition conferred on the appropriate nature conservation body by regulation 32 are exercisable in any particular case on their being authorised so to do by the Secretary of State.

(2) In that regulation and in this regulation “land” includes any interest in land.

For this purpose “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.

(3) The Acquisition of Land Act 1981(**98**) applies in relation to any acquisition under these Regulations of land in England and Wales, and the Compulsory Purchase Act 1965(**99**) applies with any necessary modifications in relation to the acquisition of any interest in land in England and Wales.

(4) In relation to the compulsory acquisition of land in Scotland, the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947(**100**) shall apply as if these Regulations had been in force immediately before the commencement of that Act and as if in paragraph (a) of subsection (1) of section 1 thereof, in Part I of the First Schedule thereto and in the Second Schedule thereto references to a local authority included Scottish Natural Heritage:

Provided that section 2 of the said Act (which confers temporary powers for the speedy acquisition of land in urgent cases) shall not apply to any such compulsory acquisition as is mentioned in this paragraph.

The provisions of the Lands Clauses Acts incorporated with these Regulations by virtue of paragraph 1 of the Second Schedule to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947, as applied by this paragraph, shall apply with the necessary modifications in relation to the compulsory acquisition of any interest in land, being an interest not falling within the definition of “lands” contained in the Lands Clauses Acts.]

**Textual Amendments**

**F209** Regs. 98, 99 revoked (S.) (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), **22(d)** (with regs. 20, 21)

**Commencement Information**

**I93** Reg. 98 in force at 30.10.1994, see [reg. 1\(2\)](#)

**[<sup>F209</sup>Powers of entry**

**99.**—(1) For the purpose of surveying land in connection with the acquisition thereof or of any interest therein, whether by agreement or compulsorily, in the exercise of any power conferred by these Regulations, a person duly authorised in writing by the authority having power so to acquire the land or interest may enter upon the land.

(2) A person authorised under this regulation to enter upon any land shall, if so required, produce evidence of his authority before entering.

(98) 1981 c. 67.

(99) 1965 c. 56.

(100) 1947 c. 42.

*Status: Point in time view as at 12/01/2010.*

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

(3) A person shall not under this regulation 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.

(4) A person who intentionally obstructs a person in the exercise of his powers under this regulation commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.]

#### Textual Amendments

**F209** Regs. 98, 99 revoked (S.) (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), **22(d)** (with regs. 20, 21)

#### Commencement Information

**I94** Reg. 99 in force at 30.10.1994, see [reg. 1\(2\)](#)

### *Supplementary provisions as to protection of species*

#### **Attempts and possession of means of committing offence**

**100.**—(1) A person who attempts to commit an offence under Part III of these Regulations is guilty of an offence and punishable in like manner as for that offence.

(2) A person who, for the purposes of committing an offence under Part III of these Regulations, has in his possession anything capable of being used for committing the offence is guilty of an offence and punishable in like manner as for that offence.

(3) References below to an offence under Part III include an offence under this regulation.

#### Commencement Information

**I95** Reg. 100 in force at 30.10.1994, see [reg. 1\(2\)](#)

#### **Enforcement** **S**

**101.**—(1) If a constable suspects with reasonable cause that any person is committing or has committed an offence under Part III of these Regulations, 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) [<sup>F210</sup>search for,] search or examine any thing which that person may then be using or [<sup>F211</sup>may have used, or may have or have had in his possession,] if the constable suspects with reasonable cause that evidence of the commission of the offence is to be found [<sup>F212</sup>in or] on that thing;

[<sup>F213</sup>(ba) arrest that person;]

- (c) seize and detain for the purposes of proceedings under that Part any thing which may be evidence of the commission of the offence or may be liable to be forfeited under regulation 103.

(2) If a constable suspects with reasonable cause that any person is committing [<sup>F214</sup>or has committed] an offence under Part III of these Regulations, he may, for the purposes of exercising the powers conferred by paragraph (1) or arresting a person in accordance with section 25 of the Police

and Criminal Evidence Act 1984(101) for such an offence, enter any land other than a [<sup>F215</sup>dwelling or lockfast premises].

(3) If a justice of the peace is satisfied by [<sup>F216</sup>evidence ] on oath that there are reasonable grounds for suspecting that an offence under regulation 39, 41 or 43 has been committed and that evidence of the offence may be found on any premises, he may grant a warrant to any constable [<sup>F217</sup>to enter those premises, if necessary using reasonable force, and search them] for the purpose of obtaining that evidence.

In the application of this paragraph to Scotland, the reference to a justice of the peace includes a sheriff.

[<sup>F218</sup>(4) A warrant under paragraph (3) continues in force until the purpose for which the entry is required has been satisfied or, if earlier, the expiry of such period as the warrant may specify.

(5) A constable authorised by virtue of this regulation to enter any land must, if required to do so by the occupier or anyone acting on the occupier's behalf, produce evidence of the constable's authority.

(6) A constable who enters any land in the exercise of a power conferred by this regulation—

(a) may—

(i) be accompanied by any other persons; and

(ii) take any machinery, other equipment or materials on to the land,

for the purpose of assisting the constable in the exercise of that power;

(b) may take samples of any articles or substances found there and remove the samples from the land.

(7) A power specified in paragraph (6)(a) or (b) which is exercisable under a warrant is subject to the terms of the warrant.

(8) A constable leaving any land which has been entered in exercise of a power conferred by paragraph (2) or by a warrant under paragraph (3), being either unoccupied land or land from which the occupier is temporarily absent, must leave it as effectively secured against unauthorised entry as the constable found it.]

#### Extent Information

**E30** This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

#### Textual Amendments

- F210** Words in reg. 101(1)(b) inserted (S.) (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), **17(a)(i)** (with regs. 20, 21)
- F211** Words in reg. 101(1)(b) substituted (S.) (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), **17(a)(ii)** (with regs. 20, 21)
- F212** Words in reg. 101(1)(b) inserted (S.) (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), **17(a)(iii)** (with regs. 20, 21)
- F213** Reg. 101(1)(ba) inserted (S.) (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), **17(b)** (with regs. 20, 21)
- F214** Words in reg. 101(2) inserted (S.) (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), **17(c)(i)** (with regs. 20, 21)
- F215** Words in reg. 101(2) substituted (S.) (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), **17(c)(ii)** (with regs. 20, 21)

*Status: Point in time view as at 12/01/2010.*

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

- F216** Word in reg. 101(3) substituted (S.) (29.11.2004) by The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2004 (S.S.I. 2004/475), regs. 1(1), **17(d)(i)** (with regs. 20, 21)
- F217** Words in reg. 101(3) substituted (S.) (29.11.2004) by The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2004 (S.S.I. 2004/475), regs. 1(1), **17(d)(ii)** (with regs. 20, 21)
- F218** Reg. 101(4)-(8) inserted (S.) (29.11.2004) by The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2004 (S.S.I. 2004/475), regs. 1(1), **17(e)** (with regs. 20, 21)

#### Commencement Information

- I96** Reg. 101 in force at 30.10.1994, see **reg. 1(2)**

#### Enforcement **E+W**

**101.**—(1) If a constable suspects with reasonable cause that any person is committing or has committed an offence under Part III of these Regulations, 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 any thing which that person may then be using or have in his possession if the constable suspects with reasonable cause that evidence of the commission of the offence is to be found on that thing;
- (c) seize and detain for the purposes of proceedings under that Part any thing which may be evidence of the commission of the offence or may be liable to be forfeited under regulation 103.

(2) If a constable suspects with reasonable cause that any person is committing [<sup>F304</sup>or has committed] an offence under Part III of these Regulations, he may, for the purposes of exercising the powers conferred by paragraph (1) or arresting a person in accordance with [<sup>F305</sup>section 24] of the Police and Criminal Evidence Act 1984(**101**) for such an offence, [<sup>F306</sup>enter any premises other than a dwelling].

[<sup>F307</sup>(2A) A constable may, for the purpose of assisting him in exercising the powers conferred by paragraphs (1)(b) and (c) when he has entered any premises under paragraph (2), take with him—

- (a) any other person; and
- (a) any equipment or materials.]

(3) If a justice of the peace is satisfied by information on oath that there are reasonable grounds for suspecting that an offence under [<sup>F308</sup>Part III of these Regulations] has been committed and that evidence of the offence may be found on any premises, he may grant a warrant to any constable ... to enter upon and search those premises for the purpose of obtaining that evidence.

In the application of this paragraph to Scotland, the reference to a justice of the peace includes a sheriff.

#### Textual Amendments

- F304** Words in reg. 101(2) inserted (E.W.) (21.8.2007) by The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007 (S.I. 2007/1843), regs. 2(1), **5(57)(a)(i)** (with reg. 9)
- F305** Words in reg. 101(2) substituted (E.W.) (1.1.2006) by The Serious Organised Crime and Police Act 2005 (Powers of Arrest) (Consequential Amendments) Order 2005 (S.I. 2005/3389), arts. 1(1), **9**
- F306** Words in reg. 101(2) substituted (E.W.) (21.8.2007) by The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007 (S.I. 2007/1843), regs. 2(1), **5(57)(a)(ii)** (with reg. 9)

**F307** Reg. 101(2A) inserted (E.W.) (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(57)(b)** (with reg. 9)

**F308** Words in reg. 101(3) substituted (E.W.) (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(57)(c)(i)** (with reg. 9)

### [<sup>F219</sup>Constables' powers in connection with samples **E+W**

**101A.**—(1) A constable who suspects with reasonable cause that a specimen found by him in the exercise of powers conferred by regulation 101 is one in respect of which an offence under Part III of these Regulations is being or has been committed may require a sample to be taken from the specimen.

(2) A constable who suspects with reasonable cause that an offence under Part III of these Regulations is being or has been committed in respect of any specimen (“the relevant specimen”) 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 pursuant to a requirement under this regulation, any person who has possession or control of the animal or plant must give the person taking the sample such assistance as he may reasonably require for that purpose.

(4) This regulation is subject to regulation 101G (restrictions on taking samples).

(5) In this regulation and regulations 101B, 101E and 101G “specimen” means any animal or plant, or any part of, or anything derived from, an animal or plant.]

#### Extent Information

**E31** This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

#### Textual Amendments

**F219** [Regs. 101A-101I](#) inserted (E.W.) (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(58)** (with reg. 9)

### [<sup>F309</sup>Application of sections 19ZC and 19ZD of the Wildlife and Countryside Act 1981 **S**

**101A.**—(1) Subject to paragraphs (2) to (4), sections 19ZC (wildlife inspectors: Scotland) and 19ZD (power to take samples: Scotland) of the Wildlife and Countryside Act 1981 apply, for the purposes of these Regulations.

(2) For the purposes of these Regulations, any reference in section 19ZC or 19ZD of the Wildlife and Countryside Act 1981 to that Act or any part thereof, shall be construed as a reference to these Regulations.

(3) The provisions of section 19ZC of the Wildlife and Countryside Act 1981 apply for the purposes of these Regulations as if—

- (a) in subsection (3)–

*Status: Point in time view as at 12/01/2010.*

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

- (i) in paragraph (a), the reference to “section 6, 9(5) or 13(2)” was a reference to regulation [F31039(3)] or 43(2) of these Regulations;
- (ii) paragraphs (b) to (d) were omitted; and
- (iii) in paragraph (e)(i) and (ii), “registration or” was omitted;
- (b) in subsection (4)–
  - (i) in paragraph (a), for “paragraphs (a) to (c) do” there was substituted “ paragraph (a) does ”;
  - (ii) in paragraph (a)(i) and (ii) “registration or” was omitted; and
  - (iii) paragraph (b) was omitted;
- (c) in subsection (5), for the words from “section 6” to “14A” there was substituted a reference to regulation [F31139(3)] or 43(2) of these Regulations;
- (d) in subsection (6), “bird or other” was omitted in each place where it occurs;
- (e) for subsection (9) there was substituted–
  - “(9) In this section–
  - “relevant licence” means a licence under regulation 44 of the Conservation (Natural Habitats, &c.) Regulations 1994 which authorises anything which would otherwise be an offence under regulation [F31239(3)] or 43(2) of those Regulations;
  - “specimen” means any animal or plant or any part of, or anything derived from, an animal or plant.”; and
- (f) after subsection (9) there was inserted–
  - “(10) A person guilty of an offence under this section 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.”.
- (4) the provisions of section 19ZD of the Wildlife and Countryside Act 1981 apply for the purposes of these Regulations as if–
  - (a) in subsection (1)–
    - (i) the reference to “section 19” was a reference to regulation 101 of these Regulations; and
    - (ii) the reference to “this Part” was a reference to Part III of these Regulations;
  - (b) in subsection (2), the reference to “this Part” was a reference to Part III of these Regulations;
  - (c) in subsection (3)–
    - (i) for the words from “section 6” to “14A” there was substituted a reference to regulation [F31339(3)] or 43(2) of these Regulations; and
    - (ii) “to (d)” was omitted;
  - (d) in subsection (4), for the words from “section 6” to “14A” there was substituted a reference to regulation [F31439(3)] or 43(2) of these Regulations;
  - (e) in subsection (5), “bird, other” was omitted;
  - (f) in subsections (6) and (7), “bird or other” was omitted;
  - (g) in subsection (8), the reference to “section 19(2)” was a reference to regulation 101(2) of these Regulations;
  - (h) in subsection (10)(b)–



- (i) for “a bird, other” there was substituted “ an ”; and
- (ii) “bird, other” was omitted; and
- (i) after subsection (10) there was inserted—
  - “(11) A person guilty of an offence under this section 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.”.]

#### Textual Amendments

- F309** Reg. 101A inserted (S.) (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), **18** (with regs. 20, 21)
- F310** Word in reg. 101A(3)(a) substituted (S.) (15.2.2007) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2007 \(S.S.I. 2007/80\)](#), regs. 2, **23**
- F311** Word in reg. 101A(3)(c) substituted (S.) (15.2.2007) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2007 \(S.S.I. 2007/80\)](#), regs. 2, **23**
- F312** Word in reg. 101A(3)(e) substituted (S.) (15.2.2007) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2007 \(S.S.I. 2007/80\)](#), regs. 2, **23**
- F313** Word in reg. 101A(4)(c) substituted (S.) (15.2.2007) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2007 \(S.S.I. 2007/80\)](#), regs. 2, **23**
- F314** Word in reg. 101A(4)(d) substituted (S.) (15.2.2007) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2007 \(S.S.I. 2007/80\)](#), regs. 2, **23**

#### [<sup>F219</sup>Offences in connection with constables’ powers to take samples

- 101B.**—(1) A person commits an offence if, without reasonable excuse, he fails—
- (a) to make available any specimen in accordance with a requirement under regulation 101A(2); or
  - (b) to give any assistance reasonably required under regulation 101A(3).
- (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.

#### Textual Amendments

- F219** Regs. 101A-101I inserted (E.W.) (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(58)** (with reg. 9)

#### Wildlife inspectors

- 101C.**—(1) In regulations 101D to 101I “wildlife inspector” means a person authorised in writing under this regulation by—
- (a) the Secretary of State (in relation to England); or
  - (b) the Welsh Ministers (in relation to Wales).
- (2) An authorisation under paragraph (1) is subject to any conditions or limitations specified in it.

*Status: Point in time view as at 12/01/2010.*

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

### Textual Amendments

**F219** Regs. 101A-101I inserted (E.W.) (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(58)** (with reg. 9)

### Powers of wildlife inspectors to enter premises

**101D.**—(1) A wildlife inspector may, at any reasonable time, enter and inspect any premises other than a dwelling—

- (a) for the purpose of ascertaining whether an offence under regulation 39, 41, 43 or 46A 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 44.

(2) The power in paragraph (1) to enter and inspect premises includes power to board and inspect a ship within the coastal sea, 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—

- (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 shall, if required to do so, produce evidence of his authority before entering any premises under this regulation.

(8) A wildlife inspector entering premises under this regulation may take with him a veterinary surgeon if he has reasonable grounds for believing that such a person will be needed for the exercise of powers under regulation 101E.

(9) In this regulation—

“coastal sea” and “ship” have the same meanings as in regulation 37C;

“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;

“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.

**Textual Amendments**

**F219** Regs. 101A-101I inserted (E.W.) (21.8.2007) by The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007 (S.I. 2007/1843), regs. 2(1), **5(58)** (with reg. 9)

**Wildlife inspectors' powers for examining specimens and taking samples**

**101E.**—(1) The powers conferred by this regulation are exercisable where a wildlife inspector has entered premises for a purpose mentioned in regulation 101D(1)(a) or (b).

(2) The inspector, or veterinary surgeon accompanying him, may—

- (a) for any such purpose, examine any specimen; and
- (b) subject to paragraph (3) and regulation 101G, 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 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 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 an offence under regulation 39, 41, 43 or 46A.

**Textual Amendments**

**F219** Regs. 101A-101I inserted (E.W.) (21.8.2007) by The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007 (S.I. 2007/1843), regs. 2(1), **5(58)** (with reg. 9)

**Offences in connection with wildlife inspectors' enforcement powers**

**101F.**—(1) A person commits an offence if he—

- (a) intentionally obstructs a wildlife inspector acting in the exercise of powers conferred by regulation 101D or regulation 101E(2) or (5); or
- (b) fails without reasonable excuse to give any assistance reasonably required under regulation 101E(4).

(2) A person commits an offence if, with intent to deceive, he falsely pretends to be a wildlife inspector.

(3) A person guilty of an offence under paragraph (1) shall be 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) shall be 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

*Status: Point in time view as at 12/01/2010.*

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

- (b) on conviction on indictment, to imprisonment not exceeding two years or to a fine, or to both.

#### Textual Amendments

**F219** Regs. 101A-101I inserted (E.W.) (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(58)** (with reg. 9)

#### Restrictions on taking samples from live specimens

**101G.**—(1) No sample may be taken by virtue of regulation 101A or 101E from a live animal except by a veterinary surgeon.

(2) No sample may be taken by virtue of regulation 101A or 101E 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.

#### Textual Amendments

**F219** Regs. 101A-101I inserted (E.W.) (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(58)** (with reg. 9)

#### Codes of practice

**101H.**—(1) The Secretary of State (in relation to England) and the Welsh Ministers (in relation to Wales) may—

- (a) issue a code of practice in connection with any of the provisions of regulations 101B to 101G; and
- (b) revise or replace such a code.

(2) In discharging any function under regulations 101B to 101G—

- (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 him 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.

#### Textual Amendments

**F219** Regs. 101A-101I inserted (E.W.) (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(58)** (with reg. 9)

**Advice and assistance from nature conservation bodies**

**101I.** Natural England (in relation to England) and the Countryside Council for Wales (in relation to Wales) may advise or assist any constable or wildlife inspector in, or in connection with, enforcement action in relation to offences under Part III of these Regulations.]

**Textual Amendments**

**F219** Regs. 101A-101I inserted (E.W.) (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(58)** (with reg. 9)

**Proceedings for offences: venue, time limits** **S**

**102.**—(1) An offence under Part III of these Regulations shall, for the purposes of conferring jurisdiction, be deemed to have been committed in any place where the offender is found or to which he is first brought after the commission of the offence.

(2) Summary proceedings [<sup>F220</sup>for any such offence] may be brought within a period of six months from the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to his knowledge.

But no such proceedings shall be brought by virtue of this paragraph more than [<sup>F221</sup>three] years after the commission of the offence [<sup>F222</sup>or, in the case of a continuous contravention, after the last date on which the offence was committed].

(3) For the purposes of paragraph (2) a certificate signed by or on behalf of the prosecutor and stating the date on which such evidence as aforesaid came to his knowledge shall be conclusive evidence of that fact; and a certificate stating that matter and purporting to be so signed shall be deemed to be so signed unless the contrary is proved.

**Extent Information**

**E32** This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

**Textual Amendments**

**F220** Words in [reg. 102\(2\)](#) substituted (S.) (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), **19(a)** (with regs. 20, 21)

**F221** Word in [reg. 102\(2\)](#) substituted (S.) (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), **19(b)** (with regs. 20, 21)

**F222** Words in [reg. 102\(2\)](#) inserted (S.) (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), **19(c)** (with regs. 20, 21)

**Commencement Information**

**I97** Reg. 102 in force at 30.10.1994, see [reg. 1\(2\)](#)

**Proceedings for offences: venue, time limits** **E+W**

**102.**—(1) An offence under Part III of these Regulations shall, for the purposes of conferring jurisdiction, be deemed to have been committed in any place where the offender is found or to which he is first brought after the commission of the offence.

*Status: Point in time view as at 12/01/2010.*

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

(2) Summary proceedings for [<sup>F315</sup>any such offence] may be brought within a period of six months from the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to his knowledge.

- (a) .....
- (b) .....

But no such proceedings shall be brought by virtue of this paragraph more than two years after the commission of the offence.

(3) For the purposes of paragraph (2) a certificate signed by or on behalf of the prosecutor and stating the date on which such evidence as aforesaid came to his knowledge shall be conclusive evidence of that fact; and a certificate stating that matter and purporting to be so signed shall be deemed to be so signed unless the contrary is proved.

**Textual Amendments**

**F315** Words in reg. 102(2) inserted (E.W.) (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(59)(a)** (with reg. 9)

**Power of court to order forfeiture**

**103.**—(1) The court by which a person is convicted of an offence under Part III of these Regulations—

- (a) shall 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 aircraft, hovercraft and boat.

**Commencement Information**

**I98** Reg. 103 in force at 30.10.1994, see [reg. 1\(2\)](#)

**Saving for other protective provisions**

**104.** Nothing in these Regulations shall be construed as excluding the application of the provisions of Part I of the Wildlife and Countryside Act 1981(**102**) (protection of wildlife) in relation to animals or plants also protected under Part III of these Regulations.

**Commencement Information**

**I99** Reg. 104 in force at 30.10.1994, see [reg. 1\(2\)](#)

**[<sup>F223</sup>Application of criminal offences to the Crown**

**104A.**—(1) No contravention by the Crown of any provision of these Regulations makes the Crown criminally liable; but the Court of Session may, on the application of any public body or

office holder having responsibility for enforcing that provision, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(2) Despite paragraph (1), the provisions of these Regulations apply to persons in the public service of the Crown as they apply to other persons.]

#### Textual Amendments

**F223** Reg. 104A inserted (S.) (15.2.2007) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2007 \(S.S.I. 2007/80\)](#), regs. 2, 24

### *General supplementary provisions*

#### **Powers of drainage authorities**

**105.**—(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 shall operate so as to prevent the authority carrying out the agreement.

(2) In paragraph (1) “drainage authority” means the National Rivers Authority or an internal drainage board.

#### Commencement Information

**I100** Reg. 105 in force at 30.10.1994, see [reg. 1\(2\)](#)

#### **Offences by bodies corporate, &c.**

**106.**—(1) Where an offence under these Regulations committed by a body corporate is proved to have committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, or a person purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

For this purpose “director”, in relation to a body corporate whose affairs are managed by its members, means any member of the body.

(2) Where an offence under these Regulations committed by a Scottish partnership is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, a partner, he (as well as the partnership) is guilty of the offence and liable to be proceeded against and punished accordingly.

#### Commencement Information

**I101** Reg. 106 in force at 30.10.1994, see [reg. 1\(2\)](#)

#### **[<sup>F224</sup>Application of criminal offences to the Crown**

**106A.**—(1) No contravention by the Crown of any provision made by 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.

*Status: Point in time view as at 12/01/2010.*

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

(2) Notwithstanding paragraph (1), the provisions of these Regulations apply to persons in the public service of the Crown as they apply to any other person.]

#### Textual Amendments

**F224** Reg. 106A inserted (E.W.) (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(60)** (with reg. 9)

#### Local inquiries

**107.**—(1) The Secretary of State may cause a local inquiry to be held for the purposes of the exercise of any of his functions under these Regulations.

(2) The provisions of section 250(2) to (5) of the Local Government Act 1972(**103**) or section 210(4) to (8) of the Local Government (Scotland) Act 1973(**104**) (local inquiries: evidence and costs) apply in relation to an inquiry held under this regulation.

#### Commencement Information

**I102** Reg. 107 in force at 30.10.1994, see [reg. 1\(2\)](#)

#### Service of notices

**108.**—(1) Section 329 of the Town and Country Planning Act 1990(**105**) or section 269 of the Town and Country Planning (Scotland) Act 1972(**106**) (service of notices) apply to notices and other documents required or authorised to be served under these Regulations.

(2) Paragraph (1) does not apply to the service of any notice required or authorised to be served under the Acquisition of Land Act 1981(**107**) or the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947(**108**), as applied by these Regulations.

#### Commencement Information

**I103** Reg. 108 in force at 30.10.1994, see [reg. 1\(2\)](#)

#### <sup>F225</sup> Advisory role of the JNCC

**109.**—(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;
- (b) any appropriate assessment on which that authority is obliged to consult the Committee under these Regulations;
- (c) any application made pursuant to regulation 62 of these Regulations and sent to the Committee by that authority pursuant to regulation 62(4); and

(103) 1972 c. 70.

(104) 1973 c. 65.

(105) 1990 c. 8.

(106) 1972 c. 52.

(107) 1981 c. 67.

(108) 1947 c. 42.



- (d) any decision of the Secretary of State in respect of which notice has been served on it by him under regulation 72(2)(b), 76(2)(b) or 80(2)(b) of these Regulations.
- (2) The Joint Nature Conservation Committee may undertake, commission or support (whether by financial means or otherwise) such research and scientific work as it considers is required for the purposes of providing advice or making representations under this regulation.
- (3) In this regulation and regulation 110 of these Regulations, “research” includes inquiries and investigations.

#### **Textual Amendments**

**F225** Regs. 109, 110 inserted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(61)** (with reg. 9)

### **Advisory role of Natural England, the Countryside Council for Wales and Scottish Natural Heritage**

- 110.**—(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 it considers 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 it considers 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 it considers is required for the purposes of providing advice or assistance or making representations under sub-paragraph (a).]

#### **Textual Amendments**

**F225** Regs. 109, 110 inserted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(61)** (with reg. 9)

*John Gummer*  
Secretary of State for the Environment

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**Status:** Point in time view as at 12/01/2010.

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

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*Ian Lang*  
Secretary of State for Scotland

*John Redwood*  
Secretary of State for Wales

¶<sup>F226</sup>SCHEDULE 1

Regulation 22(3)

PROCEDURE IN CONNECTION WITH ORDERS UNDER REGULATION 22

**Textual Amendments**

**F226** Sch. 1 revoked (S.) (29.11.2004) by The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2004 (S.S.I. 2004/475), regs. 1(1), **22(e)** (with regs. 20, 21)

*Coming into operation*

- 1.—(1) An original order or a restrictive amending order takes effect on its being made.
- (2) The Secretary of State shall consider every such order, and the order shall cease to have effect nine months after it is made unless he has previously given notice under paragraph 6 that he has considered it and does not propose to amend or revoke it, or has revoked it.
- (3) Subject to paragraphs 3(1) and 4(4), a revoking order, or an amending order which is not restrictive, does not take effect until confirmed by the Secretary of State.
- (4) An amending or revoking order requiring confirmation shall stand revoked if the Secretary of State gives notice under paragraph 6 below that it is not to be confirmed.

**Commencement Information**

**I104** Sch. 1 para. 1 in force at 30.10.1994, see **reg. 1(2)**

*Publicity for orders*

- 2.—(1) The Secretary of State shall, 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 shall—
  - (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 shall be given—
  - (a) by publication in the 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 a like notice—
    - (i) on every owner and occupier of that land (subject to sub-paragraph (4) below); and
    - (ii) on the local planning authority within whose area the land is situated.
- ¶<sup>F227</sup>(4) The Secretary of State may, in any particular case, direct that it shall not be necessary to comply with sub-paragraph (3)(b)(i); but if the Secretary of State so directs in the case of an order specifying any operation carried out, or proposed to be carried out, on any land, then in addition to publication the notice shall be addressed to “The owners and any occupiers” of the land (describing

*Status: Point in time view as at 12/01/2010.*

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

it), describing details of the operation and the details of the European site to which the order relates and a copy or copies of the notice shall be affixed to some conspicuous object or objects on the land.]

#### Textual Amendments

**F227** Sch. 1 para. 2(4) substituted (1.10.2009) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) \(No. 2\) Regulations 2009 \(S.I. 2009/2438\)](#), regs. 1(1), **11(5)** (with reg. 12)

#### Commencement Information

**I105** Sch. 1 para. 2 in force at 30.10.1994, see [reg. 1\(2\)](#)

#### *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 Secretary of State shall, 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.

An amending or revoking order under this sub-paragraph takes effect immediately and does not require confirmation nor shall any representation or objection with respect to it be entertained.

**(2)** Where an order requiring confirmation is made and no representations or objections are duly made in respect of it, or any so made are withdrawn, the Secretary of State may confirm the order (with or without modification).

#### Commencement Information

**I106** Sch. 1 para. 3 in force at 30.10.1994, see [reg. 1\(2\)](#)

#### *Opposed orders*

**4.—(1)** If any representation or objection duly made with respect to an order is not withdrawn, then, as soon as practicable in the case of an order having immediate effect and before confirming an order requiring confirmation, the Secretary of State shall either—

- (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 Secretary of State 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 Secretary of State—

- (a) if the order has already taken effect, shall decide either to take no action on the order, or to make an order amending or revoking it as he thinks 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(**109**) or section 210(4) to (8) of the Local Government (Scotland) Act 1973(**110**)(local inquiries: evidence and costs) apply in relation to an inquiry held under this paragraph.

**(109)** 1972 c. 70.

**(110)** 1973 c. 65.

(4) An amending or revoking order made by virtue of sub-paragraph (2) above takes effect immediately and does not require confirmation nor shall any representation or objection with respect to it be entertained.

**Commencement Information**

**I107** Sch. 1 para. 4 in force at 30.10.1994, see [reg. 1\(2\)](#)

*Restriction on power to amend orders or confirm them with modifications*

**5.** The Secretary of State shall not by virtue of paragraphs 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.

**Commencement Information**

**I108** Sch. 1 para. 5 in force at 30.10.1994, see [reg. 1\(2\)](#)

*Notice of final decision on order*

**6.—(1)** The Secretary of State shall as soon as practicable after making an order by virtue of paragraphs 3(1) or 4(2) 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 Secretary of State shall give notice of any of the following decisions of his as soon as practicable after making the decision—

- (a) a decision under paragraph 3(1) or 4(2) 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 shall—

- (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) Notice under this paragraph shall be given by publishing it in accordance with paragraph 2(3) and serving a copy of it on any person on whom a notice was required to be served under paragraph 2(3) or (4).

**Commencement Information**

**I109** Sch. 1 para. 6 in force at 30.10.1994, see [reg. 1\(2\)](#)

**Status:** Point in time view as at 12/01/2010.

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

### *Proceedings for questioning validity of orders*

7.—(1) This paragraph applies to any order which has taken effect and as to which the Secretary of State has given notice under paragraph 6 of a decision of his to take no action or to amend the order in accordance with paragraph 4; and in this paragraph “the relevant notice” means that 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 22, or that any of the requirements of this Schedule have not been complied with in relation to it, he may within six weeks from the date of the relevant notice make an application to the court under this paragraph.

(3) On any such application the 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—

- (a) in England and Wales, quash the order, or any provision of the order, either generally or in so far as it affects the interests of the applicant; or
- (b) in Scotland, make such declarator as seems to the court to be appropriate.

(4) Except as provided by this paragraph, the validity of an order shall not be questioned in any legal proceedings whatsoever.

(5) In this paragraph “the court” means the High Court in relation to England and Wales and the Court of Session in relation to Scotland.

#### **Commencement Information**

**I110** Sch. 1 para. 7 in force at 30.10.1994, see [reg. 1\(2\)](#)

### *Interpretation*

8. In this Schedule—

“the Gazette” means—

- (a) if the order relates in whole or in part to land in England and Wales, the London Gazette; and
- (b) if the order relates in whole or in part to land in Scotland, the Edinburgh Gazette;

#### **Commencement Information**

**I111** Sch. 1 para. 8 in force at 30.10.1994, see [reg. 1\(2\)](#)

## SCHEDULE 2

Regulation 38

### EUROPEAN PROTECTED SPECIES OF ANIMALS

#### **Commencement Information**

**I112** Sch. 2 in force at 30.10.1994, see [reg. 1\(2\)](#)

**Status:** Point in time view as at 12/01/2010.**Changes to legislation:** There are currently no known outstanding effects for the The Conservation (Natural Habitats, &c.) Regulations 1994. (See end of Document for details)

<i>Common name</i>	<i>Scientific name</i>
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
Lizard, Sand	Lacerta agilis
Newt, Great Crested (or Warty)	Triturus cristatus
Otter, Common	Lutra lutra
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 shall not be taken into account.

[<sup>F228</sup>SCHEDULE 2A

Regulation 39(9)

## EXCLUDED POPULATIONS OF CERTAIN SPECIES

**Textual Amendments**

**F228** Sch. 2A inserted: (S.) (15.2.2007) by The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2007 (S.S.I. 2007/80), reg. 2, **sch. 2**; and (E.W.) (21.8.2007) by The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007 (S.I. 2007/1843), regs. 2(1), 5(62), **Sch. 2** (with reg. 9)

<i>Common Name</i>	<i>Scientific Name</i>	<i>Excluded countries and areas</i>
Beaver, Eurasian	Castor fiber	Estonia, Finland, Latvia, Lithuania, Poland, and Sweden
Hamster, Common (or Black bellied)	Cricetus cricetus	Hungary

**Status:** Point in time view as at 12/01/2010.

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

Wolf, Grey	Canis lupus	[ <sup>F229</sup> Bulgaria,] Estonia, Greece north of the 39th parallel, Latvia, Lithuania, Poland, Slovakia, Spain north of the Duero, and the reindeer management area in Finland as defined in paragraph 2 of Finnish Act No 848/90 of 14 September 1990 on reindeer management
Lynx, Eurasian	Lynx lynx	Estonia
Viper, Seoane's	Vipera seoanni	Spain

#### Textual Amendments

**F229** Word in Sch. 2A Table inserted (25.2.2008) by The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2008 (S.S.I. 2008/17), regs. 1(1), **2(4)**

NOTE: The common name or names given in the first column of this table are included by way of guidance only; in the event of dispute or proceedings, the common name or names must not be taken into account.]

### SCHEDULE 3

Regulation 41(1)(a)

#### ANIMALS WHICH MAY NOT BE TAKEN OR KILLED IN CERTAIN WAYS

#### Commencement Information

**I113** Sch. 3 in force at 30.10.1994, see **reg. 1(2)**

<i>Common name</i>	<i>Scientific name</i>
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 shall not be taken into account.



**Status:** Point in time view as at 12/01/2010.**Changes to legislation:** There are currently no known outstanding effects for the The Conservation (Natural Habitats, &c.) Regulations 1994. (See end of Document for details)

<i>Common name</i>	<i>Scientific name</i>
Seal, Common	<i>Phoca vitulina</i>
Seal, Grey	<i>Halichoerus grypus</i>
Seal, Harp	<i>Phoca groenlandica</i> (otherwise known as <i>Pagophilus groenlandicus</i> )
Seal, Hooded	<i>Cystophora cristata</i>
Seal, Ringed	<i>Phoca hispida</i> (otherwise known as <i>Pusa hispida</i> )
Shad, Allis	<i>Alosa alosa</i>
Shad, Twaite	<i>Alosa fallax</i>
Vendace	<i>Coregonus albula</i>
Whitefish	<i>Coregonus lavaretus</i>

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 shall not be taken into account.

## SCHEDULE 4

Regulation 42

## EUROPEAN PROTECTED SPECIES OF PLANTS

**Commencement Information**

**I114** Sch. 4 in force at 30.10.1994, see [reg. 1\(2\)](#)

<i>Common name</i>	<i>Scientific name</i>
Dock, Shore	<i>Rumex rupestris</i>
Fern, Killarney	<i>Trichomanes speciosum</i>
Gentian, Early	<i>Gentianella anglica</i>
Lady's-slipper	<i>Cypripedium calceolus</i>
Marshwort, Creeping	<i>Apium repens</i>
Naiad, slender	<i>Najas flexilis</i>
Orchid, Fen	<i>Liparis loeselii</i>
Plantain, Floating-leaved water	<i>Luronium natans</i>
Saxifrage, Yellow Marsh	<i>Saxifraga hirculus</i>

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 shall not be taken into account.

**Status:** Point in time view as at 12/01/2010.

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

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make provision for implementing Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora.

Part I contains introductory provisions.

Part II provides for the conservation of natural habitats and habitats of species, and in particular—  
regulations 7 to 15 make provision for the selection, registration and notification of sites to be protected under the Directive (“European sites”);  
regulations 16 and 17 make provision for management agreements for European sites;  
regulations 18 to 27 make provision in respect of European sites for the control of damaging operations and for special nature conservation orders;  
regulations 28 to 32 make provision for byelaws and compulsory purchase orders as respects European sites; and  
regulations 33 to 36 make special provision for the protection of European marine sites.

Part III provides for the protection of certain wild animals and plants and in particular—  
regulation 39 makes it an offence, subject to certain exceptions, deliberately to capture, kill or disturb those animals or to trade in them; and  
regulation 43 makes it an offence, subject to certain exceptions, to pick, collect, cut, uproot or destroy those plants or to trade in them.

Part IV makes provision for the adaptation of planning and certain other controls for the protection of European sites; in particular—  
regulations 48, 49 and 54 require the effect on a European site to be considered before a grant of planning permission and, subject to certain exceptions, restrict the grant of planning permission where the integrity of the European site would be adversely affected;  
regulations 50 and 51 and 55 to 58 require planning permissions granted before the date on which a site becomes a European site (or if later, the commencement of these Regulations) to be reviewed and in certain circumstances revoked where the integrity of the site would be adversely affected.

Equivalent provision for the requirement to consider the effect on a European site and for review is made as respects the construction or improvement of highways, roads or cycle tracks (regulations 69 and 70), consents under the Electricity Act 1989 (regulations 71 to 74), authorisations under the Pipe-lines Act 1962 (regulations 75 to 78), orders under the Transport and Works Act 1992 (regulations 79 to 82), authorisations and licences under the Environmental Protection Act 1990 (regulations 83 and 84) and discharge consents under water pollution legislation (regulation 85). Regulations 60 to 67 make special provision as respects general and special development orders, simplified planning zones and enterprise zones.

**Status:**

Point in time view as at 12/01/2010.

**Changes to legislation:**

There are currently no known outstanding effects for the The Conservation (Natural Habitats, &c.) Regulations 1994.