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STATUTORY INSTRUMENTS

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**1994 No. 2716**

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

**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(1) 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(2) (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(3) 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—

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(1) 1925 c. 18.  
(2) 1925 c. 20.  
(3) 1925 c. 24.

- (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(4) 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.

*Supplementary provisions as to potentially damaging operations*

**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 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.

**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

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(4) 1921 c. 58.

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>(5)</sup>, or
- (b) a grant under regulations made under section 2(2) of the European Communities Act 1972<sup>(6)</sup> to a person carrying on an agricultural business within the meaning of those regulations in respect of expenditure incurred or to be incurred for the purposes of or in connection with that business, being expenditure of a capital nature or incurred in connection with expenditure of a capital nature; and

“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.

#### **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 23(1)(a), 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 the Minister of Agriculture, Fisheries and Food and 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.

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<sup>(5)</sup> 1970 c. 40; section 29 was amended by section 15(1) of the Agriculture (Miscellaneous Provisions) Act 1976 (c. 55).

<sup>(6)</sup> 1972 c. 68.

**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 in relation to that land, or if an offence under regulation 23 is being, or has been, committed on that land; or
- (b) to ascertain the amount of any compensation payable under regulation 25 in respect of an interest in that land.

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.

**Compensation: amount and assessment**

**91.**—(1) The following provisions have effect as to compensation under regulation 25(1) (effect of special nature conservation order: decrease in value of agricultural unit).

(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 the order not been made.

- (3) For this purpose—
  - (a) an interest in land shall be valued as at the time when the order is made; 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 order, his various interests shall be valued together.

(4) Section 10 of the Land Compensation Act 1973(7) (mortgages, trusts for sale and settlements) or section 10 of the Land Compensation (Scotland) Act 1973(8) 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(9) or section 12 of the Land Compensation (Scotland) Act 1963(10) 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.

**Compensation: other supplementary provisions**

**92.**—(1) The following provisions have effect in relation to compensation under regulation 25 (compensation for effect of special nature conservation order).

(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(11), from the date of the claim until payment.

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(7) 1973 c. 26.

(8) 1973 c. 56.

(9) 1961 c. 33.

(10) 1963 c. 51.

(11) 1963 c. 51.

(3) Except in so far as may be provided by regulations, any question of disputed compensation shall be referred to and determined by the Lands Tribunal or the Lands Tribunal for Scotland.

(4) In relation to the determination of any such question, the provisions of sections 2 and 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.

### **Compensation: procedural provisions**

**93.**—(1) The power to make regulations under section 30 of the Wildlife and Countryside Act 1981<sup>(12)</sup> (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.

### *Supplementary provisions as to byelaws*

### **Procedure for making byelaws, penalties, &c.**

**94.**—(1) Sections 236 to 238 of the Local Government Act 1972<sup>(13)</sup> or sections 201 to 204 of the Local Government (Scotland) Act 1973<sup>(14)</sup> (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<sup>(15)</sup> 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.

(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.

### **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.

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(12) 1981 c. 69.

(13) 1972 c. 70.

(14) 1973 c. 65.

(15) 1949 c. 97.

(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.

### **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 Lands Tribunal.

(3) For the purposes of any such reference to the Lands 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;
- (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.

### **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.

*Supplementary provisions as to compulsory acquisition*

**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<sup>(16)</sup> applies in relation to any acquisition under these Regulations of land in England and Wales, and the Compulsory Purchase Act 1965<sup>(17)</sup> 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<sup>(18)</sup> 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.

**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.

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<sup>(16)</sup> 1981 c. 67.

<sup>(17)</sup> 1965 c. 56.

<sup>(18)</sup> 1947 c. 42.

(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.

#### *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.

#### **Enforcement**

**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 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<sup>(19)</sup> for such an offence, enter any land other than a dwelling—house.

(3) If a justice of the peace is satisfied by information 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 (with or without other persons) 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.

#### **Proceedings for offences: venue, time limits**

**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 for—

- (a) any offence under regulation 39(1) involving the taking or killing of a wild animal, and

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<sup>(19)</sup> 1984 c. 60.



(b) any offence under regulation 43(1),  
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 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.

### **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.

### **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(20) (protection of wildlife) in relation to animals or plants also protected under Part III of these Regulations.

### *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.

### **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.

### **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<sup>(21)</sup> or section 210(4) to (8) of the Local Government (Scotland) Act 1973<sup>(22)</sup> (local inquiries: evidence and costs) apply in relation to an inquiry held under this regulation.

### **Service of notices**

**108.**—(1) Section 329 of the Town and Country Planning Act 1990<sup>(23)</sup> or section 269 of the Town and Country Planning (Scotland) Act 1972<sup>(24)</sup> (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<sup>(25)</sup> or the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947<sup>(26)</sup>, as applied by these Regulations.

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(21) 1972 c. 70.  
(22) 1973 c. 65.  
(23) 1990 c. 8.  
(24) 1972 c. 52.  
(25) 1981 c. 67.  
(26) 1947 c. 42.