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STATUTORY INSTRUMENTS

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**2017 No. 1012**

**The Conservation of Habitats and Species Regulations 2017**

**PART 1**

**Introductory and General Provisions**

**Citation and commencement**

**1.**—(1) These Regulations may be cited as the Conservation of Habitats and Species Regulations 2017.

(2) These Regulations come into force on 30th November 2017.

**Extent**

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

(2) The following provisions also extend to Scotland—

- (a) regulation 3(8) (meaning of adjacent sea);
- (b) regulations 9 and 10 (duties relating to compliance with the Directive and wild bird habitat, respectively), in so far as those regulations apply in relation to the exercise of a function which relates to a reserved matter (within the meaning of Schedule 5 to the Scotland Act 1998 (reserved matters)(1));
- (c) regulation 41(4) (national policy statement under Planning Act 2008(2));
- (d) Chapter 1 of Part 6 (assessment of plans and projects: general provisions), in so far as that Chapter applies in relation to plans and projects—
  - (i) which do not relate to a matter specified in Chapters 2 to 9 of that Part, and
  - (ii) which relate to a reserved matter (within the meaning of Schedule 5 to the Scotland Act 1998);
- (e) in regulation 70 (grant of planning permission)—
  - (i) paragraph (1)(e)(ii) and (iii) (deemed grant of planning permission under section 57(2) and (2A) of the Town and Country Planning (Scotland) Act 1997(3) and section 5(1) of the Pipe-lines Act 1962(4));
  - (ii) paragraph 1(f) (variation of permission deemed to be granted under section 57(2) of the Town and Country Planning (Scotland) Act 1997), in so far as that paragraph

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(1) 1998 c. 46. Schedule 5 was amended by the Scotland Act 2012 (c. 11), section 10; the Energy Act 2013 (c. 32), Schedule 12, paragraph 72; the Scotland Act 2016 (c. 11), sections 40, 45, 47 and 50(1), (6) and (7); and by S.I. 2000/3252, 2002/1629, 2004/3329, 2014/1559 and 2015/1379.

(2) 2008 c. 29.

(3) 1997 c. 8. Section 57(2) was substituted by the Growth and Infrastructure Act 2013 (c. 27), section 21(5).

(4) 1962 c. 58. Section 5(1) was amended by S.I. 1999/742.

- relates to a direction under section 57(2ZA) of the Town and Country Planning (Scotland) Act 1997 (development with government authorisation)<sup>(5)</sup>; and
- (iii) paragraph (2) in so far as that paragraph relates to sub-paragraph (1)(e)(ii) or (iii), or (1)(f) of that regulation;
- (f) in regulation 71 (planning permission: duty to review), in paragraph (4)—
- (i) sub-paragraph (b);
  - (ii) sub-paragraph (d) in so far as that sub-paragraph relates to a direction under section 57(2) of the Town and Country Planning (Scotland) Act 1997;
  - (iii) sub-paragraph (e) in so far as that sub-paragraph relates to a direction under section 57(2ZA) of the Town and Country Planning (Scotland) Act 1997;
- and paragraph (3) in so far as it relates to directions specified in those sub-paragraphs;
- (g) regulations 84, 85 and 86(2) (development consent under Planning Act 2008);
- (h) Chapter 4 of Part 6 (electricity);
- (i) Chapter 5 of Part 6 (pipe-lines);
- (j) regulation 103 (marine works) in so far as it applies to the granting of a licence under Part 2 of the Food and Environment Protection Act 1985<sup>(6)</sup>;
- (k) regulation 110 (national policy statements under Planning Act 2008), and regulations 105, 107 and 109 in so far as they apply in relation to a national policy statement by virtue of regulation 110;
- (l) regulation 112 (marine policy statement), in so far as it applies in relation to the exercise of any power by the Secretary of State, and regulations 105, 107 and 109 in so far as they apply to marine policy statements by virtue of regulation 112; and
- (m) in Part 1 of Schedule 6 (consequential amendments to primary legislation)—
- (i) sub-paragraphs (2) and (4) of paragraph 8 (amendment of section 123 of the Marine Act); and
  - (ii) sub-paragraph (1) of paragraph 8 in so far as it relates to sub-paragraph (2) and (4); and regulation 139 in so far as it relates to those provisions.
- (3) The following provisions also extend to Scotland in so far as they have effect in relation to the provisions specified in paragraph (2)—
- (a) regulations 1 (citation and commencement), 2 (extent), 3 (interpretation), 5 (nature conservation bodies), 7 (competent authorities) and 8 (European sites and European marine sites);
  - (b) Chapter 1 of Part 6 (assessment of plans and projects); and
  - (c) regulations 134, 135(3) and 138 (advisory role of the Joint Nature Conservation Committee, advisory role of Scottish Natural Heritage, notices, respectively).
- (4) The following provisions also extend to Northern Ireland—

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<sup>(5)</sup> Section 57(2ZA) was inserted by the Growth and Infrastructure Act 2013, section 21(5).

<sup>(6)</sup> 1985 c. 48. Part 2 was amended by the Environment Protection Act 1990 (c. 43), sections 146 and 147; the Petroleum Act 1998 (c. 17), Schedule 4, paragraph 20; the Food Standards Act 1999 (c. 28), Schedule 3, paragraph 16; the Energy Act 2008 (c. 32), Schedule 1, paragraph 2; the Marine Act, Schedule 8, paragraphs 2, 5 and 6; by S.I. 1999/1756; and by SSI 2011/202. It is prospectively amended by the Digital Economy Act 2017 (c. 30), Schedule 3, paragraphs 22 and 23, from a date to be appointed. By virtue of the amendments made by the Marine Act, Part 2 of the Food and Environment Protection Act 1985 only applies to the Scottish inshore region.

- (a) regulations 9 and 10, in so far as those regulations apply in relation to the exercise of a function which relates to an excepted matter (within the meaning given by section 4(1) of the Northern Ireland Act 1998(7));
  - (b) Chapter 1 of Part 6, in so far as that Chapter applies in relation to plans and projects—
    - (i) which do not relate to a matter specified in Chapters 2 to 9 of that Part; and
    - (ii) which relate to an excepted matter (within the meaning given by section 4(1) of the Northern Ireland Act 1998);
  - (c) regulation 103, in so far as it applies in relation to a marine licence under Part 4 of the Marine Act in respect of anything done in the course of carrying on an activity which relates to a matter which is an excepted matter by virtue of paragraph 4 of Schedule 2 to the Northern Ireland Act 1998 (defence of the realm etc.);
  - (d) regulation 112, in so far as it applies in relation to the exercise of any power by the Secretary of State, and regulations 105, 107 and 109 in so far as they apply to marine policy statements by virtue of regulation 112; and
  - (e) in Part 1 of Schedule 6—
    - (i) sub-paragraphs (2) and (4) of paragraph 8;
    - (ii) sub-paragraph (1) of paragraph 8 in so far as it relates to sub-paragraphs (2) and (4); and regulation 139 in so far as it relates to those provisions.
- (5) This regulation and regulations 1, 3, 5, 7, 8, 134 and 138 also extend to Northern Ireland in so far as they have effect in relation to the provisions specified in paragraph (4).
- (6) Chapter 1 of Part 6 also extends to Northern Ireland in so far as it has effect for the purposes of regulation 103, to the extent that that regulation extends to Northern Ireland by virtue of paragraph (4) (c).
- (7) The amendment of any enactment by regulation 139 and Part 2 of Schedule 6 (consequential amendments to secondary legislation) has the same extent as the enactment amended.
- (8) The revocation of any enactment by regulation 140 and Schedule 7 (revocations) has the same extent as the enactment revoked.

## Interpretation

### 3.—(1) In these Regulations—

- “the 1949 Act” means the National Parks and Access to the Countryside Act 1949(8);
- “the 2010 Regulations” means the Conservation of Habitats and Species Regulations 2010(9);
- “the Offshore Marine Conservation Regulations” means the Conservation of Offshore Marine Habitats and Species Regulations 2017(10);
- “the appropriate authority” means the Secretary of State in relation to England and the Welsh Ministers in relation to Wales (but see modifications of the meaning of that term in regulations 9(4) and 10(12)(a), and modifications of references to that term in regulations 69(1) (b), (3)(c), (5) and (8)(b), 97(6), 110(3)(b) and 112(3)(c)), and any person exercising any function of the Secretary of State or the Welsh Ministers;
- “competent authority” is to be construed in accordance with regulation 7 (competent authorities);

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(7) 1998 c. 47.

(8) 1949 c. 97.

(9) S.I. 2010/490, as amended by S.I. 2011/603, 625, 2012/630, 2012/635, 637, 1927, 2013/755 (W. 90), 2015/377, 2020 and 2016/1154.

(10) S.I. 2017/1013.

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

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

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

“the Directives” means the Habitats Directive and the new Wild Birds Directive;

“enactment” includes a local enactment and an enactment contained in subordinate legislation, and “subordinate legislation” has the same meaning as in the Interpretation Act 1978<sup>(11)</sup>;

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

“European marine site” has the meaning given by regulation 8(3) (European sites and European marine sites);

“European offshore marine site” means a European offshore marine site within the meaning of regulation 18 of the Offshore Marine Conservation Regulations (meaning of European offshore marine site);

“European site” has the meaning given by regulation 8;

“functions” includes powers and duties;

“the Habitats Directive” means Council [Directive 92/43/EEC](#) on the conservation of natural habitats and of wild fauna and flora<sup>(12)</sup>;

“land” includes land covered by water;

“local planning authority” means, except as otherwise provided, any authority having any function as a local planning authority or mineral planning authority under the TCPA 1990;

“management agreement” means an agreement made, or having effect as if made, under regulation 20 (management agreements);

“the Marine Act” means the Marine and Coastal Access Act 2009<sup>(13)</sup>;

“marine area” means (subject to regulations 9(5) and 10(12)(b)) the English inshore region and the Welsh inshore region;

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

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

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

“the new Wild Birds Directive” means [Directive 2009/147/EC](#) of the European Parliament and of the Council on the conservation of wild birds<sup>(14)</sup>;

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

<sup>(11)</sup> 1978 c. 30. See section 21 of that Act for the meaning of “subordinate legislation”.

<sup>(12)</sup> OJ No. L 206, 22.7.1992, p.7, as last amended by Council [Directive 2013/17/EU](#) (OJ No. L 158, 10.6.2013, p.193).

<sup>(13)</sup> 2009 c. 23.

<sup>(14)</sup> OJ No. L 20, 26.1.2010, p.7, as last amended by Council [Directive 2013/17/EU](#) (OJ No L 158, 10.6.2013, p.193).

“officer”—

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

“the old Wild Birds Directive” means Council [Directive 79/409/EEC](#) on the conservation of wild birds<sup>(15)</sup>;

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

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

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

“relevant licensing body” has the meaning given by regulation 58 (relevant licensing body);

“research” includes inquiries and investigations;

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

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

“sea” includes—

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

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

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

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

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

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

“specimen”—

- (a) for the purposes of Part 7 (enforcement), means any animal or plant, or any part of, or anything derived from, an animal or plant; and
- (b) for all other purposes has the meaning given by Article 1(m) of the Habitats Directive;

“statutory undertaker” means a person who is, or is deemed to be, a statutory undertaker for the purposes of any provision of Part 11 of the TCPA 1990 (statutory undertakers);

“the TCPA 1990” means the Town and Country Planning Act 1990<sup>(16)</sup>;

“the WCA 1981” means the Wildlife and Countryside Act 1981<sup>(17)</sup>;

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

“wild bird” means a bird which is—

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<sup>(15)</sup> OJ No. L 103, 25.4.1979, p.1; the old Wild Birds Directive was repealed by the new Wild Birds Directive.

<sup>(16)</sup> 1990 c. 8.

<sup>(17)</sup> 1981 c. 69.

- (a) a member of a species referred to in Article 1 of the new Wild Birds Directive (scope of the Directive); and
  - (b) wild.
- (2) The area of sea referred to in sub-paragraph (a) of the definition of “sea” in paragraph (1) includes waters in any area—
- (a) which is closed, whether permanently or intermittently, by a lock or other artificial means against the regular action of the tide, but
  - (b) into and from which seawater is caused or permitted to flow, whether continuously or from time to time.
- (3) Terms not defined in paragraph (1) which are used in these Regulations and also in the Habitats Directive have the meaning they bear in that Directive.
- (4) In these Regulations, any reference to an Annex to the Habitats Directive is a reference to that Annex to that Directive as amended from time to time.
- (5) Subject to regulation 86(1) (which relates to the construction of provisions of Chapter 2 of Part 6 as one with the TCPA 1990), these Regulations apply to the Isles of Scilly as if the Isles were a county and the Council of the Isles were a county council.
- (6) Except as provided by paragraph (7), for the purposes of these Regulations—
- (a) any reference to England includes the English inshore region;
  - (b) any reference to Wales includes the Welsh inshore region;
  - (c) any reference to Scotland includes the Scottish inshore region;
  - (d) any reference to Great Britain includes the English inshore region, the Welsh inshore region and the Scottish inshore region;
  - (e) any reference to Northern Ireland includes the Northern Ireland inshore region; and
  - (f) any reference to the United Kingdom includes its internal waters and the English inshore region, the Welsh inshore region, the Scottish inshore region and the Northern Ireland inshore region.
- (7) Paragraph (6) does not apply for the purposes of—
- (a) in paragraph (1), the definitions of “English inshore region”, “Welsh inshore region”, “Scottish inshore region” and “Northern Ireland inshore region”;
  - (b) paragraph (8); or
  - (c) sub-paragraph (b) of the definition of “offshore marine area” in regulation 4(2).
- (8) For the purposes of these Regulations—
- (a) the territorial sea adjacent to England is so much of the territorial sea adjacent to the United Kingdom as is not the territorial sea adjacent to Wales, the territorial sea adjacent to Scotland or the territorial sea adjacent to Northern Ireland;
  - (b) “the territorial sea adjacent to Wales” is to be construed in accordance with article 6 of and Schedule 3 to the National Assembly for Wales (Transfer of Functions) Order 1999<sup>(18)</sup>;
  - (c) “the territorial sea adjacent to Scotland” is to be construed in accordance with article 3 of and Schedule 1 to the Scottish Adjacent Waters Boundaries Order 1999<sup>(19)</sup>; and

<sup>(18)</sup> S.I. 1999/672, to which there are amendments not relevant to these Regulations. These provisions continue to have effect as if made under section 158(3) of the Government of Wales Act 2006 (c. 32), by virtue of paragraph 26(3) of Schedule 11 to that Act.

<sup>(19)</sup> S.I. 1999/1126.

(d) “the territorial sea adjacent to Northern Ireland” is to be construed in accordance with article 2 of the Adjacent Waters Boundaries (Northern Ireland) Order 2002<sup>(20)</sup>.

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

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

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

(2) In paragraph (1)—

“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 (exploration and exploitation of continental shelf)<sup>(21)</sup>; and
- (b) any part of the waters within British fishery limits<sup>(22)</sup> (except the internal waters of, and the territorial sea adjacent to, the United Kingdom, the Channel Islands and the Isle of Man);

“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 (exploitation of areas outside the territorial sea for energy production)<sup>(23)</sup>.

### **Nature conservation bodies**

5.—(1) Except as provided by paragraphs (2) to (4), in these Regulations—

- (a) “nature conservation body” means Natural England or the Natural Resources Body for Wales; and
- (b) “the appropriate nature conservation body” means—
  - (i) Natural England, in relation to England; or
  - (ii) the Natural Resources Body for Wales, in relation to Wales.

(2) In regulations 50 and 52, “nature conservation body” means Natural England, the Natural Resources Body for Wales or the Joint Nature Conservation Committee<sup>(24)</sup>.

(3) In a provision of Part 6 which extends to England and Wales only, “the appropriate nature conservation body” means—

- (a) in relation to an effect on a European offshore marine site, the Joint Nature Conservation Committee; and
- (b) otherwise—

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<sup>(20)</sup> S.I. 2002/791.

<sup>(21)</sup> 1964 c. 29. Section 1(7) was amended by the Oil and Gas (Enterprise) Act 1982 (c. 23), Schedule 3, paragraph 1; and the Energy Act 2011 (c. 16), section 103. Areas have been designated under section 1(7) by S.I. 1987/1265 and 2013/3162.

<sup>(22)</sup> As defined by section 1 of the Fishery Limits Act 1976 (c. 86).

<sup>(23)</sup> 2004 c. 20. Section 84(4) was amended by the Marine Act, Schedule 4(1), paragraph 4(2). Areas have been designated under section 84(4) by S.I. 2004/2668 and S.I. 2013/3161 (which revoked S.I. 2004/2668).

<sup>(24)</sup> The Joint Nature Conservation Committee was established by the Environment Protection Act 1990 (c. 43), section 128(4), and reconstituted by the Natural Environment and Rural Communities Act 2006 (c. 16), section 31 and Schedule 4.

- (i) in relation to England, Natural England; and
- (ii) in relation to Wales, the Natural Resources Body for Wales.

(4) In a provision of Part 6 which extends to Scotland or Northern Ireland, “the appropriate nature conservation body” means—

- (a) in relation to an effect on a European offshore marine site, the Joint Nature Conservation Committee; and
- (b) otherwise—
  - (i) in relation to England, Natural England;
  - (ii) in relation to Wales, the Natural Resources Body for Wales;
  - (iii) in relation to Scotland, Scottish Natural Heritage; and
  - (iv) in relation to Northern Ireland, the Department of Agriculture, Environment and Rural Affairs.

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

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

- (a) a nature conservation body;
- (b) a county council, county borough council, district council or London borough council;
- (c) the Environment Agency;
- (d) the Marine Management Organisation;
- (e) a water undertaker or sewerage undertaker, or an internal drainage board;
- (f) a navigation authority within the meaning of the Water Resources Act 1991<sup>(25)</sup>;
- (g) a harbour authority within the meaning of the Harbours Act 1964<sup>(26)</sup>;
- (h) a lighthouse authority;
- (i) an inshore fisheries and conservation authority established under Part 6 of the Marine Act (management of inshore fisheries);
- (j) the River Tweed Commission<sup>(27)</sup>; and
- (k) a National Park authority.

#### **Competent authorities**

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

- (a) any Minister of the Crown (as defined in the Ministers of the Crown Act 1975<sup>(28)</sup>), government department, statutory undertaker, public body of any description or person holding a public office;
- (b) the Welsh Ministers; and
- (c) any person exercising any function of a person mentioned in sub-paragraph (a) or (b).

(2) In the following provisions (and as provided in regulation 69(3)(a)), “competent authority” includes the Scottish Ministers—

<sup>(25)</sup> 1991 c. 57. See the definition of “navigation authority” in section 221(1).

<sup>(26)</sup> 1964 c. 40. See the definition of “harbour authority” in section 57(1).

<sup>(27)</sup> The River Tweed Commission was constituted by the Scotland Act 1998 (River Tweed) Order 2006 (S.I. 2006/2913).

<sup>(28)</sup> 1975 c. 26.



- (a) regulation 70(2), in so far as that paragraph relates to a deemed grant of planning permission under—
    - (i) section 57(2), (2A) and (2ZA) of the Town and Country Planning (Scotland) Act 1997(29), to which regulation 70(1)(e)(ii) and (f) relate; or
    - (ii) section 5(1) of the Pipe-lines Act 1962(30), to which regulation 70(1)(e)(iii) relates;
  - (b) Chapters 4 and 5 of Part 6.
- (3) In paragraph (1)—
- “public body” includes—
- (a) the Broads Authority(31);
  - (b) a joint planning board within the meaning of section 2 of the TCPA 1990 (joint planning boards)(32);
  - (c) a joint committee appointed under section 102(1)(b) of the Local Government Act 1972 (appointment of committees)(33);
  - (d) a National Park authority; or
  - (e) a local authority, which in this regulation means—
    - (i) in relation to England, a county council, a district council, a parish council, a London borough council, the Common Council of the City of London, the sub-treasurer of the Inner Temple or the under treasurer of the Middle Temple;
    - (ii) in relation to Wales, a county council, a county borough council or a community council;
- “public office” means—
- (a) an office under the Crown,
  - (b) an office created or continued in existence by a public general Act or by legislation passed by the National Assembly for Wales, or
  - (c) an office the remuneration in respect of which is paid out of money provided by Parliament or the National Assembly for Wales.

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

- 8.—(1) Subject to paragraph (2), in these Regulations a “European site” means—
- (a) a special area of conservation;
  - (b) a site of Community importance which has been placed on the list referred to in the third sub-paragraph of Article 4(2) of the Habitats Directive (list of sites of Community importance);
  - (c) a site hosting a priority natural habitat type or priority species protected in accordance with Article 5(4) of the Habitats Directive (a site in respect of which consultation has been initiated under Article 5(1) of that Directive, during the consultation period or pending a decision of the Council under Article 5(3));

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(29) 1997 c. 8. Section 57(2) was substituted, and section 57(2ZA) was inserted, by the Growth and Infrastructure Act 2013 (c. 27), section 21(5).

(30) 1962 c. 58. Section 5(1) was amended by S.I. 1999/742.

(31) The Broads Authority was established by section 1 of the Norfolk and Suffolk Broads Act 1988 (c. 4).

(32) Section 2 was amended by the Local Government (Wales) Act 1994 (c. 19), section 19(1) and (4) and Schedule 18; and by the Environment Act 1995 (c. 25), Schedule 10, paragraph 32.

(33) 1972 c. 70. Section 102(1) was amended by the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), Schedule 9, paragraph 16; and the Children Act 1989 (c. 41), Schedule 13, paragraph 31. It is prospectively amended by the Local Government and Housing Act 1989 (c. 42), Schedule 11, paragraph 25(a), from a date to be appointed.

- (d) an area classified pursuant to Article 4(1) or (2) of the old Wild Birds Directive or the new Wild Birds Directive (classification of special protection areas); or
- (e) a site which has been proposed to the European Commission under regulation 12, until such time as—
  - (i) the site is placed on the list of sites of Community importance referred to in the third sub-paragraph of Article 4(2) of the Habitats Directive; or
  - (ii) agreement is reached or a decision is taken pursuant to Article 4(2) of that Directive not to place the site on that list.
- (2) In these Regulations, a reference to a European site—
  - (a) in Part 6, is a reference to a European site in the United Kingdom; and
  - (b) in any other provision of these Regulations, except where otherwise indicated, is a reference to a European site in England or Wales.
- (3) In these Regulations a “European marine site” means a European site so far as consisting of marine areas.

### **Duties relating to compliance with the Directives**

9.—(1) The appropriate authority, the nature conservation bodies and, in relation to the marine area, a competent authority must exercise their functions which are relevant to nature conservation, including marine conservation, so as to secure compliance with the requirements of the Directives.

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

- (a) the Dockyard Ports Regulation Act 1865(34);
- (b) section 2(2) of the Military Lands Act 1900 (provision as to byelaws relating to the sea, tidal water or shore)(35);
- (c) Part 3 of the 1949 Act (nature conservation);
- (d) the Harbours Act 1964;
- (e) section 15 of the Countryside Act 1968 (areas of special scientific interest)(36);
- (f) Part 2 of the Control of Pollution Act 1974 (pollution of water)(37);
- (g) Part 1 (wildlife) and sections 28 to 28S and 31 to 35A of the WCA 1981 (which relate to sites of special scientific interest)(38);

(34) 1865 c. 125.

(35) 1900 c. 56. Section 2(2) was amended by the Armed Forces Act 2011 (c. 18), section 24(1); and by S.R. & O. 1924/1370. The functions of the Commissioners of Woods are now exercisable by the Crown Estate Commissioners: SR & O 1924/1370; the Crown Estate Act 1956 (c. 73), section 1(1); and the Crown Estate Act 1961 (c. 55), section 1(1).

(36) 1968 c. 41. Section 15 was amended by the WCA 1981, section 72(8); the Environmental Protection Act 1990 (c. 43), Schedule 9, paragraph 4(2) and Schedule 16, Part 6; the Countryside and Rights of Way Act 2000 (c. 37), section 75(3); the Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5), Schedule 12, paragraph 29(1) and (2); the Natural Environment and Rural Communities Act 2006 (c. 16), Schedule 11, paragraph 48; the Environment (Wales) Act 2016 (anaw 3), Schedule 2, paragraph 2(1) and (3); and S.I. 2013/755 (W. 90).

(37) 1974 c. 40.

(38) Section 28 was substituted, and sections 28A to 28C and 28D to 28R were inserted, by the Countryside and Rights of Way Act 2000 (“the 2000 Act”), Schedule 9, paragraph 1 and Schedule 10, paragraph 1. Sections 28, 31 and 34 were repealed as regards Scotland by the Nature Conservation (Scotland) Act 2004 (asp 6), Schedule 7, paragraph 4, and sections 28A to 28S do not extend to Scotland. Sections 28 to 28C and 28D to 28R were amended by the Natural Environment and Rural Communities Act 2006 (“the 2006 Act”), Schedule 11, paragraph 79. Sections 28, 28A, 28B and 28C were amended by the Marine Act, Schedule 13, paragraphs 2, 3, 5 and 6. Sections 28CA and 28CB were inserted by the Marine Act, Schedule 13, paragraphs 7 and 8. Section 28D was amended by the 2006 Act, section 56; and the Marine Act, Schedule 13, paragraph 9. Section 28E was amended by the 2006 Act, Schedule 11, paragraph 80; and the Environment (Wales) Act 2016, Schedule 2, paragraph 3(2). Section 28F was amended by the Planning (Wales) Act 2015 (anaw 4), Schedule 5, paragraph 5. Section 28G was amended by the 2006 Act, Schedule 11, paragraph 81. Section 28J was amended by the Environment (Wales) Act 2016, Schedule 2, paragraph 3(3). Section 28L was amended by the Planning (Wales) Act 2015, Schedule 5, paragraph 6. Section

- (h) the Water Resources Act 1991;
  - (i) the Land Drainage Act 1991<sup>(39)</sup>;
  - (j) the Sea Fisheries Acts within the meaning of section 1 of the Sea Fisheries (Wildlife Conservation) Act 1992 (conservation in the exercise of sea fisheries functions)<sup>(40)</sup>;
  - (k) the Natural Environment and Rural Communities Act 2006<sup>(41)</sup>;
  - (l) the Planning Act 2008;
  - (m) the Marine Act, in particular any functions under Parts 3, 4, 5 and 6 of that Act (marine planning, marine licensing, nature conservation and management of inshore fisheries, respectively); and
  - (n) the Natural Resources Body for Wales (Establishment) Order 2012<sup>(42)</sup>, where the functions are exercised for purposes related to nature conservation.
- (3) Without prejudice to the preceding provisions, a competent authority, in exercising any of its functions, must have regard to the requirements of the Directives so far as they may be affected by the exercise of those functions.
- (4) The reference in paragraph (1) to the appropriate authority—
- (a) to the extent that that paragraph applies in relation to Scotland, includes the Secretary of State exercising functions in relation to Scotland; and
  - (b) to the extent that that paragraph applies in relation to Northern Ireland, includes the Secretary of State exercising functions in relation to Northern Ireland.
- (5) In paragraph (1), “marine area” includes—
- (a) the Northern Ireland inshore region; and
  - (b) the Scottish inshore region.

#### **Duties in relation to wild bird habitat**

**10.**—(1) Without prejudice to regulation 9(1), the appropriate authority, the nature conservation bodies and, in relation to the marine area, a competent authority must take such steps in the exercise of their functions as they consider appropriate to secure the objective in paragraph (3), so far as lies within their powers.

(2) Except in relation to the marine area, the Environment Agency, the Forestry Commissioners<sup>(43)</sup>, local authorities, the Broads Authority and National Park authorities must take such steps in the exercise of their functions as they consider appropriate to contribute to the achievement of the objective in paragraph (3).

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28P was amended by the 2006 Act, section 55; and [S.I. 2015/664](#). Section 28S was inserted by the 2006 Act, section 58(1). Section 31 was amended by the Criminal Justice Act 1982 (c. 48), sections 37 and 46; the 2000 Act, Schedule 9, paragraph 3; the Constitutional Reform Act 2005 (c. 4), Schedule 9, paragraph 37; and the 2006 Act, section 55(5) and Schedule 11, paragraph 79. Section 32 was amended by the Agriculture Act 1986 (c. 49), section 20(1) to (3); the 2000 Act, Schedule 9, paragraph 4 and Schedule 16, Part 3; the 2006 Act, Schedule 11, paragraph 79; the Environment (Wales) Act 2016 ([anaw 3](#)), Schedule 2, paragraph 3(4); and [S.I. 2011/1043](#). Section 33 was amended by the 2006 Act, Schedule 11, paragraph 82. Section 34 was amended by the Local Government Act 1985 (c. 51), Schedule 3, paragraph 7; the Planning (Consequential Provisions) Act 1990 (c. 11), Schedule 2, paragraph 54(1); the Local Government (Wales) Act 1994 (c. 19), Schedule 16, paragraph 65(3); the 2000 Act, section 78; the 2006 Act, Schedule 11, paragraph 83; and [S.I. 2015/664](#). Section 34A was inserted by the 2006 Act, Schedule 11, paragraph 84, and was amended by [S.I. 2013/755 \(W. 90\)](#). Section 35 was amended by the 2006 Act, Schedule 11, paragraph 85; and the Marine Act, Schedule 13, paragraph 10. Section 35A was inserted by the Marine Act, Schedule 13, paragraph 11.

<sup>(39)</sup> [1991 c. 59](#).

<sup>(40)</sup> [1992 c. 36](#). Section 1 was amended by the Marine Act, section 11 and Schedule 22, Part 4; and by [S.I. 1999/1820](#).

<sup>(41)</sup> [2006 c. 16](#).

<sup>(42)</sup> [S.I. 2012/1903 \(W. 230\)](#), to which there are amendments not relevant to these Regulations.

<sup>(43)</sup> See section 1(1) of the Forestry Act [1967 \(c. 10\)](#).

(3) The objective is the preservation, maintenance and re-establishment of a sufficient diversity and area of habitat for wild birds in the United Kingdom, including by means of the upkeep, management and creation of such habitat, as appropriate, having regard to the requirements of Article 2 of the new Wild Birds Directive (measures to maintain the population of bird species).

(4) Paragraph (1) applies, in particular, to—

- (a) functions under these Regulations;
- (b) functions under the following enactments—
  - (i) sections 17, 18, 20 and 21(6) of the 1949 Act (nature reserves)(44);
  - (ii) section 7 of the Natural Environment and Rural Communities Act 2006 (management agreements);
  - (iii) Parts 3, 4, 5 and 6 of the Marine Act (marine planning, marine licensing, nature conservation and management of inshore fisheries, respectively);
- (c) any function exercisable in relation to town and country planning.

(5) Paragraph (2) applies, in particular, to—

- (a) functions under these Regulations;
- (b) functions under the following enactments—
  - (i) sections 21 and 90 of the 1949 Act (nature reserves and local authority byelaws, respectively)(45);
  - (ii) sections 3 and 10 of the Forestry Act 1967 (management of forestry land, and applications for felling licence and decision of Commissioners thereon, respectively) (46);
  - (iii) sections 3 and 6 of the Norfolk and Suffolk Broads Act 1988 (the Broads Plan and byelaws, respectively)(47);
  - (iv) section 66 of the Environment Act 1995 (National Park Management Plans)(48);
  - (v) sections 38 and 39 of the Flood and Water Management Act 2010 (which relate to incidental flooding or coastal erosion)(49);
- (c) any function exercisable in relation to town and country planning.

(6) In section 123(3)(a) of the Marine Act (creation of network of conservation sites), as it applies in relation to the marine area(50), the reference to “the conservation or improvement of the marine environment” includes the objective in paragraph (3), and accordingly the duty in section 124 of the Marine Act (report) applies in relation to that objective.

(44) Sections 17, 18, 20 and 21(6) were amended by the Natural Environment and Rural Communities Act 2006 (c. 16) (“the 2006 Act”), Schedule 11, paragraphs 15 to 17. Section 18 was amended by the Arbitration Act 1996 (c. 23), Schedule 4. Section 20 was amended by the Telecommunications Act 1984 (c. 12), Schedule 4, paragraph 28; the Water Act 1989 (c. 15), Schedule 25, paragraph 13; and the Communications Act 2003 (c. 21), of Schedule 17, paragraph 20.

(45) Section 21 was amended by the Local Government Act 1972 (c. 70), Schedule 30; the Local Government (Scotland) Act 1973 (c. 65), Schedule 27, paragraph 100 and Schedule 29; the Local Government and Planning (Scotland) Act 1982 (c. 43), section 10; the 2006 Act, Schedule 11, paragraphs 15 and 19; the Environment (Wales) Act 2016 (anaw 3), Schedule 2, paragraph 1(4); and S.I. 2013/755 (W. 90). Section 90 was amended by the Countryside Act 1968 (c. 41), Schedule 5; the Local Government Act 1972, Schedule 17, paragraph 39; the Environmental Protection Act 1990 (c. 43), Schedule 8, paragraph 1(14); the 2006 Act, Schedule 11, paragraph 10(1); and S.I. 2013/755 (W. 90).

(46) 1967 c. 10. Sections 3 and 10 were amended by S.I. 1999/1747 and 2013/755 (W. 90). Section 3 was amended by S.I. 2017/524. Section 10 was amended by the Nature Conservation (Scotland) Act 2004 (asp 6), Schedule 7, paragraph 2.

(47) 1988 c. 4. Section 6 was amended by the 2006 Act, Schedule 11, paragraph 112(a).

(48) 1995 c. 25. Section 66 was amended by the 2006 Act, Schedule 11, paragraph 143; the Planning (Wales) Act 2015 (anaw 4), Schedule 2, paragraph 20; the Environment (Wales) Act 2016, Schedule 2, paragraph 6; and by S.I. 2013/755 (W. 90).

(49) 2010 c. 29. Sections 38 and 39 were amended by S.I. 2013/755 (W. 90).

(50) Section 123(3)(a) applies in relation to the “UK marine area”, which is defined in section 42 of the Marine Act in terms which include the area comprised in the marine area as defined in these Regulations.

(7) In considering which measures may be appropriate for the purpose of securing or contributing to the objective in paragraph (3), appropriate account must be taken of economic and recreational requirements.

(8) So far as lies within its powers, a competent authority in exercising any function in or in relation to the United Kingdom must use all reasonable endeavours to avoid any pollution or deterioration of habitats of wild birds (except habitats beyond the outer limits of the area to which the new Wild Birds Directive applies).

(9) The appropriate authority must take any steps it considers necessary to facilitate or co-ordinate arrangements to secure the taking of steps under paragraphs (1) and (2) by the bodies mentioned in those paragraphs.

(10) After consultation with the appropriate nature conservation body, the appropriate authority must give guidance to the Environment Agency, the Forestry Commissioners, the Natural Resources Body for Wales, local authorities, the Broads Authority, National Park authorities and any other competent authority it considers appropriate—

- (a) to facilitate the determination by those bodies of the extent to which the diversity and area of habitat for wild birds is sufficient; and
- (b) on the steps that it may be appropriate to take under paragraph (1) or (2).

(11) In exercising a function to which paragraph (1) or (2) applies, a body to which guidance has been given under paragraph (10) must have regard to that guidance.

(12) In this regulation—

- (a) references in paragraphs (1), (9) and (10) to the appropriate authority—
  - (i) to the extent that this regulation applies in relation to Scotland, include the Secretary of State exercising functions in relation to Scotland; and
  - (ii) to the extent that this regulation applies in relation to Northern Ireland, include the Secretary of State exercising functions in relation to Northern Ireland;
- (b) in paragraphs (1) and (2), “marine area” includes—
  - (i) the Northern Ireland inshore region; and
  - (ii) the Scottish inshore region; and
- (c) “local authority” has the same meaning as in regulation 7.

### **Review by appropriate nature conservation body**

**11.**—(1) The appropriate nature conservation body must, from time to time—

- (a) review the extent to which the objective in regulation 10(3) has been met, other than in relation to the marine area;
- (b) set out the conclusions of the review in a report, including any recommendations for further action; and
- (c) send the report to the appropriate authority.

(2) In carrying out the review, the nature conservation bodies must, so far as is reasonable, take account of any measures taken which contribute to the achievement of that objective, whether or not taken pursuant to a requirement imposed by any enactment.

(3) The nature conservation bodies may act together to fulfil the duty under paragraph (1).

## PART 2

### Conservation of Natural Habitats and Habitats of Species

#### *European sites*

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

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

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

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

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

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

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

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

provided in a format established by the European Commission.

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

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

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

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

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

**14.**—(1) Paragraph (2) applies where consultation is initiated by the European Commission in accordance with Article 5(1) of the Habitats Directive (procedure following omission of site hosting a priority natural habitat type or priority species) with respect to a site in England or Wales hosting a priority natural habitat type or priority species, and—

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

(2) Where this paragraph applies, 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).

### **Classification of sites as special protection areas**

**15.**—(1) The appropriate authority must classify as special protection areas such sites in England and Wales as the authority considers necessary to ensure that the objective in paragraph (2) is met.

(2) The objective referred to in paragraph (1) is that those sites across the United Kingdom's territory which are most suitable in number and size for—

- (a) the conservation of the species listed in Annex 1 to the new Wild Birds Directive which naturally occur in that territory, and
- (b) the conservation of regularly occurring migratory species of birds not listed in Annex 1 which naturally occur in that territory,

are classified as special protection areas.

(3) The appropriate authority must make a decision as to the sites to be classified for the purpose mentioned in paragraph (1) only on the basis of relevant scientific information and—

- (a) in the case of a site to be classified for the purpose mentioned in paragraph (2)(a), on the basis of the criteria set out in Article 4(1) of the new Wild Birds Directive (classification of special protection areas); and
- (b) in the case of a site to be classified for the purpose mentioned in paragraph (2)(b), on the basis of the criteria set out in Article 4(2) of the new Wild Birds Directive.

(4) Where a site is classified under paragraph (1), the appropriate authority must provide information on that site to the Commission including—

- (a) a map or chart of the site;
- (b) its name, location and extent; and
- (c) the data resulting from application of the criteria set out in Article 4(1) or Article 4(2) of the new Wild Birds Directive.

(5) The information specified in paragraph (4) must be provided in such format as is established by the Commission.

(6) In this regulation “the United Kingdom's territory” means the United Kingdom and the offshore marine area (as defined in regulation 4(2)).

**Notification of a proposal to classify a special protection area**

16.—(1) If the appropriate authority proposes to classify a site as a special protection area under regulation 15, the authority must give to the appropriate nature conservation body—

- (a) notice of that proposal; and
- (b) an accompanying statement of the reasons for that proposal.

(2) Where the appropriate nature conservation body is given notice of a proposal under paragraph (1), the body must give notice of that proposal and provide a copy of the appropriate authority's statement of reasons for that proposal to—

- (a) any of the following who in its opinion ought to be notified—
  - (i) competent authorities which exercise functions in relation to the site;
  - (ii) competent authorities which exercise functions in relation to an area adjacent to the site; and
  - (iii) every owner and occupier of the site;
- (b) such other persons as in its opinion ought to be notified; and
- (c) such other persons as the appropriate authority directs.

(3) A notice under paragraph (2) must specify the date (being not less than 12 weeks from the date of the giving of the notice) by which representations with respect to the proposal may be made to the appropriate nature conservation body.

(4) The appropriate nature conservation body must provide to the appropriate authority a report describing the representations duly made, if any, that it received about the proposal, or, where no such representations have been received, stating that fact.

(5) The appropriate authority must consider the report provided under paragraph (4).

(6) The appropriate authority may issue guidance to the appropriate nature conservation body for the purposes of its functions under this regulation, and the appropriate nature conservation body must have regard to that guidance in discharging any of those functions.

(7) The appropriate authority may vary or revoke a direction under paragraph (2)(c).

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

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

- (a) the Secretary of State, in relation to European sites in England; and
- (b) the Welsh Ministers, in relation to European sites in Wales.

(2) The registers must include—

- (a) special areas of conservation, as soon as they are designated by the appropriate authority;
- (b) sites of Community importance as soon as they are placed on the list referred to in the third sub-paragraph of Article 4(2) of the Habitats Directive, until they are designated as special areas of conservation;
- (c) any site hosting a priority natural habitat type or priority species in respect of which consultation is initiated under Article 5(1) of the Habitats Directive, during the consultation period or pending a Council decision under Article 5(3);
- (d) areas classified pursuant to Article 4(1) or (2) of the old Wild Birds Directive or the new Wild Birds Directive, as soon as they are classified by the appropriate authority; and



- (e) any site which has been proposed to the European Commission under regulation 12 until such time as regulation 8(1)(e)(i) or (ii) applies.
- (3) The appropriate authority, in relation to the register for which that authority is responsible—
  - (a) may amend any entry;
  - (b) must remove any entry relating to a site which is no longer a European site; and
  - (c) must keep a copy available for public inspection at all reasonable hours and free of charge.
- (4) An entry in the register in respect of a European site other than a European marine site is a local land charge.

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

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

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

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

(4) In this regulation, and in regulation 19, “the register” means the register of European sites provided for by regulation 17.

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

**19.**—(1) As soon as practicable after a nature conservation body receives notification under regulation 18 in relation to a European site, it must give notice to—

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

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

(3) In paragraph (2), the register entry a copy of which must be provided to the person mentioned in that paragraph—

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

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

*Management agreements***Management agreements**

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

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

about the management or use of the land.

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

(3) A management agreement may, in particular—

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

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

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

(5) Paragraphs 1 to 3 of Schedule 2 to the Forestry Act 1967 (which makes provision for certain persons to enter into forestry dedication covenants)<sup>(51)</sup> apply to management agreements as they apply to forestry dedication covenants.

(6) In this regulation—

“interest in land” has the same meaning as in the 1949 Act; and

“management scheme” and “site of special scientific interest” have the same meanings as in Part 2 of the WCA 1981 (nature conservation, countryside and national parks).

**Existing agreements**

**21.**—(1) For the purposes of these Regulations, any agreement made before 30th November 2017 in relation to land in England or Wales which on or after that date becomes land within a European site, or adjacent to such a site, being an agreement made under—

- (a) section 16 of the 1949 Act (agreements for management of nature reserves)<sup>(52)</sup>,

<sup>(51)</sup> 1967 c. 10. Paragraph 1 of Schedule 2 was amended by the Trusts of Land and Appointment of Trustees Act 1996 (c. 47), Schedule 4. Paragraph 3 of Schedule 2 was amended by the Endowments and Glebe Measure 1976 (1976 No. 4), Schedule 7; and the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No. 1), Schedule 5, paragraph 14.

<sup>(52)</sup> Section 16 was amended by the Natural Environment and Rural Communities Act 2006 (c. 16), Schedule 11, paragraph 14; and the Environment (Wales) Act 2016 (anaw 3), Schedule 2, Part 1, paragraph 1(1) and (3).

- (b) section 15 of the Countryside Act 1968 (areas of special scientific interest)(53), or
- (c) section 7 of the Natural Environment and Rural Communities Act 2006 (management agreements)(54),

has effect as from the date on which the land becomes land within a European site as if it were a management agreement entered into by Natural England or the Natural Resources Body for Wales (as the case may be) under regulation 20.

- (2) Any other thing done or deemed to have been done under—
  - (a) any provision of Part 3 of the 1949 Act (nature conservation), or Part 6 of that Act (general, financial and supplementary) so far as it applies for the purposes of Part 3, or
  - (b) section 15 of the Countryside Act 1968,

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

(3) Any reference in a relevant enactment to a nature reserve within the meaning of section 15 of the 1949 Act (meaning of “nature reserve”)(55) is to be construed as including a reference to a European site.

(4) In paragraph (3), “relevant enactment” means an enactment not contained in, or in an instrument made under, the 1949 Act or the WCA 1981.

### **Certain payments under management agreements**

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

- (a) a person who has given notice under section 28E(1)(a) of the WCA 1981 (duties in relation to sites of special scientific interest)(56) or regulation 28(5)(a)(ii) or (b); or
- (b) a person whose application for a farm capital grant within the meaning of regulation 26 has been refused in consequence of an objection by that body.

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

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

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

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

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(53) 1968 c. 41. Section 15 was amended by the WCA 1981, section 72(8); the Environmental Protection Act 1990 (c. 43), Schedule 9, paragraph 4(2) and Schedule 16, Part 6; the Countryside and Rights of Way Act 2000 (c. 37), section 75(3); the Natural Environment and Rural Communities Act 2006, Schedule 11, paragraph 48; the Environment (Wales) Act 2016, Schedule 2, paragraph 2(1) and (3); and S.I. 2013/755 (W. 90).

(54) 2006 c. 16.

(55) Section 15 was substituted by the Natural Environment and Rural Communities Act 2006, Schedule 11, paragraph 12.

(56) Section 28E was inserted by the Countryside and Rights of Way Act 2000, Schedule 9, paragraph 1; and subsection (1)(a) was amended by the Natural Environment and Rural Communities Act 2006, Schedule 11, paragraph 79.

*Control of potentially damaging operations***Notification of potentially damaging operations**

**23.**—(1) This regulation and regulation 24 apply where a notification is in force under section 28 of the WCA 1981 (sites of special scientific interest)(**57**) in relation to land which is or forms part of a European site.

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

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

**Assessment of implications for European sites**

**24.**—(1) Where it appears to the appropriate nature conservation body that a notice of a proposal under section 28E(1)(a) of the WCA 1981 relates to an operation which is or forms part of a plan or project which—

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

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

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

(3) This regulation does not apply in relation to a site which is a European site by reason of regulation 8(1)(c).

**Sites of special scientific interest which become European sites: duty to review**

**25.**—(1) This regulation applies where a consent for an operation has been given under section 28E(3)(a) of the WCA 1981(**58**) (or has effect as if given under that section(**59**)) in relation to land included in a site of special scientific interest which, after the date of that consent, becomes land within a European site.

(2) The appropriate nature conservation body must, as soon as reasonably practicable, review the consent and affirm, modify or withdraw it.

(3) Regulation 24 applies for the purposes of paragraph (2), as if—

- (a) the reference in regulation 24(1) to a notice of a proposal under section 28E(1)(a) of the WCA 1981 were a reference to a consent under section 28E(3)(a) of that Act; and
- (b) the reference to giving consent in regulation 24(2) were a reference to affirming that the consent should remain in force.

(57) Section 28 was substituted by the Countryside and Rights of Way Act 2000 (c. 37), Schedule 9, paragraph 1, and amended by the Natural Environment and Rural Communities Act 2006 (c. 16), Schedule 11, paragraph 79; and the Marine Act, Schedule 13, Part 2, paragraph 2.

(58) Section 28E(3)(a) was amended by the Natural Environment and Rural Communities Act 2006 (c. 16), Schedule 11, paragraph 79.

(59) See paragraph 8(1)(b) of Schedule 11 to the Countryside and Rights of Way Act 2000 (c. 37).

## **Farm capital grants**

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

- (a) must, so far as may be consistent with the purposes of the grant provisions, exercise its functions so as to further the conservation of the protected features; and
- (b) where the appropriate nature conservation body has objected to the making of the grant on the ground that the activities in question have destroyed or damaged, or will destroy or damage, those protected features, must not make the grant except after considering the objection.

(2) Where in consequence of an objection by the appropriate nature conservation body, an application for a grant as respects expenditure to be incurred is refused on the ground that the activities in question will destroy or damage protected features, the appropriate nature conservation body must, within three months of its receiving notice of the appropriate authority’s decision, offer to enter into a management agreement in the terms of a draft submitted to the applicant—

- (a) imposing restrictions as respects those activities; and
- (b) providing for the making by it 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 (farm capital grants)<sup>(60)</sup>; or
- (b) a grant under regulations made under section 2(2) of the European Communities Act 1972<sup>(61)</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;

“grant provisions” means—

- (a) in the case of a grant described in paragraph (a) of the definition of “farm capital grant”, the scheme under which the grant is made and section 29 of the Agriculture Act 1970;
- (b) in the case of a grant of a kind described in paragraph (b) of the definition of “farm capital grant”, the regulations under which the grant is made and the EU instrument in pursuance of which the regulations were made;

“protected features”, in relation to a European site, means the flora, fauna, or geological or physiological features by reason of which the land is a European site.

## *Special nature conservation orders*

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

**27.**—(1) The appropriate authority may, after consultation with the appropriate nature conservation body, make in respect of any land within a European site an order (a “special nature conservation order”) specifying operations (whether on land specified in that order or elsewhere and whether or not within the European site) which appear to the appropriate authority to be of a kind

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<sup>(60)</sup> 1970 c. 40. Section 29 was amended by the Agriculture (Miscellaneous Provisions) Act 1976 (c. 55), section 15; the Criminal Justice Act 1982 (c. 48), sections 37, 38 and 46; and the Statute Law (Repeals) Act 1986 (c. 12).

<sup>(61)</sup> 1972 c. 68. Section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c. 51), section 27(1); and the European Union (Amendment) Act 2008 (c. 7), Schedule I(1), paragraph 1.

which, if carried out in certain circumstances or in a particular manner, would be likely to destroy or damage protected features.

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

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

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

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

(6) In this regulation, and in regulation 28, “protected features” has the meaning given by regulation 26(3).

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

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

(2) The stop notice must specify—

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

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

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

(5) The notice condition is—

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

(6) The consent condition is—

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

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

- (a) subject to conditions specified in the consent; and
- (b) for a limited period so specified.

(8) A person who, without reasonable excuse, contravenes paragraph (4) commits an offence and is liable (whether on summary conviction or on conviction on indictment) to a fine.

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

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

(10) For the purposes of this regulation and regulations 29 and 30—

- (a) a “stop notice” means a notice served under paragraph (1);
- (b) references to the service of a stop notice are taken to mean (in an appropriate case) the publication and affixing of a notice under paragraph (3); and
- (c) where a notice is published and affixed under paragraph (3), any person carrying out an operation specified in the notice is taken to be a person on whom a stop notice is served.

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

**29.**—(1) Where it appears to the appropriate nature conservation body that an application for consent under regulation 28(6)(a) relates to an operation which is or forms part of a plan or project which—

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

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

(2) In the light of the conclusions of the assessment, it 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 refuses consent, it must give reasons for its decision.

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

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

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

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

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

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

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

(8) This regulation does not apply in relation to a site which is a European site by reason of regulation 8(1)(c).

### Compensation for effect of stop notice

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

- (a) at the time at which the notice is served has an interest in affected relevant land; and
- (b) on a claim duly made to the appropriate nature conservation body, shows that the value of that interest is less than it would have been if the notice had not been served.

(2) No claim for compensation may be made in respect of an order unless the appropriate authority has given notice of the decision in respect of that order under paragraph 6(1) or (2) of Schedule 1.

(3) The amount of the compensation payable is the difference between the value of the interest and what that value would have been had a stop notice not been served.

(4) For this purpose—

- (a) an interest in land is to be valued at the time when the stop notice is served; and
- (b) where a person, by reason of having more than one interest in affected relevant land, makes more than one claim in respect of the same restriction having effect by virtue of the service of a stop notice, the various interests in respect of which that person claims compensation are to be valued together.

(5) Section 10 of the Land Compensation Act 1973 (mortgages, trusts of land and settlements)(**62**) applies in relation to compensation under this regulation as it applies in relation to compensation under Part 1 of that Act.

(6) For the purposes of assessing compensation under this regulation, the rules set out in section 5 of the Land Compensation Act 1961 (rules for assessing compensation on a compulsory acquisition)(**63**) have effect, so far as applicable and subject to any necessary modifications, as they have effect for the purpose of assessing compensation for the compulsory acquisition of an interest in land.

(7) Interest is payable in relation to compensation, at the rate for the time being prescribed under section 32 of the Land Compensation Act 1961 (rate of interest after entry on land), from the date of the claim until payment.

(8) In the case of any dispute as to compensation—

- (a) the Upper Tribunal has the function of determining the dispute; and
- (b) section 4 of the Land Compensation Act 1961 (costs)(**64**) applies in relation to the determination, subject to any necessary modifications.

(62) 1973 c. 26. Section 10 was amended by the Trusts of Land and Appointment of Trustees Act 1996 (c. 47), Schedule 3, paragraph 13.

(63) 1961 c. 33. Section 5 was amended by the Planning and Compensation Act 1991 (c. 34), Schedule 15, paragraph 1; and by S.I. 2009/1307. It is prospectively amended by the Neighbourhood Planning Act 2017 (c. 20), section 32(1) and (2), from a date to be appointed.

(64) Section 4 was amended by S.I. 2009/1307.



(9) In this regulation—

“affected relevant land” means land which forms part of an agricultural unit which comprises land to which the stop notice relates;

“agricultural unit” means land which is occupied by a person as a unit for agricultural purposes, including any dwelling or other building occupied by that person for the purpose of farming the land.

### **Restoration orders**

**31.**—(1) Where a person (“P”) is convicted of an offence under regulation 28(8), the court may, in addition to dealing with P in any other way, make an order (a “restoration order”) requiring P to carry out, within such period as may be specified in the order, such operations for the purpose of restoring the land to its former condition as may be so specified.

(2) A restoration order made on conviction on indictment is to be treated for the purposes of section 30 of the Criminal Appeal Act 1968 (restitution of property)(**65**) as an order for the restitution of property.

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

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

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

(5) A person who fails without reasonable excuse to comply with a restoration order commits an offence and is liable on summary conviction to a fine.

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

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

### *Byelaws*

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

**32.**—(1) The appropriate nature conservation body may make byelaws for the protection of a European site under section 20 of the 1949 Act (byelaws for protection of nature reserves)(**66**).

(2) Such byelaws may, in particular, make the kinds of provision mentioned in this regulation, subject to regulation 33(1).

(3) Byelaws may—

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(65) 1968 c. 19. Section 30 was substituted by the Criminal Justice Act 1988 (c. 33), Schedule 15, paragraph 28, and amended by the Constitutional Reform Act 2005 (c. 4), Schedule 9, paragraph 16(2).

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

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

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

(5) Where entry into, or any activity within, the site or any such surrounding or adjoining area as is mentioned in paragraph (4) would otherwise be unlawful under byelaws made under this regulation, the byelaws may provide for the issue of permits authorising such entry or activity, on such terms and subject to such conditions as may be specified in the byelaws.

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

(7) This regulation does not apply in relation to a European marine site (but see regulation 40 (European marine sites: byelaws and orders)).

### **Byelaws: supplementary provisions**

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

- (a) the exercise by any person of a right vested in that person as owner, lessee or occupier of land in the European site, or in any such surrounding or adjoining area as is mentioned in regulation 32(4);
- (b) the exercise of any public right of way;
- (c) the exercise of any functions of statutory undertakers;
- (d) the exercise of any functions of an internal drainage board<sup>(67)</sup> or the Commissioners appointed under the Tweed Fisheries Act 1969<sup>(68)</sup>; or
- (e) the provision of an electronic communications code network or the exercise of any right conferred by or in accordance with the electronic communications code on the provider of any such network.

(2) Sections 236 to 237 and 237A to 238 of the Local Government Act 1972 (procedure, etc., for, offences against and evidence of byelaws)<sup>(69)</sup> apply to all relevant byelaws as if the appropriate nature conservation body were a local authority within the meaning of that Act.

<sup>(67)</sup> See section 1 of the Land Drainage Act 1991 (c. 59).

<sup>(68)</sup> 1969 c.xxiv.

<sup>(69)</sup> 1972 c. 70. Sections 236 and 238 were amended by the Local Government Byelaws (Wales) Act 2012 (anaw 2), Schedule 2, paragraph 9(3) and (5); by the Local Democracy, Economic Development and Construction Act 2009 (c. 20), Schedule 6, paragraphs 34 and 36; and by S.I. 2001/3719. Section 236 was amended by the Civil Aviation Act 1982 (c. 16), Schedule 15, paragraph 11; the Local Government Act 1985 (c. 51), Schedule 14, paragraph 31(1); the Water Act 1989 (c. 15), Schedule 27, Part 1; the Local Government (Wales) Act 1994 (c. 19), Schedule 15, paragraph 50; the Greater London Authority Act 1999 (c. 29), sections 76 and 166; and the Local Government and Public Involvement in Health Act 2007 (c. 28), section 129(2).

(3) In relation to relevant byelaws, the confirming authority for the purposes of section 236 of the Local Government Act 1972(70) is the appropriate authority.

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

(5) In this regulation and in regulations 34 and 35, “relevant byelaws” means byelaws under section 20 of the 1949 Act as it applies by virtue of regulation 32.

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

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

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

(3) For the purposes of any such reference to the Upper Tribunal, section 4 of the Land Compensation Act 1961 (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 (rules for assessing compensation on a compulsory acquisition) apply to the calculation of any such compensation, in so far as it is calculated by reference to the depreciation of the value of an interest in land.

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

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

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

**35.** Any byelaws in force under section 20 of the 1949 Act in relation to land which on or after 30th November 2017 becomes land within a European site, or adjacent to such a site—

- (a) have effect as if they are relevant byelaws; and
- (b) are to be construed as if originally made as such byelaws (see also regulation 141(5)).

### *Powers of compulsory acquisition*

#### **Powers of compulsory acquisition**

**36.**—(1) The appropriate nature conservation body may acquire compulsorily any interest in land in a European site where it is satisfied that either of the conditions in paragraph (2) is met.

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(70) See definition of “the confirming authority” in subsection (11).

(2) The conditions are—

- (a) that, as respects that interest, it is unable to conclude a management agreement on terms appearing to it to be reasonable; or
- (b) where it has 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.

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

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

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

(6) The Acquisition of Land Act 1981<sup>(71)</sup> and the Compulsory Purchase Act 1965<sup>(72)</sup> apply in relation to the acquisition of any interest in land under paragraph (1).

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

### *European marine sites*

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

**37.**—(1) The appropriate nature conservation body may deposit or remove markers indicating the existence and extent of a European marine site.

(2) This power is exercisable subject to the obtaining of any necessary marine licence under Part 4 of the Marine Act or any approval required to be obtained from the appropriate authority<sup>(73)</sup> under article 26(2) of the Marine Licensing (Exempted Activities) Order 2011<sup>(74)</sup> or article 25(2) of the Marine Licensing (Exempted Activities) (Wales) Order 2011<sup>(75)</sup>.

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

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

<sup>(71)</sup> 1981 c. 67.

<sup>(72)</sup> 1965 c. 56.

<sup>(73)</sup> For the purposes of regulation 37, the “appropriate authority” is defined in regulation 3(1) of these Regulations as the Secretary of State in relation to England and the Welsh Ministers in relation to Wales. The person responsible for granting approval under article 26(2) of the Marine Licensing (Exempted Activities) Order 2011 or article 25(2) of the Marine Licensing (Exempted Activities) (Wales) Order 2011 is the Secretary of State and Welsh Ministers respectively. (See definition of “licensing authority” in those Regulations).

<sup>(74)</sup> S.I. 2011/409, to which there are amendments not relevant to these Regulations.

<sup>(75)</sup> S.I. 2011/559 (W. 81), to which there are amendments not relevant to these Regulations.

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

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

(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) An authority which has established a management scheme under paragraph (1) must as soon as practicable thereafter send a copy of it to the appropriate nature conservation body.

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

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

(2) Directions may, in particular—

(a) require conservation measures specified in the direction to be included in the scheme;

(b) appoint one of the relevant authorities to co-ordinate the establishment of the scheme;

(c) set time limits within which any steps are to be taken;

(d) provide that the approval of the appropriate authority is required before the scheme is established; and

(e) require any relevant authority to supply to the appropriate authority such information concerning the establishment of the scheme as may be specified in the direction.

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

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

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

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

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

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

(4) The modifications are—

(a) any reference to an MCZ is to be read as a reference to a European marine site;

(b) in sections 129(1) and 134(1), the reference to furthering the conservation objectives stated for an MCZ is to be read as a reference to protecting a European marine site;

(c) the reference in section 129(3)(c) to hindering the conservation objectives stated for an MCZ is to be read as a reference to damaging a European marine site.

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

**41.**—(1) For the purposes of the relevant provisions, policies relating to the development and use of land or in respect of the conservation of the natural beauty and amenity of the land are to be taken to include policies encouraging the management of features of the landscape of the kinds described in paragraph (3).

(2) In paragraph (1), the “relevant provisions” means—

(a) in relation to the development and use of land—

(i) section 17(3) of the Planning and Compulsory Purchase Act 2004 (local development documents)(**76**); and

(ii) section 62(2)(b) of that Act (local development plan); and

(b) in relation to the conservation of the natural beauty and amenity of the land—

(i) section 12(3A) of the TCPA 1990 (preparation of unitary development plan)(**77**);

(ii) section 31(3) of that Act (structure plans: continuity, form and content)(**78**); and

(iii) section 36(3) of that Act (local plans)(**79**).

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

(4) Where the Secretary of State considers it necessary, the Secretary of State must include in a national policy statement under Part 2 of the Planning Act 2008 (national policy statements)(**80**) policy that encourages the management of features of the landscape of the kinds described in paragraph (3).

**PART 3****Protection of species***Protection of animals***European protected species of animals**

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

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

(76) 2004 c. 5. Section 17(3) was amended by the Planning Act 2008 (c. 29), section 180(3)(b).

(77) Section 12(3A) was inserted by the Planning and Compensation Act 1991 (c. 34), paragraph 2(1) of Schedule 4, and was repealed by the Planning and Compulsory Purchase Act 2004 (c. 5), Schedule 9, but (in relation to England only) subject to transitional provisions contained in Schedule 8 to that Act.

(78) Section 31(3) was substituted by the Planning and Compensation Act 1991 (c. 34) (“the 1991 Act”), Schedule 4, paragraph 16, and was repealed by the Planning and Compulsory Purchase Act 2004 (c. 5) (“the 2004 Act”), Schedule 9, subject to transitional provisions contained in Schedule 8 to that Act.

(79) Section 36 was substituted by the 1991 Act, Schedule 4, paragraph 17, and was repealed by the 2004 Act, Schedule 9, subject to transitional provisions contained in Schedule 8 to that Act.

(80) 2008 c. 29.

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

**43.**—(1) A person who—

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

is guilty of an offence.

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

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

(3) It is an offence for any person—

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

anything to which this paragraph applies.

(4) Paragraph (3) applies to—

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

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

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

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

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

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

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

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

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

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

**44.**—(1) A person (“P”) is not guilty of the offence under regulation 43(1)(a) of deliberately capturing a wild animal of a European protected species, or an offence under regulation 43(3)(a) or (b), if P shows that the act in question—

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

(2) A person (“P”) is not guilty of an offence under regulation 43(1)(a) or 43(3)(a) or (b) if P shows that the act in question—

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

(3) A person is not guilty of the offence under regulation 43(1)(a) of deliberately injuring a wild animal of a European protected species if that person shows that this was done solely—

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

(4) A person is not guilty of an offence under regulation 43(3)(a) or (b) if that person shows that the act in question was done solely for one or more of the purposes of—

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

(5) Subject to paragraph (6), a person who shows that the animal or part of the animal in question, or the animal or part of the animal from which the thing in question is derived, was lawfully taken from the wild is not guilty of an offence under regulation 43(3).

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

- (a) in respect of the offences in regulation 43(3)(a) and (b) if—
  - (i) the animal or part in question is an animal, or part of an animal, of a European protected species or of the species *Lacerta vivipara pannonica* (viviparous lizard) or *Lycaena dispar* (the large copper butterfly), or the thing in question is derived from such an animal; and
  - (ii) the animal, part or thing in question was in the defendant’s possession or control, or transported by the defendant, for the purpose of sale or exchange; or



- (b) in respect of the offences in regulation 43(3)(c) and (d), if the animal or part in question is an animal, or part of an animal, of any of the species referred to in sub-paragraph (a)(i), or the thing in question is derived from such an animal.
- (7) For the purposes of paragraph (5) an animal, or part of an animal, is treated as having been lawfully taken from the wild if—
- (a) it was taken from the wild in the European territory of a member State, being territory to which the TFEU applies, without contravention of the law of that member State and before the implementation date; or
  - (b) it was taken from the wild elsewhere.
- (8) A person is not guilty of an offence under regulation 43(3) if that person shows that the animal or part of the animal, or the animal from which the thing in question is derived—
- (a) is of a species listed in the second column of Schedule 3 and was from a population occurring in a country or area which is specified in respect of that species in the third column of that Schedule;
  - (b) is of the species *Capra aegagrus* (wild goat) and was not from a naturally occurring population;
  - (c) is of the subspecies *Ovis gmelini musimon* (European mouflon) and was not from a naturally occurring population in Corsica or Sardinia; or
  - (d) is of the species *Coregonus oxyrhynchus* (houting) and either was from Finland or was not from an anadromous population.
- (9) The defences in paragraphs (1) to (4) do not apply where it is shown by the prosecution that the defendant's action did not satisfy the conditions in paragraph (10).
- (10) Those conditions are that—
- (a) there was no satisfactory alternative; and
  - (b) the action was not detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range.
- (11) For the purposes of paragraphs (3)(b) and (4)(a) and (b), the specified offences are—
- (a) an offence under any of the following sections of the WCA 1981—
    - (i) section 9 (protection of certain wild animals)**(81)**;
    - (ii) section 11 (prohibition of certain methods of killing or taking wild animals)**(82)**;
    - (iii) section 17 (false statements made for obtaining registration or licence etc.)**(83)**; or
    - (iv) section 18 (attempts to commit offences etc.) which relates to an offence under section 9 or 11;
  - (b) an offence under any of the following provisions—
    - (i) regulation 43 (protection of certain wild animals: offences);
    - (ii) regulation 45 (prohibition of certain methods of capturing or killing wild animals);
    - (iii) regulation 59 (false statements made for obtaining licence), where that offence relates to the obtaining of a licence under regulation 55 (licences for certain activities relating to animals or plants); or
    - (iv) regulation 122 (attempts and possession of means of committing offence), where that offence relates to an offence under regulation 43 or 45;

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**(81)** Section 9 was amended by the Countryside and Rights of Way Act 2000 (c. 37), Schedule 12, paragraph 5(b); and by S.I. 2007/1843 and 2011/1043.

**(82)** Section 11 was amended by the Wildlife and Countryside (Amendment) Act 1991 (c. 39), section 2.

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

- (c) an offence under the 1997 Regulations or an offence of attempting to commit such an offence; or
- (d) an offence under regulation 45 (protection of wild animals listed in Annex IV(a) to the Habitats Directive), 47 (prohibition of certain methods of capturing or killing wild animals) or 57 (false statements made for obtaining licence) of the Offshore Marine Conservation Regulations, an offence of attempting to commit an offence under regulation 45 or 47 of those Regulations, or an offence under regulation 71 of those Regulations (possession of means of committing offence) which relates to an offence under regulation 45 or 47 of those Regulations.

(12) For the purposes of any proceedings for an offence under regulation 43(3), the common names given in parentheses in paragraphs (6) and (8) are to be disregarded.

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

- 45.**—(1) This regulation applies in relation to the capturing or killing of a wild animal—
- (a) of any of the species listed in Schedule 4 (which lists those species listed in Annex V(a) to the Habitats Directive, and to which Article 15 of that Directive applies, which have a natural range which includes any area of Great Britain); or
  - (b) of a European protected species, where the capturing or killing of such animals is permitted in accordance with these Regulations.
- (2) It is an offence to use for the purpose of capturing or killing any such wild animal—
- (a) any of the means listed in paragraph (3) or (4);
  - (b) any form of capturing or killing from the modes of transport listed in paragraph (5); or
  - (c) any other means of capturing or killing which is indiscriminate and capable of causing the local disappearance of, or serious disturbance to, a population of any species of animal listed in Schedule 4 or any European protected species of animal.
- (3) The prohibited means of capturing or killing mammals are—
- (a) the use of blind or mutilated animals as live decoys;
  - (b) tape recorders;
  - (c) electrical and electronic devices capable of killing or stunning;
  - (d) artificial light sources;
  - (e) mirrors and other dazzling devices;
  - (f) devices for illuminating targets;
  - (g) sighting devices for night shooting comprising an electronic image magnifier or image converter;
  - (h) explosives;
  - (i) nets which are non-selective according to their principle or their conditions of use;
  - (j) traps which are non-selective according to their principle or their conditions of use;
  - (k) crossbows;
  - (l) poisons and poisoned or anaesthetic bait;
  - (m) gassing or smoking out; and
  - (n) semi-automatic or automatic weapons with a magazine capable of holding more than two rounds of ammunition.
- (4) The prohibited means of capturing or killing fish are—
- (a) poison; and

- (b) explosives.
- (5) The prohibited modes of transport are—
  - (a) aircraft; and
  - (b) moving motor vehicles.
- (6) A person guilty of an offence under this regulation is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine, or to both.

### *Protection of plants*

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

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

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

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

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

- (2) It is an offence for any person—
  - (a) to be in possession of, or to control,
  - (b) to transport,
  - (c) to sell or exchange, or
  - (d) to offer for sale or exchange,

anything to which this paragraph applies.

- (3) Paragraph (2) applies to—
  - (a) any live or dead plant or part of a plant—
    - (i) which has been taken in the wild, and
    - (ii) which is of a species or subspecies listed in Annex II(b) (other than any bryophyte) or Annex IV(b) to the Habitats Directive; and
  - (b) anything derived from such a plant or any part of such a plant.

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

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

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

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

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

**48.**—(1) A person is not guilty of the offence under regulation 47(1) of picking or cutting a wild plant of a European protected species if this was done solely—

- (a) for the purpose of taking a sample by virtue of any of the sampling provisions; or

- (b) for the purpose of taking a sample to be used in evidence in any criminal proceedings in respect of an offence specified in paragraph (6) (wherever the offence was committed).
- (2) A person is not guilty of an offence under regulation 47(2)(a) or (b) if that person shows that the act in question was done solely for one or more of the purposes of—
  - (a) investigating whether an offence specified in paragraph (6) was being or had been committed (wherever the offence was committed);
  - (b) bringing, conducting, or giving evidence in, any criminal proceedings in respect of any such offence; or
  - (c) giving effect to an order under any of the forfeiture provisions.
- (3) Subject to paragraph (4), a person who shows that the plant or part of the plant in question, or the plant or part of the plant from which the thing in question is derived, was lawfully taken in the wild, is not guilty of an offence under regulation 47(2).
- (4) The defence in paragraph (3) does not apply—
  - (a) in respect of the offences in regulation 47(2)(a) and (b) if—
    - (i) the plant or part in question is a plant, or part of a plant, of a European protected species, or the thing in question is derived from such a plant; and
    - (ii) the plant, part or thing in question was in the defendant's possession or control, or transported by the defendant, for the purpose of sale or exchange; or
  - (b) in respect of the offences in regulation 47(2)(c) and (d), if the plant or part in question is a plant, or part of a plant, of a European protected species, or the thing in question is derived from such a plant.
- (5) For the purposes of paragraph (3) a plant, or part of a plant, is treated as having been lawfully taken in the wild if—
  - (a) it was taken in the wild in the European territory of a member State, being territory to which the TFEU applies, without contravention of the law of that member State and before the implementation date; or
  - (b) it was taken in the wild elsewhere.
- (6) For the purposes of paragraphs (1)(b) and (2)(a) and (b), the specified offences are—
  - (a) an offence under any of the following sections of the WCA 1981—
    - (i) section 13 (protection of wild plants);
    - (ii) section 17 (false statements made for obtaining registration or licence etc.);
    - (iii) section 18 (attempts to commit offences etc.) which relates to an offence under section 13;
  - (b) an offence under any of the following provisions—
    - (i) regulation 47;
    - (ii) regulation 59, where that offence relates to the obtaining of a licence under regulation 55; or
    - (iii) regulation 122, where that offence relates to an offence under regulation 47;
  - (c) an offence under the 1997 Regulations or an offence of attempting to commit such an offence; or
  - (d) an offence under regulation 49 (offences relating to wild plants listed in Annex IV(b) to the Habitats Directive) or 57 (false statements made for obtaining licence) of the Offshore Marine Conservation Regulations, an offence of attempting to commit an offence under regulation 49 of those Regulations, or an offence under regulation 71 of those

Regulations (possession of means of committing offence) which relates to an offence under regulation 49 of those Regulations.

### *Interpretation of Part 3*

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

**49.** In this Part—

“the 1997 Regulations” means the Control of Trade in Endangered Species (Enforcement) Regulations 1997<sup>(84)</sup>;

“the forfeiture provisions” means—

- (a) section 21(6) of the WCA 1981 (penalties, forfeitures etc.)<sup>(85)</sup>;
- (b) regulation 11 of the 1997 Regulations (forfeiture); or
- (c) regulation 128 of these Regulations;

“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;

“relevant State” means (as the case may be) the State in whose territory—

- (a) the animal, or part of it, was taken from the wild; or
- (b) the plant, or part of it, was taken in the wild;

“the sampling provisions” means—

- (a) the following provisions of the WCA 1981—
  - (i) section 18C (Group 1 offences and licences: examining specimens and taking samples)<sup>(86)</sup>
  - (ii) section 18E (Group 2 offences: examining specimens and taking samples)<sup>(87)</sup>; or
  - (iii) section 19XA (constables’ powers in connection with samples)<sup>(88)</sup>;
- (b) regulation 9(3) and (5) of the 1997 Regulations (powers of entry);
- (c) regulation 119 and 120 of these Regulations; or
- (d) regulation 63(2) of the Offshore Marine Conservation Regulations (powers relating to specimens);

“the TFEU” means the Treaty on the Functioning of the European Union.

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<sup>(84)</sup> S.I. 1997/1372, amended by S.I. 2005/1674, 2007/2952, 2009/1773, and 2011/1043.

<sup>(85)</sup> Section 21(6) was amended by the Natural Environment and Rural Communities Act 2006 (c. 16) (“the 2006 Act”), Schedule 11, paragraph 73(1).

<sup>(86)</sup> Section 18C was inserted by the 2006 Act, Schedule 5, paragraph 1.

<sup>(87)</sup> Section 18E was inserted by the 2006 Act, Schedule 5, paragraph 1.

<sup>(88)</sup> Section 19XA was inserted by the 2006 Act, Schedule 5, paragraph 3, and amended by the Criminal Justice and Immigration Act 2008 (c. 4), Schedule 26, paragraph 7.

## PART 4

### Additional protection of habitats and wild animals and plants

#### *Surveillance and monitoring*

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

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

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

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

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

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

(4) The appropriate nature conservation body must—

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

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

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

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

(7) In this regulation—

“natural habitat types of Community interest” has the meaning given by Article 1(c) of the Habitats Directive (interpretation);

“relevant habitat type or species” means a natural habitat type or species of Community interest;

“species of Community interest” has the meaning given by Article 1(g) of the Habitats Directive.

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

51.—(1) The appropriate authority must, as required in the light of information derived from surveillance arranged under regulation 50 or otherwise arranged for the purpose of Article 11 of the Habitats Directive (surveillance), ensure that measures are taken for the purpose specified in paragraph (2).

(2) The purpose is to ensure that—

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

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

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

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

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

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

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

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

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

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

- (a) identify the risks of incidental capture and killing to which those species are subject, and the activities which give rise to such risks;
- (b) maintain a record of instances of incidental capture or killing of animals of those species of which the nature conservation body is aware as a result of the surveillance carried out under regulation 50, the monitoring carried out under this regulation or otherwise;
- (c) assess to what extent monitoring of incidental capture and killing is needed, having regard to—
  - (i) the risks identified under sub-paragraph (a);
  - (ii) the instances of incidental capture or killing recorded under sub-paragraph (b);
  - (iii) whether the species is a priority species; and

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

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

**53.**—(1) The appropriate authority must, as required in the light of information derived from monitoring arranged under regulation 52 or otherwise arranged for the purpose of Article 12(4) of the Habitats Directive (system to monitor incidental capture and killing), make arrangements for further research for, or ensure that conservation measures are taken for, the purpose specified in paragraph (2).

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

### *Introduction of new species*

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

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

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

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

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

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

- (6) In any proceedings for an offence under this regulation—
  - (a) where the offence is alleged to have been committed in England, a court must have regard to any guidance issued by the Secretary of State under paragraph (5); and



(b) where the offence is alleged to have been committed in Wales, a court must have regard to any guidance issued by the Welsh Ministers under paragraph (5).

(7) A person guilty of an offence under this regulation is liable (whether on summary conviction or on conviction on indictment) to a fine.

(8) Section 14 of the WCA 1981 (introduction of new species etc.)<sup>(89)</sup> does not apply in relation to any act which is an offence under this regulation.

## PART 5

### Licences

#### *Grant of licences*

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

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

(2) The purposes are—

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

(3) Regulations 43 (protection of certain wild animals: offences), 45 (prohibition of certain methods of capturing or killing wild animals) and 47 (protection of certain wild plants: offences) do not apply to anything done under and in accordance with the terms of a licence granted under paragraph (1).

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

(5) Regulations 43, 45 and 47 do not apply to anything done under and in accordance with the terms of a licence granted under paragraph (4).

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

(7) The relevant licensing body may grant a licence under paragraph (4) only if 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”).

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<sup>(89)</sup> Section 14 was amended by the Countryside and Rights of Way Act 2000 (c. 37), Schedule 16, Part 4; and by the Infrastructure Act 2015 (c. 7), sections 23(2) and 25(2).

- (8) A licence under paragraph (4) must specify—
- (a) the species or subspecies of animal or plant to which the licence relates;
  - (b) the maximum number of specimens which may be taken or be in the possession or control of the person authorised by the licence, or which particular specimens may be taken or be in the possession or control of that person; and
  - (c) the conditions subject to which the action authorised by the licence may be taken and in particular—
    - (i) the methods, means or arrangements by which specimens may be taken or be in the possession or control of the person authorised by the licence;
    - (ii) when or over what period the action authorised by the licence may be taken; and
    - (iii) where the licence authorises any person to take specimens, the area from which they may be taken.
- (9) The relevant licensing body must not grant a licence under this regulation unless it is satisfied—
- (a) that there is no satisfactory alternative; and
  - (b) that the action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range.
- (10) A licence under this regulation which authorises any person to kill wild animals must specify the area within which and the methods by which the wild animals may be killed and must not be granted for a period of more than two years.
- (11) Where the appropriate authority exercises any functions under this regulation (see regulation 58(3)), the appropriate authority must from time to time consult the appropriate nature conservation body as to the exercise of those functions, and must not grant a licence of any description unless the appropriate nature conservation body has advised as to the circumstances in which, in its opinion, licences of that description should be granted.
- (12) Where the Marine Management Organisation exercises any functions under this regulation (see regulation 58(2)(a)), it must from time to time consult Natural England as to the exercise of those functions, and must not grant a licence of any description unless Natural England has advised as to the circumstances in which, in its opinion, licences of that description should be granted.
- (13) It is a defence in proceedings for an offence under section 8(b) of the Protection of Animals Act 1911 (which restricts the placing on land of poison and poisonous substances)<sup>(90)</sup> to show that—
- (a) the act alleged to constitute the offence was done under and in accordance with the terms of a licence granted under this regulation; and
  - (b) any conditions specified in the licence were complied with.
- (14) In paragraph (2)(g) “livestock” includes any animal which is kept—
- (a) for the provision of food, skins or fur;
  - (b) for the purpose of its use in the carrying on of any agricultural activity; or
  - (c) for the provision or improvement of shooting or fishing.

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

**56.**—(1) The relevant licensing body may grant a licence in relation to the introduction of new species from ships, but must not do so unless it is satisfied that the action authorised by the licence will not prejudice natural habitats within their natural range or wild native flora and fauna.

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(90) 1911 c. 27.

(2) Regulation 54 does not apply to anything done under and in accordance with the terms of a licence granted under paragraph (1).

### **Licences: general provisions**

**57.**—(1) This regulation applies in relation to a licence under regulation 55 or 56.

(2) A licence—

- (a) may be, to any degree, general or specific;
- (b) except where regulation 55(6) applies, may be granted either to persons of a class or to a particular person; and
- (c) may be subject to compliance with any specified conditions.

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

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

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

#### *Relevant licensing body*

### **Relevant licensing body**

**58.**—(1) For the purposes of regulations 55, 56 and 57, “relevant licensing body” has the meaning given in this regulation.

(2) In the case of a licence granted under regulation 55(1) for a purpose specified in any of paragraph (2)(a) to (d) of that regulation, “relevant licensing body”, in relation to England, means—

- (a) so far as the licence relates to the restricted English inshore region, the Marine Management Organisation; and
- (b) otherwise, Natural England.

(3) In the case of a licence granted in relation to England under any of the provisions specified in paragraph (4), “relevant licensing body” means the appropriate authority.

(4) The provisions referred to in paragraph (3) are—

- (a) regulation 55(1), where the licence is granted for a purpose specified in any of paragraph (2)(e) to (g) of that regulation;
- (b) regulation 55(4); or
- (c) regulation 56.

(5) In the case of a licence granted in relation to Wales, “relevant licensing body” means the Natural Resources Body for Wales.

(6) In paragraph (2), “restricted English inshore region” means so much of the English inshore region as lies to seaward of mean low water mark;

#### *Offences*

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

**59.**—(1) A person (“P”) commits an offence if, for the purposes of obtaining, whether for P or another, the grant of a licence under regulation 55 or 56, P—

- (a) makes a statement or representation, or supplies a document or information, which P knows to be false in a material particular; or
  - (b) recklessly makes a statement or representation, or supplies a document or information, which is false in a material particular.
- (2) A person guilty of an offence under this regulation is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine, or to both.

### **Offence of breaching licence condition**

- 60.**—(1) It is an offence for a person to contravene or fail to comply with a licence condition.
- (2) Paragraph (1) applies in relation to a licence under regulation 55 granted on or after 21st August 2007.
- (3) A person (“P”) is not guilty of an offence under paragraph (1) if P shows that—
- (a) P took all reasonable precautions and exercised all due diligence to avoid commission of the offence; or
  - (b) the commission of the offence was otherwise due to matters beyond P’s control.
- (4) A person guilty of an offence under paragraph (1) is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine, or to both.

## **PART 6**

### **Assessment of plans and projects**

#### **CHAPTER 1**

#### **General provisions**

#### *Introductory provisions*

### **Interpretation of Part 6**

- 61.**—(1) In this Part—
- “the assessment provisions” means regulations 63 and 64;
  - “the review provisions” means regulations 65 and 66.
- (2) In this Part, any reference to—
- (a) the giving or granting of any consent, permission or other authorisation (except in the heading to any regulation or in any reference to any such heading), or
  - (b) directing that planning permission is deemed to be granted,
- is to be taken, in relation to any consent, permission or authorisation which is capable of being varied or modified, to include a reference to its variation or modification.

### **Application of provisions of Chapter 1**

- 62.**—(1) The requirements of the assessment provisions and the review provisions apply—
- (a) subject to and in accordance with the provisions of Chapters 2 to 7, in relation to the matters specified in those provisions; and
  - (b) subject to regulation 63(7)(c), in relation to all other plans and projects not relating to matters specified in Chapters 2 to 9.

- (2) Supplementary provision is made by regulations 67 to 69.

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

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

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

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

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

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

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

(4) It must also, if it considers it appropriate, take the opinion of the general public, and if it does so, it must take such steps for that purpose as it considers appropriate.

(5) In the light of the conclusions of the assessment, and subject to regulation 64, the competent authority may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site or the European offshore marine site (as the case may be).

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

(7) This regulation does not apply in relation to—

- (a) a site which is a European site by reason of regulation 8(1)(c);
- (b) a site which is a European offshore marine site by reason of regulation 18(c) of the Offshore Marine Conservation Regulations; or
- (c) a plan or project to which any of the following apply—
  - (i) the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001<sup>(91)</sup> (in so far as this regulation is not disapplied by regulation 4 (plans or projects relating to offshore marine area or offshore marine installations) in relation to plans or projects to which those Regulations apply);
  - (ii) the Environmental Impact Assessment (Agriculture) (England) (No. 2) Regulations 2006<sup>(92)</sup>;
  - (iii) the Environmental Impact Assessment (Agriculture) (Wales) Regulations 2017<sup>(93)</sup>;  
or
  - (iv) the Merchant Shipping (Ship-to-Ship Transfers) Regulations 2010<sup>(94)</sup>.

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<sup>(91)</sup> S.I. 2001/1754, amended by S.I. 2007/77, 1842, 2010/1513, 2015/1431, 2016/529, 912, 1042 and 2017/582.

<sup>(92)</sup> S.I. 2006/2522, amended by S.I. 2009/1307, 3264, 2010/1159, 2011/1043, 1824 and 2017/593.

<sup>(93)</sup> S.I. 2017/565 (W. 134).

<sup>(94)</sup> S.I. 2010/1228, amended by S.I. 2011/974, 2183, 2012/742, 2013/755 (W. 90), 2014/3306 and 2015/664.

(8) Where a plan or project requires an appropriate assessment both under this regulation and under the Offshore Marine Conservation 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 the United Kingdom, provided that an assessment made for the purpose of this regulation and the Offshore Marine Conservation Regulations assesses the effects of the plan or project as a whole.

(9) In paragraph (1) the reference to the competent authority deciding to undertake a plan or project includes the competent authority deciding to vary any plan or project undertaken or to be undertaken.

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

**64.**—(1) If the competent authority 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 (2), may be of a social or economic nature), it may agree to the plan or project notwithstanding a negative assessment of the implications for the European site or the European offshore marine site (as the case may be).

(2) Where the site concerned hosts a priority natural habitat type or a priority species, the reasons referred to in paragraph (1) must be either—

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

(3) Where a competent authority other than the Secretary of State or the Welsh 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 may submit a written request to the appropriate authority—

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

(4) The appropriate authority—

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

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

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

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

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

**65.**—(1) Where before the date on which a site becomes a European site or a European offshore marine site a competent authority has decided to undertake, or has given any consent, permission

or other authorisation for, a plan or project to which regulation 63(1) would apply if it were to be reconsidered as of that date, the authority must, as soon as reasonably practicable—

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

(2) The authority must for that purpose make an appropriate assessment of the implications for the site in view of that site's conservation objectives; and the provisions of regulation 63(2) to (4) and (8) apply, with the appropriate modifications, in relation to such a review.

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

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

### **Consideration on review**

**66.**—(1) The following provisions apply where a decision, or a consent, permission or other authorisation, falls to be reviewed under regulation 65.

(2) Subject as follows, the provisions of regulations 63(5) and (6) and 64 apply, with the appropriate modifications, in relation to the decision on the review.

(3) The decision, or the consent, permission or other authorisation, may be affirmed if it appears to the competent authority reviewing it that other action taken or to be taken by it, or by another authority, will secure that the plan or project does not adversely affect the integrity of the site.

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

(5) The appropriate authority may issue guidance to competent authorities for the purposes of paragraph (3) as to the manner of determining which of different ways should be adopted for securing that the plan or project does not have any such effect, and in particular—

- (a) the order of application of different controls; and
- (b) the extent to which account should be taken of the possible exercise of other powers.

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

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

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

**67.**—(1) This regulation applies where a plan or project—

- (a) is undertaken by more than one competent authority;
- (b) requires the consent, permission or other authorisation of more than one competent authority; or
- (c) is undertaken by one or more competent authorities and requires the consent, permission or other authorisation of one or more other competent authorities.

(2) Nothing in regulation 63(1) or 65(2) requires a competent authority to assess any implications of a plan or project which would be more appropriately assessed under that provision by another competent authority.

(3) The appropriate authority may issue guidance to competent authorities for the purposes of regulations 63 to 66 as to the circumstances in which a competent authority may or should adopt the reasoning or conclusions of another competent authority as to whether a plan or project—

- (a) is likely to have a significant effect on a European site or a European offshore marine site; or
- (b) will adversely affect the integrity of a European site or a European offshore marine site.

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

(5) In determining whether a plan or project should be agreed to under regulation 64, a competent authority other than the Secretary of State or the Welsh Ministers must seek and have regard to the views of the other competent authority or authorities involved.

### Compensatory measures

**68.** Where in accordance with regulation 64—

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

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

### Modifications of regulations 63 to 68 in certain cases

**69.—**(1) Where any provision of regulations 63 to 68 (a “general provision”) applies in relation to a provision specified in paragraph (2), that general provision applies with the following modifications—

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

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

- (a) regulation 70(1)(e)(i) and (2) (grant of planning permission) in so far as those provisions relate to a direction given by the Secretary of State under section 90 of the TCPA 1990 (development with government authorisation)<sup>(95)</sup> that planning permission is deemed to be granted; and
- (b) regulations 84 and 85 (development consent under Planning Act 2008)<sup>(96)</sup>.

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

- (a) any reference to a competent authority is taken to include the Scottish Ministers;
- (b) for any reference to the Welsh Ministers, substitute a reference to the Scottish Ministers; and
- (c) for any reference to the appropriate authority—

<sup>(95)</sup> Section 90 was amended by the Planning and Compensation Act 1991 (c. 34), Schedule 6, paragraph 12; the Environment Act 1995 (c. 25), Schedule 10, paragraph 32(4); the Transport and Works Act 1992 (c. 42), section 16(1); the Growth and Infrastructure Act 2013 (c. 27), section 21(1) to (3); and the Planning (Wales) Act 2015 (anaw 4), section 33(1) and (3). It is prospectively amended by the Wales Act 2017 (c. 4), section 39(13), and the Neighbourhood Planning Act 2017 (c. 20), Schedule 3, paragraph 5, from a date or dates to be appointed.

<sup>(96)</sup> 2008 c. 29.



- (i) in a case where the competent authority for the purposes of a provision specified in paragraph (4) is the Scottish Ministers, substitute a reference to the Scottish Ministers; and
  - (ii) in any other case, substitute a reference to the Secretary of State.
- (4) The provisions specified for the purposes of paragraph (3) are—
  - (a) in regulation 70—
    - (i) paragraph (1)(e)(ii) and (iii);
    - (ii) paragraph (1)(f), in so far as that paragraph relates to a direction under section 57(2ZA) of the Town and Country Planning (Scotland) Act 1997 (development with government authorisation)<sup>(97)</sup>; and
    - (iii) paragraph (2) in so far as that paragraph relates to paragraph (1)(e)(ii) and (iii), and (1)(f) of that regulation;
  - (b) Chapter 4 (electricity); and
  - (c) Chapter 5 (pipe-lines).
- (5) Where a general provision applies in relation to regulation 103 (marine works), and confers a function on the appropriate authority, that provision applies with the following modifications—
  - (a) in a case to which paragraph (6) applies, for any reference to the appropriate authority, substitute a reference to the Welsh Ministers; and
  - (b) in any other case, for any reference to the appropriate authority, substitute a reference to the Secretary of State.
- (6) This paragraph applies where the function in question is exercisable in relation to—
  - (a) any application to the Welsh Ministers for an authorisation in respect of marine works;
  - (b) any application to any other authority for—
    - (i) an authorisation in respect of marine works, the refusal of which gives rise to a right of appeal to the Welsh Ministers;
    - (ii) an authorisation in respect of marine works in relation to which the Welsh Ministers exercise any power of direction or call-in; or
    - (iii) an authorisation of harbour works which are, or are to be, carried out in relation to a fishery harbour in Wales under legislation of a kind mentioned in regulation 103(6)(c);
  - (c) the grant of any application of a kind mentioned in sub-paragraph (a) or (b); or
  - (d) harbour works which—
    - (i) are, or are to be, carried out in relation to a fishery harbour in Wales; and
    - (ii) are authorised by, and are, or are to be, carried out in accordance with, any legislation of a kind mentioned in regulation 103(6)(c).
- (7) In paragraph (6)—
  - “authorisation” means any licence, consent or other approval;
  - “marine works” and “harbour works” have the meanings given by regulation 103(5) and (7) respectively.
- (8) Where a general provision applies in relation to a plan or project which does not relate to a matter specified in Chapters 2 to 9, to the extent that that general provision applies in relation to Scotland or Northern Ireland, that provision applies with the following modifications—

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<sup>(97)</sup> 1997 c. 8. Section 57(2ZA) was inserted by the Growth and Infrastructure Act 2013, section 21(5).

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

## CHAPTER 2

### Planning

#### *Planning permission*

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

- 70.**—(1) The assessment provisions apply in relation to—
- (a) granting planning permission on an application under Part 3 of the TCPA 1990 (control over development);
  - (b) granting planning permission on an application under section 293A of that Act (urgent Crown development)**(98)**;
  - (c) granting planning permission, or upholding a decision of the local planning authority to grant planning permission (whether or not subject to the same conditions and limitations as those imposed by the local planning authority), on determining an appeal under section 78 of that Act (right to appeal against planning decisions)**(99)** in respect of such an application;
  - (d) granting planning permission under—
    - (i) section 141(2)(a) of that Act (action in relation to purchase notice); or
    - (ii) section 177(1)(a) of that Act (grant or modification of planning permission on appeals against enforcement notices)**(100)**;
  - (e) directing under the following provisions that planning permission is deemed to be granted—
    - (i) section 90(1), (2) or (2A) of that Act (development with government authorisation);
    - (ii) section 57(2) or (2A) of the Town and Country Planning (Scotland) Act 1997 (development with government authorisation)**(101)**; or
    - (iii) section 5(1) of the Pipe-lines Act 1962 (provisions with respect to planning permission concerning pipe-lines)**(102)**;
  - (f) directing under section 90(2ZA)(a) or (b) of the TCPA 1990**(103)** or section 57(2ZA)(a) or (b) of the Town and Country Planning (Scotland) Act 1997**(104)**, in respect of a planning permission which is deemed to be granted under section 90(2) or section 57(2)

**(98)** Section 293A was inserted by the Planning and Compulsory Purchase Act 2004 (c. 5), section 82(1), and amended by the Planning (Wales) Act 2015 (anaw 4), Schedule 2, paragraphs 8 and 9, and Schedule 4, paragraphs 1 and 17; and the Housing and Planning Act 2016 (c. 22), Schedule 12, paragraph 34.

**(99)** Section 78 was amended by the Planning and Compensation Act 1991 (c. 34), section 17(2); the Planning and Compulsory Purchase Act 2004, sections 40(2)(e) and 43(2); the Planning Act 2008 (c. 29), Schedule 10, paragraphs 1 and 3 and Schedule 11, paragraphs 1 and 2; the Localism Act 2011 (c. 20), section 123(1) and (3), and Schedule 12, paragraphs 1 and 11; the Growth and Infrastructure Act 2013 (c. 27), Schedule 1, paragraphs 1 and 8; the Infrastructure Act 2015 (c. 7), Schedule 4, Part 2, paragraphs 2 and 12; the Planning (Wales) Act 2015, sections 45 and 47, and Schedule 7, paragraph 7; the Housing and Planning Act 2016, Schedule 12, paragraphs 1 and 21; and by S.I. 2014/2773.

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

**(101)** 1997 c. 8. Section 57(2) was substituted by the Growth and Infrastructure Act 2013 (c. 27), section 21(5).

**(102)** 1962 c. 58. Section 5(1) was amended by S.I. 1999/742.

**(103)** Section 90(2ZA) was inserted by the Environment Act 1995 (c. 25), Schedule 10.

**(104)** Section 57(2ZA) was inserted by the Growth and Infrastructure Act 2013 (c. 27), section 21(5).

(respectively) on varying a consent under section 36 or 37 of the Electricity Act 1989<sup>(105)</sup>, that that permission, or any conditions subject to which it was granted, be varied;

- (g) making—
- (i) an order under section 102 of the TCPA 1990 (orders requiring discontinuance of use or alteration or removal of buildings or works)<sup>(106)</sup>, including an order made under that section by virtue of section 104 of that Act (powers in relation to section 102 orders) which grants planning permission, or confirming any such order under section 103 of that Act (confirmation of section 102 orders); or
  - (ii) an order under paragraph 1 of Schedule 9 to that Act (order requiring discontinuance of mineral working)<sup>(107)</sup>, including an order made under that paragraph by virtue of paragraph 11 of that Schedule (powers in relation to orders under Schedule 9) which grants planning permission; or
- (h) directing under the following provisions that, if an application is made for planning permission, it must be granted—
- (i) section 141(3) of the TCPA 1990 (action in relation to purchase notice); or
  - (ii) section 35(5) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (action in relation to listed building purchase notice)<sup>(108)</sup>.

(2) Where the assessment provisions apply, the competent authority may, if it considers that any adverse effects of the plan or project on the integrity of a European site or a European offshore marine site would be avoided if the planning permission were subject to conditions or limitations, grant planning permission, or, as the case may be, take action which results in planning permission being granted or deemed to be granted, subject to those conditions or limitations.

(3) Where the assessment provisions apply, outline planning permission must not be granted unless the competent authority is satisfied (whether by reason of the conditions and limitations to which the outline planning permission is to be made subject, or otherwise) that no development likely adversely to affect the integrity of a European site or a European offshore marine site could be carried out under the permission, whether before or after obtaining approval of any reserved matters.

(4) In paragraph (3), “outline planning permission” and “reserved matters” have the same meanings as in section 92 of the TCPA 1990 (outline planning permission)<sup>(109)</sup>.

### **Planning permission: duty to review**

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

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

<sup>(105)</sup> 1989 c. 29. Section 36 was amended by the Energy Act 2004 (c. 20), section 93; by the Planning Act 2008, Schedule 2, paragraphs 31 and 32; by the Marine Act, section 12(7)(a) and (8); by the Energy Act 2016 (c. 20), section 78; and by S.I. 2006/1054; and is prospectively amended by the Wales Act 2017 (c. 4), section 39(7) to (11), and Schedule 6, Part 3, paragraph 47, from a date to be appointed. Section 36C of the Act, inserted by the Growth and Infrastructure Act 2013 (c. 27), section 20, provides for the variation of consents granted under section 36. Section 37 was amended by the Planning Act 2008, Schedule 2, paragraphs 31 and 33; and is prospectively amended by the Wales Act 2017, section 42 from a date to be appointed.

<sup>(106)</sup> Section 102 was amended by the Planning and Compensation Act 1991 (c. 34), Schedule 1, paragraph 6, and Schedule 7, paragraph 21; and the Planning (Wales) Act 2015 (anaw 4), section 33(1) and (4).

<sup>(107)</sup> Paragraph 1 of Schedule 9 was amended by the Planning and Compensation Act 1991, Schedule 1, paragraph 15.

<sup>(108)</sup> 1990 c. 9.

<sup>(109)</sup> Section 92 was amended by the Planning (Wales) Act 2015 (anaw 4), section 36(1) to (6), and Schedule 4, paragraphs 1 and 10.

- (2) The review provisions do not apply to planning permission granted or deemed to have been granted—
- (a) by a development order, local development order or neighbourhood development order (but see regulations 75 to 81);
  - (b) by virtue of the adoption of a simplified planning zone scheme or of alterations to such a scheme (but see regulation 82); or
  - (c) by virtue of the taking effect of an order designating an enterprise zone under paragraph 5 of Schedule 32 to the Local Government, Planning and Land Act 1980 (enterprise zones)<sup>(110)</sup>, or by virtue of the approval of a modified enterprise zone scheme (but see regulation 83).
- (3) Planning permission deemed to be granted by virtue of a direction of a kind specified in paragraph (4) must be reviewed in accordance with Chapter 4, Chapter 5 or Chapter 6 (as the case may be) in conjunction with the review of the underlying authorisation, consent or order.
- (4) Directions of a kind referred to in paragraph (3) are—
- (a) a direction under section 90(1) of the TCPA 1990 in respect of development for which an authorisation has been granted under section 1 of the Pipe-lines Act 1962 (pipe-line construction authorisations)<sup>(111)</sup>;
  - (b) a direction under section 5(1) of the Pipe-lines Act 1962;
  - (c) a direction under section 90(1) of the TCPA 1990 in respect of development for which a consent has been granted under section 36 or 37 of the Electricity Act 1989 (consents required in relation to generating stations and overhead lines);
  - (d) a direction under section 90(2) of the TCPA 1990 or section 57(2) of the Town and Country Planning (Scotland) Act 1997 (which relate to development for which a consent has been granted under section 36 or 37 of the Electricity Act 1989);
  - (e) a direction under section 90(2ZA)(a) or (b) of the TCPA 1990 or section 57(2ZA)(a) or (b) of the Town and Country Planning (Scotland) Act 1997 (which relate to the variation of a deemed grant of planning permission in relation to development for which a consent has been granted under section 36 or 37 of the Electricity Act 1989 and to the variation of conditions of any such deemed grant of planning permission); or
  - (f) a direction under section 90(2A) of the TCPA 1990 (which relates to development in pursuance of an order under section 1 or 3 of the Transport and Works Act 1992 (orders as to railways, tramways or inland waterways)<sup>(112)</sup>).
- (5) In the case of planning permission deemed to have been granted in any other case by a direction under section 90(1) of the TCPA 1990, the local planning authority must—
- (a) identify any such permission which it considers falls to be reviewed under the review provisions; and
  - (b) refer the matter to the government department or person which made the direction.
- (6) The department or person to whom a reference is made under paragraph (5)(b) must, if in agreement that the planning permission does fall to be so reviewed, review the direction in accordance with the review provisions.
- (7) Except as otherwise expressly provided, the review provisions do not apply to planning permission granted or deemed to be granted by a public general Act of Parliament.

<sup>(110)</sup> 1980 c. 65. Paragraph 5 of Schedule 32 was amended by the Planning (Consequential Provisions) Act 1990 (c. 11), Schedule 1, Part 1.

<sup>(111)</sup> 1962 c. 58. Section 1 was amended by the Criminal Justice Act 1982 (c. 48), sections 37, 38 and 46; by the Planning Act 2008 c. 29, Schedule 2, paragraphs 5 and 6; and by S.I. 1999/742 and 2007/1519.

<sup>(112)</sup> 1992 c. 42. Sections 1 and 3 were amended by the Planning Act 2008, Schedule 2, paragraphs 51, 52 and 53.

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

- (a) it must be reviewed by the local planning authority; and
- (b) the power conferred by section 97 of the TCPA 1990 (power to revoke or modify planning permission)(**113**) is exercisable by that local planning authority as in relation to planning permission granted on an application under Part 3 of that Act (control over development).

(9) In a non-metropolitan county in England the function of reviewing any such planning permission is to be exercised by the district planning authority unless it relates to a county matter (within the meaning of paragraph 1 of Schedule 1 to the TCPA 1990(**114**)), in which case it is exercisable by the county planning authority.

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

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

- (a) consider whether any adverse effects could be overcome by planning obligations under section 106 of the TCPA 1990 (planning obligations)(**115**) being entered into; and
- (b) if it considers that those effects could be so overcome, invite those concerned to enter into such obligations.

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

- (a) section 97 of the TCPA 1990 Act (power to revoke or modify planning permission); or
- (b) section 102 of, or paragraph 1 of Schedule 9 to, that Act (orders requiring discontinuance of use etc.).

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

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

**73.**—(1) An order under section 97 of the TCPA 1990 made pursuant to paragraph (2) of regulation 72 (planning permission: consideration on review) takes effect upon the service of the notices required by section 98(2) of that Act (procedure for section 97 orders) or, where there is more than one such notice and those notices are served at different times, upon the service of the last such notice to be served.

(2) Where the appropriate authority determines not to confirm such an order—

- (a) the order ceases to have effect as from the time of that determination;
- (b) the permission revoked or modified by the order thereafter has effect as if the order had never been made;

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(**113**) Section 97 was amended by the Planning and Compensation Act 1991 (c. 34), Schedule 1, paragraph 4; and by the Housing and Planning Act 2016 (c. 22), Schedule 12, paragraphs 1 and 25.

(**114**) Paragraph 1 of Schedule 1 was amended by the Planning and Compensation Act 1991, Schedule 1, paragraph 13.

(**115**) Section 106 was substituted by the Planning and Compensation Act 1991, section 12(1), and amended by the Greater London Authority Act 2007 (c. 24), section 33; the Planning Act 2008 (c. 29), section 174(1) and (2); the Growth and Infrastructure Act 2013 (c. 27), Schedule 2, paragraphs 1 and 3. It is prospectively amended by the Housing and Planning Act 2016, section 158(3), and is prospectively repealed by the Planning and Compulsory Purchase Act 2004 (c. 5), Schedule 6, paragraphs 1 and 5, from a date or dates to be appointed.

- (c) any period specified in the permission for the taking of any action, being a period which had not expired prior to the date upon which the order took effect under paragraph (1), is extended by a period equal to that during which the order had effect; and
- (d) for any date specified in the permission as being a date by which any action should be taken (“the specified date”), not being a date falling before the date upon which the order took effect under paragraph (1), there is substituted such later date as postpones the specified date by a period equal to that during which the order had effect.

(3) An order under section 102 of, or paragraph 1 of Schedule 9 to, the TCPA 1990 made pursuant to regulation 72(2), in so far as it requires the discontinuance of a use of land or imposes conditions upon the continuance of a use of land, takes effect upon the service of the notices required by section 103(3) of that Act (confirmation of section 102 orders) or, where there is more than one such notice and those notices are served at different times, upon the service of the last such notice to be served.

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

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

(5) An order under section 97 of that Act made in pursuance of regulation 72(2) does not affect so much of the development authorised by the permission as was carried out before the order took effect.

(6) An order under section 102 of or paragraph 1 of Schedule 9 to that Act made in pursuance of regulation 72(2) does not affect anything done before the site became a European site or European offshore marine site.

### **Planning permission: compensation**

**74.**—(1) Where the appropriate authority determines not to confirm an order under section 97 of the TCPA 1990 which has taken effect under regulation 73(1), any claim for compensation under section 107 of that Act (compensation where planning permission revoked or modified)**(116)** is limited to any loss or damage directly attributable to the permission being suspended or temporarily modified for the duration of the period between the order so taking effect and the appropriate authority’s determination not to confirm the order.

(2) Where the appropriate authority determines not to confirm an order under section 102 of the TCPA 1990 (orders requiring discontinuance of use or alteration or removal of buildings or works) which has taken effect under regulation 73(3), any claim for compensation under section 115 of that Act (compensation in respect of orders under section 102) is limited to any loss or damage directly attributable to the effect of the order in suspending or imposing conditions on any right to continue a use of the land for the duration of the period between the order so taking effect and the appropriate authority’s determination not to confirm the order.

(3) Paragraph (4) applies where—

- (a) compensation is payable in respect of—
  - (i) an order under section 97 of the TCPA 1990; or
  - (ii) any order mentioned in section 115(1) of that Act or to which that section applies by virtue of section 115(5); and

**(116)** Section 107 was amended by the Planning and Compensation Act 1991 (c. 34), Schedule 1, paragraph 8 and Schedule 6, paragraph 13; and by the Housing and Planning Act 2016 (c. 22), Schedule 12, paragraphs 1 and 28.

(b) the order has been made pursuant to regulation 65 (review of existing decisions and consents).

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

### *General development orders*

#### **General development orders**

**75.** It is a condition of any planning permission granted by a general development order made on or after 30th November 2017, that development which—

(a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects), and

(b) is not directly connected with or necessary to the management of the site,

must not be begun until the developer has received written notification of the approval of the local planning authority under regulation 77 (approval of local planning authority).

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

**76.—**(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 its opinion as to whether the development is likely to have a relevant effect.

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

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

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

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

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

(7) In this regulation and in regulation 77, “a relevant effect” means an effect of a kind mentioned in regulation 75(a).

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

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

(a) give details of the development which is intended to be carried out; and

(b) be accompanied by—

- (i) a copy of any relevant notification by the appropriate nature conservation body under regulation 76; and
- (ii) any fee required to be paid.

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

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

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

(5) The sending of the copy of the representations to the applicant under paragraph (4) has the same effect as a notification by the appropriate nature conservation body of its opinion under regulation 76(4).

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

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

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

**78.**—(1) The local planning authority for the purposes of regulations 75 to 77 is the authority to which an application for approval under regulation 77 would fall to be made if it were an application for planning permission.

- (2) The fee payable in connection with an application for such approval is £30.
- (3) Approval required by regulation 75 is to be treated—
  - (a) for the purposes of the provisions of the TCPA 1990 relating to appeals, as approval required by a condition imposed on a grant of planning permission; and
  - (b) for the purposes of the provisions of any general development order relating to the time within which notice of a decision should be given, as approval required by a condition attached to a grant of planning permission.

#### *Special development orders*

#### **Special development orders**

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

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

(2) A special development order 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).



(3) This regulation does not apply to a special development order made before 30th November 2017.

#### *Local development orders*

##### **Local development orders**

**80.** A local development order made on or after 30th November 2017 may not grant planning permission for development which—

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

#### *Neighbourhood development orders*

##### **Neighbourhood development orders**

**81.—**(1) A neighbourhood development order made on or after 30th November 2017 may not grant planning permission for development which—

- (a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects); and
  - (b) is not directly connected with or necessary to the management of the site.
- (2) This regulation applies in relation to England only.

#### *Simplified planning zones and enterprise zones*

##### **Simplified planning zones**

**82.—**(1) Where a simplified planning zone scheme is adopted or approved, that scheme is not to be taken to grant planning permission for development which (either alone or in combination with other plans or projects) is likely to have a significant effect on a European offshore marine site or (where the development is not directly connected with or necessary to the management of the site) on a European site.

(2) This regulation does not apply to a simplified planning zone scheme adopted or approved (as the case may be) before 30th November 2017.

##### **Enterprise zones**

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

(2) This regulation does not apply to an order designating an enterprise zone made, or to a modified enterprise scheme approved, before 30th November 2017.

*Development consent under Planning Act 2008***Grant of development consent**

**84.**—(1) The assessment provisions apply in relation to the making of an order granting development consent under the Planning Act 2008(**117**).

(2) Where those provisions apply, the competent authority may, if it considers that any adverse effects of the plan or project on the integrity of a European site or a European offshore marine site would be avoided if the order granting development consent included requirements under section 120 of the Planning Act 2008 (what may be included in order granting development consent)(**118**), make an order subject to those requirements.

**Development consent: review**

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

- (a) the development to which it related has been completed before the site becomes a European site or a European offshore marine site;
  - (b) it included a requirement as to the time within which the development to which it related was to be begun and that time has expired without the development having been begun; or
  - (c) the development consent was granted for a limited period and that period has expired.
- (2) In any such review of an order granting development consent, the competent authority must—
- (a) consider whether any adverse effects could be overcome by imposing requirements under paragraph 5(4)(c), (d) or (e) of Schedule 6 to the Planning Act 2008 (changes to, and revocation of, orders granting development consent); and
  - (b) if it considers that those effects could be so overcome, impose those requirements by making such an order under paragraph 3(1) of Schedule 6 to that Act(**119**) as may be required.

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

**86.**—(1) This Chapter, except regulations 84 and 85, is to be construed as one with the TCPA 1990.

(2) In regulations 84 and 85, the terms “development” and “development consent” have the meanings given by the Planning Act 2008(**120**).

## CHAPTER 3

## Highways and roads

**Construction or improvement of highways or roads**

**87.**—(1) The assessment provisions apply in relation to any plan or project—

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(117) 2008 c. 29.

(118) Section 120 was amended by the Localism Act 2011 (c. 20), section 140 and Schedule 13, paragraphs 1 and 60.

(119) Paragraph 3(1) of Schedule 6 was amended by the Localism Act 2011, Schedule 13, paragraphs 1 and 72.

(120) See sections 31 and 32 for the definition of “development consent” and “development” respectively.

- (a) by the appropriate authority or a strategic highways company to construct a new highway or to improve, within the meaning of the Highways Act 1980(121), an existing highway; or
  - (b) by a local highway authority to carry out within the boundaries of a road any works required for the improvement of the road.
- (2) The review provisions apply to any such plan or project as is mentioned in paragraph (1) unless—
- (a) the works were completed before 30th October 1994; or
  - (b) the works have been completed before the site became a European site or a European offshore marine site.
- (3) In paragraph (1)(a) “strategic highways company” means a company for the time being appointed under Part 1 of the Infrastructure Act 2015(122).

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

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

- (a) is likely to have a significant effect on a European site (either alone or in combination with other plans or projects), and
  - (b) is not directly connected with or necessary to the management of the site,
- whether or not the development authorised by the permission has been begun.

## CHAPTER 4

### Electricity

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

- 89.**—(1) The assessment provisions apply in relation to the granting of—
- (a) consent under section 36 of the Electricity Act 1989 (consent required for construction etc. of generating stations)(124) to construct, extend or operate a generating station in Great Britain; or
  - (b) consent under section 37 of that Act (consent required for overhead lines)(125) for an electric line to be installed or kept installed above ground.
- (2) Where in such a case the competent authority considers that any adverse effects of the plan or project on the integrity of a European site or a European offshore marine site would be avoided if the consent were subject to conditions, the competent authority may grant consent subject to those conditions.
- (3) The review provisions apply to a consent mentioned in paragraph (1) unless—
- (a) in the case of a consent to construct or extend (whether or not also to operate) a generating station or a consent of a kind mentioned in paragraph (1)(b)—

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(121) 1980 c. 66. See the definition of “improvement” in section 329(1).

(122) 2015 c. 7.

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

(124) 1989 c. 29. Section 36 was amended by the Energy Act 2004 (c. 20), section 93; by the Planning Act 2008, Schedule 2, paragraphs 31 and 32; by the Marine Act, section 12(7)(a) and (8); by the Energy Act 2016 (c. 20), section 78; and by S.I. 2006/1054, and is prospectively amended by the Wales Act 2017 (c. 4), section 39(7) to (11), and Schedule 6, Part 3, paragraph 47, from a date to be appointed. Section 36C of the Act, inserted by the Growth and Infrastructure Act 2013 (c. 27), section 20, provides for the variation of consents granted under section 36.

(125) Section 37 was amended by the Planning Act 2008, Schedule 2, paragraphs 31 and 33; and is prospectively amended by the Wales Act 2017, section 42 from a date to be appointed.

- (i) the works to which the consent relates were completed before the relevant date; or
  - (ii) 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 those works having been begun;
  - (b) in the case of a consent to operate (but not also to construct or extend) a generating station, the operation began before the relevant date; or
  - (c) in any case, the consent was for a limited period and that period has expired.
- (4) Where the consent is to construct or extend, but also to operate, a generating station, the works, if not already completed when the generating station is first operated in reliance on the consent, are to be treated as completed at that date.
- (5) In the case of a consent of a kind mentioned in paragraph (1)(b) for an electric line to be kept installed, the works to which the consent relates are to be treated for the purposes of paragraph (3) (a) as the works to which any consent for the installation of that line relates.
- (6) Where on the review of such a consent, the competent authority considers that any adverse effects on the integrity of a European site or a European offshore marine site of the carrying out or, as the case may be, the continuation of the plan or project would be avoided by a variation of the consent, the authority may vary the consent accordingly.
- (7) In conjunction with the review of any such consent, the competent authority must review any direction deeming planning permission to be granted for the plan or project and may vary or revoke it.
- (8) In this regulation, “the relevant date” means the date on which the site became a European site or a European offshore marine site (as the case may be) or (if later) 30th October 1994.

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

**90.**—(1) Where the competent authority decides in pursuance of regulation 89(3), (6) or (7) to revoke or vary a consent under the Electricity Act 1989 or a direction deeming planning permission to be granted, the authority must serve notice on the persons specified in paragraph (2), informing them of the decision and specifying a period of not less than 28 days within which any person on whom the notice is served may make representations to the authority.

- (2) The persons referred to in paragraph (1) are—
  - (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 the authority’s opinion will be affected by the revocation or variation.
- (3) The competent authority must also serve notice on—
  - (a) the relevant planning authority within the meaning of paragraph 2(6) of Schedule 8 to the Electricity Act 1989 (consents under sections 36 and 37 of that Act)**(126)**, and
  - (b) the appropriate nature conservation body,

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

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

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

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

(a) to that person or the relevant planning authority (as the case may be), and

(b) to any other person on whom notice under paragraph (1) or (3) was required to be served, an opportunity of appearing before, and being heard by, a person appointed by the competent authority for the purpose.

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

**91.**—(1) The revocation or variation pursuant to regulation 89(3), (6) or (7) of a consent under the Electricity Act 1989 or a direction deeming planning permission to be granted takes effect upon the service of the notices required by regulation 90(1) or, where there is more than one such notice and those notices are served at different times, upon the service of the last such notice to be served.

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

(a) any period specified in the consent or direction for the taking of any action, being a period which had not expired before the date on which the revocation or variation took effect, were extended by a period equal to that during which the revocation or variation had effect; and

(b) there were substituted for any date specified in the consent or direction as being a date by which any action should be taken (“the specified date”), not being a date falling before the date on which the revocation or variation took effect, such later date as postpones the specified date by a period equal to that during which the revocation or variation had effect.

(3) The revocation or variation of a consent or direction pursuant to regulation 89(3), (6) or (7) does not affect anything done under the consent or direction before the revocation or variation takes effect.

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

**92.**—(1) Where a direction deeming planning permission to be granted is revoked or varied pursuant to regulation 89(7), that permission is to be treated—

(a) for the purposes of Part 4 of the TCPA 1990 (compensation for effects of certain orders, notices etc.), as having been revoked or modified by order under section 97 of that Act (power to revoke or modify planning permission)(**127**); or

(b) for the purposes of Part 4 of the Town and Country Planning (Scotland) Act 1997(**128**) (compensation for effects of certain orders, notices etc.), as having been revoked or modified by order under section 65 of that Act (power to revoke or modify planning permission)(**129**).

(2) Where a consent under the Electricity Act 1989 is revoked or varied pursuant to regulation 89(3) or (6), Part 4 of the TCPA 1990 or Part 4 of the Town and Country Planning (Scotland) Act 1997 (as the case may be) applies as if—

(a) the consent had been planning permission granted on an application under that Act and had been revoked or modified by order under section 97 of the TCPA 1990 or section 65 of the Town and Country Planning (Scotland) Act 1997; and

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(**127**) Section 97 was amended by the Planning and Compensation Act 1991 (c. 34), Schedule 1, paragraph 4 and Schedule 19, Part 1; and by the Housing and Planning Act 2016 (c. 22), Schedule 12, paragraphs 1 and 25(1) to (5).

(**128**) 1997 c. 8.

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

(b) that Part provided that the competent authority was the person liable to pay any compensation provided for by that Part.

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

(4) Where the competent authority decides not to proceed with the revocation or variation of a consent under the Electricity Act 1989 or a direction deeming planning permission to be granted, any claim for compensation by virtue of this regulation is limited to any loss or damage directly attributable to the consent or direction ceasing to have effect or being varied for the duration of the period between the revocation or variation taking effect under regulation 91(1) and the competent authority's decision not to proceed with it.

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

## CHAPTER 5

### Pipe-lines

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

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

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

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

(a) the works to which the authorisation relates—

(i) were completed before 30th October 1994; or

(ii) have been completed before the site became a European site or a European offshore marine site (as the case may be); or

(b) the authorisation was granted—

(i) subject to a condition as to the time within which the works to which it relates were to be begun and that time has expired without those works having been begun; or

(ii) for a limited period and that period has expired.

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

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

**(130)** 1962 c. 58; see section 1, which relates to pipe-line construction authorisations. Section 1 was amended by the Planning Act 2008 (c. 29), Schedule 2, paragraph 6; S.I. 1999/742; and 2007/1519. It was also amended, in relation to England and Wales, by the Criminal Justice Act 1982 (c. 48), sections 38 and 46 and, in relation to Scotland, by the Criminal Procedure (Scotland) Act 1975 (c. 21), sections 289F and 289G.

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

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

**94.**—(1) Where the competent authority decides in pursuance of regulation 93(3), (4) or (5) to revoke or vary an authorisation under the Pipe-lines Act 1962 or a direction deeming planning permission to be granted, the authority must serve notice on the persons specified in paragraph (2) informing them of the decision and specifying a period of not less than 28 days within which any person on whom the notice is served may make representations to the authority.

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

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

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

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

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

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

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

- (a) to that person or the local planning authority (as the case may be), and
- (b) to any other person on whom notice under paragraph (1) or (3) was required to be served,

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

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

**95.**—(1) The revocation or variation pursuant to regulation 93(3), (4) or (5) of an authorisation under the Pipe-lines Act 1962 or a direction deeming planning permission to be granted takes effect upon the service of the notices required by regulation 94(1) or, where there is more than one such notice and those notices are served at different times, upon the service of the last such notice to be served.

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

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

(3) The revocation or variation of an authorisation or direction pursuant to regulation 93(3), (4) or (5) does not affect anything done under the authorisation or direction before the revocation or variation takes effect.

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

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

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

(2) Where an authorisation under the Pipe-lines Act 1962 is revoked or varied pursuant to regulation 93(3) or (4), Part 4 of the TCPA 1990 or Part 4 of the Town and Country Planning (Scotland) Act 1997 (as the case may be) applies as if—

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

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

(4) Where the competent authority 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 is limited to any loss or damage directly attributable to the authorisation or direction ceasing to have effect or being varied for the duration of the period between the revocation or variation taking effect under regulation 95(1) and the competent authority's decision not to proceed with it.

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

## CHAPTER 6

### Transport and Works

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

97.—(1) The assessment provisions apply in relation to the making of an order under section 1 (orders as to railways, tramways etc.) or 3 (orders as to inland waterways etc.) of the Transport and Works Act 1992(132).

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

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

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(132) 1992 c. 42; sections 1 and 3 were amended by the Planning Act 2008 (c. 29), Schedule 2, paragraphs 51, 52 and 53.



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

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

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

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

**98.**—(1) Where the appropriate authority decides in pursuance of regulation 97(3), (4) or (5) to revoke or vary an order under the Transport and Works Act 1992 or a direction deeming planning permission to be granted, the authority must serve notice on the persons specified in paragraph (2) informing them of the decision and specifying a period of not less than 28 days within which any person on whom the notice is served may make representations to the appropriate authority.

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

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

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

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

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

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

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

- (a) to that person or the local planning authority (as the case may be), and
- (b) to any other person on whom notice under paragraph (1) or (3) was required to be served,

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

### **Orders under Transport and Works Act 1992: effect of review**

**99.**—(1) The revocation or variation pursuant to regulation 97(3), (4) or (5) of an order under the Transport and Works Act 1992 or a direction deeming planning permission to be granted takes effect upon the service of the notices required by regulation 98(1) or, where there is more than one such notice and those notices are served at different times, upon the service of the last such notice to be served.

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

- (a) any period specified in the order or direction for the taking of any action, being a period which had not expired before the date on which the revocation or variation took effect,

were extended by a period equal to that during which the revocation or variation had effect; and

- (b) there were substituted for any date specified in the order or direction as being a date by which any action should be taken (“the specified date”), not being a date falling before the date on which the revocation or variation took effect, such later date as postpones the specified date by a period equal to that during which the revocation or variation had effect.

(3) The revocation or variation of an order or direction pursuant to regulation 97(3), (4) or (5) does not affect anything done under the order or direction before the revocation or variation takes effect.

### **Orders under Transport and Works Act 1992: compensation**

**100.**—(1) Where a direction deeming planning permission to be granted is revoked or varied pursuant to regulation 97(5), that permission is to be treated for the purposes of Part 4 of the TCPA 1990 (compensation for effects of certain orders, notices etc.) as having been revoked or modified by order under section 97 of that Act (power to revoke or modify planning permission).

(2) Where an order under the Transport and Works Act 1992 is revoked or varied pursuant to regulation 97(3) or (4), Part 4 of the TCPA 1990 applies as if—

- (a) the order had been planning permission granted on an application under that Act and had been revoked or modified by order under section 97 of that Act; and
- (b) that Part provided that the appropriate authority was the person liable to pay any compensation provided for by that Part.

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

(4) Where the appropriate authority decides not to proceed with the revocation or variation of an order under the Transport and Works Act 1992 or a direction deeming planning permission to be granted, any claim for compensation by virtue of this regulation is limited to any loss or damage directly attributable to the order or direction ceasing to have effect or being varied for the duration of the period between the revocation or variation taking effect under regulation 99(1) and the appropriate authority’s decision not to proceed with it.

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

## CHAPTER 7

### Environmental Controls

#### **Environmental permits**

**101.**—(1) The assessment provisions apply in relation to the granting of an environmental permit under the Environmental Permitting (England and Wales) Regulations 2016(**133**).

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

(3) The review provisions apply to a permit described in paragraph (1).

(4) Where, on the review of such a permit, the competent authority considers that any adverse effects on the integrity of a European site or a European offshore marine site of the carrying out or, as the case may be, the continuation of activities authorised by it would be avoided by a variation of the permit, it may vary it, or cause it to be varied, accordingly.

(5) Where any question arises as to agreeing to a plan or project, or affirming a permit on review, under regulation 64 (considerations of overriding public interest), the competent authority must refer the matter to the appropriate authority which must determine the matter in accordance with that regulation and give directions to the competent authority accordingly.

### **Abstraction and works authorised under water legislation**

**102.**—(1) The assessment provisions apply in relation to the granting of an authorisation by virtue of—

- (a) the granting of a licence under Chapter 2 of Part 2 of the WRA (abstraction and impounding)(**134**);
- (b) the making of an order under section 27A of the WRA (variation of small quantity threshold)(**135**);
- (c) the making of regulations under section 33A of the WRA (power to provide for further exemptions)(**136**), 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 (restrictions on abstraction)(**137**)); 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)(**138**) 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)(**139**);
- (g) any consent given under section 166 of the WIA (consents for certain discharges under section 165)(**140**) or section 164 of the WRA (consents for certain discharges under section 163)(**141**); or
- (h) the making of an order under section 167 of the WIA (compulsory works orders)(**142**) or section 168 of the WRA (compulsory works orders)(**143**).

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(134) 1991 c. 57.

(135) Section 27A was inserted by the Water Act 2003 (c. 37), section 6(1); and amended by S.I. 2013/755.

(136) Section 33A was inserted by the Water Act 2003 (c. 37), section 9; and amended by S.I. 2013/755.

(137) Section 24 was amended by the Environment Act 1995 (c. 25), Schedule 22, paragraph 128; and by S.I. 1996/593, 2013/755 and 2015/664.

(138) Section 73 was amended by the Environment Act 1995 (c. 25), Schedule 22, paragraphs 128 and 139; and by S.I. 2013/755.

(139) Section 79A was inserted by the Environment Act 1995 (c. 25), Schedule 22, paragraph 140, and amended by the Water Act 2003 (c. 37), section 64(3) and Schedule 9, Part 3; and by S.I. 2013/755.

(140) 1991 c. 56; section 166 was amended by the Environment Act 1995 (c. 25), Schedule 22, paragraph 118; and by S.I. 2013/755.

(141) Section 164 was amended by the Environment Act 1995 (c. 25), Schedule 22, paragraph 128; and by S.I. 2013/755.

(142) Section 167 was amended by the Planning Act 2008 (c. 29), Schedule 2, paragraph 50; and the Flood and Water Management Act 2010 (c. 29), section 41(1) and (2).

(143) Section 168 was amended by the Environment Act 1995 (c. 25), Schedule 22, paragraph 128.

(2) An exemption conferred by regulations under section 33A of the WRA, other than regulations referred to in paragraph (1)(c), does not apply in relation to any particular abstraction or impounding works unless the Environment Agency in relation to England or the Natural Resources Body for Wales in relation to Wales 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 paragraph (1) (a) to (h), the competent authority considers that any adverse effects of the plan or project on the integrity of a European site or a European offshore marine site would be avoided if the authorisation were subject to conditions, it may grant the authorisation, or cause it to be granted, subject to those conditions.

(4) Where, by virtue of paragraph (1)(g), the assessment provisions apply in relation to the granting of an authorisation by virtue of a consent under section 166 of the WIA or section 164 of the WRA, the section in question has effect as if in each case in subsection (3)—

- (a) in paragraph (a), for “seven” there were substituted “fourteen”; and
- (b) the words from “and, subject to” to the end were omitted.

(5) The review provisions apply to any authorisation mentioned in paragraph (1)(a), (b), (c), (d) or (h).

(6) Where, on the review of any such authorisation, the competent authority considers that any adverse effects on the integrity of a European site or a European offshore marine site of the carrying out or, as the case may be, the continuation of the activities authorised by it would be avoided by a variation of the authorisation, it may vary it, or cause it to be varied, accordingly.

(7) In this regulation—

- “the WIA” means the Water Industry Act 1991(144);
- “the WRA” means the Water Resources Act 1991(145).

### **Marine works**

**103.**—(1) The assessment provisions apply in relation to the granting of a licence, consent or other approval for marine works.

(2) Where the assessment provisions apply, the competent authority may, if it considers that any adverse effects of the plan or project on the integrity of a European site or a European offshore marine site would be avoided if the licence, consent or other approval were subject to conditions or requirements, grant the licence, consent or other approval subject to those conditions or requirements.

(3) The review provisions apply to any licence, consent or other approval for marine works.

(4) Where, on the review of any such licence, consent or other approval the competent authority considers that any adverse effects on the integrity of a European site or a European offshore marine site of the carrying out or, as the case may be, the continuation of activities authorised by it would be avoided by a variation of the licence, consent or other approval, it may vary it accordingly.

(5) In this regulation, “marine works” means—

- (a) any activity or proposed activity requiring—
  - (i) a marine licence under Part 4 of the Marine Act;

(144) 1991 c. 56.

(145) 1991 c. 57.

- (ii) a licence under Part 2 of the Food and Environment Protection Act 1985 (deposits in the sea)(**146**);
- (iii) an authorisation under the Aquatic Animal Health (England and Wales) Regulations 2009(**147**);
- (iv) an approval or consent for harbour works under legislation falling within paragraph (6); or
- (b) harbour works authorised by, and carried out in accordance with, any legislation falling within paragraph (6).
- (6) The legislation referred to in paragraph (5)(a)(iv) and (b) is—
  - (a) a local Act;
  - (b) such an Act read together with a notice given and published under section 9 of the Harbours Transfer Act 1862(**148**) (power to Admiralty to retain authority over ports, etc. where dockyards, etc. are situate); or
  - (c) an order made under section 14 (powers, on application of harbour authorities, or others, to make orders for securing harbour efficiency etc.) or 16 (powers, on application of intending undertakers, or others, to make orders conferring powers for improvement, construction, etc., of harbours) of the Harbours Act 1964(**149**).
- (7) In paragraph (5)(a)(iv) and (b), “harbour works” means—
  - (a) works involved in the construction of a harbour;
  - (b) works involving the making of modifications to an existing harbour;
  - (c) any dredging operation undertaken by or on behalf of a harbour authority within the meaning of the Harbours Act 1964(**150**); and
  - (d) works involving the deposit of spoil from any such dredging operation.

### **Derogations in relation to nitrate pollution prevention legislation**

- 104.**—(1) The assessment provisions apply in relation to the granting of a derogation under—
- (a) Part 8 of the Nitrate Pollution Prevention Regulations 2015(**151**); or
  - (b) Part 3A of the Nitrate Pollution Prevention (Wales) Regulations 2013(**152**).
- (2) Where the assessment provisions apply, the competent authority may, if it considers that any adverse effects of the plan or project on the integrity of a European site or a European offshore marine site would be avoided if the derogation were subject to conditions, grant the derogation, subject to those conditions.

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(**146**) 1985 c. 48. Part 2 was amended by the Environmental Protection Act 1990 (c. 43), sections 146 and 162 and Schedule 16, Part 8; and by the Marine Act 2009, section 112(1) and Schedule 8, paragraphs 2, 5 and 6. By virtue of these amendments, Part 2 of the Food and Environment Protection Act 1985 only applies to the Scottish inshore region. See section 322(1) for the definition of the “Scottish inshore region”.

(**147**) S.I. 2009/463.

(**148**) 1862 c. 69. Section 9 was amended by SR & O 1921/1804.

(**149**) 1964 c. 40; sections 14 and 16 were amended by the Transport Act 1981 (c. 56), Schedule 6, paragraphs 3 and 14 and Schedule 12; the Criminal Justice Act 1982 (c. 48), sections 37 and 46; the Transport and Works Act 1992 (c. 42), Schedule 3, paragraphs 1 and 2; the Planning Act 2008 (c. 29), Schedule 2, paragraphs 8, 9 and 10; and S.I. 2006/1177. Section 14 was additionally amended by S.I. 2009/1941. Section 16 was additionally amended by the Marine Act 2009, Schedule 21, paragraphs 1 and 2.

(**150**) See the definition of “harbour authority” in section 57(1).

(**151**) S.I. 2015/668. Part 8 was amended by S.I. 2016/1190.

(**152**) S.I. 2013/2506 (W. 245), Part 3A was inserted by S.I. 2015/2020 (W. 308).

## CHAPTER 8

## Land Use Plans

*Land use plans***Assessment of implications for European sites and European offshore marine sites**

**105.**—(1) Where a land use plan—

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

the plan-making authority for that plan must, before the plan is given effect, make an appropriate assessment of the implications for the site in view of that site’s conservation objectives.

(2) The plan-making authority must for the purposes of the assessment consult the appropriate nature conservation body and have regard to any representations made by that body within such reasonable time as the authority specifies.

(3) The plan-making authority must also, if it considers it appropriate, take the opinion of the general public, and if it does so, it must take such steps for that purpose as it considers appropriate.

(4) In the light of the conclusions of the assessment, and subject to regulation 107, the plan-making authority must give effect to the land use plan only after having ascertained that it will not adversely affect the integrity of the European site or the European offshore marine site (as the case may be).

(5) A plan-making authority must provide such information as the appropriate authority may reasonably require for the purposes of the discharge by the appropriate authority of its obligations under this Chapter.

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

- (a) a European site by reason of regulation 8(1)(c), or
- (b) a European offshore marine site by reason of regulation 18(c) of the Offshore Marine Conservation Regulations (site protected in accordance with Article 5(4) of the Habitats Directive).

**Assessment of implications for European site: neighbourhood development plans**

**106.**—(1) A qualifying body which submits a proposal for a neighbourhood development plan must provide such information as the competent authority may reasonably require for the purposes of the assessment under regulation 105 or to enable it to determine whether that assessment is required.

(2) In this regulation, “qualifying body” means a parish council, or an organisation or body designated as a neighbourhood forum, authorised for the purposes of a neighbourhood development plan to act in relation to a neighbourhood area as a result of section 61F of the TCPA 1990 (authorisation to act in relation to neighbourhood areas)(**153**), as applied by section 38C of the 2004 Planning Act (supplementary provisions)(**154**).

(3) Where the competent authority decides to revoke or modify a neighbourhood development plan after it has been made, it must for that purpose make an appropriate assessment of the implications for any European site likely to be significantly affected in view of that

(**153**) Section 61F was inserted by the Localism Act 2011 (c. 20), Schedule 9, paragraphs 1 and 2. It is prospectively amended by the Neighbourhood Planning Act 2017 (c. 20), section 5, from a date to be appointed.

(**154**) Section 38C was inserted the Localism Act 2011 (c. 20), Schedule 9, paragraphs 5 and 7.

site's conservation objectives; and regulation 105 and paragraph (1) apply with the appropriate modifications in relation to such a revocation or modification.

(4) This regulation applies in relation to England only.

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

**107.**—(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 or the European offshore marine site (as the case may be).

(2) Where the site concerned hosts a priority natural habitat type or a priority species, the reasons referred to in paragraph (1) must be either—

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

(3) 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, it may submit a written request to the appropriate authority—

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

(4) The appropriate authority—

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

(5) Where a plan-making authority other than the Secretary of State or the Welsh Ministers propose to give effect to a land use plan under this regulation notwithstanding a negative assessment of the implications for the site concerned it must—

- (a) notify the appropriate authority; and
- (b) not give effect to the land use plan before the end of the period of 21 days beginning with the day notified by the appropriate authority as that on which its notification was received, unless the appropriate authority notify it that it may do so.

(6) Without prejudice to any other power, the appropriate authority may give directions to the plan-making authority in any such case prohibiting it from giving effect to the land use plan, either indefinitely or during such period as may be specified in the direction.

### **Co-ordination for land use plan prepared by more than one authority**

**108.**—(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(155).

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(155) Section 28 was amended by the Local Democracy, Economic Development and Construction Act 2009 (c. 20), Schedule 5, paragraphs 12 and 16; and the Neighbourhood Planning Act 2017 (c. 20), section 9(1) and (5) to (7). It is prospectively amended by the Localism Act 2011 (c. 20), Schedule 8, paragraphs 7 and 11, and Schedule 25, Part 16, from a date to be appointed.

(2) Nothing in paragraph (1) of regulation 105 requires a local planning authority to assess any implications of a joint local development document or plan which would be more appropriately assessed under that provision by another local planning authority.

(3) The appropriate authority may issue guidance to local planning authorities for the purposes of regulation 105(1) as to the circumstances in which a local planning authority may or should adopt the reasoning or conclusions of another local planning authority as to whether a joint local planning document or plan—

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

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

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

(5) In determining whether a joint local development document or plan should be adopted under regulation 107, a local planning authority must seek and have regard to the views of the other local planning authorities concerned.

### **Compensatory measures**

**109.** Where in accordance with regulation 107 a land use plan is given effect notwithstanding a negative assessment of the implications for a European site or a European offshore marine site, the appropriate authority must secure that any necessary compensatory measures are taken to ensure that the overall coherence of Natura 2000 is protected.

### *Planning Act 2008*

### **National policy statements**

**110.**—(1) This Chapter applies—

(a) in relation to a national policy statement under Part 2 of the Planning Act 2008 (national policy statements)(**156**) as it applies in relation to a land use plan, and

(b) in relation to the Secretary of State when exercising powers under Part 2 of that Act as it applies in relation to a plan-making authority,

with the modifications specified in paragraphs (2) and (3).

(2) Any reference in this Chapter to giving effect to a land use plan, in relation to a national policy statement, is to be taken to be a reference to the designation of a statement as a national policy statement or an amendment of a national policy statement under Part 2 of the Planning Act 2008.

(3) Where this Chapter applies by virtue of paragraph (1)—

(a) regulations 105(5), 107(3) to (6) and 108 do not apply; and

(b) in regulation 109, the reference to the appropriate authority is taken to be a reference to the Secretary of State.

### *Interpretation of Chapter 8*

### **Interpretation of Chapter 8**

**111.**—(1) In this Chapter—



“the 1999 Act” means the Greater London Authority Act 1999**(157)**;

“the 2004 Planning Act” means the Planning and Compulsory Purchase Act 2004**(158)**;

“the 2005 Order” means the Planning and Compulsory Purchase Act 2004 (Commencement No. 3 and Consequential and Transitional Provisions) (Wales) Order 2005**(159)**;

“land use plan” means—

- (a) the spatial development strategy under section 334 of the 1999 Act (the spatial development strategy);
- (b) a local development document as provided for in Part 2 of the 2004 Planning Act (local development) other than a statement of community involvement under section 18 of that Act (statement of community involvement)**(160)**;
- (c) a local development plan as provided for in Part 6 of the 2004 Planning Act (Wales);
- (d) the Wales Spatial Plan under section 60 of the 2004 Planning Act (national development framework for Wales)**(161)**;
- (e) an alteration or replacement of a structure plan, unitary development plan, local plan, minerals local plan, or waste local plan under Part 2 of the TCPA 1990 (development plans)**(162)** to the extent permitted by Schedule 8 to the 2004 Planning Act (transitional provisions); or
- (f) (in England) a neighbourhood development plan as defined in section 38A of the 2004 Planning Act (neighbourhood development plans)**(163)**.

“plan-making authority” means—

- (a) the Mayor of London when exercising powers under section 341(1) or (2) of the 1999 Act (alteration or replacement);
- (b) an authority which, by virtue of Part 1 of the TCPA 1990 (planning authorities) or an order under section 29(2) of the 2004 Planning Act (joint committees), is a local planning authority;
- (c) the Secretary of State when exercising powers under—
  - (i) section 21 or section 27 of the 2004 Planning Act (intervention by the Secretary of State, Secretary of State’s default power, respectively); or
  - (ii) section 19, section 35A(4) or section 45 of the TCPA 1990 (approval of a unitary development plan, calling in of proposal for approval by the Secretary of State, approval of proposals by the Secretary of State, respectively)**(164)** to the extent permitted by Schedule 8 to the 2004 Planning Act;
- (d) the Welsh Ministers when exercising powers under—

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**(157)** 1999 c. 29.

**(158)** 2004 c. 5.

**(159)** S.I. 2005/1229 (W.87) (C.56), amended by S.I. 2005/2722 (W.193) (C.110).

**(160)** Section 18 was amended by the Planning Act 2008 (c. 29), section 180(1) and (4) and Schedule 13; the Localism Act 2011 (c. 20), Schedule 12, paragraphs 27 and 28; and the Neighbourhood Planning Act 2017 (c. 20), sections 6(1) to (3) and 13(1) and (2).

**(161)** Section 60 was substituted by the Planning (Wales) Act 2015 (anaw 4), section 3; and amended by the Environment (Wales) Act 2016 (anaw 3), Schedule 2, Part 1, paragraph 8(1) and (2).

**(162)** Sections 32 to 40 in Part 2 of the TCPA 1990 were substituted by the Planning and Compensation Act 1991 (c. 34), Schedule 4, paragraph; Part 2 of the TCPA 1990 was repealed by the 2004 Planning Act, Schedule 9, subject to transitional provisions contained in Schedule 8 to that Act.

**(163)** Section 38A was inserted by the Localism Act 2011 (c. 20), Schedule 9, paragraphs 5 and 7.

**(164)** Section 35A was inserted by the Planning and Compensation Act 1991 (c. 34), Schedule 4, paragraph 17; and repealed by the 2004 Planning Act, Schedule 9, subject to transitional provisions contained in Schedule 8 to that Act.

- (i) section 60(3), section 65 or section 71(4) of the 2004 Planning Act (national development framework for Wales, intervention by Assembly, Assembly’s default power, respectively); or
  - (ii) section 19 of the TCPA 1990 to the extent permitted by article 4 of the 2005 Order; or
  - (e) (in England) the local planning authority when exercising powers under Schedule 4B to the TCPA 1990 (as applied by section 38A(3) of the 2004 Planning Act).
- (2) References in this Chapter to giving effect to a land use plan are to—
- (a) the approval, under section 21(9) or 27(4) of the 2004 Planning Act, of a local development document;
  - (b) the adoption, under section 23 of the 2004 Planning Act (adoption of local development documents), of a local development document other than a statement of community involvement under section 18 of that Act;
  - (c) the publication, under section 341 of the 1999 Act, of alterations of the spatial development strategy or a new spatial development strategy to replace it;
  - (d) the publication, under section 60 of the 2004 Planning Act, of a revision of the Wales Spatial Plan;
  - (e) the adoption, under section 67 of the 2004 Planning Act (adoption of local development plan), of a local development plan;
  - (f) the approval, under section 65(9) or 71(4) of the 2004 Planning Act, of a local development plan;
  - (g) the adoption, under section 35(1) (adoption of proposals), or approval under section 35A(4) of the TCPA 1990, of an alteration or replacement of a structure plan to the extent permitted by paragraph 2(2) of Schedule 8 to the 2004 Planning Act;
  - (h) the adoption, under section 15 (adoption of unitary development plans by local planning authority)(**165**) and that provision as applied by section 21(2) (alteration or replacement of unitary development plans)(**166**) of the TCPA 1990, of an alteration or replacement of a unitary development plan to the extent permitted by paragraph 4 of Schedule 8 to the 2004 Planning Act;
  - (i) the approval, under section 19 and that provision as applied by section 21(2) of the TCPA 1990, of an alteration or replacement of a unitary development plan to the extent permitted by paragraph 4 of Schedule 8 to the 2004 Planning Act;
  - (j) the adoption, under section 43 (adoption of proposals)(**167**) or approval under section 45 of the TCPA 1990, of an alteration or replacement of a local plan, minerals local plan or waste local plan to the extent permitted by paragraph 9, 10 or 14 of Schedule 8 to the 2004 Planning Act;
  - (k) the adoption, under section 15 of the TCPA 1990, of a unitary development plan to the extent permitted by article 4 of the 2005 Order;
  - (l) the approval, under section 19 of the TCPA 1990, of a unitary development plan to the extent permitted by article 4 of the 2005 Order; or

(165) Section 15(1) was substituted by the Planning and Compensation Act 1991, Schedule 4, paragraph 6; and repealed by the 2004 Planning Act, Schedule 9, subject to transitional provisions contained in Schedule 8 to that Act.

(166) Section 21 was amended by the Planning and Compensation Act 1991, Schedule 4, paragraph 12 and Schedule 19; and repealed by the 2004 Planning Act, Schedule 9, subject to transitional provisions contained in Schedule 8 to that Act.

(167) Section 43 was amended by the Planning and Compensation Act 1991, Schedule 4, paragraph 19(1); and repealed by the 2004 Planning Act, Schedule 9, subject to transitional provisions contained in Schedule 8 to that Act.

- (m) (in England) the holding of a referendum in accordance with paragraph 12(4) of Schedule 4B to the TCPA 1990 (as applied by section 38A(3) of the 2004 Planning Act).

## CHAPTER 9

### MARINE POLICY STATEMENTS AND MARINE PLANS

#### **Marine policy statement**

**112.**—(1) Chapter 8 applies (with the modifications specified in paragraphs (2) and (3))—

- (a) in relation to a marine policy statement under Chapter 1 of Part 3 (marine planning) of the Marine Act as it applies in relation to a land use plan; and
- (b) in relation to a policy authority when exercising powers under Part 3 of that Act as it applies in relation to a plan-making authority.

(2) Any reference in Chapter 8 to giving effect to a land use plan, in relation to a marine policy statement, is to be taken to be a reference to the adoption and publication of a marine policy statement in accordance with Schedule 5 to the Marine Act or any amendment of a marine policy statement under section 47 of that Act.

(3) Where Chapter 8 applies by virtue of paragraph (1)—

- (a) in regulation 105(2), after “the appropriate nature conservation body” insert “and the Joint Nature Conservation Committee”;
- (b) regulations 105(5), 107(3) to (6) and 108 do not apply; and
- (c) in regulation 109, for the reference to the appropriate authority substitute a reference to the policy authority.

(4) In this regulation “policy authority” means the Secretary of State or the Welsh Ministers.

#### **Marine plan**

**113.**—(1) Chapter 8 applies (with the modifications specified in paragraphs (2) and (3))—

- (a) in relation to a marine plan as it applies in relation to a land use plan; and
- (b) in relation to a marine plan authority when exercising powers under Part 3 of the Marine Act as it applies in relation to a plan-making authority.

(2) Any reference in Chapter 8 to giving effect to a land use plan, in relation to a marine plan, is to be taken to be a reference to the adoption and publication of a marine plan in accordance with Schedule 6 to the Marine Act or any amendment of a marine plan under section 52 of that Act.

(3) Where Chapter 8 applies by virtue of paragraph (1), regulations 105(5), 107(3) to (6) and 108 do not apply.

(4) In this regulation—

“marine plan” means a marine plan under Chapter 2 of Part 3 of the Marine Act;

“marine plan authority” has the meaning given by Part 3 of the Marine Act.

## PART 7

### Enforcement

#### *Wildlife inspectors*

##### **Wildlife inspectors**

**114.**—(1) In this Part, “wildlife inspector” means a person authorised in writing under this regulation by the appropriate authority (but see regulation 141(6)).

(2) An authorisation under paragraph (1) is subject to any conditions or limitations specified in it.

#### *Powers of entry*

##### **Powers of entry: constables**

**115.**—(1) If a constable suspects with reasonable cause that any person is committing or has committed an offence specified in paragraph (4), the constable may, for the purposes of exercising the powers conferred by regulation 118, or arresting a person in accordance with section 24 of the Police and Criminal Evidence Act 1984 (arrest without warrant: constables)(**168**) for such an offence, enter any premises other than a dwelling.

(2) A constable may—

- (a) be accompanied by any other person that the constable considers necessary; and
- (b) bring any equipment or materials that the constable considers necessary.

(3) If a justice of the peace, on sworn information in writing, is satisfied that there are reasonable grounds for suspecting that an offence specified in paragraph (4) has been committed and that evidence of the offence may be found on any premises, the justice may by signed warrant authorise a constable to enter and search those premises for the purpose of obtaining that evidence.

(4) The offences specified for the purposes of this regulation are—

- (a) a species offence (see regulation 132);
- (b) an offence under regulation 54 (introduction of new species from ships);
- (c) an offence under regulation 59 (false statements made for obtaining licence); and
- (d) an offence under regulation 122(1) or (2).

##### **Powers of entry: wildlife inspectors**

**116.**—(1) A wildlife inspector may, at all reasonable hours, enter and inspect any premises other than a dwelling—

- (a) for the purpose of ascertaining whether a species offence is being or has been committed; or
- (b) for the purpose of verifying any statement or representation made, or document or information supplied, by an occupier of the premises in connection with an application for, or the holding of, a licence granted under regulation 55 (licences for certain activities relating to animals or plants).

(2) The power in paragraph (1) to enter and inspect premises includes power to board and inspect a ship within the marine area, subject to paragraphs (3) to (6).

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(168) 1984 c. 60; section 24 was substituted by the Serious Organised Crime and Police Act 2005 (c. 15), section 110(1).

- (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 must, if requested to do so, produce a duly authenticated authorisation document before entering any premises.
- (8) A wildlife inspector may be accompanied by a veterinary surgeon if the wildlife inspector has reasonable grounds for believing that such a person will be needed for the exercise of powers under regulation 120.
- (9) In this regulation—
- “the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs;
  - “flag state”, in relation to a ship, means the State whose flag that ship is flying or is entitled to fly;
  - “third country ship” means a ship which—
- (a) is flying the flag of, or is registered in, any State or territory (other than Gibraltar) which is not a member State; and
  - (b) is not registered in a member State.

**Powers of entry: other authorised persons**

- 117.**—(1) A person authorised in writing by the appropriate nature conservation body may, at all reasonable hours, enter any land except a dwelling—
- (a) to ascertain whether a special nature conservation order should be made under regulation 27 (power to make special nature conservation order), whether a stop notice should be served under paragraph (1) of regulation 28 (restriction on carrying out operations specified in order) or whether an offence under regulation 28(8) is being, or has been, committed on that land;
  - (b) to ascertain the amount of any compensation payable under regulation 30 (compensation for effect of stop notice) in respect of an interest in that land; or
  - (c) to affix a notice in accordance with regulation 28(3) or paragraph 2(5) of Schedule 1 (procedure in connection with special conservation orders).

(2) An officer of the Valuation Office or a person authorised in writing by the appropriate nature conservation body may enter any land for the purpose of surveying it, or of estimating its value, in connection with any claim for compensation under regulation 34 (compensation for effect of byelaws) in respect of that or any other land.

(3) A person authorised in writing by the authority having power to acquire land or an interest in land may enter that land for the purpose of surveying it in connection with the acquisition of that land or of any interest in that land, whether by agreement or compulsorily, in the exercise of any power conferred by these Regulations.

(4) A person authorised under this regulation must, if requested to do so, produce a duly authenticated authorisation document before entering any land.

(5) A person authorised under paragraph (1) may not demand admission as of right to any land which is occupied unless either—

- (a) 24 hours' notice of the intended entry has been given to the occupier; or
- (b) the purpose of the entry is to ascertain whether an offence under regulation 28(8) is being, or has been, committed on that land.

(6) A person authorised under paragraph (2) or (3) may not demand admission as of right to any land which is occupied unless at least 14 days' notice in writing of the intended entry has been given to the occupier.

#### *Powers of search etc.*

#### **Constables' powers of search, etc.**

**118.**—(1) If a constable suspects with reasonable cause that any person is committing or has committed an offence specified in paragraph (2), the constable may without warrant—

- (a) stop and search that person if the constable suspects with reasonable cause that evidence of the commission of the offence is to be found on that person;
- (b) search or examine anything which that person may be using or which is in that person's possession if the constable suspects with reasonable cause that evidence of the commission of the offence is to be found on that thing; or
- (c) seize and detain, for the purposes of proceedings in relation to an offence specified in paragraph (2), anything which may be evidence of the commission of the offence or may be liable to be forfeited under regulation 128.

(2) The offences specified for the purposes of this regulation are—

- (a) a species offence;
- (b) an offence under regulation 54 (introduction of new species from ships);
- (c) an offence under regulation 59 (false statements made for obtaining licence); and
- (d) an offence under regulation 122(1) or (2).

#### *Powers in relation to specimens and samples*

#### **Powers in relation to samples: constables**

**119.**—(1) If a constable suspects with reasonable cause that a specimen found in the exercise of powers conferred by this Part is one in respect of which an offence specified in paragraph (5) is being or has been committed, the constable may require a sample to be taken from the specimen.

(2) If a constable suspects with reasonable cause that an offence specified in paragraph (5) is being or has been committed in respect of any specimen (“the relevant specimen”), the constable may require any person to make available for the taking of a sample any other specimen in that person’s possession or control which is alleged to be, or the constable suspects with reasonable cause to be, a specimen a sample from which will tend to establish the identity or ancestry of the relevant specimen.

(3) Where a sample from a live animal or plant is to be taken, any person who has possession or control of the animal or plant must give the person taking the sample such assistance as that person may reasonably require for that purpose.

(4) This regulation is subject to regulation 121.

(5) The offences specified for the purposes of this regulation are—

- (a) a species offence;
- (b) an offence under regulation 59 (false statements made for obtaining licence), where that offence relates to the obtaining of a licence under regulation 55 (licences for certain activities relating to animals or plants); and
- (c) an offence under regulation 122(1) or (2).

#### **Powers in relation to specimens and samples: wildlife inspectors**

**120.**—(1) The powers conferred by this regulation are exercisable where a wildlife inspector has entered premises for a purpose mentioned in regulation 116(1)(a) or (b).

(2) The wildlife inspector, or accompanying veterinary surgeon, may—

- (a) for any such purpose, examine any specimen; and
- (b) subject to paragraph (3) and regulation 121, take a sample from it.

(3) No sample may be taken under paragraph (2) from a live animal or plant except for the purpose of establishing its ancestry or identity.

(4) The wildlife inspector may require an occupier of the premises to give such assistance as is reasonable in the circumstances for the purpose of—

- (a) making an examination under paragraph (2)(a); or
- (b) taking a sample under paragraph (2)(b).

(5) The wildlife inspector may take and remove from the premises a specimen which is not a live animal or plant, if there are reasonable grounds for believing that it is evidence of a species offence.

#### **Restrictions on taking samples from live specimens**

**121.**—(1) No sample may be taken by virtue of regulation 119 or 120 from a live animal except by a veterinary surgeon.

(2) No sample may be taken by virtue of those regulations from a live animal or plant unless the person taking it is satisfied on reasonable grounds that taking it will not cause lasting harm to the specimen.

### *Offences*

#### **Attempts and possession of means of committing offence**

**122.**—(1) A person who attempts to commit an offence specified in paragraph (3) is guilty of an offence and punishable in the same manner as for that offence.

(2) A person who, for the purposes of committing an offence specified in paragraph (3), is in possession of anything capable of being used for committing such an offence, is guilty of an offence and punishable in the same manner as for that offence.

(3) The offences specified for the purposes of this regulation are—

- (a) a species offence; and
- (b) an offence under regulation 59 (false statements made for obtaining licence), where that offence relates to the obtaining of a licence under regulation 55 (licences for certain activities relating to animals or plants).

### **Obstruction of persons exercising powers of entry under regulation 117**

**123.** A person who intentionally obstructs a person exercising powers under regulation 117 commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### **Obstruction in connection with constables' powers to take samples**

**124.**—(1) A person commits an offence if that person, without reasonable excuse, fails—

- (a) to make available any specimen in accordance with a requirement regulation 119(2); or
- (b) to give any assistance reasonably required under regulation 119(3).

(2) A person guilty of an offence under paragraph (1) is liable on summary conviction to a fine.

### **Offences in connection with wildlife inspectors' enforcement powers**

**125.**—(1) A person commits an offence if that person—

- (a) intentionally obstructs a wildlife inspector acting in the exercise of powers conferred by regulation 116 or 120(2) or (5); or
- (b) fails without reasonable excuse to give any assistance reasonably required under regulation 120(4).

(2) A person who, with intent to deceive, falsely pretends to be a wildlife inspector, commits an offence.

(3) A person guilty of an offence under paragraph (1) is liable on summary conviction to a fine.

(4) A person guilty of an offence under paragraph (2) is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine, or to both; or
- (b) on conviction on indictment, to imprisonment not exceeding two years or to a fine, or to both.

### *Codes of practice*

#### **Codes of practice**

**126.**—(1) The appropriate authority may—

- (a) issue a code of practice in connection with any of the provisions of regulations 114, 116, 120, 121, 124 and 125; and
- (b) revise or replace such a code.

(2) In discharging any function under the regulations specified in paragraph (1)(a)—



- (a) a wildlife inspector authorised by the Secretary of State must have regard to any relevant provision of a code issued by the Secretary of State;
  - (b) a wildlife inspector authorised by the Welsh Ministers must have regard to any relevant provision of a code issued by them.
- (3) But a wildlife inspector’s failure to have regard to any provision of a code does not make that inspector liable to criminal or civil proceedings.
- (4) A code—
- (a) is admissible in evidence in any proceedings; and
  - (b) must be taken into account by any court in any case in which it appears to the court to be relevant.

#### *Miscellaneous*

#### **Advice and assistance from nature conservation bodies**

**127.**—(1) The appropriate nature conservation body may advise or assist any constable or wildlife inspector in, or in connection with, enforcement action in relation to an offence specified in paragraph (2).

- (2) The offences specified for the purposes of this regulation are—
- (a) a species offence;
  - (b) an offence under regulation 59 (false statements made for obtaining licence), where that offence relates to the obtaining of a licence under regulation 55 (licences for certain activities relating to animals or plants); and
  - (c) an offence under regulation 122(1) or (2).

#### **Forfeiture**

- 128.**—(1) The court by which a person is convicted of an offence specified in paragraph (3)—
- (a) must order the forfeiture of any animal, plant or other thing in respect of which the offence was committed; and
  - (b) may order the forfeiture of any vehicle, animal, weapon or other thing which was used to commit the offence.
- (2) In paragraph (1)(b) “vehicle” includes any aircraft, hovercraft or boat.
- (3) The offences specified for the purposes of this regulation are—
- (a) a species offence;
  - (b) an offence under regulation 59 (false statements made for obtaining licence), where that offence relates to the obtaining of a licence under regulation 55 (licences for certain activities relating to animals or plants); and
  - (c) an offence under regulation 122(1) or (2).

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

**129.**—(1) For the purposes of conferring jurisdiction in any proceedings for the prosecution of an offence specified in paragraph (5), any such offence is deemed to have been committed in any place where the offender is found or to which the offender is first brought after the commission of the offence.

(2) Summary proceedings for such an offence may be commenced within the period of six months from the date on which the prosecutor first knows of evidence sufficient, in the prosecutor's opinion, to justify proceedings.

(3) But no such proceedings may be commenced more than two years after the commission of the offence.

(4) For the purposes of paragraph (2)—

- (a) a certificate signed by or on behalf of the prosecutor and stating the date on which the prosecutor first knew of evidence sufficient to justify the proceedings is conclusive evidence of that fact; and
- (b) a certificate stating that matter and purporting to be so signed is deemed to be so signed unless the contrary is proved.

(5) The offences specified for the purposes of this regulation are—

- (a) a species offence;
- (b) an offence under regulation 54 (introduction of new species from ships);
- (c) an offence under regulation 59 (false statements made for obtaining licence); and
- (d) an offence under regulation 122(1) or (2).

#### **Offences by bodies corporate etc.**

**130.**—(1) If an offence under these Regulations committed by a body corporate (other than a limited liability partnership or a Scottish partnership) is proved—

- (a) to have been committed with the consent or connivance of an officer, or
- (b) to be attributable to any neglect on the part of an officer,

the officer, as well as the body corporate, is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) If the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with the member's functions of management as it applies to an officer of a body corporate.

(3) If an offence under these Regulations committed by a partnership (including a limited liability partnership and a Scottish partnership) is proved—

- (a) to have been committed with the consent or connivance of a partner, or
- (b) to be attributable to any neglect on the part of a partner,

the partner, as well as the partnership, is guilty of the offence and liable to be proceeded against and punished accordingly.

(4) If an offence under these Regulations committed by an unincorporated body (other than an unincorporated partnership) is proved—

- (a) to have been committed with the consent or connivance of an officer of the body, or
- (b) to be attributable to any neglect on the part of such an officer,

the officer, as well as the body, is guilty of the offence and liable to be proceeded against and punished accordingly.

(5) In this regulation—

- “officer” includes a person purporting to act as an officer;
- “partner” includes a person purporting to act as a partner.

### **Application of criminal offences to the Crown**

**131.**—(1) No contravention by the Crown of any provision of these Regulations makes the Crown criminally liable, but the High Court may, on the application of any person appearing to the Court to have an interest, declare unlawful an act or omission of the Crown which constitutes such a contravention.

(2) Notwithstanding paragraph (1), these Regulations apply to persons in the public service of the Crown as they apply to any other person.

### *Interpretation of Part 7*

### **Interpretation of Part 7**

**132.** In this Part—

“premises” includes land (including buildings), movable structures, vehicles, vessels, aircraft and other means of transport;

a “species offence” means an offence under—

- (a) regulation 43 (protection of certain wild animals: offences);
- (b) regulation 45 (prohibition of certain methods of capturing or killing wild animals);
- (c) regulation 47 (protection of certain wild plants: offences); or
- (d) regulation 60 (offence of breaching licence condition).

## **PART 8**

### **Final Provisions**

### **Powers of drainage authorities**

**133.**—(1) Where the appropriate nature conservation body or any other person enters into an agreement with a drainage authority for the carrying out by that authority of any work on land in a European site, no limitation imposed by law on the capacity of the drainage authority by virtue of its constitution operates so as to prevent the authority carrying out the agreement.

(2) In paragraph (1) “drainage authority” means—

- (a) an internal drainage board<sup>(169)</sup>; or
- (b) the relevant environmental authority.

(3) In paragraph (2)(b), “the relevant environmental authority” means—

- (a) in relation to England, the Environment Agency;
- (b) in relation to Wales, the Natural Resources Body for Wales.

### **Advisory role of the Joint Nature Conservation Committee**

**134.**—(1) The Joint Nature Conservation Committee may provide advice or make representations to any competent authority in relation to—

- (a) any question as to whether that authority is obliged to carry out an appropriate assessment in relation to a European offshore marine site under these Regulations;

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<sup>(169)</sup>See section 1 of the Land Drainage Act 1991 (c. 59) for the meaning of “internal drainage board”.

- (b) any appropriate assessment on which that authority is obliged to consult the Committee under these Regulations;
- (c) any application made pursuant to regulation 77 and sent to the Committee by that authority pursuant to regulation 77(3);
- (d) any decision of the Secretary of State in respect of which notice has been served on the Committee under regulation 90(3)(b) or 94(3)(b); and
- (e) any decision of the appropriate authority in respect of which notice has been served on the Committee under regulation 98(3)(b).

(2) The Joint Nature Conservation Committee may undertake, commission or support (whether by financial means or otherwise) such research and scientific work as they consider is required for the purposes of providing advice or making representations under this regulation.

### **Advisory role of Natural England, the Natural Resources Body for Wales and Scottish Natural Heritage**

**135.**—(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 Natural Resources Body 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).

### **Research**

**136.**—(1) The appropriate authority must take such steps to encourage research and scientific work as it considers necessary—

- (a) having regard to the objectives in Article 2 (aims of the Directive), and the obligation in Article 11 (surveillance), of the Habitats Directive; and
- (b) for the purpose of the protection or management, and in relation to the use, of any population of wild birds.

(2) The appropriate authority must supply such information as it considers appropriate to the European Commission and, in the case of information supplied for the purposes of the Habitats

Directive, to member States, to further the proper co-ordination of research carried out the European Commission or by member States for the purposes of the Directives.

(3) In deciding what steps to take under paragraph (1), the appropriate authority must have particular regard to the need for research and scientific work—

- (a) on the subjects listed in Annex V to the new Wild Birds Directive (subjects for research); or
- (b) which may be required to implement Articles 4 and 10 of the Habitats Directive (classification of special protection areas, research, respectively).

### **Local inquiries**

**137.**—(1) The appropriate authority may cause a local inquiry to be held for the purposes of the exercise of any of its functions under these Regulations.

(2) The provisions of section 250(2) to (5) of the Local Government Act 1972(**170**) (which relate to evidence and costs in inquiries) apply in relation to an inquiry held under this regulation.

### **Notices**

**138.**—(1) Any notice required or authorised to be served under these Regulations to any person may be given by—

- (a) delivering it to the person;
- (b) leaving it at the person's proper address; or
- (c) sending it by post to the person at that address.

(2) Any such notice may—

- (a) in the case of a body corporate, be served on an officer of the body;
- (b) in the case of a limited liability partnership, Scottish partnership or unincorporated partnership, be served on a partner or a person having the control or management of the partnership business; and
- (c) in the case of an unincorporated body other than an unincorporated partnership, be served on an officer of that body.

(3) For the purposes of this regulation and section 7 of the Interpretation Act 1978(**171**) (service of documents by post) in its application to this regulation, the proper address of any person on whom a notice is to be served is—

- (a) in the case of a body corporate, the address of the registered or principal office of the body;
- (b) in the case of a limited liability partnership or a Scottish partnership, the address of the registered or principal office of the partnership;
- (c) in the case of an unincorporated partnership or any other unincorporated body, the address of the principal office of the partnership or body;
- (d) in the case of a person on whom the notice is served in reliance on paragraph (2), the proper address of the body corporate, partnership or other unincorporated body in question; and
- (e) in any other case, the last known address of the person in question.

(4) If a person on whom a notice is to be served under these Regulations has specified an address for service of such a notice, that address is also to be treated, for the purposes of this regulation and section 7 of the Interpretation Act 1978 in its application to this regulation, as that person's proper address.

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(**170**)1972 c. 70; section 250 was amended by the Criminal Justice Act 1982 (c. 48), sections 37, 38 and 46; the Housing and Planning Act 1986 (c. 63), Schedule 12, Part 3; and the Statute Law (Repeals) Act 1989 (c. 43).  
(**171**)1978 c. 30.

(5) If the name or address of any occupier of premises on whom a notice is to be served under these Regulations cannot, after reasonable inquiry, be ascertained, the notice may be served by leaving it conspicuously affixed to a building or object on the premises.

(6) This regulation is subject to any provision of these Regulations, or to any direction given under these Regulations, which relates to the service of any notice under these Regulations.

(7) This regulation does not apply to the service of any notice required or authorised to be served under the Acquisition of Land Act 1981(172), as applied by these Regulations (see regulation 36 (powers of compulsory acquisition)).

(8) In this regulation—

- (a) “body corporate” does not include a limited liability partnership or a Scottish partnership; and
- (b) references to serving include references to similar expressions (such as giving or sending).

### **Consequential Amendments**

**139.** Schedule 6 (which makes amendments to legislation) has effect.

### **Revocations**

**140.** Schedule 7 (revocations) has effect.

### **Transitional provisions**

**141.**—(1) Any licence granted for any purpose by Natural England, the Countryside Council for Wales, the Natural Resources Body for Wales or the Marine Management Organisation before 30th November 2017 under regulation 53(1) or (4) or 54 of the 2010 Regulations (licences for certain activities relating to animals or plants, licences for the introduction of new species, respectively), or which immediately before that date has effect as if it were granted by any of those bodies under any of those provisions(173), is to have effect from that date as a licence granted for that purpose under regulation 55(1) or (4) or 56 of these Regulations, respectively.

(2) Any application for a licence made before 30th November 2017 under regulation 53(1) or (4) or 54 of the 2010 Regulations, or which immediately before that date is treated as made under any of those provisions(174), and which (in either case) is not determined or withdrawn before that date, is to be treated as an application made under regulation 55(1), or (4) or 56 of these Regulations, respectively.

(3) Any agreement previously entered into by Natural England, the Countryside Council for Wales or the Natural Resources Body for Wales under regulation 16 of the 2010 Regulations (management agreements), or having effect as if it had been entered into by any of those bodies under that provision(175), which is in force immediately before 30th November 2017 has effect as if it were a management agreement entered into by Natural England or the Natural Resources Body for Wales (as the case may be) under regulation 20 (management agreements) of these Regulations.

(4) Any management scheme previously established by any of the relevant authorities under regulation 36 of the 2010 Regulations (management scheme for European marine site)(176) which is in force immediately before 30th November 2017 has effect as if it were a management scheme established by the authority in question under regulation 38 (management scheme for European marine site) of these Regulations.

(172) 1981 c. 67.

(173) See regulation 134(1) of the 2010 Regulations.

(174) See regulation 134(2) of the 2010 Regulations.

(175) See regulations 17 and 134(5) of the 2010 Regulations.

(176) Regulation 36(1) was amended by S.I. 2012/1927.

- (5) Any byelaw—
- (a) made under section 20 of the 1949 Act as applied by virtue of regulation 30 of the 2010 Regulations (power to make byelaws)(**177**),
  - (b) to which regulation 33 of those Regulations (continuation in force of existing byelaws) applies; or
  - (c) made under regulation 38 of the 2010 Regulations (European marine sites: byelaws and orders)(**178**),

and which is in force immediately before 30th November 2017, has effect as if it were a byelaw made under section 20 of the 1949 Act (byelaws for protection of nature reserves) as applied by virtue of regulation 32 (power to make byelaws), or under regulation 40 (European marine sites: byelaws and orders) of these Regulations, respectively.

(6) An authorisation of a wildlife inspector under regulation 108 of the 2010 Regulations (wildlife inspectors), is to have effect as if granted under regulation 114 of these Regulations (wildlife inspectors).

### **Review: England**

**142.**—(1) The Secretary of State, in relation to England, must from time to time—

- (a) carry out a review of the regulatory provision contained in these Regulations; and
- (b) publish a report setting out the conclusions of the review.

(2) The first review must be published before 30th November 2022.

(3) Subsequent reviews must be carried out at intervals of not exceeding 5 years.

(4) Section 30(3) of the Small Business, Enterprise and Employment Act 2015(**179**) requires that a review carried out under this regulation must, so far as is reasonable, have regard to how the Directives are implemented in other member States.

(5) Section 30(4) of the Small Business, Enterprise and Employment Act 2015 requires that a review carried out under this regulation must, in particular—

- (a) set out the objectives intended to be achieved by the regulatory provision referred to in paragraph (1)(a);
- (b) assess the extent to which those objectives are achieved;
- (c) assess whether those objectives remain appropriate; and
- (d) if those objectives remain appropriate, assess the extent to which they could be achieved in another way which involves less onerous regulatory provision.

(6) In this regulation, “regulatory provision” has the same meaning as in sections 28 to 33 of the Small Business, Enterprise and Employment Act 2015 (see section 32 of that Act).

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

(**178**) Regulation 38(5) was revoked by S.I. 2012/1927.

(**179**) 2015 c. 2; section 30(3) was amended by the Enterprise Act 2016 (c. 12), section 19.

30th October 2017

*Thérèse Coffey*  
Parliamentary Under Secretary of State  
Department for Environment, Food and Rural  
Affairs

25th October 2017

*Lesley Griffiths*  
Cabinet Secretary for Environment and Rural  
Affairs One of the Welsh Ministers