

SCHEDULE 1

Regulation 22

PART IVA to be inserted in the Conservation (Natural Habitats, &c.) Regulations 1994

“PART IVA

APPROPRIATE ASSESSMENTS FOR LAND USE PLANS

Interpretation

85A.—(1) In this Part—

“the 1997 Planning Act” means the Town and Country Planning (Scotland) Act 1997⁽¹⁾;

“land use plan” means an alteration or replacement of a structure plan or local plan as provided for in Part II of the 1997 Planning Act;

“plan making authority” means—

- (a) a planning authority;
- (b) the Loch Lomond and the Trossachs National Park Authority⁽²⁾ and the Cairngorms National Park Authority⁽³⁾;
- (c) the Scottish Ministers when exercising powers under section 10 (approval or rejection of structure plans), section 19 (approval of plans or proposals) and section 22 (default powers of the Scottish Ministers) of the 1997 Planning Act;

“planning authority” has the meaning given in section 1 of the 1997 Planning Act.

(2) References in this Part to giving effect to a land use plan are to—

- (a) the adoption by a planning authority, the Loch Lomond and the Trossachs National Park Authority or the Cairngorms National Park Authority of a local plan under section 17 of the 1997 Planning Act;
- (b) the approval by the Scottish Ministers of a structure plan under section 10 or a local plan under section 19 of the 1997 Planning Act.

Assessment of implications for European site

85B.—(1) Where a land use plan—

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

the plan-making authority for that land use plan shall, before the plan is given effect, make an appropriate assessment of the implications for the site in view of that site’s conservation objectives.

(1) 1997 c. 8.

(2) The Loch Lomond and the Trossachs National Park Authority was established by the Loch Lomond and the Trossachs National Park Designation, Transitional and Consequential Provisions (Scotland) Order 2002 (S.S.I. 2002/201). The functions of planning authorities under the Town and Country Planning (Scotland) Act 1997 in relation to local plans are transferred to and exercisable by the Loch Lomond and the Trossachs National Park Authority in terms of Article 7 of that Order.

(3) The Cairngorms National Park Authority was established by the Cairngorms National Park Designation, Transitional and Consequential Provisions (Scotland) Order 2003 (S.S.I. 2003/1). The functions of planning authorities under the Town and Country Planning (Scotland) Act 1997 in relation to local plans are transferred to and exercisable by the Cairngorms National Park Authority in terms of Article 7 of that Order.

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

(3) The plan-making authority shall, if it considers it appropriate, take the opinion of the general public, and in doing so, shall take such steps for that purpose as it considers appropriate.

(4) In the light of the conclusions of the assessment, and subject to regulation 85C (considerations of overriding public interest), the plan-making authority shall give effect to the land use plan only after having ascertained that it will not adversely affect the integrity of the European site.

(5) A plan-making authority other than the Scottish Ministers shall provide such information as the Scottish Ministers may reasonably require—

- (a) to enable the Scottish Ministers to determine whether an assessment under paragraph (1) is required; or
- (b) for the purposes of an assessment under paragraph (1).

(6) This regulation does not apply in relation to a site which is a European site by reason only of regulation 10(1)(c)..

Considerations of overriding public interest

85C.—(1) If the plan making authority is satisfied that, there being no alternative solutions, the land use plan must be given effect for imperative reasons of overriding public interest (which subject to paragraph (2), may be of a social or economic nature), it may give effect to the land use plan notwithstanding a negative assessment of the implications for the European site.

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

- (a) reasons relating to human health, public safety or beneficial consequences of primary importance to the environment; or
- (b) any other reasons of overriding public interest provided the competent authority has had regard to the opinion of the European Commission in satisfying themselves that there are such reasons.

(3) Where a plan-making authority, other than the Scottish Ministers, desires to obtain the opinion of the European Commission as to whether reasons are to be considered imperative reasons of overriding public interest, it shall submit a written request to the Scottish Ministers—

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

(4) The Scottish Ministers may seek the opinion of the European Commission and shall transmit the opinion to the plan-making authority.

(5) Where a plan-making authority other than the Scottish Ministers proposes to give effect to a land use plan under this regulation notwithstanding a negative assessment of the implications for a European site, it shall notify the Scottish Ministers.

(6) Having notified the Scottish Ministers under paragraph (5), the authority in question shall not give effect to the land use plan before the end of the period of 21 days beginning with the day notified to it by the Scottish Ministers as that on which the notification was received by them, unless the Scottish Ministers notify the authority that it may do so.

(7) Without prejudice to any other power, the Scottish Ministers may give directions to the plan making authority prohibiting it from giving effect to the land use plan, either indefinitely or during such period as may be specified in the direction.

Co-ordination for land use plan prepared by more than one planning authority

85D.—(1) This regulation applies where two or more planning authorities prepare a joint structure plan under section 5 or joint local plan under section 11 of the 1997 Planning Act.

(2) Nothing in regulation 85B(1) requires a planning authority to assess any implications of a joint structure plan or joint local plan which would be more appropriately assessed under that provision by another planning authority.

(3) The Scottish Ministers may issue guidance to planning authorities for the purposes of regulation 85B(1) as to the circumstances in which a planning authority may or should adopt the reasoning or conclusions of another planning authority as to whether a joint structure plan or a joint local plan—

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

(4) The planning authorities involved shall have regard to any guidance issued under paragraph (3) in discharging their functions under regulation 85B(1).

(5) In determining whether a joint structure or local plan should be adopted under regulation 85C(1) a planning authority shall seek and have regard to the views of other planning authorities involved.

Compensatory measures

85E. Where in accordance with regulation 85C a land use plan is given effect, notwithstanding a negative assessment of the implications for a European site, the Scottish Ministers shall secure that any necessary compensatory measures are taken to ensure that the overall coherence of Natura 2000 is protected.”.