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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations implement, in relation to projects for the use of uncultivated land and semi-natural areas in England for intensive agricultural purposes, Council Directive [85/337/EEC](#) (as last amended by Council Directive [97/11/EEC](#)) on the assessment of the effects of certain public and private projects on the environment and Council Directive [1992/43/EEC](#) (as last amended by Council Directive [97/62/EC](#)) on the conservation of natural habitats and of wild fauna and flora (“the Habitats Directive”) insofar as it applies to such projects.

The definition of “project” identifies those activities which are subject to the requirements of the Regulations. Regulation 4 prevents any projects from being undertaken unless a screening decision is first obtained. The screening decision determines whether the project is one which is likely to have significant effects on the environment (which will include a project likely to have a significant effect on a European site within the meaning of the Conservation (Natural Habitats, &c.) Regulations 1994 (as amended) (“the Habitats Regulations”). A project which has been so determined is defined as a “relevant project” in the Regulations. The screening decision must be reached in accordance with the selection criteria set out in Schedule 1 of the Regulations. The procedural requirements in respect of screening decisions are set out in Regulation 5.

Regulation 6 prohibits a relevant project from being carried out without consent first having been obtained from the Secretary of State.

Regulation 7 entitles the prospective applicant for consent to obtain an opinion from the Secretary of State as to the information which will be required as part of the environmental statement to accompany the application for consent.

Regulation 8 requires the environmental bodies referred to provide any relevant information in their possession to the applicant for consent.

Regulations 9 and 10 contain the procedural requirements for the application for consent. The application is required to include the environmental statement which is defined as a statement which includes the information in Part II of Schedule 2 to the Regulations and such of the information in Part I of Schedule 2 as is reasonably required to assess the environmental effects of the project.

Regulation 11 contains provisions for notifying other States which are parties to the Agreement on the European Economic Area of projects likely to have environmental effects on those States and for giving them the opportunity to make representations in respect of such projects. It also contains provisions for consideration of the effects of projects in other EEA States which are notified to the Secretary of State as being likely to have environmental effects on England.

Regulation 12 specifies how decisions under the Regulations are to be made in respect of projects partly located in England and partly in Wales or partly in England and partly in Scotland.

Regulation 13 prescribes how the Secretary of State should decide whether to grant consent for a project. It requires her to take into account all of the information and representations provided in accordance with the Regulations.

Under Regulation 13(3) the Secretary of State may not grant consent for a project which would involve activities prohibited under those provisions of the Habitats Regulations which implement Articles 12, 13, 15 and 16 (requirements for protection of species) of the Habitats Directive.

Paragraphs (4) to (9) of this regulation implement the requirements to be met before consent can be granted for a project which is likely to have a significant effect on a European site. Although the

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same information and representations need to be taken into account, insofar as they may be relevant, as with any other project, there are specific tests to be met. These specific tests implement Article 6(3) of the Habitats Directive. The provisions in these Regulations are similar to those in the Habitats Regulations which apply to other consent regimes.

Regulation 13(11) specifies mandatory conditions to which the consents are required to be subject to ensure that consents are implemented and that further consent is required for works which are materially different from those permitted.

Regulation 13(12) contains procedural requirements to be complied with in granting or refusing consent.

Regulation 13(13) reproduces the provisions in the Wildlife and Countryside Act 1981 which apply where a competent authority intends to grant consent for any project which consists of an operation likely to damage a site of special scientific interest against the advice of English Nature.

Regulation 14 and Schedule 3 implement Article 6(2) of the Habitats Directive by ensuring that any decisions taken in accordance with the Regulations before the designation of a European site which would permit a project to be carried out which would adversely affect the integrity of the site are reviewed and revoked or modified as necessary.

An applicant for a screening decision or for consent for a relevant project (or a person interested in a project subject to a revocation or modification under the review provisions contained in Schedule 3) may appeal against an adverse decision to the Secretary of State. An appellant is entitled to be heard by a person appointed by the Secretary of State for the purpose which hearing may take the form of a local inquiry if the Secretary of State so decides. The general appeal provisions are contained in regulation 15 and Schedule 4 and the procedures for determination by written representations and by hearing or local inquiry are contained in regulations 16 and 17 respectively.

Persons aggrieved by decisions allowing projects to take place may apply to the High Court for a review of those decisions within six weeks of the decision being published (regulation 18).

Persons who carry on projects without first obtaining either a negative screening decision or consent for the project, or who act in breach of conditions imposed on a consent, commit an offence under the Regulations. It is also an offence under the Regulations to make false or misleading statements in order to obtain a particular decision.

If the Secretary of State wishes to ensure that unauthorised activities are stopped with immediate effect, she can serve a stop notice on the person carrying out the activities or on any person with an interest in the land upon which the activities are taking place. Non-compliance with the stop notice is an offence (regulation 23).

Regulation 24 contains a power for the Secretary of State to serve a notice requiring a person she believes to be responsible for committing an offence to reinstate the land to its former condition. An appeal against a reinstatement notice lies to the Magistrates' Court. Failure to comply with the requirements of a reinstatement notice is an offence.

Regulation 25 contains powers of entry in connection with carrying out the functions of the Secretary of State under the Regulations and includes the power to inspect and take copies of records. Powers are also provided to enter land for the purpose of carrying out works of reinstatement following non-compliance with a reinstatement notice.

A Transposition Note has been prepared for these Regulations and a copy has been placed in the library of each House of Parliament. Copies of the Transposition Note can be obtained from EIA Unit, Rural Development Service, DEFRA, Coley Park, Reading, RG1 6DT.

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