

## SCHEDULE 1

Regulation 5(55)

### Part IVA of the 1994 Regulations

#### “PART IVA

#### APPROPRIATE ASSESSMENTS FOR LAND USE PLANS FOR ENGLAND AND WALES

##### **Interpretation**

**85A.**—(1) This Part extends to England and Wales only.

(2) In this Part—

“the 1990 Act” means the Town and Country Planning Act 1990 <sup>M1</sup>;

“the 1999 Act” means the Greater London Authority Act 1999 <sup>M2</sup>;

“the 2004 Planning Act” means the Planning and Compulsory Purchase Act 2004 <sup>M3</sup>;

“the 2005 Order” means the Planning and Compulsory Purchase Act 2004 (Commencement No.3 and Consequential, Transitional and Saving Provisions) (Wales) Order 2005 <sup>M4</sup>;

“land use plan” means—

- (a) the regional spatial strategy under Part 1 (regional functions) of the 2004 Planning Act;
- (b) the spatial development strategy under section 334 (the spatial development strategy) of the 1999 Act;
- (c) a local development document as provided for in Part 2 (local development) of the 2004 Planning Act other than a statement of community involvement under section 18 (statement of community involvement) of that Act;
- (d) a local development plan as provided for in Part 6 (Wales) of the 2004 Planning Act;
- (e) the Wales Spatial Plan under section 60 (Wales Spatial Plan) of the 2004 Planning Act;
- (f) an alteration or replacement of a structure plan, unitary development plan, local plan, minerals local plan, or waste local plan under Part 2 (development plans) of the 1990 Act <sup>M5</sup> to the extent permitted by Schedule 8 (transitional provisions) to the 2004 Planning Act; or
- (g) a unitary development plan as provided for in Part 2 of the 1990 Act to the extent permitted by section 122(3) (regulations and orders) of the 2004 Planning Act and article 4 of the 2005 Order;

“plan-making authority” means—

- (a) a regional planning body recognised by the Secretary of State under section 2(1) (regional planning bodies) of the 2004 Planning Act;
- (b) the Mayor of London when exercising powers under section 341(1) or (2) (alteration or replacement) of the 1999 Act;
- (c) an authority which, by virtue of Part 1 (planning authorities) of the 1990 Act or an order under section 29(2) (joint committees) of the 2004 Planning Act, is a local planning authority;
- (d) the Secretary of State when exercising powers under—

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- (i) section 21 (intervention by Secretary of State) or section 27 (Secretary of State's default power) of the 2004 Planning Act; or
    - (ii) section 19(1) (approval of a unitary development plan by the Secretary of State), section 35A(4) (calling in of proposal for approval by the Secretary of State) or section 45(1) (approval of proposals by the Secretary of State) of the 1990 Act <sup>M6</sup> to the extent permitted by Schedule 8 to the 2004 Planning Act; or
  - (e) the Welsh Ministers when exercising powers under—
    - (i) section 60(3), section 65 (intervention by Assembly) or section 71(4) (Assembly's default power) of the 2004 Planning Act; or
    - (ii) under section 19(1) of the 1990 Act to the extent permitted by section 122(3) of the 2004 Planning Act and article 4 of the 2005 Order.
- (3) References in this Part to giving effect to a land use plan are to—
- (a) the publication, under section 9(6) (RSS: further procedure) of the 2004 Planning Act, of a revision of a regional spatial strategy;
  - (b) the approval, under section 21(9) or section 27(4) of the 2004 Planning Act, of a local development document;
  - (c) the adoption, under section 23 (adoption of local development documents) of the 2004 Planning Act, of a local development document other than a statement of community involvement under section 18 (statement of community involvement) of that Act;
  - (d) the publication, under section 341 (alteration or replacement) of the 1999 Act, of alterations of the spatial development strategy or a new spatial development strategy to replace it;
  - (e) the publication, under section 60 (Wales Spatial Plan) of the 2004 Planning Act, of a revision of the Wales Spatial Plan;
  - (f) the adoption, under section 67 (adoption of local development plan) of the 2004 Planning Act, of a local development plan;
  - (g) the approval, under section 65(9) or section 71(4) of the 2004 Planning Act, of a local development plan;
  - (h) the adoption, under section 35(1) (adoption of proposals), or approval under section 35A(4) of the 1990 Act, of an alteration or replacement of a structure plan to the extent permitted by paragraph 2(2) of Schedule 8 to the 2004 Planning Act;
  - (i) the adoption, under section 15(1) (adoption of unitary development plans by local planning authority) <sup>M7</sup> and that provision as applied by section 21(2) (alteration or replacement) <sup>M8</sup> of the 1990 Act, of an alteration or replacement of a unitary development plan to the extent permitted by paragraph 4(1) of Schedule 8 to the 2004 Planning Act;
  - (j) the approval, under section 19(1) and that provision as applied by section 21(2) of the 1990 Act, of an alteration or replacement of a unitary development plan to the extent permitted by paragraph 4(1) of Schedule 8 to the 2004 Planning Act;
  - (k) the adoption, under section 43(1) (adoption of proposals) <sup>M9</sup> or approval under section 45(1) of the 1990 Act, of an alteration or replacement of a local plan or a minerals local plan or waste local plan to the extent permitted by paragraph 9(1), 10(1) or 14 of Schedule 8 to the 2004 Planning Act;

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- (l) the adoption, under section 15(1) of the 1990 Act, of a unitary development plan to the extent permitted by section 122(3) of the 2004 Planning Act and article 4 of the 2005 Order; or
- (m) the approval, under section 19(1) of the 1990 Act, of a unitary development plan to the extent permitted by section 122(3) of the 2004 Planning Act and article 4 of the 2005 Order.

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

**85B.**—(1) Where a land use plan—

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

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

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

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

(4) In the light of the conclusions of the assessment, and subject to regulation 85C (considerations of overriding public interest), the plan-making authority or, in the case of a regional spatial strategy, the Secretary of State shall give effect to the land use plan only after having ascertained that it will not adversely affect the integrity of the European site or the European offshore marine site (as the case may be).

(5) A plan-making authority shall provide such information as the Secretary of State or the Welsh Ministers may reasonably require for the purposes of the discharge of the obligations of the Secretary of State or the Welsh Ministers under this Part.

(6) This regulation does not apply in relation to a site which is—

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

#### **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 (3), may be of a social or economic nature), they may give effect to the land use plan notwithstanding a negative assessment of the implications for the European site or the European offshore marine site (as the case may be).

(2) In relation to a regional spatial strategy under Part 1 (regional functions) of the 2004 Planning Act, paragraph (1) applies to the Secretary of State as it applies to a plan-making authority in the case of any other land use.

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

- (a) reasons relating to human health, public safety or beneficial consequences of primary importance to the environment, or

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- (b) any other imperative reasons of overriding public interest, provided that the competent authority has had due regard to the opinion of the European Commission in satisfying themselves that there are such reasons.

(4) Where a plan-making authority, other than the Secretary of State or the Welsh Ministers, desire to obtain the opinion of the European Commission as to whether reasons are to be considered imperative reasons of overriding public interest, they shall submit a written request to the Secretary of State for a plan relating to England and to the Welsh Ministers for a plan relating to Wales—

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

(5) The Secretary of State may, if he thinks fit, seek the opinion of the European Commission for—

- (a) a plan relating to England; or
- (b) at the request of the Welsh Ministers, a plan relating to Wales.

(6) The Secretary of State shall send any opinion obtained under paragraph (5) to—

- (a) in the case of a plan relating to England, the plan-making authority, and
- (b) in the case of a plan relating to Wales, the Welsh Ministers.

(7) The Welsh Ministers shall, upon receiving the opinion, transmit it to the plan-making authority.

(8) Where a plan-making authority, other than the Secretary of State or the Welsh Ministers, propose to give effect to a land use plan under this regulation, they shall notify—

- (a) the Secretary of State, if the plan relates to England; or
- (b) the Welsh Ministers, if the plan relates to Wales.

(9) The plan-making authority shall not give effect to the land use plan before the end of the period of 21 days beginning with the day notified by the Secretary of State or the Welsh Ministers as that on which their notification was received, unless—

- (a) the Secretary of State, in relation to a plan relating to England, or
- (b) the Welsh Ministers, in relation to a plan relating to Wales,

notifies them that they may do so.

(10) Without prejudice to any other power, the Secretary of State (in relation to a plan relating to England), or the Welsh Ministers (in relation to a plan relating to Wales), may give directions to the authority in any such case prohibiting them from giving effect to the land use plan, either indefinitely or during such period as may be specified in the direction.

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

**85D.**—(1) The following provisions apply where two or more local planning authorities prepare a joint local development document under section 28 (joint local development documents) or a joint local development plan under section 72 (joint local development plans) of the 2004 Planning Act.

(2) Nothing in paragraph (1) of regulation 85B (assessment of implications for European site or European offshore marine site) requires a local planning authority to assess any implications of a joint local development document or plan which would be more appropriately assessed under that provision by another local planning authority.

(3) The Secretary of State (in relation to England) and the Welsh Ministers (in relation to Wales) may issue guidance to local planning authorities for the purposes of regulation 85B(1)

as to the circumstances in which an authority may or should adopt the reasoning or conclusions of another authority as to whether a joint local planning document or plan—

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

(4) The local planning authorities concerned shall have regard to any such guidance.

(5) In determining whether a joint local development document or plan should be adopted under regulation 85C (considerations of overriding public interest), a local planning authority shall seek and have regard to the views of the other local planning authorities concerned.

### Compensatory measures

**85E.** Where in accordance with regulation 85C (considerations of overriding public interest) a land use plan is given effect notwithstanding a negative assessment of the implications for a European site or European offshore marine site, the Secretary of State (where the plan relates to England) and the Welsh Ministers (where the plan relates to Wales) shall secure that any necessary compensatory measures are taken to ensure that the overall coherence of Natura 2000 is protected.”

#### Marginal Citations

- M1** 1990 c.8.
- M2** 1999 c.29.
- M3** 2004 c.5.
- M4** S.I. 2005/1229 (W.87) (C.56) has been amended. See, the [Planning and Compulsory Purchase Act 2004 \(Commencement No. 4 and Consequential, Transitional and Savings Provisions\) \(Wales\) Order 2005 \(S.I. 2005/2722\) \(W.193\) \(C.110\)](#) and the [Planning and Compulsory Purchase Act 2004 \(Commencement No.4 and Consequential, Transitional and Savings Provisions\) \(Wales\) \(Amendment\) Order 2006 \(S.I. 2006/842\) \(W.77\)](#).
- M5** Sections 32 to 40 in Part 2 of the 1990 Act were substituted by section 27 of, and paragraph 17 of Schedule 4 to, the [Planning and Compulsory Purchase Act 1991 \(c.34\)](#). Part 2 of the 1990 Act was repealed by section 120 of, and Schedule 9 to, the [Planning and Compulsory Purchase Act 2004](#), subject to transitional provisions in section 119 of, and Schedule 8 to, that Act.
- M6** The functions of the Secretary of State under sections 19(1), 35A(4) and 45(1) were, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales by the [National Assembly for Wales \(Transfer of Functions\) Order 1999 \(S.I. 1999/672\)](#), [article 2](#); see entry in Schedule 1 for the [Town and Country Planning Act 1990](#). Section 35A was inserted by section 27 of, and paragraphs 1 and 17 of Schedule 4 to, the [Planning and Compensation Act 1991 \(c.34\)](#). By virtue of paragraphs 30 and 32 of Schedule 11 to the [Government of Wales Act 2006 \(c. 32\)](#), the relevant functions were transferred from the National Assembly for Wales to the Welsh Ministers.
- M7** As substituted by section 27 of, and paragraphs 1 and 6 of Schedule 4 to, the [Planning and Compensation Act 1991 \(c.34\)](#).
- M8** As amended by sections 27 and 84(6) of, and paragraph 12(2) of Schedule 4 and Schedule 19 to, the [Planning and Compensation Act 1991 \(c.34\)](#).
- M9** As amended by section 27 of, and paragraphs 1 and 19(1) of Schedule 4 to, the [Planning and Compensation Act 1991 \(c.34\)](#).

**Changes to legislation:**

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