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STATUTORY INSTRUMENTS

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**2010 No. 490**

The Conservation of Habitats and Species Regulations 2010

**PART 6**

ASSESSMENT OF PLANS AND PROJECTS

CHAPTER 1

GENERAL PROVISIONS

*Introductory provisions*

**Interpretation of Part 6**

**59.** In this Part—

- (a) “the assessment provisions” means regulations 61 (assessment of implications for European sites and European offshore marine sites) and 62 (considerations of overriding public interest); <sup>F1</sup>...
- (b) “the review provisions” means regulations 63 (review of existing decisions and consents) and 64 (consideration on review).

[<sup>F2</sup>(c) any reference to—

- (i) 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
- (ii) directing that planning permission is deemed to be granted,

is to be taken, in relation to any authorisation which is capable of being varied or modified, to include a reference to the variation or modification of such a consent, permission or authorisation; and]

[<sup>F2</sup>(d) the reference in regulation 61(1) to deciding to undertake a plan or project is to be taken to include a reference to deciding to vary any plan or project undertaken or to be undertaken by the competent authority.]

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**Textual Amendments**

**F1** Word in [reg. 59\(a\)](#) omitted (6.4.2011) by virtue of [The Conservation of Habitats and Species \(Amendment\) Regulations 2011 \(S.I. 2011/625\)](#), regs. 1(1), **6(a)**

**F2** [Reg. 59\(c\)\(d\)](#) inserted (6.4.2011) by [The Conservation of Habitats and Species \(Amendment\) Regulations 2011 \(S.I. 2011/625\)](#), regs. 1(1), **6(b)**

**Application of provisions of Chapter 1**

**60.**—[<sup>F3</sup>(1) The requirements of the assessment provisions and the review provisions apply—

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- (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 61(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 65 to 67.

#### **Textual Amendments**

**F3** Reg. 60(1) substituted (16.8.2012) by [The Conservation of Habitats and Species \(Amendment\) Regulations 2012 \(S.I. 2012/1927\)](#), regs. 1(1), **19**

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

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

**61.**—(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 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 them 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 specify.

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

(5) In the light of the conclusions of the assessment, and subject to regulation 62 (considerations of overriding public interest), 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 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 they propose that the consent, permission or other authorisation should be given.

[<sup>F4</sup>(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 15(c) of the 2007 Regulations; or
- (c) a plan or project to which any of the following apply—
  - (i) the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001 (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,
- (iii) the Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, or
- (iv) the Merchant Shipping (Ship-to-Ship Transfers) Regulations 2010.]

(8) Where a plan or project requires an appropriate assessment both under this regulation and under the 2007 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 [F5the United Kingdom], provided that an assessment made for the purpose of this regulation and the 2007 Regulations assesses the effects of the plan or project as a whole.

#### Textual Amendments

- F4** Reg. 61(7) substituted (16.8.2012) by [The Conservation of Habitats and Species \(Amendment\) Regulations 2012 \(S.I. 2012/1927\)](#), regs. 1(1), **20(a)**
- F5** Words in reg. 61(8) substituted (16.8.2012) by [The Conservation of Habitats and Species \(Amendment\) Regulations 2012 \(S.I. 2012/1927\)](#), regs. 1(1), **20(b)**

#### Considerations of overriding public interest

**62.**—(1) If the competent authority are 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), they 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, consider to be imperative reasons of overriding public interest.

(3) Where a competent 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 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 propose to agree to a plan or project under this regulation notwithstanding a negative assessment of the implications for the site concerned—

- (a) they must notify the appropriate authority; and

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(b) they 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 their notification was received, unless the appropriate authority notify them that they 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 them 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**

**63.**—(1) Where before the date on which a site becomes a European site or a European offshore marine site a competent authority have decided to undertake, or have given any consent, permission or other authorisation for, a plan or project to which regulation 61(1) would apply if it were to be reconsidered as of that date, the authority must, as soon as reasonably practicable—

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

(2) They 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 61(2) to (4) 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**

**64.**—(1) The following provisions apply where a decision, or a consent, permission or other authorisation, falls to be reviewed under regulation 63.

(2) Subject as follows, the provisions of regulations 61(5) and (6) and 62 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 them, 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**

**65.**—(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 61(1) or 63(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 61 to 64 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 62 (considerations of overriding public interest), 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**

**66.** Where in accordance with regulation 62 (considerations of overriding public interest)—

- (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 61 to 66 in certain cases**

**67.—**(1) Where any provision of regulations 61 to 66 (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) paragraphs (1)(e)(i) and (2) of regulation 68 (grant of planning permission) in so far as those provisions relate to a direction given by the Secretary of State under section 90 <sup>M1</sup> of the TCPA 1990 (development with government authorisation) that planning permission is deemed to be granted; and
- (b) regulations 81 and 82 (development consent under Planning Act 2008 <sup>M2</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;

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- (b) for any reference to the Welsh Ministers, substitute a reference to the Scottish Ministers; and
- (c) for any reference to the appropriate authority—
  - (i) in a case where the competent authority for the purposes of a provision specified in paragraph (4) are 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 68—
    - (i) paragraph (1)(e)(ii) and (iii) (deemed grant of planning permission under section 57(2) of the Town and Country Planning (Scotland) Act 1997 <sup>M3</sup> and section 5(1) of the Pipe-lines Act 1962 <sup>M4</sup>), and
    - (ii) paragraph (2) in so far as that paragraph relates to paragraph (1)(e)(ii) and (iii) of that regulation;
  - (b) Chapter 4 (electricity); and
  - (c) Chapter 5 (pipe-lines).
- (5) Where a general provision applies in relation to regulation 100 (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,
    - <sup>F6</sup>(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 100(6)(c);]
  - (c) the grant of any application of a kind mentioned in sub-paragraph (a) or (b)<sup>F7</sup>; or]
  - <sup>F8</sup>(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 100(6)(c).]
- (7) In paragraph (6)—
  - (a) “authorisation” means any licence, consent or other approval; and
  - (b) <sup>F9</sup>“marine works” and “harbour works” have] the same meaning as in regulation 100.
- <sup>F10</sup>(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—

- (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.]

#### Textual Amendments

- F6** Reg. 67(6)(b)(iii) substituted (6.4.2011) by [The Conservation of Habitats and Species \(Amendment\) Regulations 2011 \(S.I. 2011/625\)](#), regs. 1(1), **7(a)**
- F7** Words in reg. 67(6)(c) substituted (6.4.2011) by [The Conservation of Habitats and Species \(Amendment\) Regulations 2011 \(S.I. 2011/625\)](#), regs. 1(1), **7(b)**
- F8** Reg. 67(6)(d) inserted (6.4.2011) by [The Conservation of Habitats and Species \(Amendment\) Regulations 2011 \(S.I. 2011/625\)](#), regs. 1(1), **7(c)**
- F9** Words in reg. 67(7)(b) substituted (16.8.2012) by [The Conservation of Habitats and Species \(Amendment\) Regulations 2012 \(S.I. 2012/1927\)](#), regs. 1(1), **21(a)**
- F10** Reg. 67(8) added (16.8.2012) by [The Conservation of Habitats and Species \(Amendment\) Regulations 2012 \(S.I. 2012/1927\)](#), regs. 1(1), **21(b)**

#### Marginal Citations

- M1** Relevant amendments were made to section 90 by the [Environment Act 1995 \(c. 25\)](#), **paragraph 32(4)** of Schedule 10, and the [Transport and Works Act 1992 \(c. 42\)](#), **section 16(1)**.
- M2** [2008 c. 29](#).
- M3** [1997 c. 8](#).
- M4** [1962 c. 58](#); section 5(1) was amended by [S.I. 1999/742](#), **paragraph 2(3)** of the Schedule.

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