

---

STATUTORY INSTRUMENTS

---

**2017 No. 1012**

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

**PART 6**

**Assessment of plans and projects**

**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)(1), as applied by section 38C of the 2004 Planning Act (supplementary provisions)(2).

(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 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

(1) 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.

(2) Section 38C was inserted the Localism Act 2011 (c. 20), Schedule 9, paragraphs 5 and 7.

- (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<sup>(3)</sup>.

(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.

---

(3) 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.