

SCHEDULE 3

Regulations 13(3) and 24

NATURAL HABITATS

Definitions

1.—(1) In this Schedule, “Natura 2000” means the European network of special areas of conservation, and special protection areas designated under the Wild Birds Directive, provided for by Article 3(1) of the Habitats Directive.

(2) For the purposes of paragraphs 3 and 4 of this Schedule, the definition of “European site” in regulation 2 is extended by the insertion of the following paragraph—

- “(e) a site hosting a priority natural habitat type or priority species in respect of which consultation has been initiated under Article 5(1) of the Habitats Directive, during the consultation period or pending a decision of the Council under Article 5(3).”

Provision for the protection of European sites: new dredging projects

2.—(1) This paragraph applies in relation to every project in respect of which the Welsh Ministers have determined under regulation 6, 13(1) or 18(3) that it would constitute a habitats project.

(2) A person applying under regulation 10, or under regulation 18, must provide such information as the Welsh Ministers may reasonably require for the purposes of the assessment under regulation 13(3) or that regulation as applied by regulation 19(3).

(3) For the purposes of the assessment, the Welsh Ministers must take appropriate scientific advice.

(4) The Welsh Ministers may also take appropriate steps to obtain the opinion of the public for the purposes of the assessment.

(5) In the light of the conclusion of the assessment, and subject to sub-paragraphs (7) and (8) below, the Welsh Ministers may grant permission for the project only after having ascertained that it will not, either alone or in combination with other plans or projects, adversely affect the integrity of the European site.

(6) In considering whether a project will adversely affect the integrity of the site, the Welsh Ministers must have regard to—

- (a) the manner in which it is proposed to be carried out; and
- (b) any conditions or restrictions subject to which it is proposed that the permission should be granted.

(7) Where the Welsh Ministers consider that any adverse effects of the project on the integrity of an European site would be avoided if the permission were subject to conditions, permission can only be granted subject to those conditions.

(8) If the Welsh Ministers are satisfied that, there being no alternative solutions, the project must be carried out for imperative reasons of overriding public interest (which, subject to sub-paragraph (9), may be of a social or economic nature), permission may be granted for the project notwithstanding a negative assessment of the implications for the site.

(9) Where the site concerned hosts a priority natural habitat type or a priority species, the reasons referred to in sub-paragraph (8) must be either—

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

- (b) other reasons of overriding public interest, provided the Welsh Ministers have had due regard to the opinion of the European Commission in concluding that there are such reasons.

Provision for the protection of European sites: review of existing permissions

3.—(1) Where —

- (a) before the date on which a site becomes a European site, the Welsh Ministers have granted permission under these Regulations for a project which the Welsh Ministers consider would have constituted a habitats project had the European site been designated at the date when the application for the permission was determined; and
- (b) none of the circumstances mentioned in sub-paragraph (2) apply,

the Welsh Ministers must, as soon as reasonably practicable after the date on which the site becomes a European site, review the permission.

(2) The circumstances referred to in sub-paragraph (1)(b) are—

- (a) the dredging to which the permission relates has been completed before the site became a European site;
- (b) the permission was granted subject to a condition as to the period within which the dredging to which it relates was to be begun and that period has expired without the dredging having been begun, and the permission is no longer capable of implementation without being varied by the Welsh Ministers; and
- (c) the permission was granted for a limited period and that period has expired.

(3) The Welsh Ministers must, for the purpose of reviewing the permission, make an appropriate assessment of the implications of the dredging for the site in view of its conservation objectives; and the provisions of sub-paragraphs (3), (4), (5) and (6) of paragraph 2 apply, with appropriate modifications, in relation to such a review.

(4) Where a permission is reviewed under this regulation, the Welsh Ministers may request the owner or the holder of the permission, as the case may be, to provide, within a specified period, any additional information which the Welsh Ministers require in order to carry out the review and, if that information is not provided within the period specified, or such further period as the Welsh Ministers may allow, the Welsh Ministers may revoke the permission without completing the review.

(5) Having reviewed a permission under this paragraph, the Welsh Ministers must—

- (a) affirm or vary it in accordance with sub-paragraph (6), (7) or (8); or
- (b) in any other case, revoke it.

(6) The permission may be affirmed if the Welsh Ministers are satisfied that the project will not adversely affect the integrity of the European site.

(7) The permission may be varied if the Welsh Ministers are satisfied that any adverse effects on the integrity of the European site of the carrying out or, as the case may be, the continuation of the project, would be avoided by a variation of the permission.

(8) Subject to sub-paragraph (10), if the Welsh Ministers are satisfied that, there being no alternative solutions, the project must be carried out for imperative reasons of overriding public interest (which, except in cases to which sub-paragraph (9) applies, may be of a social or economic nature), the permission may be affirmed notwithstanding a negative assessment of the implications for the site.

(9) Where the site concerned hosts a priority natural habitat type or a priority species, the reasons referred to in sub-paragraph (8) must be —

- (a) reasons relating to human health, public safety or beneficial consequences of primary importance to the environment; or
- (b) other reasons of overriding public interest, provided the Welsh Ministers have had due regard to the opinion of the European Commission in concluding that there are such reasons.

(10) The Welsh Ministers must not affirm a permission under sub-paragraph (8) in any case where sub-paragraph (6) or (7) applies.

(11) Nothing in this paragraph affects anything done under the permission before the date on which the site became a European site.

Provision for the protection of European sites: review of existing agreements

4.—(1) As soon as reasonably practicable after commencement, the Welsh Ministers must serve on the parties to each agreement to which sub-paragraph (2) applies a notice specifying a date for the purposes of sub-paragraph (5).

(2) This sub-paragraph applies to any written agreement —

- (a) entered into by an owner before commencement; and
- (b) which the Welsh Ministers consider relates to dredging which constitutes a habitats project.

(3) As soon as reasonably practicable after a site becomes a European site, the Welsh Ministers must serve on the parties to each agreement to which sub-paragraph (4) applies, a notice specifying a date for the purposes of sub-paragraph (5).

(4) This sub-paragraph applies to any agreement —

- (a) entered into by an owner before commencement; and
- (b) which the Welsh Ministers consider relates to dredging which constitutes a habitats project as a result of—
 - (i) the designation of the European site, or
 - (ii) a proposal by the Welsh Ministers that a site be designated as a special area of conservation for the purposes of meeting the United Kingdom’s obligations under Article 4(1) of the Habitats Directive.

(5) On and after the date specified in a notice under sub-paragraph (1) or (3), the agreement has effect for all purposes as a permission granted as the result of an application under regulation 10 and which it is the Welsh Ministers' duty to review under paragraph 3.

Procedure on review

5.—(1) Where, on a review under paragraph 3 or 4, the Welsh Ministers propose to revoke or vary a permission granted, or having effect as if granted, under these Regulations, the Welsh Ministers must serve notice on —

- (a) the owner;
- (b) any holder of the permission, or the part affected, as the case may be; and
- (c) any other person who, in the Welsh Ministers' opinion, will be affected by the revocation or variation,

informing them of the decision and specifying a period, being not less than 28 days from the date of the notice (“the specified period”), within which representations may be made in relation to that decision.

Status: This is the original version (as it was originally made).

(2) The Welsh Ministers must also serve notice on any person or body from which scientific advice was obtained, informing them of the decision and inviting their representations within the specified period.

(3) If, within the specified period, a person on whom notice has been served under sub-paragraph (1) so requires, the Welsh Ministers must, before deciding whether to proceed with the revocation or variation, give—

- (a) to that person; and
- (b) to any other person or body on whom notice was served under that sub-paragraph or sub-paragraph (2),

an opportunity to make representations (whether in person or in writing) to a person appointed by the Welsh Ministers for the purpose.

(4) The Welsh Ministers must decide, having regard, in particular, to—

- (a) any representations made in response to a notice served under sub-paragraph (1) or (2); and
- (b) if applicable, the report of any person appointed under sub-paragraph (3),

whether to proceed with the revocation or variation of the permission.

(5) The Welsh Ministers must serve on any person on whom notice was served under—

- (a) sub-paragraph (1); or
- (b) sub-paragraph (2),

notice of the decision under sub-paragraph (4) stating —

- (i) the main reasons for the decision,
- (ii) the main considerations on which the decision is based, and
- (iii) that the decision may be challenged and the procedures for doing so.

Effect of Welsh Ministers' decision on review

6.—(1) Where the Welsh Ministers propose, under paragraph 5(1), to revoke or vary a permission granted, or having effect as if granted, under these Regulations, the permission will be suspended or the variation will take effect temporarily, as the case may be, subject to sub-paragraph (2), on the date on which notice is served under paragraph 5(1).

(2) Where more than one notice is served under paragraph 5(1) in respect of the same revocation or variation, and those notices are served on different days, the suspension or temporary variation will take effect on the date on which the last of them is served.

(3) Where the Welsh Ministers decide not to proceed with the revocation or variation of the permission under paragraph 5(4), it will again have effect, or have effect on the terms on which that permission was effective prior to the temporary variation, as the case may be, from the date of the Welsh Ministers' decision not so to proceed.

(4) In relation to a permission to which sub-paragraph (3) applies—

- (a) where the Welsh Ministers have decided not to revoke the permission—
 - (i) any period specified in the permission for the taking of any action, which expires after the date on which the permission was suspended under sub-paragraph (1) or sub-paragraph (2), will be treated as extended by a period equal to that during which the permission was suspended, and
 - (ii) where a permission requires anything to be done by a specified date, which falls after the date upon which the permission was suspended, the specified date will be postponed by a period equal to that during which the permission was suspended;
- (b) where the Welsh Ministers have decided not to vary the permission—

- (i) any period specified in the permission for the taking of any action, which expires after the date on which the permission was varied temporarily under sub-paragraph (1) or (2), will, if the action relates to matters which are affected by the temporary variation, be treated as extended by a period equal to that during which the permission had effect as varied, and
- (ii) where a permission requires any action to be taken by a specified date which falls after the date on which the permission was varied temporarily, the specified date will, if the action relates to matters which are affected by the temporary variation, be postponed by a period equal to that during which the permission had effect as varied.

(5) A revocation or variation under paragraph 5(1), or the suspension or temporary variation of a permission under sub-paragraph (1), will not affect anything done under the permission before the date determined in accordance with that sub-paragraph or, as the case may be, sub-paragraph (2).

Compensatory measures

7. Where —

- (a) a project is granted permission, notwithstanding a negative assessment of the implications for a European site; or
- (b) a permission is affirmed on review, notwithstanding such an assessment,

the Welsh Ministers must secure that any necessary compensatory measures are taken to ensure that the overall coherence of Natura 2000 is protected and must ensure that the European Commission is informed of the compensatory measures taken.