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STATUTORY INSTRUMENTS

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**1994 No. 2716**

**The Conservation (Natural Habitats, &c.) Regulations 1994**

**PART II**

**CONSERVATION OF NATURAL HABITATS AND HABITATS OF SPECIES**

*Special nature conservation orders*

**Power to make special nature conservation order**

**22.**—(1) The Secretary of State may, after consultation with the appropriate nature conservation body, make in respect of any land within a European site an order (a “special nature conservation order”) specifying operations which appear to him to be likely to destroy or damage the flora, fauna, or geological or physiographical features by reason of which the land is a European site.

(2) A special nature conservation order may be amended or revoked by a further order.

(3) Schedule 1 has effect with respect to the making, confirmation and coming into operation of special nature conservation orders and amending or revoking orders.

(4) A special nature conservation order in relation to land in England and Wales is a local land charge.

(5) A special nature conservation order in relation to land in Scotland shall be registered either—

(a) in a case where the land affected by the order is registered in that Register, in the Land Register of Scotland; or

(b) in any other case, in the appropriate Division of the General Register of Sasines.

(6) A report submitted by a nature conservation body to the Secretary of State under paragraph 20 of Schedule 6 to the Environmental Protection Act 1990(1) or section 10(2) of the Natural Heritage (Scotland) Act 1991(2) shall set out particulars of any land in their area as respects which a special nature conservation order has come into operation during the year to which the report relates.

**Restriction on carrying out operations specified in order**

**23.**—(1) No person shall carry out on any land within a European site in respect of which a special nature conservation order is in force any operation specified in the order, unless the operation is carried out, or caused or permitted to be carried out, by the owner or occupier of the land and—

(a) one of them has, after the making of the order, given the appropriate nature conservation body written notice of a proposal to carry out the operation, specifying its nature and the land on which it is proposed to carry it out, and

(b) one of the conditions specified in paragraph (2) is fulfilled.

(2) Those conditions are—

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(1) 1990 c. 43.

(2) 1991 c. 28.

- (a) that the operation is carried out with the written consent of the appropriate nature conservation body;
  - (b) that the operation is carried out in accordance with the terms of a management agreement.
- (3) A person who, without reasonable excuse, contravenes paragraph (1) commits an offence and is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine.
- (4) For the purposes of paragraph (3) it is a reasonable excuse for a person to carry out an operation—
- (a) that the operation was an emergency operation particulars of which (including details of the emergency) were notified to the appropriate nature conservation body as soon as practicable after the commencement of the operation; or
  - (b) that the operation was authorised by a planning permission granted on an application under Part III of the Town and Country Planning Act 1990 or Part III of the Town and Country Planning (Scotland) Act 1972.

#### **Supplementary provisions as to consents**

24.—(1) Where it appears to the appropriate nature conservation body that an application for consent under regulation 23(2)(a) relates to an operation which is or forms part of a plan or project which—

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

they shall make an appropriate assessment of the implications for the site in view of that site's conservation objectives.

(2) In the light of the conclusions of the assessment, they may give consent for the operation only after having ascertained that the plan or project will not adversely affect the integrity of the site.

(3) Where the appropriate nature conservation body refuse consent in accordance with paragraph (2) they shall give reasons for their decision.

(4) The owner or occupier of the land in question may—

- (a) within two months of receiving notice of the refusal of consent, or
- (b) if no notice of a decision is received by him within three months of an application for consent being made,

by notice in writing to the appropriate nature conservation body require them to refer the matter forthwith to the Secretary of State.

(5) If on the matter being referred to the Secretary of State he is 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 (6), may be of a social or economic nature), he may direct the appropriate nature conservation body to give consent to the operation.

(6) Where the site concerned hosts a priority natural habitat type or a priority species, the reasons referred to in paragraph (5) must be either—

- (a) reasons relating to human health, public safety or beneficial consequences of primary importance to the environment, or
- (b) other reasons which in the opinion of the European Commission are imperative reasons of overriding public interest.

(7) Where the Secretary of State directs the appropriate nature conservation body to give consent under this regulation, he shall secure that such compensatory measures are taken as are necessary to ensure that the overall coherence of Natura 2000 is protected.

(8) This regulation does not apply in relation to a site which is a European site by reason only of regulation 10(1)(c) (site protected in accordance with Article 5(4)).

### **Compensation for effect of order**

**25.**—(1) Where a special nature conservation order is made, the appropriate nature conservation body shall pay compensation to any person having at the time of the making of the order an interest in land comprised in an agricultural unit comprising land to which the order relates who, on a claim made to the appropriate nature conservation body within the time and in the manner prescribed by regulations, shows that the value of his interest is less than it would have been if the order had not been made.

(2) For this purpose an “agricultural unit” means land which is occupied as a unit for agricultural purposes, including any dwelling–house or other building occupied by the same person for the purpose of farming the land.

(3) No claim for compensation shall be made under this regulation in respect of an order unless the Secretary of State has given notice under paragraph 6(1) or (2) of Schedule 1 of his decision in respect of the order.

### **Restoration where order contravened**

**26.**—(1) Where a person is convicted of an offence under regulation 23, the court by which he is convicted may, in addition to dealing with him in any other way, make an order requiring him to carry out, within such period as may be specified in the order, such operations for the purpose of restoring the land to its former condition as may be so specified.

(2) An order under this regulation made on conviction on indictment shall be treated for the purposes of section 30 of the Criminal Appeal Act 1968(3) (effect of appeals on orders for the restitution of property) as an order for the restitution of property.

(3) In the case of an order under this regulation made by a magistrates' court the period specified in the order shall not begin to run—

- (a) in any case until the expiration of the period for the time being prescribed by law for the giving of notice of appeal against a decision of a magistrates' court;
- (b) where notice of appeal is given within the period so prescribed, until determination of the appeal.

(4) At any time before an order under this regulation has been complied with or fully complied with, the court by which it was made may, on the application of the person against whom it was made, discharge or vary the order if it appears to the court that a change in circumstances has made compliance or full compliance with the order impracticable or unnecessary.

(5) If a person fails without reasonable excuse to comply with an order under this regulation, he commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale; and if the failure continues after conviction, he may be proceeded against for a further offence from time to time until the order is complied with.

(6) If, within the period specified in an order under this regulation, any operations specified in the order have not been carried out, the appropriate nature conservation body may enter the land and carry out those operations and recover from the person against whom the order was made any expenses reasonably incurred by them in doing so.

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(3) 1968 c. 19; section 30 was substituted by paragraph 28 of Schedule 15 to the Criminal Justice Act 1988 (c. 33).

- (7) In the application of this regulation to Scotland—
- (a) paragraphs (2) and (3) shall not apply, and
  - (b) for the purposes of any appeal or review, an order under this regulation is a sentence.

**Continuation in force of existing orders, &c.**

27.—(1) Where an order is in force under section 29 of the Wildlife and Countryside Act 1981(4) (special protection for certain areas of special scientific interest) in relation to land which on or after the commencement of these Regulations becomes land within a European site, the order shall have effect as if made under regulation 22 above.

(2) Any notice previously given under section 29(4)(a)(5) (notice by owner or occupier of proposal to carry out operation) shall have effect as if given under regulation 23(1)(a) and, if the appropriate nature conservation body have neither given nor refused consent, shall be dealt with under these Regulations.

(3) Any consent previously given under section 29(5)(a) shall be reviewed by the appropriate nature conservation body as regards its compatibility with the conservation objectives of the site, and may be modified or withdrawn.

(4) Notice of any such modification or withdrawal of consent shall be given to every owner and occupier of land within the site who in the opinion of the appropriate nature conservation body may be affected by it; and the modification or withdrawal shall come into force in relation to an owner or occupier upon such notice being given to him.

(5) The modification or withdrawal of a consent shall not affect anything done in reliance on the consent before the modification or withdrawal takes effect.

(6) Section 29(5)(c), (6) and (7) shall cease to apply and the carrying out, or continuation, of any operation on land within a European site which is not otherwise authorised in accordance with these Regulations shall be subject to the prohibition in regulation 23(1).

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(4) 1981 c. 69.

(5) Section 29(4)(a) was amended by paragraph 11(9) and (10) of Schedule 9 to the Environmental Protection Act 1990 (c. 43).