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STATUTORY INSTRUMENTS

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**2007 No. 1842**

**The Offshore Marine Conservation  
(Natural Habitats, &c.) Regulations 2007**

**PART 2**

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

*Plans and projects*

**Meaning of “European site” in these Regulations**

**24.—(1)** — In these Regulations a “European site” means any of the following located in the United Kingdom—

- (a) a special area of conservation;
- (b) a site of Community importance which has been placed on the list referred to in the third sub-paragraph of Article 4(2) of the Habitats Directive;
- (c) 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 mentioned in Article 5(2) or pending a decision of the Council under Article 5(3);
- (d) a site classified as a special protection area pursuant to Article 4(1) or (2) of the Wild Birds Directive; and
- (e) a site which has been proposed to the Commission by the Secretary of State or any of the devolved administrations as a site eligible for designation as a special area of conservation for the purposes of meeting the United Kingdom’s obligations under Article 4(1) of the Habitats Directive, until such time as—
  - (i) it is placed on the list of sites of Community importance referred to in the third sub-paragraph of Article 4(2) of the Habitats Directive, or
  - (ii) agreement is reached or a decision is taken pursuant to Article 4(2) of that Directive that the site is not to be placed on that list.

(2) For the purposes of paragraph (1), where consultation is initiated by the Commission in accordance with Article 5(1) of the Habitats Directive with respect to a site in the United Kingdom hosting a priority natural habitat type or priority species, and—

- (a) it is agreed between the Commission and the Secretary of State, within the six-month period mentioned in Article 5(2) of the Habitats Directive, that the site should be selected as a site of Community importance; or
- (b) the Council, acting on a proposal from the Commission in pursuance of Article 5(2) of the Habitats Directive, decides that the site should be so selected,

the site is to be treated as having been placed on the list referred to in the third sub-paragraph of Article 4(2) of the Habitats Directive as from the date of the agreement referred to in sub-paragraph (a) or the decision referred to in sub-paragraph (b).

(3) In this regulation “the United Kingdom” means the United Kingdom (including its internal waters) and the territorial sea adjacent to the United Kingdom.

### **Protection of European offshore marine sites and European sites**

**25.**—(1) Before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project which—

- (a) is to be carried out on or in any part of the waters or on or in any part of the seabed or subsoil comprising the offshore marine area, or on or in relation to an offshore marine installation,
- (b) is likely to have a significant effect on a European offshore marine site or a European site (either alone or in combination with other plans or projects), and
- (c) is not directly connected with or necessary to the management of the site,

a competent authority must make an appropriate assessment of the implications for the site in view of that site’s conservation objectives.

(2) A person applying to a competent authority for any consent, permission or other authorisation for a plan or project in the offshore marine area must provide such information as the competent authority may reasonably require—

- (a) to enable it to determine whether an assessment under paragraph (1) is required; or
- (b) for the purposes of an assessment under paragraph (1).

(3) The competent authority must for the purposes of the assessment—

- (a) where it relates to a European offshore marine site, consult the Joint Nature Conservation Committee;
- (b) where it relates to a European site in England, consult Natural England;
- (c) where it relates to a European site in Wales, consult the Countryside Council for Wales;
- (d) where it relates to a European site in Scotland, consult Scottish Natural Heritage;
- (e) where it relates to a European site in Northern Ireland, consult the Department of the Environment in Northern Ireland; and
- (f) if it considers it appropriate, take the opinion of the general public and if it does so, take such steps for that purpose as it considers appropriate.

(4) In the light of the conclusions of the assessment, and subject to regulation 26, the competent authority may agree to the plan or project only if it has ascertained that it will not adversely affect the integrity of the European offshore marine site or European site (as the case may be).

(5) In considering whether a plan or project will adversely affect the integrity of a site, the competent authority must have regard to the manner in which it is proposed to be carried out and to any conditions or restrictions subject to which the competent authority proposes that the consent, permission or other authorisation should be given.

(6) This regulation does not apply in relation to—

- (a) a site which is a European offshore marine site by reason of regulation 15(c);
- (b) a site which is a European site by reason of regulation 24(1)(c);
- (c) the giving of any Petroleum Act approval, Petroleum Act authorisation, Petroleum Act consent, or Petroleum Act licence; or

(d) any project to which paragraph 2 of Schedule 3 to the Environmental Impact Assessment and Natural Habitats (Extraction of Minerals by Marine Dredging) (England and Northern Ireland) Regulations 2007(1) applies.

(7) Subject to paragraph (8), where a plan or project requires an appropriate assessment both under this regulation and under the 1994 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 the offshore marine area, provided that an assessment made for the purposes of this regulation and the 1994 Regulations assesses the effects of the plan or project as a whole.

(8) Paragraph (7) does not apply to assessments under this regulation carried out by competent authorities whose functions are exercisable solely in or as regards Scotland.

(9) In this regulation—

“England” includes so much of the internal waters and territorial sea of the United Kingdom as are not part of Northern Ireland, Scotland or Wales;

“Northern Ireland” has the same meaning as in the Northern Ireland Act 1998(2); and

“Wales” has the same meaning as in section 158(1) of the Government of Wales Act 2006(3).

### **Considerations of overriding public interest**

**26.**—(1) If it is satisfied that, there being no alternative solutions, the plan or project referred to in regulation 25(1) must be carried out for imperative reasons of overriding public interest (which, subject to paragraph (2), may be of a social or economic nature), the competent authority may agree to the plan or project notwithstanding a negative assessment of the implications for the site.

(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 imperative reasons of overriding public interest.

(3) A competent authority may not agree to a plan or project under paragraph (1) for any reason referred to in paragraph (2)(b) unless it has had due regard to the opinion of the Commission in satisfying itself that there are such reasons.

(4) Where a competent authority other than the Secretary of State desires to obtain the opinion of the Commission as to whether reasons are to be considered imperative reasons of overriding public interest, it must submit a request to the Secretary of State—

(a) identifying the matter on which an opinion is sought; and

(b) accompanied by any documents or information that may be required.

(5) Where a competent authority has submitted a request in accordance with paragraph (4), the Secretary of State may, if he thinks fit, seek the opinion of the Commission, and if he does so, he must upon receiving the Commission’s opinion transmit it to the competent authority.

(6) Where a competent authority (other than the Secretary of State or a competent authority in Scotland) proposes to agree to a plan or project under this regulation notwithstanding a negative assessment of the implications for a European offshore marine site or a European site—

(a) it must notify the Secretary of State; and

(b) it must not agree to the plan or project before the end of the period of 21 days beginning with the day notified to it by the Secretary of State as that on which the authority’s

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(1) S.I. 2007/1067.

(2) 1998 c.47.

(3) 2006 c.32.

notification was received by him, unless the Secretary of State authorises the authority to do so under paragraph (11)(b).

(7) Where a competent authority in Scotland other than the Scottish Ministers proposes to agree to a plan or project under this regulation notwithstanding a negative assessment of the implications for a European site in Scotland—

- (a) it must notify the Scottish Ministers; and
- (b) it must not agree to the plan or project before the end of the period of 21 days beginning with the day notified to it by the Scottish Ministers as that on which the authority's notification was received by them, unless the Scottish Ministers authorise the authority to do so under paragraph (11)(b).

(8) Where a competent authority in Scotland agrees to a plan or project under this regulation notwithstanding a negative assessment of the implications for a European site in Scotland, it must notify the Secretary of State as soon as practicable thereafter.

(9) Where a competent authority in Scotland other than the Scottish Ministers proposes to agree to a plan or project under this regulation notwithstanding a negative assessment of the implications for a European site outside Scotland or a European offshore marine site—

- (a) it must notify the Scottish Ministers and the Secretary of State; and
- (b) it may agree to the plan or project only after having received notification from the Scottish Ministers that the Scottish Ministers and the Secretary of State have agreed that it may do so.

(10) Where the Scottish Ministers propose to agree to a plan or project under this regulation notwithstanding a negative assessment of the implications for a European site outside Scotland or a European offshore marine site—

- (a) they must notify the Secretary of State; and
- (b) they may agree to the plan or project only after having obtained the Secretary of State's agreement, which may be given subject to such conditions or restrictions as the Secretary of State may specify.

(11) In any case within paragraph (6) or (7), the relevant administration may—

- (a) at any time before the competent authority has agreed to the plan or project in question, give a direction to the competent authority prohibiting it from agreeing to the plan or project, either indefinitely or during such period as may be specified in the direction; or
- (b) authorise the competent authority to agree to the plan or project subject to such conditions or restrictions as may be specified in the authorisation.

(12) The relevant administration may amend or revoke a direction or authorisation under paragraph (11) at any time before the competent authority has agreed to the plan or project in question.

(13) In any case within paragraph (9), the Scottish Ministers may give a direction to the competent authority prohibiting it from agreeing to the plan or project, either indefinitely or during such period as may be specified in the direction, and may amend or revoke any such direction at any time before the competent authority has agreed to the plan or project in question.

(14) Any agreement between the Scottish Ministers and the Secretary of State that is the subject of a notification under paragraph (9)(b) may be subject to such conditions or restrictions as may be specified in the notification, and where the Scottish Ministers and the Secretary of State so agree, the Scottish Ministers may, at any time before the competent authority has agreed to the plan or project in question, amend or revoke a notification under paragraph (9)(b).

(15) In this regulation—

“competent authority in Scotland” means a competent authority whose functions are exercisable solely in or as regards Scotland;

“the relevant administration” means—

- (a) in relation to a competent authority in Scotland, the Scottish Ministers; and
- (b) in relation to any other competent authority, the Secretary of State.

### **Review of existing decisions and consents**

27.—(1) Where, before the date on which a site becomes a European offshore marine site, a competent authority has decided to undertake, or has given any consent, permission or other authorisation for, a plan or project to which regulation 25(1) would apply if it were to be considered at that date, the authority must as soon as reasonably practicable after that date review its decision, or as the case may be, consent, permission or other authorisation.

(2) Where, before the date on which a site becomes a European site or, if later, the commencement of these Regulations, a competent authority has decided to undertake, or has given any consent, permission or other authorisation for, a plan or project to which regulation 25(1) would apply if it were to be considered at that date, the authority must as soon as reasonably practicable after that date review its decision, or as the case may be, consent, permission or other authorisation.

(3) A competent authority must for the purpose of reviewing a decision, consent, permission or other authorisation under paragraph (1) or (2) make an appropriate assessment of the implications for the site in view of that site’s conservation objectives, and the provisions of regulation 25(2), (3) and (7) apply, with the appropriate modifications, in relation to such a review.

(4) Where a competent authority reviews a decision, consent, permission or other authorisation under this regulation it must affirm, modify or revoke it.

(5) Subject to the following provisions of this Part, any review required by this regulation must be carried out under existing statutory procedures where such procedures exist, and if none exists the competent authority must determine the procedure to be followed, having regard to any guidance issued by the Secretary of State.

(6) Nothing in this regulation—

- (a) requires a review where a site is a European offshore marine site by reason of regulation 15(c);
- (b) requires a review where a site is a European site by reason of regulation 24(1)(c);
- (c) requires a review of a Petroleum Act approval, Petroleum Act authorisation, Petroleum Act consent or Petroleum Act licence;
- (d) requires a review of any project or agreement that falls to be similarly reviewed under the Environmental Impact Assessment and Natural Habitats (Extraction of Minerals by Marine Dredging) (England and Northern Ireland) Regulations 2007; or
- (e) affects anything done in pursuance of the decision, or the consent, permission or other authorisation, before the date mentioned in paragraph (1) or (2) (as the case may be).

(7) The Secretary of State may not issue guidance under paragraph (5) which relates to a function within devolved competence without the consent of the Scottish Ministers.

(8) Regulations 72 and 73 of the 1994 Regulations apply in relation to any decision under paragraph (4) revoking or modifying a consent granted under section 36 or 37 of the Electricity Act 1989(4) as they apply in relation to a decision pursuant to regulation 71 of the 1994 Regulations(5) revoking or varying any such consent, but with the following modifications—

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(4) 1989 c.29. Section 36 was amended by section 93 of the Energy Act 2004 and (in relation to Scotland) by article 2 of and Part 1 of Schedule 1 to, the Water Environment and Water Services (Scotland) Act 2003 (Consequential Provisions and Modifications) Order 2006 (S.I. 2006/1054).

- (a) omit—
  - (i) in regulations 72(1), 73(1) and 73(3), the words “, or a direction deeming planning permission to be granted”;
  - (ii) in regulation 72(1)(a), the words “or, as the case may be, in whose favour the direction was made”;
  - (iii) in regulation 72(1)(b), the words “in the case of a consent under section 36 of the Electricity Act 1989,”;
  - (iv) regulation 72(2)(a); and
  - (v) in regulation 73(2)(a) and (b) and 73(3), the words “or direction”; and
- (b) in their application in relation to a consent to be granted by the Scottish Ministers, for any reference to the Secretary of State substitute a reference to the Scottish Ministers.

### **Consideration on review**

**28.**—(1) The following provisions apply where a decision, or a consent, permission or other authorisation falls to be reviewed under regulation 27.

(2) Subject as follows, the provisions of regulation 25(4) and (5) and regulation 26 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 it, or by another competent authority, will secure that the plan or project does not adversely affect the integrity of the site.

(4) Where the avoidance of an adverse effect on the integrity of a site may be secured in a number of ways, the competent authority or authorities concerned must seek to ensure that the action taken is the least onerous to those affected.

(5) The Secretary of State may issue guidance to competent authorities for the purposes of paragraphs (3) and (4) as to the manner of determining which of different ways should be adopted for securing that a plan or project does not adversely effect the integrity of a site, and in particular as to—

- (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) A competent authority must have regard to any guidance issued by the Secretary of State under paragraph (5) in discharging its functions under paragraph (3) or (4).

(7) Any modification or revocation under regulation 27(4) must be carried out under existing statutory procedures where such procedures exist, or if none exists, the competent authority must determine the procedure to be followed, having regard to any guidance given by the Secretary of State.

(8) The Secretary of State may not issue guidance under paragraph (5) which relates to a function within devolved competence without the consent of the Scottish Ministers.

### **Co-ordination where more than one competent authority is involved**

**29.**—(1) The following provisions apply 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

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(5) Regulation 71 was amended by the Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007, S.I. 2007/1843.

(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 25(1) or 27(3) requires a competent authority to assess any implication of a plan or project which would be more appropriately assessed under that provision by another competent authority.

(3) The Secretary of State may issue guidance to competent authorities for the purposes of regulations 25 to 28 as to the circumstances in which an 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 offshore marine site or European site; or

(b) may adversely affect the integrity of a European offshore marine site or European site.

(4) A competent authority must have regard to any guidance issued by the Secretary of State under paragraph (3) in discharging any of its functions under regulations 25 to 28.

(5) In determining whether a plan or project should be agreed to under regulation 26(1), a competent authority other than the Secretary of State must seek and have regard to the views of any other competent authority or authorities involved.

(6) The Secretary of State may not issue any guidance under paragraph (3) which relates to a function within devolved competence without the consent of the Scottish Ministers.

### **Compensatory measures**

**30.**—(1) This regulation applies where, in accordance with regulation 26, notwithstanding a negative assessment of the implications for a European offshore marine site or European site—

(a) a plan or project is agreed to; or

(b) a decision, or a consent, permission or other authorisation, is affirmed on review.

(2) The appropriate authority must secure that any necessary compensatory measures are taken to ensure that the overall coherence of Natura 2000 is protected.

(3) The appropriate authority is—

(a) where the plan or project is agreed to in the exercise of a function within devolved competence or by Scottish Ministers, or the decision, consent, permission or other authorisation is affirmed in the exercise of a function within devolved competence or by Scottish Ministers, the Scottish Ministers;

(b) where the plan or project is agreed to by a Northern Ireland department, that Northern Ireland department;

(c) where the decision, consent, permission or other authorisation is affirmed by a Northern Ireland department, that Northern Ireland department; and

(d) in any other case, the Secretary of State.

### **Notification of compensatory measures**

**31.**—(1) The appropriate authority must ensure that the Commission is notified of the compensatory measures that are taken pursuant to regulation 30(2).

(2) In this regulation “appropriate authority” is to be construed in accordance with regulation 30(3).