
STATUTORY INSTRUMENTS

2010 No. 490

The Conservation of Habitats and Species Regulations 2010

PART 2

CONSERVATION OF NATURAL HABITATS AND HABITATS OF SPECIES

Special nature conservation orders

Power to make special nature conservation order

25.—(1) The appropriate authority 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 (whether on land specified in that order or elsewhere and whether or not within the European site) which appear to the appropriate authority to be of a kind which, if carried out in certain circumstances or in a particular manner, would 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 specifying operations on land is a local land charge.

(5) If an order under paragraph (1) specifies any operation of a kind not carried out, or proposed to be carried out, on land within a European site, the order must specify the operation by reference to the place where it is being, or is proposed to be, carried out.

Restriction on carrying out operations specified in order

26.—(1) In respect of any land within a European site in respect of which a special nature conservation order is made, the appropriate authority may serve a notice (a “stop notice”) on any person carrying out, or proposing to carry out, any operation of a kind specified in that order which appears to the appropriate authority 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) The stop notice must specify—

- (a) details of the operation;
- (b) details of the European site to which the notice relates; and
- (c) the date on which the notice takes effect.

(3) Where the identity of a person carrying out, or proposing to carry out, the operation is not reasonably ascertainable, the appropriate authority may, instead of serving a stop notice, publish a notice in at least one local newspaper circulating in the area in which the land to which the notice relates is situated, and affix a copy or copies of the notice to some conspicuous object or objects on the land to which the notice relates.

(4) A person on whom a stop notice is served must not carry out on any land within a European site in respect of which a special nature conservation order is in force, or in the place by reference to which the operation is specified, any operation specified in the order, unless the notice condition specified in paragraph (5) and the consent condition specified in paragraph (6) are fulfilled.

(5) The notice condition is—

(a) where the operation is carried out on land, that—

(i) the operation is carried out, or caused or permitted to be carried out, by the owner or occupier of the land, and

(ii) after service of the stop notice, one of them has given the appropriate nature conservation body written notice of a proposal to carry out the operation, specifying its nature and where it is proposed to carry it out; and

(b) in any other case, that after service of the stop notice, the person proposing to carry out the operation has given the appropriate nature conservation body written notice of a proposal to carry out the operation, specifying its nature and where it is proposed to carry it out.

(6) The consent condition is—

(a) that the operation is carried out with the written consent of the appropriate nature conservation body; or

(b) that the operation is carried out in accordance with the terms of a management agreement.

(7) A consent under paragraph (6)(a) may be given—

(a) subject to conditions, and

(b) for a limited period,

specified in the consent.

(8) A person who, without reasonable excuse, contravenes paragraph (4) 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.

(9) For the purposes of paragraph (8) it is a reasonable excuse for a person to carry out an operation if—

(a) 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) the operation was authorised by a planning permission granted on an application under Part 3 (control over development) of the TCPA 1990.

(10) For the purposes of this regulation and regulations 27 and 28—

(a) a “stop notice” means a notice served under paragraph (1);

(b) references to the service of a stop notice are taken to mean (in an appropriate case) the publication and affixing of a notice under paragraph (3); and

(c) where a notice is published and affixed under paragraph (3), any person carrying out an operation specified in the notice is taken to be a person on whom a stop notice is served.

Assessment of implications for European sites after service of stop notice

27.—(1) Where it appears to the appropriate nature conservation body that an application for consent under regulation 26(6)(a) relates to an operation which is or forms part of a plan or project which—

(a) is likely to have a significant effect on a European 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,
they must make an appropriate assessment of the implications for that 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 they must give reasons for their decision.

(4) A person on whom a stop notice is served may—

- (a) within two months of receiving notice of the refusal of consent, or
- (b) if no notice of a decision is received by that person 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 as soon as possible to the appropriate authority.

(5) If, following a referral under paragraph (4), the appropriate 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 (6), may be of a social or economic nature), the appropriate authority 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) any other reasons which the appropriate authority, having due regard to the opinion of the European Commission, consider to be imperative reasons of overriding public interest.

(7) Where the appropriate authority direct the appropriate nature conservation body to give consent under paragraph (5), the appropriate authority must 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 of regulation 8(1)(c) (site protected in accordance with Article 5(4) of the Habitats Directive).

Compensation for effect of stop notice

28.—(1) Where the appropriate authority have served a stop notice on any person, the appropriate nature conservation body must pay compensation to any person who—

- (a) at the time at which the notice is served has an interest in affected relevant land; and
- (b) on a claim duly made to the appropriate nature conservation body, shows that the value of that interest is less than it would have been if the notice had not been served.

(2) No claim for compensation may be made in respect of an order unless the appropriate authority have given notice of the decision in respect of that order under paragraph 6(1) or (2) of Schedule 1 (special nature conservation orders: procedure).

(3) The amount of the compensation payable is the difference between the value of the interest and what that value would have been had a stop notice not been served.

(4) For this purpose—

- (a) an interest in land is to be valued at the time when the stop notice is served; and

- (b) where a person, by reason of having more than one interest in affected relevant land, makes more than one claim in respect of the same restriction having effect by virtue of a stop notice being served, the various interests in respect of which that person claims compensation are to be valued together.

(5) Section 10 of the Land Compensation Act 1973(1) (mortgages, trusts of land and settlements) applies in relation to compensation under this regulation as it applies in relation to compensation under Part 1 of that Act.

(6) For the purposes of assessing compensation under this regulation, the rules set out in section 5 of the Land Compensation Act 1961(2) (rules for assessing compensation on a compulsory acquisition) have effect, so far as applicable and subject to any necessary modifications, as they have effect for the purpose of assessing compensation for the compulsory acquisition of an interest in land.

(7) Interest is payable in relation to compensation, at the rate for the time being prescribed under section 32 of the Land Compensation Act 1961 (rate of interest after entry on land), from the date of the claim until payment.

(8) In the case of any dispute as to compensation—

- (a) the Upper Tribunal has the function of determining the dispute; and
 (b) section 4(3) of the Land Compensation Act 1961 (costs) applies in relation to the determination, subject to any necessary modifications.

(9) In this regulation—

- (a) “affected relevant land” means land which forms part of an agricultural unit which comprises land to which the stop notice relates; and
 (b) “agricultural unit” means land which is occupied by a person as a unit for agricultural purposes, including any dwelling or other building occupied by that person for the purpose of farming the land.

Restoration orders

29.—(1) Where a person (“P”) is convicted of an offence under regulation 26 (restriction on carrying out operations specified in order), the court may, in addition to dealing with P in any other way, make an order (a “restoration order”) requiring P 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) A restoration order made on conviction on indictment is to be treated for the purposes of section 30 of the Criminal Appeal Act 1968(4) (restitution of property) as an order for the restitution of property.

(3) In the case of a restoration order made by a magistrates’ court, the period specified in the order does not begin to run—

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

(1) 1973 c. 26; relevant amendments to section 10 were made by the Trusts of Land and Appointment of Trustees Act 1996 (c. 47), paragraph 13 of Schedule 3.

(2) 1961 c. 33; section 5 was amended by the Planning and Compensation Act 1991 (c. 34), paragraph 1 of Schedule 15 and Part 3 of Schedule 19, and by S.I. 2009/1307.

(3) Section 4 was amended by S.I. 2009/1307.

(4) 1968 c. 19; section 30 was substituted by the Criminal Justice Act 1988 (c. 33), paragraphs 20 and 28 of Schedule 15, and amended by the Constitutional Reform Act 2005 (c. 4), paragraph 16(1) and (2) of Schedule 9.

(4) At any time before a restoration order has been fully complied with, the court may, on the application of the person subject to the order, discharge or vary the order if it appears to the court that a change in circumstances has made compliance with the order impracticable or unnecessary.

(5) A person who fails without reasonable excuse to comply with a restoration order commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(6) A person who continues to fail to comply with a restoration order, following conviction under paragraph (5), may be proceeded against for a further offence from time to time until the order is complied with.

(7) If, within the period specified in a restoration order, 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 subject to the order any expenses reasonably incurred by them in doing so.