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STATUTORY INSTRUMENTS

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**2010 No. 490**

**The Conservation of Habitats and Species Regulations 2010**

**PART 2**

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

*European sites*

**Selection of sites eligible for identification as of Community importance**

**10.**—(1) On the basis of the criteria set out in Annex III (Stage 1) to the Habitats Directive, and relevant scientific information, the appropriate authority must propose a list of sites in England or Wales which are eligible for identification as of Community importance, indicating with respect to each site—

- (a) which natural habitat types in Annex I to the Habitats Directive the site hosts; and
- (b) which species in Annex II to the Habitats Directive that are native to Great Britain the site hosts.

(2) For animal species ranging over wide areas these sites must correspond to the places within the natural range of such species which present the physical or biological factors essential to their life and reproduction.

(3) For aquatic species which range over wide areas, such sites are to be proposed only where there is a clearly identifiable area representing the physical and biological factors essential to their life and reproduction.

(4) The appropriate authority may propose modification of the list in the light of the results of the surveillance referred to in Article 11 of the Habitats Directive.

(5) The list, and any new site included in that list, must be transmitted to the European Commission together with information on each site including—

- (a) a map of the site,
- (b) its name, location and extent, and
- (c) the data resulting from application of the criteria specified in Annex III (Stage 1) to the Habitats Directive,

provided in a format established by the European Commission.

**Designation of special areas of conservation**

**11.**—(1) Once a site of Community importance in England or Wales has been adopted in accordance with the procedure laid down in Article 4(2) of the Habitats Directive, the appropriate authority must designate that site as a special area of conservation as soon as possible and no later than six years from the date of adoption of that site.

(2) The appropriate authority must establish priorities for the designation of sites in the light of—

- (a) the importance of the sites for the maintenance or restoration at a favourable conservation status of—
  - (i) a natural habitat type specified in Annex I to the Habitats Directive, or
  - (ii) a species specified in Annex II to the Habitats Directive,
 and for the coherence of Natura 2000; and
- (b) the threats of degradation or destruction to which the sites are exposed.

### **Consultation as to inclusion of site omitted from the list**

**12.** If consultation is initiated by the European Commission in accordance with Article 5(1) of the Habitats Directive with respect to a site in England or Wales hosting a priority natural habitat type or priority species, and—

- (a) the appropriate authority and the European Commission agree, within the period of six months mentioned in Article 5(2) of the Habitats Directive, that the site should be selected as a site of Community importance, or
- (b) the European Council, acting on a proposal from the European Commission in pursuance of Article 5(2) of the Habitats Directive, decides that the site should be so selected in accordance with Article 5(3) of that Directive,

for the purposes of these Regulations 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 paragraph (a) or the decision referred to in paragraph (b).

### *Register of European sites*

#### **Register of European sites**

**13.—(1)** A register of European sites, in an appropriate format, must be compiled and maintained by—

- (a) the Secretary of State, in relation to European sites in England; and
  - (b) the Welsh Ministers, in relation to European sites in Wales.
- (2) The registers must include—
- (a) special areas of conservation, as soon as they are designated by the appropriate authority;
  - (b) sites of Community importance as soon as they are placed on the list referred to in the third sub-paragraph of Article 4(2) of the Habitats Directive, until they are designated as special areas of conservation;
  - (c) any site hosting a priority natural habitat type or priority species in respect of which consultation is initiated under Article 5(1) of the Habitats Directive, during the consultation period or pending a Council decision under Article 5(3);
  - (d) areas classified pursuant to Article 4(1) or (2) of the old Wild Birds Directive or the new Wild Birds Directive, as soon as they are classified by the appropriate authority; and
  - (e) any site which has been proposed to the European Commission under regulation 10 (selection of sites eligible for identification as of Community importance), until such time as paragraph (i) or (ii) of regulation 8(1)(e) applies.
- (3) The appropriate authority, in relation to the register for which that authority is responsible—
- (a) may amend any entry;
  - (b) must remove any entry relating to a site which is no longer a European site; and

(c) must keep a copy available for public inspection at all reasonable hours and free of charge.

(4) An entry in the register in respect of a European site other than a European marine site is a local land charge.

#### **Notification of changes to the register**

**14.**—(1) As soon as possible after including a European site in the register or amending an entry in the register, the appropriate authority must notify the appropriate nature conservation body and send to that body a copy of the new or amended entry.

(2) As soon as possible after removing an entry from the register, the appropriate authority must notify the appropriate nature conservation body.

(3) The nature conservation bodies must keep a copy of the register entries relating to European sites in their area available for public inspection at all reasonable hours and free of charge.

#### **Notice to landowners and other bodies**

**15.**—(1) As soon as practicable after a nature conservation body receive notification under regulation 14 in relation to a European site, they must give notice to—

- (a) every owner or occupier of land within that site;
- (b) every local planning authority in whose area that site, or any part of it, is situated;
- (c) the Marine Management Organisation, if that site is a European marine site; and
- (d) such other persons as the appropriate authority may direct.

(2) Where, under paragraph (1), a nature conservation body give notice to a person (“P”) that a site has been included in the register, or that a register entry relating to a site has been amended, the nature conservation body must provide P with a copy of the register entry.

(3) In paragraph (2) the register entry a copy of which must be provided to P—

- (a) in the case of notice given under paragraph (1)(a), is the register entry (or that part of an entry) which relates to the land owned or occupied by P; and
- (b) in the case of notice given under paragraph (1)(b), is the register entry (or that part of an entry) which relates to the land within P’s area.

(4) The appropriate authority may give directions as to the form and content of notices under this regulation.

#### *Management agreements*

#### **Management agreements**

**16.**—(1) The appropriate nature conservation body may, for the purposes specified in paragraph (2), make an agreement (a “management agreement”) with a person who has an interest in—

- (a) land which forms part of a European site, or
- (b) land adjacent to such a site,

about the management or use of the land.

(2) A management agreement may be made for the purposes of the management, conservation, restoration or protection of the site, or any part of it.

(3) A management agreement may, in particular—

- (a) impose on the person who has an interest in the land obligations in respect of the use of the land;
  - (b) impose on the person who has an interest in the land restrictions on the exercise of rights over the land;
  - (c) provide for the carrying out of such work as may be expedient for the purposes of the agreement by any person or persons;
  - (d) provide for any matter for which a management scheme relating to a site of special scientific interest provides (or could provide);
  - (e) provide for the making of payments by either party to the other party or to any other person;
  - (f) contain incidental and consequential provision.
- (4) A management agreement is, unless the agreement otherwise provides—
- (a) binding on persons deriving title under or from the person with whom the appropriate nature conservation body make the agreement; and
  - (b) enforceable by the appropriate nature conservation body against those persons.
- (5) Paragraphs 1 to 3 of Schedule 2 to the Forestry Act 1967(1) (which makes provision for certain persons to enter into forestry dedication covenants) apply to management agreements as they apply to forestry dedication covenants.
- (6) In this regulation—
- (a) “interest in land” has the same meaning as in the 1949 Act; and
  - (b) “management scheme” and “site of special scientific interest” have the same meaning as in Part 2 (nature conservation, countryside and national parks) of the WCA 1981.

### Existing agreements

17.—(1) For the purposes of these Regulations, any agreement made before 1st April 2010 in relation to land in England or Wales which on or after that date becomes land within a European site, or adjacent to such a site, being an agreement made under—

- (a) section 16 of the 1949 Act(2) (agreements for management of nature reserves),
- (b) section 15 of the Countryside Act 1968(3) (areas of special scientific interest), or
- (c) section 7 of the Natural Environment and Rural Communities Act 2006(4) (management agreements),

has effect upon the designation of the site as if it were a management agreement entered into by Natural England or the Countryside Council for Wales (as the case may be) under regulation 16.

- (2) Any other thing done or deemed to have been done under—
- (a) any provision of Part 3 (nature conservation) of the 1949 Act, or under Part 6 (general, financial and supplementary) of that Act so far as it applies for the purposes of Part 3, or
  - (b) section 15 of the Countryside Act 1968,

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(1) 1967 c. 10; paragraphs 1 to 3 of Schedule 2 were amended by the Endowments and Glebe Measure 1976 (1976 No. 4), Schedule 7; the Trusts of Land and Appointment of Trustees Act 1996 (c. 47), Schedule 4; and the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No. 1), paragraph 14 of Schedule 5.

(2) Relevant amendments were made to section 16 by the Natural Environment and Rural Communities Act 2006 (c. 16), paragraph 14 of Schedule 11.

(3) 1968 c. 41; relevant amendments were made to section 15 by the WCA 1981, section 72(8) and Part 1 of Schedule 17; the Environmental Protection Act 1990 (c. 43), paragraph 4(2) of Schedule 9 and Part 6 of Schedule 16; the Countryside and Rights of Way Act 2000 (c. 37), section 75(3); and the Natural Environment and Rural Communities Act 2006 (c. 16), paragraph 48 of Schedule 11 and Schedule 12.

(4) 2006 c. 16.

in respect of any land prior to that land becoming land within a European site, or adjacent to such a site, continues to have effect as if done under the corresponding provision of these Regulations.

(3) Any reference in a relevant enactment to a nature reserve within the meaning of section 15(5) (meaning of “nature reserve”) of the 1949 Act is to be construed as including a reference to a European site, and in this paragraph “a relevant enactment” means an enactment not contained in, or in an instrument made under, the 1949 Act or the WCA 1981.

### **Certain payments under management agreements**

**18.**—(1) This regulation applies where the appropriate nature conservation body offer to enter into a management agreement providing for the making of payments by them to—

- (a) a person who has given notice under paragraph (1)(a) of regulation 20 (restriction on carrying out operations specified in notification) or paragraph (5)(a)(ii) or (b) of regulation 26 (restriction on carrying out operations specified in order); or
- (b) a person whose application for a farm capital grant within the meaning of regulation 24 has been refused in consequence of an objection by that body.

(2) Subject to paragraph (3), such payments must be of such amounts as may be determined by the appropriate nature conservation body in accordance with guidance given by the appropriate authority.

(3) If the person with whom the agreement is to be made so requires within one month of receiving the offer, the determination of those amounts must be referred to an arbitrator to be appointed, in default of agreement, by the appropriate authority.

(4) Where the amounts determined by the arbitrator exceed those determined by the appropriate nature conservation body, that body must—

- (a) amend the offer so as to give effect to the arbitrator’s determination; or
- (b) except in the case of an offer made to a person whose application for a farm capital grant has been refused in consequence of an objection by the appropriate nature conservation body, withdraw the offer.

### *Control of potentially damaging operations*

### **Notification of potentially damaging operations**

**19.**—(1) This regulation and regulations 20 to 22 apply where a notification is in force under section 28(6) of the WCA 1981 (sites of special scientific interest) in relation to land which is or forms part of a European site.

(2) The appropriate nature conservation body may, for the purpose of securing compliance with the requirements of the Habitats Directive, at any time amend the notification with respect to—

- (a) the flora, fauna or geological or physiographical features by reason of which the land is of special interest; or
- (b) any operations appearing to the appropriate nature conservation body to be likely to damage that flora or fauna or those features.

(3) The appropriate nature conservation body must give notice of any amendment to—

- (a) every owner and occupier of land within the European site who in the opinion of that body may be affected by the amendment, and

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(5) Section 15 was substituted by the Natural Environment and Rural Communities Act 2006 (c. 16), paragraph 12 of Schedule 11.

(6) Section 28 was substituted by the Countryside and Rights of Way Act 2000 (c. 37), paragraph 1 of Schedule 9, and amended by the Natural Environment and Rural Communities Act 2006 (c. 16), paragraph 79 of Schedule 11.

(b) the local planning authority in whose area the land is situated, and after service of a notice under sub-paragraph (a) the notification has effect in relation to such an owner or occupier in its amended form.

(4) Any local land charge relating to a notification by virtue of section 28(9) of the WCA 1981 must be varied in accordance with the amendment to that notification.

### **Restriction on carrying out operations specified in notification**

**20.**—(1) While a notification under section 28(1) of the WCA 1981 is in force in relation to any land which is or forms part of a European site, the owner or occupier of that land must not carry out, or cause or permit to be carried out, on that land any operation specified in the notification unless—

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

(2) The conditions are—

- (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;
- (c) that four months have passed since the notice under paragraph (1)(a) was given.

(3) If before the end of the period of four months referred to in sub-paragraph (c) of paragraph (2) the relevant person agrees in writing with the appropriate nature conservation body that the condition specified in that sub-paragraph does not apply in relation to the operation in question, as from the date of the agreement paragraph (2) has effect in relation to the operation (as regards both the owner and the occupier of the land in question) as if that sub-paragraph were omitted.

(4) If, after such an agreement has been made, the relevant person (whether a party to the agreement or not) gives written notice to the appropriate nature conservation body that that person wishes to terminate the agreement, paragraph (2) has effect in relation to the operation in question (as regards both the owner and the occupier of the land in question) as if sub-paragraph (c) specified a period of one month from the giving of that notice, or any longer period specified in that notice.

(5) A person who, without reasonable excuse, contravenes paragraph (1) commits an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(6) For the purposes of paragraph (5) 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.

(7) The appropriate nature conservation body may take such steps as may be necessary for the purpose of enforcing this regulation.

(8) Proceedings for an offence under this regulation must not, without the consent of the Director of Public Prosecutions, be taken by a person other than the appropriate nature conservation body.

(9) In paragraphs (3) and (4) “the relevant person”—

- (a) in a case where the notice under paragraph (1)(a) was given by the owner of the land in question, means the owner of that land;
- (b) in a case where that notice was given by the occupier of that land, means the occupier of that land.

### **Assessment of implications for European sites**

**21.**—(1) Where it appears to the appropriate nature conservation body that an application for consent under regulation 20(2)(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) 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).

### **Notification of appropriate authority in case of risk**

**22.**—(1) Where the appropriate nature conservation body have not given consent for an operation, but they consider that there is a risk that the operation may nevertheless be carried out, they must notify the appropriate authority.

(2) Such notification must be given at least one month before the end of the period mentioned in regulation 20(2)(c).

### **Existing notices and consents**

**23.**—(1) Any notice previously given under subsection (1)(a) of section 28E(7) (duties in relation to sites of special scientific interest) of the WCA 1981, or any consent previously given under section 28E(3)(a) of that Act, in relation to land which on or after 1st April 2010 becomes land within a European site, has effect, subject as follows, as if given under regulation 20(1)(a) or (2)(a), respectively.

(2) The appropriate nature conservation body must review any such consent as regards its compatibility with the conservation objectives of the site, and may modify or withdraw it.

(3) Notice of any such modification or withdrawal of consent must 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 after such notice has been given, the consent has effect in relation to an owner or occupier as so modified or withdrawn.

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

(5) Where or to the extent that an operation ceases to be authorised by a consent by reason of the consent being modified or withdrawn, the period after which in accordance with regulation 20(2)(c) the operation may be carried out in the absence of consent is four months from the giving of notice of the modification or withdrawal under paragraph (3).

(6) Regulation 22 (notification of appropriate authority in case of risk) applies in such a case, with the following modifications—

(a) for the reference to consent not having been given substitute a reference to consent being modified or withdrawn; and

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(7) Section 28E was inserted by the Countryside and Rights of Way Act 2000 (c. 37), paragraph 1 of Schedule 9, and amended by the Natural Environment and Rural Communities Act 2006 (c. 16), paragraphs 79 and 80 of Schedule 11.

- (b) for the reference to the period specified in regulation 20(2)(c) substitute a reference to the period specified in paragraph (5).

### **Farm capital grants**

**24.**—(1) Where an application for a farm capital grant is made as respects expenditure incurred or to be incurred for the purpose of activities on land within a European site, the appropriate authority—

- (a) must, so far as may be consistent with the purposes of the grant provisions, exercise their functions so as to further the conservation of the flora, fauna, or geological or physiological features by reason of which the land is a European site; and
- (b) where the appropriate nature conservation body have objected to the making of the grant on the ground that the activities in question have destroyed or damaged or will destroy or damage that flora or fauna or those features, must not make the grant except after considering the objection.

(2) Where in consequence of an objection by the appropriate nature conservation body, an application for a grant as respects expenditure to be incurred is refused on the ground that the activities in question will have such an effect as is mentioned in paragraph (1)(b), the appropriate nature conservation body must, within three months of their receiving notice of the appropriate authority’s decision, offer to enter into a management agreement—

- (a) imposing restrictions as respects those activities, and
- (b) providing for the making by them of payments to the applicant,

in the terms of a draft submitted to the applicant.

(3) In this regulation—

- (a) “farm capital grant” means—
  - (i) a grant under a scheme made under section 29 of the Agriculture Act 1970<sup>(8)</sup> (farm capital grants), or
  - (ii) a grant under regulations made under section 2(2) of the European Communities Act 1972<sup>(9)</sup> to a person carrying on an agricultural business within the meaning of those regulations in respect of expenditure incurred or to be incurred for the purposes of or in connection with that business, being expenditure of a capital nature or incurred in connection with expenditure of a capital nature; and
- (b) “grant provisions” means—
  - (i) in the case of a grant of a kind described in sub-paragraph (a)(i), the scheme under which the grant is made and section 29 of the Agriculture Act 1970, and
  - (ii) in the case of a grant of a kind described in sub-paragraph (a)(ii), the regulations under which the grant is made and the EU instrument in pursuance of which the regulations were made.

### *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

<sup>(8)</sup> 1970 c. 40; section 29 was amended by the Agriculture (Miscellaneous Provisions) Act 1976 (c. 55), section 15; the Criminal Justice Act 1982 (c. 48), sections 37, 38 and 46; and the Statute Law (Repeals) Act 1986 (c. 12).

<sup>(9)</sup> 1972 c. 68.

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<sup>(10)</sup> (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<sup>(11)</sup> (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

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<sup>(10)</sup> 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.

<sup>(11)</sup> 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.

- (b) section 4(12) 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(13) (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.

(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.

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

(13) 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.

## Byelaws

### Power to make byelaws

**30.**—(1) The appropriate nature conservation body may make byelaws for the protection of a European site under section 20 of the 1949 Act<sup>(14)</sup> (byelaws for protection of nature reserves).

(2) Such byelaws may, in particular, make the kinds of provision mentioned in this regulation, subject to regulation 31(1).

(3) Byelaws may—

- (a) provide for prohibiting or restricting the entry into, or movement within, the site of persons, vehicles, boats or animals;
- (b) prohibit or restrict the killing, taking, molesting or disturbance of living creatures of any description in the site, the taking, destruction or disturbance of eggs of any such creature, the taking of, or interference with, vegetation of any description in the site, or the doing of anything in the site which will interfere with the soil or damage any object in the site;
- (c) contain provisions prohibiting the depositing of rubbish and the leaving of litter in the site; and
- (d) prohibit or restrict, or provide for prohibiting or restricting, the lighting of fires in the site or the doing of anything likely to cause a fire in the site.

(4) Byelaws may prohibit or restrict any activity referred to in paragraph (3) within such area surrounding or adjoining the site as appears to the appropriate nature conservation body necessary for the protection of the site.

(5) Byelaws may provide for the issue, on such terms and subject to such conditions as may be specified in the byelaws, of permits authorising—

- (a) entry into the site or any such surrounding or adjoining area as is mentioned in paragraph (4), or
- (b) the doing of anything within the site, or any such surrounding or adjoining area,

where such entry, or doing that thing, would otherwise be unlawful under the byelaws.

(6) Byelaws may be made so as to relate either to the whole or to any part of the European site, or of any such surrounding or adjoining area as is mentioned in paragraph (4), and may make different provision for different parts of the site.

(7) This regulation does not apply in relation to a European marine site (but see regulation 38 (European marine sites: byelaws and orders)).

### Byelaws: supplementary provisions

**31.**—(1) Relevant byelaws must not interfere with—

- (a) the exercise by any person of a right vested in that person as owner, lessee or occupier of land in the European site, or in any such surrounding or adjoining area as is mentioned in regulation 30(4);
- (b) the exercise of any public right of way;
- (c) the exercise of any functions of statutory undertakers;

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<sup>(14)</sup> Section 20 was amended by the Telecommunications Act 1984 (c. 12), paragraph 28 of Schedule 4; the Water Act 1989 (c. 15), paragraph 13 of Schedule 25; the Communications Act 2003 (c. 21), paragraph 20(1) and (2) of Schedule 17; and the Natural Environment and Rural Communities Act 2006 (c. 16), paragraph 15(d) of Schedule 11.

- (d) the exercise of any functions of an internal drainage board<sup>(15)</sup> or the Commissioners appointed under the Tweed Fisheries Act 1969<sup>(16)</sup>; or
- (e) the provision of an electronic communications code network or the exercise of any right conferred by or in accordance with the electronic communications code on the provider of any such network.

(2) Sections 236 to 238 of the Local Government Act 1972<sup>(17)</sup> (procedure, etc., for byelaws; offences against byelaws; evidence of byelaws) apply to all relevant byelaws as if the appropriate nature conservation body were a local authority within the meaning of that Act.

(3) In relation to relevant byelaws, the confirming authority for the purposes of section 236<sup>(18)</sup> of the Local Government Act 1972 is the appropriate authority.

(4) The appropriate nature conservation body may take such steps as may be necessary for the purpose of enforcing byelaws made by them.

(5) In this regulation and in regulations 32 and 33, “relevant byelaws” means byelaws under section 20 of the 1949 Act as it applies by virtue of regulation 30.

### Compensation for effect of byelaws

**32.**—(1) Where the exercise of any right vested in a person (“P”), whether by reason of P’s being entitled to any interest in land or by virtue of a licence or agreement, is prevented or hindered by the coming into operation of relevant byelaws, P is entitled to receive compensation from the appropriate nature conservation body.

(2) Any dispute arising on a claim for any such compensation is to be determined by the Upper Tribunal.

(3) For the purposes of any such reference to the Upper Tribunal, section 4 of the Land Compensation Act 1961<sup>(19)</sup> (costs) has effect with the substitution for references to the acquiring authority of references to the authority from whom the compensation in question is claimed.

(4) Rules (2) to (4) of the Rules set out in section 5<sup>(20)</sup> of that Act (rules for assessing compensation on a compulsory acquisition) apply to the calculation of any such compensation, in so far as it is calculated by reference to the depreciation of the value of an interest in land.

(5) In the case of an interest in land subject to a mortgage—

- (a) any such compensation in respect of the depreciation of that interest is to be calculated as if the interest were not subject to the mortgage;
- (b) a claim or application for the payment of any such compensation may be made by any person who when the byelaws giving rise to the compensation were made was the mortgagee of the interest, or by any person claiming under such a person, but without prejudice to the making of a claim or application by any other person;
- (c) subject to sub-paragraph (d), a mortgagee is not entitled to any such compensation in respect of that mortgagee’s interest as such; and

<sup>(15)</sup> See section 1 of the Land Drainage Act 1991 (c. 59).

<sup>(16)</sup> 1969 c. xxiv.

<sup>(17)</sup> 1972 c. 70; section 236 was amended by the Civil Aviation Act 1982 (c. 16), paragraph 11 of Schedule 15; the Local Government Act 1985 (c. 51), paragraph 31(1) of Schedule 14; the Water Act 1989 (c. 15), Part 1 of Schedule 27; the Local Government (Wales) Act 1994 (c. 19), paragraph 50 of Schedule 15; the Greater London Authority Act 1999 (c. 29), sections 76 and 166; S.I. 2001/3719; the Local Government and Public Involvement in Health Act 2007 (c. 28), section 129(1) and (2); and the Local Democracy, Economic Development and Construction Act 2009 (c. 20) (“the 2009 Act”), paragraphs 10 and 34 of Schedule 6. Section 238 was amended by S.I. 2001/3719 and the 2009 Act, paragraphs 10 and 36 of Schedule 6.

<sup>(18)</sup> See definition of “the confirming authority” in subsection (11).

<sup>(19)</sup> 1961 c. 33; section 4 was amended by S.I. 2009/1307.

<sup>(20)</sup> 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.

- (d) any compensation payable in respect of the interest subject to the mortgage must be paid to the mortgagee or, where there is more than one mortgagee, to the first mortgagee, and must in either case be applied by the mortgagee as if it were proceeds of sale.

### **Continuation in force of existing byelaws**

**33.** Any byelaws in force under section 20 of the 1949 Act in relation to land which on or after 1st April 2010 becomes land within a European site, or adjacent to such a site—

- (a) have effect as if they are relevant byelaws; and
- (b) are to be construed as if originally made as such byelaws.

### *Powers of compulsory acquisition*

### **Powers of compulsory acquisition**

**34.**—(1) Where the appropriate nature conservation body are satisfied—

- (a) that they are unable, as respects any interest in land within a European site, to conclude a management agreement on terms appearing to them to be reasonable, or
- (b) where they have entered into a management agreement as respects such an interest, that a breach of the agreement has occurred which prevents or impairs the satisfactory management of the European site,

they may acquire that interest compulsorily.

(2) Such a breach as is mentioned in paragraph (1)(b) is not to be treated as having occurred by virtue of any act or omission capable of remedy unless there has been default in remedying it within a reasonable time after notice given by the appropriate nature conservation body requiring that act or omission to be remedied.

(3) Any dispute arising as to whether there has been such a breach of a management agreement is to be determined by an arbitrator appointed by the Lord Chancellor.

(4) The power of compulsory acquisition conferred by paragraph (1) on the appropriate nature conservation body may be exercised in any particular case only after authorisation by the appropriate authority.

(5) In relation to any acquisition of land under this regulation, the Acquisition of Land Act 1981<sup>(21)</sup> applies; and in relation to any such acquisition of any interest in land, the Compulsory Purchase Act 1965<sup>(22)</sup> applies.

(6) In this regulation—

- (a) “land” includes any interest in land; and
- (b) an “interest”, in relation to land, includes any estate in land and any right over land, whether the right is exercisable by virtue of the ownership of an interest in land or by virtue of a licence or agreement, and in particular includes sporting rights.

### *European marine sites*

### **Marking of site and advice by nature conservation bodies**

**35.**—(1) The appropriate nature conservation body may install markers indicating the existence and extent of a European marine site.

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(21) 1981 c. 67.

(22) 1965 c. 56.

(2) This power is exercisable subject to the obtaining of any necessary consent under section 34 of the Coast Protection Act 1949(23) (restriction of works detrimental to navigation).

(3) As soon as possible after a site becomes a European marine site, the appropriate nature conservation body must advise other relevant authorities as to—

- (a) the conservation objectives for that site; and
- (b) any operations which may cause deterioration of natural habitats or the habitats of species, or disturbance of species, for which the site has been designated.

### **Management scheme for European marine site**

**36.**—(1) The relevant authorities, or any of them, may establish for a European marine site a management scheme under which their functions (including any power to make byelaws) are to be exercised so as to secure in relation to that site compliance with the requirements of the Habitats Directive.

(2) Only one management scheme may be made for each European marine site.

(3) A management scheme may be amended from time to time.

(4) As soon as a management scheme has been established, or is amended, a copy of it must be sent by the relevant authority or authorities concerned to the appropriate nature conservation body.

### **Direction to establish or amend management scheme**

**37.**—(1) The appropriate authority may give directions to the relevant authorities, or any of them, as to the establishment of a management scheme for a European marine site.

(2) Directions may, in particular—

- (a) require conservation measures specified in the direction to be included in the scheme;
- (b) appoint one of the relevant authorities to co-ordinate the establishment of the scheme;
- (c) set time limits within which any steps are to be taken;
- (d) provide that the approval of the appropriate authority is required before the scheme is established; and
- (e) require any relevant authority to supply to the appropriate authority such information concerning the establishment of the scheme as may be specified in the direction.

(3) The appropriate authority may give directions to the relevant authorities, or any of them, as to the amendment of a management scheme for a European marine site, either generally or in any particular respect.

(4) Any direction under this regulation must be in writing and may be varied or revoked by a further direction.

### **European marine sites: byelaws and orders**

**38.**—(1) The Marine Management Organisation may make byelaws for the protection of a European marine site in England under section 129 of the Marine Act (byelaws for protection of marine conservation zones in England).

(2) The Welsh Ministers may make orders for the protection of a European marine site in Wales under section 134 of that Act (orders for protection of marine conservation zones in Wales).

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(23) 1949 c. 74; section 34 was amended by the Merchant Shipping Act 1988 (c. 12), section 36, and by the Statute Law Revision Act 1953 (c. 5).

(3) The provisions of Chapter 1 (marine conservation zones) of Part 5 of that Act relating to byelaws under section 129 or orders under section 134 apply, with the modifications described in paragraph (4), in relation to byelaws made by virtue of paragraph (1) or (as the case may be) orders made by virtue of paragraph (2).

(4) The modifications are—

- (a) any reference to an MCZ is to be read as a reference to a European marine site;
- (b) in sections 129(1) and 134(1), the reference to furthering the conservation objectives stated for an MCZ is to be read as a reference to protecting a European marine site;
- (c) the reference in section 129(3)(c) to hindering the conservation objectives stated for an MCZ is to be read as a reference to damaging a European marine site.

(5) Nothing in byelaws or orders made by virtue of this regulation may interfere with the exercise of any functions of a relevant authority, any functions conferred by or under an enactment (whenever passed) or any right of any person (whenever vested).

#### *Nature conservation policy in planning contexts*

### **Nature conservation policy in planning contexts**

**39.**—(1) For the purposes of—

- (a) subsection (3) of section 17(**24**) (local development documents) of the Planning and Compulsory Purchase Act 2004(**25**),
- (b) subsection (2)(b) of section 62 (local development plan) of that Act, and
- (c) subsection (2)(b) of section 70 (regional strategy) of the Local Democracy, Economic Development and Construction Act 2009(**26**),

policies relating to the development and use of land are to be taken to include policies encouraging the management of features of the landscape which are of major importance for wild fauna and flora.

(2) For the purposes of—

- (a) subsection (3A) of section 12(**27**) (preparation of unitary development plan) of the TCPA 1990;
- (b) subsection (3) of section 31(**28**) (structure plans: continuity, form and content) of that Act; and
- (c) subsection (3) of section 36(**29**) (local plans) of that Act,

policies in respect of the conservation of the natural beauty and amenity of the land are to be taken to include policies encouraging the management of features of the landscape which are of major importance for wild fauna and flora.

(3) The features of the landscape referred to in paragraphs (1) and (2) are those which, by virtue of their linear and continuous structure (such as rivers with their banks or the traditional systems of marking field boundaries) or their function as “stepping stones” (such as ponds or small woods), are essential for the migration, dispersal and genetic exchange of wild species.

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(24) Section 17(3) was amended by the Planning Act 2008 (c. 29), section 180(3)(b).

(25) 2004 c. 5.

(26) 2009 c. 20.

(27) Section 12(3A) was inserted by the Planning and Compensation Act 1991 (c. 34), paragraph 2(1) of Schedule 4. Part 2 of the TCPA 1990 (which includes sections 12, 31 and 36) was repealed by the Planning and Compulsory Purchase Act 2004 (c. 5), Schedule 9, subject to transitional provisions contained in Schedule 8 to that Act. In relation to Wales, transitional provisions contained in article 4 of S.I. 2005/1229 (W. 87) (C. 56) have the effect that section 12 of the TCPA 1990 continues to apply in relation to certain local planning authorities.

(28) Section 31(3) was substituted by the Planning and Compensation Act 1991 (c. 34), paragraph 16 of Schedule 4.

(29) Section 36 was substituted by the Planning and Compensation Act 1991 (c. 34), paragraph 17 of Schedule 4.

(4) Where the Secretary of State considers it necessary, the Secretary of State must include in a national policy statement under Part 2 (national policy statements) of the Planning Act 2008(30) policy that encourages the management of such features of the landscape (as mentioned in paragraph (3)) which are of major importance for wild fauna and flora.