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STATUTORY INSTRUMENTS

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**2010 No. 490**

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

**PART 6**

**ASSESSMENT OF PLANS AND PROJECTS**

**CHAPTER 8**

**LAND USE PLANS**

*Land use plans*

**Assessment of implications for European sites and European offshore marine sites**

**102.**—(1) Where a land use plan—

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

the plan-making authority for that plan must, before the plan is given effect, make an appropriate assessment of the implications for the site in view of that site's conservation objectives.

(2) The plan-making authority must for the purposes of the assessment consult the appropriate nature conservation body and have regard to any representations made by that body within such reasonable time as the authority specify.

(3) They must also, if they consider it appropriate, take the opinion of the general public, and if they do so, they must take such steps for that purpose as they consider appropriate.

(4) In the light of the conclusions of the assessment, and subject to regulation 103 (considerations of overriding public interest), the plan-making authority or, in the case of a regional strategy, the Secretary of State must give effect to the land use plan only after having ascertained that it will not adversely affect the integrity of the European site or the European offshore marine site (as the case may be).

(5) A plan-making authority must provide such information as the appropriate authority may reasonably require for the purposes of the discharge of the obligations of the appropriate authority under this Chapter.

(6) This regulation does not apply in relation to a site which is—

- (a) a European site by reason of regulation 8(1)(c), or
- (b) a European offshore marine site by reason of regulation 15(c) of the 2007 Regulations (site protected in accordance with Article 5(4) of the Habitats Directive).

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

**103.**—(1) If the plan-making authority are satisfied that, there being no alternative solutions, the land use plan must be given effect for imperative reasons of overriding public interest (which, subject to paragraph (3), may be of a social or economic nature), they may give effect to the land use plan notwithstanding a negative assessment of the implications for the European site or the European offshore marine site (as the case may be).

(2) In relation to a regional strategy, paragraph (1) applies to the Secretary of State as it applies to a plan-making authority in the case of any other land use.

(3) 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 reasons which the plan-making authority, having due regard to the opinion of the European Commission, consider to be imperative reasons of overriding public interest.

(4) Where a plan-making authority other than the Secretary of State or the Welsh Ministers desire to obtain the opinion of the European Commission as to whether reasons are to be considered imperative reasons of overriding public interest, they may submit a written request to the appropriate authority—

- (a) identifying the matter on which an opinion is sought; and
- (b) accompanied by any documents or information which may be required.

(5) The appropriate authority—

- (a) may seek the opinion of the European Commission concerning the plan; and
- (b) where such an opinion is received, must send it to the plan-making authority.

(6) Where a plan-making authority other than the Secretary of State or the Welsh Ministers propose to give effect to a land use plan under this regulation notwithstanding a negative assessment of the implications for the site concerned—

- (a) they must notify the appropriate authority; and
- (b) they must not give effect to the land use plan before the end of the period of 21 days beginning with the day notified by the appropriate authority as that on which their notification was received, unless the appropriate authority notify them that they may do so.

(7) Without prejudice to any other power, the appropriate authority may give directions to the plan-making authority in any such case prohibiting them from giving effect to the land use plan, either indefinitely or during such period as may be specified in the direction.

### **Co-ordination for land use plan prepared by more than one authority**

**104.**—(1) The following provisions apply where two or more local planning authorities prepare a joint local development document under section 28(1) (joint local development documents) or a joint local development plan under section 72 (joint local development plans) of the 2004 Planning Act.

(2) Nothing in paragraph (1) of regulation 102 (assessment of implications for European sites and European offshore marine sites) requires a local planning authority to assess any implications of a joint local development document or plan which would be more appropriately assessed under that provision by another local planning authority.

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(1) Section 28 was amended by the Local Democracy, Economic Development and Construction Act 2009 (c. 20), paragraphs 12 and 16 of Schedule 5.

(3) The appropriate authority may issue guidance to local planning authorities for the purposes of regulation 102(1) as to the circumstances in which a local planning authority may or should adopt the reasoning or conclusions of another local planning authority as to whether a joint local planning document or plan—

(a) is likely to have a significant effect on a European site or a European offshore marine site; or

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

(4) The local planning authorities concerned must have regard to any such guidance.

(5) In determining whether a joint local development document or plan should be adopted under regulation 103 (considerations of overriding public interest), a local planning authority must seek and have regard to the views of the other local planning authorities concerned.

### **Compensatory measures**

**105.** Where in accordance with regulation 103 (considerations of overriding public interest) a land use plan is given effect notwithstanding a negative assessment of the implications for a European site or a European offshore marine site, the appropriate authority must secure that any necessary compensatory measures are taken to ensure that the overall coherence of Natura 2000 is protected.