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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.

### *Planning Act 2008*

### **National policy statements**

**106.—**(1) This Chapter applies—

(a) in relation to a national policy statement under Part 2 (national policy statements) of the Planning Act 2008(2) as it applies in relation to a land use plan, and

(b) in relation to the Secretary of State when exercising powers under Part 2 of that Act as it applies in relation to a plan-making authority,

with the modifications specified in paragraphs (2) and (3).

(2) Any reference in this Chapter to giving effect to a land use plan, in relation to a national policy statement, is to be taken to be a reference to the designation of a statement as a national policy statement or an amendment of a national policy statement under Part 2 of the Planning Act 2008.

(3) Where this Chapter applies by virtue of paragraph (1)—

(a) regulations 102(5), 103(4) to (7) and 104 do not apply; and

(b) in regulation 105, for the reference to the appropriate authority substitute a reference to the Secretary of State.

### *Interpretation of Chapter 8*

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**107.—**(1) In this Chapter—

“the 1999 Act” means the Greater London Authority Act 1999(3);

“the 2004 Planning Act” means the Planning and Compulsory Purchase Act 2004(4);

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(2) 2008 c. 29.

(3) 1999 c. 29.

(4) 2004 c. 5.

“the 2005 Order” means the Planning and Compulsory Purchase Act 2004 (Commencement No. 3 and Consequential and Transitional Provisions) (Wales) Order 2005<sup>(5)</sup>;

“the 2009 Act” means the Local Democracy, Economic Development and Construction Act 2009<sup>(6)</sup>;

“land use plan” means—

- (a) the regional strategy under Part 5 (regional strategy) of the 2009 Act;
- (b) the spatial development strategy under section 334 (the spatial development strategy) of the 1999 Act;
- (c) a local development document as provided for in Part 2 (local development) of the 2004 Planning Act other than a statement of community involvement under section 18<sup>(7)</sup> (statement of community involvement) of that Act;
- (d) a local development plan as provided for in Part 6 (Wales) of the 2004 Planning Act;
- (e) the Wales Spatial Plan under section 60<sup>(8)</sup> (Wales Spatial Plan) of the 2004 Planning Act;
- (f) an alteration or replacement of a structure plan, unitary development plan, local plan, minerals local plan, or waste local plan under Part 2<sup>(9)</sup> (development plans) of the TCPA 1990 to the extent permitted by Schedule 8 (transitional provisions) to the 2004 Planning Act; or
- (g) a unitary development plan as provided for in Part 2 of the TCPA 1990 to the extent permitted by article 4 (transitional provisions) of the 2005 Order<sup>(10)</sup>;

“plan-making authority” means—

- (a) responsible regional authorities as defined in section 72 (responsible regional authorities) of the 2009 Act;
- (b) the Mayor of London when exercising powers under subsection (1) or (2) of section 341 (alteration or replacement) of the 1999 Act;
- (c) an authority which, by virtue of Part 1 (planning authorities) of the TCPA 1990 or an order under subsection (2) of section 29 (joint committees) of the 2004 Planning Act, is a local planning authority;
- (d) the Secretary of State when exercising powers under—
  - (i) section 21 (intervention by Secretary of State) or section 27 (Secretary of State’s default power) of the 2004 Planning Act, or
  - (ii) section 19 (approval of a unitary development plan), subsection (4) of section 35A<sup>(11)</sup> (calling in of proposal for approval by the Secretary of State) or section 45 (approval of proposals by the Secretary of State) of the TCPA 1990 to the extent permitted by Schedule 8 to the 2004 Planning Act; or
- (e) the Welsh Ministers when exercising powers under—
  - (i) section 60(3), section 65 (intervention by Assembly) or subsection (4) of section 71 (Assembly’s default power) of the 2004 Planning Act, or

<sup>(5)</sup> [S.I. 2005/1229 \(W.87\) \(C.56\)](#), amended by [S.I. 2005/2722 \(W.193\) \(C.110\)](#).

<sup>(6)</sup> [2009 c. 20](#).

<sup>(7)</sup> Section 18 was amended by the Planning Act 2008 ([c. 29](#)), section 180(1) and (4) and Schedule 13.

<sup>(8)</sup> Section 60 was amended by the Government of Wales Act 2006 ([c. 32](#)), paragraph 66 of Schedule 10 and Schedule 12.

<sup>(9)</sup> Sections 32 to 40 in Part 2 of the TCPA 1990 were substituted by the Planning and Compensation Act 1991 ([c. 34](#)), paragraph 17 of Schedule 4; Part 2 of the TCPA 1990 was repealed by the 2004 Planning Act, Schedule 9, subject to transitional provisions contained in Schedule 8 to that Act.

<sup>(10)</sup> Article 4 contains transitional provisions; it was revoked by [S.I. 2005/2722 \(W.193\) \(C.110\)](#), but that S.I. was amended by [S.I. 2006/842 \(W.77\)](#) with the effect that the transitional provisions in Article 4 of the 2005 Order continue to apply in relation to the local planning authorities in Wales listed in the Schedule to [S.I. 2005/2722](#).

<sup>(11)</sup> Section 35A was inserted by the Planning and Compensation Act 1991 ([c. 34](#)), paragraph 17 of Schedule 4.

- (ii) section 19 of the TCPA 1990 to the extent permitted by article 4 of the 2005 Order;  
and

“regional strategy” has the same meaning as in section 70 (regional strategy) of the 2009 Act.

(2) References in this Chapter to giving effect to a land use plan are to—

- (a) the publication, under subsection (5) of section 78 (approval of revision by Secretary of State) of the 2009 Act, of a revision of a regional strategy;
- (b) the approval, under section 21(9) or 27(4) of the 2004 Planning Act, of a local development document;
- (c) the adoption, under section 23 (adoption of local development documents) of the 2004 Planning Act, of a local development document other than a statement of community involvement under section 18 of that Act;
- (d) the publication, under section 341 of the 1999 Act, of alterations of the spatial development strategy or a new spatial development strategy to replace it;
- (e) the publication, under section 60 of the 2004 Planning Act, of a revision of the Wales Spatial Plan;
- (f) the adoption, under section 67 (adoption of local development plan) of the 2004 Planning Act, of a local development plan;
- (g) the approval, under section 65(9) or 71(4) of the 2004 Planning Act, of a local development plan;
- (h) the adoption, under section 35(1) (adoption of proposals), or approval under section 35A(4) of the TCPA 1990, of an alteration or replacement of a structure plan to the extent permitted by paragraph 2(2) of Schedule 8 to the 2004 Planning Act;
- (i) the adoption, under section 15(12) (adoption of unitary development plans by local planning authority) and that provision as applied by subsection (2) of section 21(13) (alteration or replacement of unitary development plans) of the TCPA 1990, of an alteration or replacement of a unitary development plan to the extent permitted by paragraph 4 of Schedule 8 to the 2004 Planning Act;
- (j) the approval, under section 19 and that provision as applied by section 21(2) of the TCPA 1990, of an alteration or replacement of a unitary development plan to the extent permitted by paragraph 4 of Schedule 8 to the 2004 Planning Act;
- (k) the adoption, under section 43(14) (adoption of proposals) or approval under section 45 of the TCPA 1990, of an alteration or replacement of a local plan, minerals local plan or waste local plan to the extent permitted by paragraph 9, 10 or 14 of Schedule 8 to the 2004 Planning Act;
- (l) the adoption, under section 15 of the TCPA 1990, of a unitary development plan to the extent permitted by article 4 of the 2005 Order; or
- (m) the approval, under section 19 of the TCPA 1990, of a unitary development plan to the extent permitted by article 4 of the 2005 Order.

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(12) Section 15(1) was substituted by the Planning and Compensation Act 1991 (c. 34), paragraph 6 of Schedule 4.

(13) Section 21 was amended by the Planning and Compensation Act 1991 (c. 34), paragraph 12(2) of Schedule 4 and Schedule 19.

(14) Section 43 was amended by the Planning and Compensation Act 1991 (c. 34), paragraph 19(1) of Schedule 4.