
STATUTORY INSTRUMENTS

2017 No. 1013

**The Conservation of Offshore Marine
Habitats and Species Regulations 2017**

PART 2

CONSERVATION OF NATURAL HABITATS AND HABITATS OF SPECIES

Plans and projects

Consideration on review

34.—(1) The following provisions apply where a decision, or a consent, permission or other authorisation falls to be reviewed under regulation 33.

(2) Subject as follows, the provisions of regulation 28(4) and (5) and regulations 29 to 32 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 affect 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) The Scottish Ministers and the Welsh Ministers may issue guidance to competent authorities in Scotland and competent authorities in Wales, respectively, 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 affect 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.

(7) 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).

(8) A competent authority in Scotland must have regard to any guidance issued by the Scottish Ministers under paragraph (6) in discharging its functions under paragraph (3) or (4).

(9) A competent authority in Wales must have regard to any guidance issued by the Welsh Ministers under paragraph (6) in discharging its functions under paragraph (3) or (4).

(10) Any modification or revocation under regulation 33(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, or, in relation to a competent authority in Scotland, the Scottish Ministers, or in relation to a competent authority in Wales, the Welsh Ministers.

(11) 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 or the Welsh Ministers (as the case may be).