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STATUTORY INSTRUMENTS

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**1994 No. 2716**

**WILDLIFE  
COUNTRYSIDE**

**The Conservation (Natural Habitats, &c.) Regulations 1994**

*Made* - - - - *20th October 1994*

*Coming into force* - - *30th October 1994*

The Secretary of State for the Environment, as respects England, the Secretary of State for Wales, as respects Wales, and the Secretary of State for Scotland, as respects Scotland, being designated<sup>(1)</sup> Ministers for the purposes of section 2(2) of the European Communities Act 1972<sup>(2)</sup> in relation to measures relating to the conservation of natural habitats and of wild fauna and flora, in exercise of the powers conferred upon them by the said section 2 and of all other powers enabling them in that behalf, hereby make the following Regulations, a draft of which has been laid before and approved by a resolution of each House of Parliament:—

**PART I**

**INTRODUCTORY PROVISIONS**

**Citation and commencement**

1.—(1) These Regulations may be cited as the Conservation (Natural Habitats, &c.) Regulations 1994.

(2) These Regulations shall come into force on the tenth day after that on which they are made.

**Interpretation and application**

2.—(1) In these Regulations—

“agriculture Minister” means the Minister of Agriculture, Fisheries and Food or the Secretary of State;

“competent authority” shall be construed in accordance with regulation 6;

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(1) S.I.1992/2870.

(2) 1972 c. 68.

“destroy”, in relation to an egg, includes doing anything to the egg which is calculated to prevent it from hatching, and “destruction” shall be construed accordingly;

“enactment” includes a local enactment and an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978<sup>(3)</sup>;

“European site” has the meaning given by regulation 10 and “European marine site” means a European site which consists of, or so far as it consists of, marine areas;

“functions” includes powers and duties;

“the Habitats Directive” has the meaning given by regulation 3(1);

“land” includes land covered by water and as respects Scotland includes salmon fishings;

“livestock” includes any animal which is kept—

- (a) for the provision of food, skins or fur,
- (b) for the purpose of its use in the carrying on of any agricultural activity, or
- (c) for the provision or improvement of shooting or fishing;

“local planning authority” means—

- (a) in England and Wales, except as otherwise provided, any authority having any function as a local planning authority or mineral planning authority under the Town and Country Planning Act 1990<sup>(4)</sup>, and
- (b) in Scotland, a planning authority within the meaning of section 172(1) of the Local Government (Scotland) Act 1973<sup>(5)</sup>;

“management agreement” means an agreement entered into, or having effect as if entered into, under regulation 16;

“marine area” means any land covered (continuously or intermittently) by tidal waters or any part of the sea in or adjacent to Great Britain up to the seaward limit of territorial waters;

“Natura 2000” means the European network of special areas of conservation, and special protection areas under the Wild Birds Directive, provided for by Article 3(1) of the Habitats Directive;

“nature conservation body”, and “appropriate nature conservation body” in relation to England, Wales or Scotland, have the meaning given by regulation 4;

“occupier”, for the purposes of Part III (protection of species), includes, in relation to any land other than the foreshore, any person having any right of hunting, shooting, fishing or taking game or fish;

“planning authority”, in Scotland, means a planning authority within the meaning of section 172(1) of the Local Government (Scotland) Act 1973;

“the register” means the register of European sites in Great Britain provided for by regulation 11;

“relevant authorities”, in relation to marine areas and European marine sites, shall be construed in accordance with regulation 5;

“statutory undertaker” has the same meaning as in the National Parks and Access to the Countryside Act 1949<sup>(6)</sup>;

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(3) 1978 c. 30.

(4) 1990 c. 8.

(5) 1973 c. 65.

(6) 1949 c. 97.

“the Wild Birds Directive” means Council Directive [79/409/EEC](#)(7) on the conservation of wild birds.

(2) Unless the context otherwise requires, expressions used in these Regulations and in the Habitats Directive have the same meaning as in that Directive.

The following expressions, in particular, are defined in Article 1 of that Directive—

“priority natural habitat types” and “priority species”;

“site” and “site of Community importance”; and

“special area of conservation”.

(3) In these Regulations, unless otherwise indicated—

(a) any reference to a numbered regulation or Schedule is to the regulation or Schedule in these Regulations which bears that number, and

(b) any reference in a regulation or Schedule to a numbered paragraph is to the paragraph of that regulation or Schedule which bears that number.

(4) Subject to regulation 68 (which provides for Part IV to be construed as one with the Town and Country Planning Act 1990), these Regulations apply to the Isles of Scilly as if the Isles were a county and the Council of the Isles were a county council.

(5) For the purposes of these Regulations the territorial waters of the United Kingdom adjacent to Great Britain shall be treated as part of Great Britain and references to England, Wales and Scotland shall be construed as including the adjacent territorial waters.

For the purposes of this paragraph—

(a) territorial waters include any waters landward of the baselines from which the breadth of the territorial sea is measured; and

(b) any question as to whether territorial waters are to be treated as adjacent to England, Wales or Scotland shall be determined by the Secretary of State or, for any purpose in relation to which the Minister of Agriculture, Fisheries and Food has responsibility, by the Secretary of State and that Minister acting jointly.

### **Implementation of Directive**

**3.—**(1) These Regulations make provision for the purpose of implementing, for Great Britain, Council Directive [92/43/EEC](#)(8) on the conservation of natural habitats and of wild fauna and flora (referred to in these Regulations as “the Habitats Directive”).

(2) The Secretary of State, the Minister of Agriculture, Fisheries and Food and the nature conservation bodies shall exercise their functions under the enactments relating to nature conservation so as to secure compliance with the requirements of the Habitats Directive.

Those enactments include—

Part III of the National Parks and Access to the Countryside Act 1949(9),

section 49A of the Countryside (Scotland) Act 1967(10) (management agreements),

section 15 of the Countryside Act 1968(11) (areas of special scientific interest),

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(7) O.J. No. L103, 25.4.79 p.1.

(8) O.J. No. L206, 22.7.92 p.7.

(9) 1949 c. 97; Part III was amended by paragraph 1 of Schedule 1 to the Nature Conservancy Council Act 1973 (c. 54).

(10) 1967 c. 86; section 49A was inserted by section 9 of the Countryside (Scotland) Act 1981 (c. 44).

(11) 1968 c. 41; section 15 was amended by paragraph 9 of Schedule 1 to the Nature Conservancy Council Act 1973 (c. 54) and section 73(8) of the Wildlife and Countryside Act 1981 (c. 69).

Part I and sections 28 to 38 of the Wildlife and Countryside Act 1981<sup>(12)</sup>, sections 131 to 134 of the Environmental Protection Act 1990<sup>(13)</sup>, sections 2, 3, 5, 6, 7 and 11 of the Natural Heritage (Scotland) Act 1991<sup>(14)</sup>, and these Regulations.

(3) In relation to marine areas any competent authority having functions relevant to marine conservation shall exercise those functions so as to secure compliance with the requirements of the Habitats Directive.

This applies, in particular, to functions under the following enactments—

the Sea Fisheries Acts within the meaning of section 1 of the Sea Fisheries (Wildlife Conservation) Act 1992<sup>(15)</sup>,

the Dockyard Ports Regulation Act 1865<sup>(16)</sup>,

section 2(2) of the Military Lands Act 1900<sup>(17)</sup> (provisions as to use of sea, tidal water or shore),

the Harbours Act 1964<sup>(18)</sup>,

Part II of the Control of Pollution Act 1974<sup>(19)</sup>,

sections 36 and 37 of the Wildlife and Countryside Act 1981<sup>(20)</sup> (marine nature reserves),

sections 120 to 122 of the Civic Government (Scotland) Act 1982<sup>(21)</sup> (control of the seashore, adjacent waters and inland waters),

the Water Resources Act 1991<sup>(22)</sup>,

the Land Drainage Act 1991<sup>(23)</sup>, and

these Regulations.

(4) Without prejudice to the preceding provisions, every competent authority in the exercise of any of their functions, shall have regard to the requirements of the Habitats Directive so far as they may be affected by the exercise of those functions.

### **Nature conservation bodies**

**4.** In these Regulations “nature conservation body” means the Nature Conservancy Council for England, the Countryside Council for Wales or Scottish Natural Heritage; and references to “the appropriate nature conservation body”, in relation to England, Wales or Scotland, shall be construed accordingly.

(12) 1981 c. 69; relevant amendments have been made by the Wildlife and Countryside (Amendment) Act 1985 (c. 31), the Wildlife and Countryside (Service of Notices) Act 1985 (c. 59) and the Wildlife and Countryside (Amendment) Act 1991 (c. 39).

(13) 1990 c. 43.

(14) 1991 c. 28.

(15) 1992 c. 36.

(16) 1865 c. 125.

(17) 1900 c. 56; the power conferred by section 2(2) was extended by section 7 of the Lands Powers (Defence) Act 1958 (c. 30).

(18) 1964 c. 40; relevant amendments were made by Part III of the Docks and Harbours Act 1966 (c. 28), Schedule 6 to the Transport Act 1981 (c. 56) and section 63 of, and Schedule 3 to, the Transport and Works Act 1992 (c. 42).

(19) 1974 c. 40.

(20) 1981 c. 69.

(21) 1982 c. 45.

(22) 1991 c. 57.

(23) 1991 c. 59.

### **Relevant authorities in relation to marine areas and European marine sites**

5. For the purposes of these Regulations the relevant authorities, in relation to a marine area or European marine site, are such of the following as have functions in relation to land or waters within or adjacent to that area or site—

- (a) a nature conservation body;
- (b) a county council, district council, London borough council or, in Scotland, a regional, islands or district council;
- (c) the National Rivers Authority, a water undertaker or sewerage undertaker, or an internal drainage board;
- (d) a navigation authority within the meaning of the Water Resources Act 1991<sup>(24)</sup>;
- (e) a harbour authority within the meaning of the Harbours Act 1964<sup>(25)</sup>;
- (f) a lighthouse authority;
- (g) a river purification board or a district salmon fishery board;
- (h) a local fisheries committee constituted under the Sea Fisheries Regulation Act 1966<sup>(26)</sup> or any authority exercising the powers of such a committee.

### **Competent authorities generally**

6.—(1) For the purposes of these Regulations the expression “competent authority” includes any Minister, government department, public or statutory undertaker, public body of any description or person holding a public office.

The expression also includes any person exercising any function of a competent authority in the United Kingdom.

(2) In paragraph (1)—

- (a) “public body” includes any local authority, joint board or joint committee; and
- (b) “public office” means—
  - (a) an office under Her Majesty,
  - (b) an office created or continued in existence by a public general Act of Parliament, or
  - (c) an office the remuneration in respect of which is paid out of money provided by Parliament.

(3) In paragraph (2)(a)—

“local authority”—

- (a) in relation to England, means a county council, district council or London borough council, the Common Council of the City of London, the sub-treasurer of the Inner Temple, the under treasurer of the Middle Temple or a parish council,
- (b) in relation to Wales, means a county council, district council or community council, and
- (c) in relation to Scotland, means a regional, islands or district council;

“joint board” and “joint committee” in relation to England and Wales mean—

- (a) a joint or special planning board constituted for a National Park by order under paragraph 1 or 3 of Schedule 17 to the Local Government Act 1972<sup>(27)</sup>, or a joint planning board within the meaning of section 2 of the Town and Country Planning Act 1990, and

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<sup>(24)</sup> The expression “navigation authority” is defined in section 221(1) of that Act.

<sup>(25)</sup> The expression “harbour authority” is defined in section 57 of that Act.

<sup>(26)</sup> 1966 c. 38.

<sup>(27)</sup> 1972 c. 70.

- (b) a joint committee appointed under section 102(1)(b) of the Local Government Act 1972, and in relation to Scotland have the same meaning as in the Local Government (Scotland) Act 1973(28).

## PART II

### CONSERVATION OF NATURAL HABITATS AND HABITATS OF SPECIES

#### *European sites*

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

7.—(1) On the basis of the criteria set out in Annex III (Stage 1) to the Habitats Directive, and relevant scientific information, the Secretary of State shall propose a list of sites indicating with respect to each site—

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

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

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

(3) Where appropriate the Secretary of State may propose modification of the list in the light of the results of the surveillance referred to in Article 11 of the Habitats Directive.

(4) The list shall be transmitted to the Commission on or before 5th June 1995, 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),

provided in a format established by the Commission.

#### **Adoption of list of sites: designation of special areas of conservation**

8.—(1) Once a site of Community importance in Great Britain has been adopted in accordance with the procedure laid down in paragraph 2 of Article 4 of the Habitats Directive, the Secretary of State shall designate that site as a special area of conservation as soon as possible and within six years at most.

(2) The Secretary of State shall 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 in Annex I to the Habitats Directive, or
    - (ii) a species in Annex II to the Directive,
- and for the coherence of Natura 2000; and

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(28) 1973 c. 65; the expressions “joint board” and “joint committee” are defined in section 235(1) of the Act.

- (b) the threats of degradation or destruction to which those sites are exposed.

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

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

- (a) the Secretary of State agrees that the site should be added to the list transmitted in accordance with regulation 7, or
- (b) the Council, acting on a proposal from the Commission in pursuance of paragraph 2 of Article 5 of the Habitats Directive, so decides,

the site shall be treated as added to the list as from the date of that agreement or decision.

#### **Meaning of “European site” in these Regulations**

**10.—**(1) In these Regulations a “European site” means—

- (a) a special area of conservation,
- (b) a site of Community importance which has been placed on the list referred to in the third sub-paragraph of Article 4(2) of the Habitats Directive,
- (c) a site hosting a priority natural habitat type or priority species in respect of which consultation has been initiated under Article 5(1) of the Habitats Directive, during the consultation period or pending a decision of the Council under Article 5(3), or
- (d) an area classified pursuant to Article 4(1) or (2) of the Wild Birds Directive.

(2) Sites which are European sites by virtue only of paragraph (1)(c) are not within regulations 20(1) and (2), 24 and 48 (which relate to the approval of certain plans and projects); but this is without prejudice to their protection under other provisions of these Regulations.

#### *Register of European sites*

#### **Duty to compile and maintain register of European sites**

**11.—**(1) The Secretary of State shall compile and maintain, in such form as he thinks fit, a register of European sites in Great Britain.

(2) He shall include in the register—

- (a) special areas of conservation, as soon as they are designated by him;
- (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); and
- (d) areas classified by him pursuant to Article 4(1) or (2) of the Wild Birds Directive, as soon as they are so classified or, if they have been classified before the commencement of these Regulations, as soon as practicable after commencement.

(3) He may, if appropriate, amend the entry in the register relating to a European site.

(4) He shall remove the relevant entry—

- (a) if a special area of conservation is declassified by the Commission under Article 9 of the Habitats Directive; or
  - (b) if a site otherwise ceases to fall within any of the categories listed in paragraph (2) above.
- (5) He shall keep a copy of the register available for public inspection at all reasonable hours and free of charge.

#### **Notification to appropriate nature conservation body**

**12.**—(1) The Secretary of State shall notify the appropriate nature conservation body as soon as may be after including a site in the register, amending an entry in the register or removing an entry from the register.

(2) Notification of the inclusion of a site in the register shall be accompanied by a copy of the register entry.

(3) Notification of the amendment of an entry in the register shall be accompanied by a copy of the amended entry.

(4) Each nature conservation body shall keep copies 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, relevant authorities, &c.**

**13.**—(1) As soon as practicable after a nature conservation body receive notification under regulation 12 they shall give notice to—

- (a) every owner or occupier of land within the site,
- (b) every local planning authority in whose area the site, or any part of it, is situated, and
- (c) such other persons or bodies as the Secretary of State may direct.

(2) Notice of the inclusion of a site in the register, or of the amendment of an entry in the register, shall be accompanied by a copy of so much of the relevant register entry as relates to land owned or occupied by or, as the case may be, to land within the area of, the person or authority to whom the notice is given.

(3) The Secretary of State may give directions as to the form and content of notices to be given under this regulation.

#### **Local registration: England and Wales**

**14.** An entry in the register relating to a European site in England and Wales is a local land charge.

#### **Local registers: Scotland**

**15.**—(1) A planning authority in Scotland shall keep available at their principal office for free public inspection a register of all the European sites of which they have been given notice under regulation 13(1)(b).

(2) A planning authority in Scotland may keep available at any other of their offices for free public inspection such part of the register referred to in paragraph (1) as appears to them to relate to that part of their area in which such office is situated.

(3) A planning authority shall supply to any person, on payment of such reasonable fee as they may determine, a copy, certified by the proper officer of the authority to be a true copy, of any entry in the register kept by them under paragraph (1).



### *Management agreements*

#### **Management agreements**

**16.**—(1) The appropriate nature conservation body may enter into an agreement (a “management agreement”) with every owner, lessee and occupier of land forming part of a European site, or land adjacent to such a site, for the management, conservation, restoration or protection of the site, or any part of it.

(2) A management agreement may impose such restrictions as may be expedient for the purposes of the agreement on the exercise of rights over the land by the persons who can be bound by the agreement.

(3) A management agreement—

- (a) may provide for the management of the land in such manner, the carrying out thereon of such work and the doing thereon of such other things as may be expedient for the purposes of the agreement;
- (b) may provide for any of the matters mentioned in sub-paragraph (a) being carried out, or for the costs thereof being defrayed, either by the said owner or other persons or by the appropriate nature conservation body, or partly in one way and partly in another;
- (c) may contain such other provisions as to the making of payments by the appropriate nature conservation body, and in particular for the payment by them of compensation for the effect of the restrictions mentioned in paragraph (2), as may be specified in the agreement.

(4) Where land in England and Wales is subject to a management agreement, the appropriate nature conservation body shall, as respects the enforcement of the agreement against persons other than the original contracting party, have the like rights as if—

- (a) they had at all material times been the absolute owners in possession of ascertained land adjacent to the land subject to the agreement and capable of being benefited by the agreement, and
- (b) the management agreement had been expressed to be for the benefit of that adjacent land;

and section 84 of the Law of Property Act 1925<sup>(29)</sup> (which enables the Lands Tribunal to discharge or modify restrictive covenants) shall not apply to the agreement.

(5) A management agreement affecting land in Scotland may be registered either—

- (a) in a case where the land affected by the agreement is registered in that register, in the Land Register of Scotland, or
- (b) in any other case, in the General Register of Sasines;

and, on being so recorded, it shall be enforceable at the instance of the appropriate nature conservation body against any person having an interest in the land and against any person deriving title from him:

Provided that a management agreement shall not be so enforceable against a third party who has *bona fide* onerously acquired right (whether completed by infestment or not) to his interest in the land prior to the agreement being recorded as aforesaid, or against any person deriving title from such third party.

#### **Continuation in force of existing agreement, &c.**

**17.**—(1) Any agreement previously entered into under—

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<sup>(29)</sup> 1925 c. 20; by virtue of section 28(1) of the Law of Property Act 1969 (c. 59) section 84 has effect as set out in Schedule 3 to that Act.

- (a) section 16 of the National Parks and Access to the Countryside Act 1949<sup>(30)</sup> (nature reserves),
- (b) section 15 of the Countryside Act 1968<sup>(31)</sup> (areas of special scientific interest), or
- (c) section 49A of the Countryside (Scotland) Act 1967<sup>(32)</sup> (management agreements),

in relation to land which on or after the commencement of these Regulations becomes land within a European site, or adjacent to such a site, shall have effect as if entered into under regulation 16 above.

Regulation 32(1)(b) (power of compulsory acquisition in case of breach of agreement) shall apply accordingly.

(2) Any other thing done or deemed to have been done under any provision of Part III or VI of the National Parks and Access to the Countryside Act 1949, or under section 49A of the Countryside (Scotland) Act 1967, in respect of any land prior to that land becoming land within a European site, or adjacent to such a site, shall continue to have effect as if done under the corresponding provision of these Regulations.

For the purposes of this paragraph Part III of the 1949 Act shall be deemed to include section 15 of the Countryside Act 1968 and anything done or deemed to be done under that section and to which this paragraph applies shall have effect as if done or deemed to be done under section 16 of the 1949 Act.

(3) Any reference in an outlying enactment to a nature reserve within the meaning of section 15 of the National Parks and Access to the Countryside Act 1949 shall be construed as including a European site.

For this purpose an “outlying enactment” means an enactment not contained in, or in an instrument made under, the National Parks and Access to the Countryside Act 1949 or the Wildlife and Countryside Act 1981<sup>(33)</sup>.

### *Control of potentially damaging operations*

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

**18.**—(1) Any notification in force in relation to a European site under section 28 of the Wildlife and Countryside Act 1981 (areas of special scientific interest) specifying—

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

shall have effect for the purposes of these Regulations.

(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 any of the matters mentioned in paragraph (1)(a) or (b).

(3) Notice of any amendment shall be given—

- (a) to every owner and occupier of land within the site who in the opinion of the appropriate nature conservation body may be affected by the amendment, and
- (b) to the local planning authority;

and the amendment shall come into force in relation to an owner or occupier upon such notice being given to him.

<sup>(30)</sup> 1949 c. 97; section 16 was amended by paragraph 1 of Schedule 1 to the Nature Conservancy Council Act 1973 (c. 54).

<sup>(31)</sup> 1968 c. 41; section 15 was amended by paragraph 9 of Schedule 1 to the Nature Conservancy Council Act 1973 (c. 54).

<sup>(32)</sup> 1967 c. 86; section 49A was inserted by section 9 of the Countryside (Scotland) Act 1981 (c. 44).

<sup>(33)</sup> 1981 c. 69.

- (4) The provisions of—
- (a) section 28(11) of the Wildlife and Countryside Act 1981 (notification to be local land charge in England and Wales), and
  - (b) section 28(12) to (12B)(**34**) of that Act (local registration of notification in Scotland),
- apply, with the necessary modifications, in relation to an amendment of a notification under this regulation as in relation to the original notification.

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

**19.**—(1) The owner or occupier of any land within a European site shall not carry out, or cause or permit to be carried out, on that land any operation specified in a notification in force in relation to the site under regulation 18, 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 the land on which it is proposed to carry it out, and
  - (b) one of the conditions specified in paragraph (2) is fulfilled.
- (2) Those 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 expired from the giving of the notice under paragraph (1)(a).

(3) 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.

(4) For the purposes of paragraph (3) it is a reasonable excuse for a person to carry out an operation—

- (a) that 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) that the operation was authorised by a planning permission granted on an application under Part III of the Town and Country Planning Act 1990(**35**) or Part III of the Town and Country Planning (Scotland) Act 1972(**36**).

(5) The appropriate nature conservation body has power to enforce this regulation; but nothing in this paragraph shall be construed as authorising the institution of proceedings in Scotland for an offence.

(6) Proceedings in England and Wales for an offence under this regulation shall not, without the consent of the Director of Public Prosecutions, be taken by a person other than the appropriate nature conservation body.

### **Supplementary provisions as to consents**

**20.**—(1) Where it appears to the appropriate nature conservation body that an application for consent under regulation 19(2)(a) relates to an operation which is or forms part of a plan or project which—

- (a) is not directly connected with or necessary to the management of the site, and

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**(34)** Subsections (12) to (12B) were substituted by section 2(8) of the Wildlife and Countryside (Amendment) Act 1985 (c. 31).

**(35)** 1990 c. 8.

**(36)** 1972 c. 52.

(b) is likely to have a significant effect on the site (either alone or in combination with other plans or projects),

they shall make an appropriate assessment of the implications for the 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) The above provisions do not apply in relation to a site which is a European site by reason only of regulation 10(1)(c) (site protected in accordance with Article 5(4)).

(4) Where in any case, whether in pursuance of this regulation or otherwise, 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 shall notify the Secretary of State.

(5) They shall take such steps as are requisite to secure that any such notification is given at least one month before the expiry of the period mentioned in regulation 19(2)(c) (period after which operation may be carried out in absence of consent).

#### **Provision as to existing notices and consents**

**21.**—(1) Any notice or consent previously given under section 28(5)(a) or (6)(a) of the Wildlife and Countryside Act 1981 in relation to land which on or after the commencement of these Regulations becomes land within a European site shall have effect, subject as follows, as if given under regulation 19(1)(a) or (2)(a) above.

(2) The appropriate nature conservation body shall 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 shall 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 the modification or withdrawal shall come into force in relation to an owner or occupier upon such notice being given to him.

(4) The modification or withdrawal of a consent shall 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 covered by a consent by reason of the consent being modified or withdrawn, the period after which in accordance with regulation 19(2)(c) the operation may be carried out in the absence of consent shall be four months from the giving of notice of the modification or withdrawal under paragraph (3) above.

(6) Regulation 20(4) and (5) (provisions as to notification of Secretary of State) apply 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;
- (b) for the reference to the period specified in regulation 19(2)(c) substitute a reference to the period specified in paragraph (5) above.

#### *Special nature conservation orders*

#### **Power to make special nature conservation order**

**22.**—(1) The Secretary of State 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 which appear to him 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) 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 in relation to land in England and Wales is a local land charge.
- (5) A special nature conservation order in relation to land in Scotland shall be registered either—
  - (a) in a case where the land affected by the order is registered in that Register, in the Land Register of Scotland; or
  - (b) in any other case, in the appropriate Division of the General Register of Sasines.
- (6) A report submitted by a nature conservation body to the Secretary of State under paragraph 20 of Schedule 6 to the Environmental Protection Act 1990<sup>(37)</sup> or section 10(2) of the Natural Heritage (Scotland) Act 1991<sup>(38)</sup> shall set out particulars of any land in their area as respects which a special nature conservation order has come into operation during the year to which the report relates.

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

- 23.**—(1) No person shall carry out on any land within a European site in respect of which a special nature conservation order is in force any operation specified in the order, unless the operation is carried out, or caused or permitted to be carried out, by the owner or occupier of the land and—
- (a) one of them has, after the making of the order, given the appropriate nature conservation body written notice of a proposal to carry out the operation, specifying its nature and the land on which it is proposed to carry it out, and
  - (b) one of the conditions specified in paragraph (2) is fulfilled.
- (2) Those 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.
- (3) A person who, without reasonable excuse, contravenes paragraph (1) 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.
- (4) For the purposes of paragraph (3) it is a reasonable excuse for a person to carry out an operation—
- (a) that 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) that the operation was authorised by a planning permission granted on an application under Part III of the Town and Country Planning Act 1990 or Part III of the Town and Country Planning (Scotland) Act 1972.

### **Supplementary provisions as to consents**

- 24.**—(1) Where it appears to the appropriate nature conservation body that an application for consent under regulation 23(2)(a) relates to an operation which is or forms part of a plan or project which—

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<sup>(37)</sup> 1990 c. 43.

<sup>(38)</sup> 1991 c. 28.

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

they shall make an appropriate assessment of the implications for the 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 in accordance with paragraph (2) they shall give reasons for their decision.

(4) The owner or occupier of the land in question may—

- (a) within two months of receiving notice of the refusal of consent, or
- (b) if no notice of a decision is received by him 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 forthwith to the Secretary of State.

(5) If on the matter being referred to the Secretary of State he is 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), he 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) other reasons which in the opinion of the European Commission are imperative reasons of overriding public interest.

(7) Where the Secretary of State directs the appropriate nature conservation body to give consent under this regulation, he shall 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 only of regulation 10(1)(c) (site protected in accordance with Article 5(4)).

### **Compensation for effect of order**

**25.**—(1) Where a special nature conservation order is made, the appropriate nature conservation body shall pay compensation to any person having at the time of the making of the order an interest in land comprised in an agricultural unit comprising land to which the order relates who, on a claim made to the appropriate nature conservation body within the time and in the manner prescribed by regulations, shows that the value of his interest is less than it would have been if the order had not been made.

(2) For this purpose an “agricultural unit” means land which is occupied as a unit for agricultural purposes, including any dwelling-house or other building occupied by the same person for the purpose of farming the land.

(3) No claim for compensation shall be made under this regulation in respect of an order unless the Secretary of State has given notice under paragraph 6(1) or (2) of Schedule 1 of his decision in respect of the order.

### **Restoration where order contravened**

**26.**—(1) Where a person is convicted of an offence under regulation 23, the court by which he is convicted may, in addition to dealing with him in any other way, make an order requiring him 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) An order under this regulation made on conviction on indictment shall be treated for the purposes of section 30 of the Criminal Appeal Act 1968<sup>(39)</sup> (effect of appeals on orders for the restitution of property) as an order for the restitution of property.

(3) In the case of an order under this regulation made by a magistrates' court the period specified in the order shall not begin to run—

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

(4) At any time before an order under this regulation has been complied with or fully complied with, the court by which it was made may, on the application of the person against whom it was made, discharge or vary the order if it appears to the court that a change in circumstances has made compliance or full compliance with the order impracticable or unnecessary.

(5) If a person fails without reasonable excuse to comply with an order under this regulation, he commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale; and if the failure continues after conviction, he may be proceeded against for a further offence from time to time until the order is complied with.

(6) If, within the period specified in an order under this regulation, 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 against whom the order was made any expenses reasonably incurred by them in doing so.

(7) In the application of this regulation to Scotland—

- (a) paragraphs (2) and (3) shall not apply, and
- (b) for the purposes of any appeal or review, an order under this regulation is a sentence.

### **Continuation in force of existing orders, &c.**

**27.**—(1) Where an order is in force under section 29 of the Wildlife and Countryside Act 1981<sup>(40)</sup> (special protection for certain areas of special scientific interest) in relation to land which on or after the commencement of these Regulations becomes land within a European site, the order shall have effect as if made under regulation 22 above.

(2) Any notice previously given under section 29(4)(a)<sup>(41)</sup> (notice by owner or occupier of proposal to carry out operation) shall have effect as if given under regulation 23(1)(a) and, if the appropriate nature conservation body have neither given nor refused consent, shall be dealt with under these Regulations.

(3) Any consent previously given under section 29(5)(a) shall be reviewed by the appropriate nature conservation body as regards its compatibility with the conservation objectives of the site, and may be modified or withdrawn.

(4) Notice of any such modification or withdrawal of consent shall be given to every owner and occupier of land within the site who in the opinion of the appropriate nature conservation body may

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<sup>(39)</sup> 1968 c. 19; section 30 was substituted by paragraph 28 of Schedule 15 to the Criminal Justice Act 1988 (c. 33).

<sup>(40)</sup> 1981 c. 69.

<sup>(41)</sup> Section 29(4)(a) was amended by paragraph 11(9) and (10) of Schedule 9 to the Environmental Protection Act 1990 (c. 43).

be affected by it; and the modification or withdrawal shall come into force in relation to an owner or occupier upon such notice being given to him.

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

(6) Section 29(5)(c), (6) and (7) shall cease to apply and the carrying out, or continuation, of any operation on land within a European site which is not otherwise authorised in accordance with these Regulations shall be subject to the prohibition in regulation 23(1).

### *Byelaws*

#### **Power to make byelaws**

**28.**—(1) The appropriate nature conservation body may make byelaws for the protection of a European site under section 20 of the National Parks and Access to the Countryside Act 1949<sup>(42)</sup> (byelaws for protection of nature reserves).

(2) Without prejudice to the generality of paragraph (1), byelaws under that section as it applies by virtue of this regulation may make provision of any of the following kinds.

(3) They may—

- (a) provide for prohibiting or restricting the entry into, or movement within, the site of persons, vehicles, boats and 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;
- (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) They 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 requisite for the protection of the site.

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

(7) This regulation does not apply in relation to a European marine site (but see regulation 36).

<sup>(42)</sup> 1949 c. 97; section 20 was amended by paragraph 1 of Schedule 1 to the Nature Conservancy Council Act 1973 (c. 54), paragraph 28(1) of Schedule 4 to the Telecommunications Act 1984 (c. 12) and paragraph 13(1) of Schedule 25 to the Water Act 1989 (c. 15).



### **Byelaws: limitation on effect**

**29.** Byelaws under section 20 of the National Parks and Access to the Countryside Act 1949 as it applies by virtue of regulation 28 shall not interfere with—

- (a) the exercise by any person of a right vested in him as owner, lessee or occupier of land in the European site, or in any such surrounding or adjoining area as is mentioned in paragraph (4) of that regulation;
- (b) the exercise of any public right of way;
- (c) the exercise of any functions of statutory undertakers;
- (d) the exercise of any functions of an internal drainage board, a district salmon fishery board or the Commissioners appointed under the Tweed Fisheries Act 1969<sup>(43)</sup>; or
- (e) the running of a telecommunications code system or the exercise of any right conferred by or in accordance with the telecommunications code on the operator of any such system.

### **Compensation for effect of byelaws**

**30.** Where the exercise of any right vested in a person, whether by reason of his 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 byelaws under section 20 of the National Parks and Access to the Countryside Act 1949 as it applies by virtue of regulation 28, he shall be entitled to receive from the appropriate nature conservation body compensation in respect thereof.

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

**31.** Any byelaws in force under section 20 of the National Parks and Access to the Countryside Act 1949 in relation to land which on or after the commencement of these Regulations becomes land within a European site, or adjacent to such a site, shall have effect as if made under the said section 20 as it applies by virtue of regulation 28 and shall be construed as if originally so made.

### *Powers of compulsory acquisition*

#### **Powers of compulsory acquisition**

**32.—**(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) shall not 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 the remedying thereof.

(3) Any dispute arising whether there has been such a breach of a management agreement shall be determined—

- (a) in the case of land in England and Wales, by an arbitrator appointed by the Lord Chancellor;

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(43) 1969 c.xxiv.

- (b) in the case of land in Scotland, by an arbiter appointed by the Lord President of the Court of Session.

*Special provisions as to European marine sites*

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

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

This power is exercisable subject to the obtaining of any necessary consent under section 34 of the Coast Protection Act 1949<sup>(44)</sup> (restriction of works detrimental to navigation).

(2) As soon as possible after a site becomes a European marine site, the appropriate nature conservation body shall 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**

**34.**—(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) shall 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 shall be sent by the relevant authority or authorities concerned to the appropriate nature conservation body.

**Direction to establish or amend management scheme**

**35.**—(1) The relevant Minister 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 Minister is required before the scheme is established; and
- (e) require any relevant authority to supply to the Minister such information concerning the establishment of the scheme as may be specified in the direction.

(3) The relevant Minister 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 shall be in writing and may be varied or revoked by a further direction.

<sup>(44)</sup> 1949 c. 74; section 34 was amended by section 36(1) to (4) of the Merchant Shipping Act 1988 (c. 12).

(5) In this regulation “the relevant Minister” means, in relation to a site in England, the Secretary of State and the Minister of Agriculture, Fisheries and Food acting jointly and in any other case the Secretary of State.

### **Byelaws for protection of European marine site**

**36.**—(1) The appropriate nature conservation body may make byelaws for the protection of a European marine site under section 37 of the Wildlife and Countryside Act 1981 (byelaws for protection of marine nature reserves).

(2) The provisions of subsections (2) to (11) of that section apply in relation to byelaws made by virtue of this regulation with the substitution for the references to marine nature reserves of references to European marine sites.

(3) Nothing in byelaws made by virtue of this regulation shall 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).

### *Miscellaneous*

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

**37.**—(1) For the purposes of the planning enactments mentioned below, policies in respect of the conservation of the natural beauty and amenity of the land shall be taken to include policies encouraging the management of features of the landscape which are of major importance for wild flora and fauna.

Such features 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.

(2) The enactments referred to in paragraph (1) are—

- (a) in the Town and Country Planning Act 1990<sup>(45)</sup>, section 12(3A) (unitary development plans), section 31(3) (structure plans) and section 36(3)<sup>(46)</sup> (local plans);
- (b) in the Town and Country Planning (Scotland) Act 1972<sup>(47)</sup>, section 5(3)(a) (structure plans) and section 9(3)(a) (local plans)<sup>(48)</sup>.

## **PART III**

### **PROTECTION OF SPECIES**

#### *Protection of animals*

### **European protected species of animals**

**38.** The species of animals listed in Annex IV(a) to the Habitats Directive whose natural range includes any area in Great Britain are listed in Schedule 2 to these Regulations.

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<sup>(45)</sup> 1990 c. 8.

<sup>(46)</sup> Section 12(3A) was inserted, and sections 31(3) and 36(3) were substituted, by paragraphs 2(1), 16 and 17 respectively of Schedule 4 to the Planning and Compensation Act 1991 (c. 34).

<sup>(47)</sup> 1972 c. 52.

<sup>(48)</sup> The relevant passages in sections 5(3)(a) and 9(3)(a) were inserted by paragraphs 3 and 4 of Schedule 13 to the Planning and Compensation Act 1991 (c. 34).

References in these Regulations to a “European protected species” of animal are to any of those species.

### **Protection of wild animals of European protected species**

**39.**—(1) It is an offence—

- (a) deliberately to capture or kill a wild animal of a European protected species;
- (b) deliberately to disturb any such animal;
- (c) deliberately to take or destroy the eggs of such an animal; or
- (d) to damage or destroy a breeding site or resting place of such an animal.

(2) It is an offence to keep, transport, sell or exchange, or offer for sale or exchange, any live or dead wild animal of a European protected species, or any part of, or anything derived from, such an animal.

(3) Paragraphs (1) and (2) apply to all stages of the life of the animals to which they apply.

(4) A person shall not be guilty of an offence under paragraph (2) if he shows—

- (a) that the animal had not been taken or killed, or had been lawfully taken or killed, or
- (b) that the animal or other thing in question had been lawfully sold (whether to him or any other person).

For this purpose “lawfully” means without any contravention of these Regulations or Part I of the Wildlife and Countryside Act 1981<sup>(49)</sup>.

(5) In any proceedings for an offence under this regulation, the animal in question shall be presumed to have been a wild animal unless the contrary is shown.

(6) A person guilty of an offence under this regulation is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

### **Exceptions from regulation 39**

**40.**—(1) Nothing in regulation 39 shall make unlawful—

- (a) anything done in pursuance of a requirement by the agriculture Minister under section 98 of the Agriculture Act 1947<sup>(50)</sup> or section 39 of the Agriculture (Scotland) Act 1948<sup>(51)</sup> (prevention of damage by pests); or
- (b) anything done under, or in pursuance of an order made under, the Animal Health Act 1981<sup>(52)</sup>.

(2) Nothing in regulation 39(1)(b) or (d) shall make unlawful anything done within a dwelling-house.

(3) Notwithstanding anything in regulation 39, a person shall not be guilty of an offence by reason of—

- (a) the taking of a wild animal of a European protected species if he shows that the animal had been disabled otherwise than by his unlawful act and was taken solely for the purpose of tending it and releasing it when no longer disabled;

<sup>(49)</sup> 1981 c. 69.

<sup>(50)</sup> 1947 c. 48; section 98 was amended by the Prevention of Damage by Pests Act 1949 (c. 55) and the Pests Act 1954 (c. 68).

<sup>(51)</sup> 1948 c. 45; section 39 was amended by the Prevention of Damage by Pests Act 1949 (c. 55), the Pests Act 1954 (c. 68) and the Deer (Amendment) (Scotland) Act 1982 (c. 19).

<sup>(52)</sup> 1981 c. 22; the Act was amended by the Animal Health and Welfare Act 1984 (c. 40) and the Environmental Protection Act 1990 (c. 43).

- (b) the killing of such an animal if he shows that the animal has been so seriously disabled otherwise than by his unlawful act that there was no reasonable chance of its recovering; or
  - (c) any act made unlawful by that regulation if he shows that the act was the incidental result of a lawful operation and could not reasonably have been avoided.
- (4) A person shall not be entitled to rely on the defence provided by paragraph (2) or (3)(c) as respects anything done in relation to a bat otherwise than in the living area of a dwelling-house unless he had notified the appropriate nature conservation body of the proposed action or operation and allowed them a reasonable time to advise him as to whether it should be carried out and, if so, the method to be used.
- (5) Notwithstanding anything in regulation 39 a person—
- (a) being the owner or occupier, or any person authorised by the owner or occupier, of the land on which the action authorised is taken, or
  - (b) authorised by the local authority for the area within which the action authorised is taken,
- shall not be guilty of an offence by reason of the killing or disturbing of an animal of a European protected species if he shows that his action was necessary for the purpose of preventing serious damage to livestock, foodstuffs, crops, vegetables, fruit, growing timber or any other form of property or fisheries.
- (6) A person may not rely on the defence provided by paragraph (5) as respects action taken at any time if it had become apparent before that time that the action would prove necessary for the purpose mentioned in that paragraph and either—
- (a) a licence under regulation 44 authorising that action had not been applied for as soon as reasonably practicable after that fact had become apparent, or
  - (b) an application for such a licence had been determined.
- (7) In paragraph (5) “local authority” means—
- (a) in relation to England and Wales, a county, district or London borough council and includes the Common Council of the City of London, and
  - (b) in Scotland, a regional, islands or district council.

### **Prohibition of certain methods of taking or killing wild animals**

- 41.—**(1) This regulation applies in relation to the taking or killing of a wild animal—
- (a) of any of the species listed in Schedule 3 to these Regulations (which shows the species listed in Annex V(a) to the Habitats Directive, and to which Article 15 applies, whose natural range includes any area of Great Britain), or
  - (b) of a European protected species, where the taking or killing of such animals is permitted in accordance with these Regulations.
- (2) It is an offence to use for the purpose of taking or killing any such wild animal—
- (a) any of the means listed in paragraph (3) or (4) below, or
  - (b) any form of taking or killing from the modes of transport listed in paragraph (5) below.
- (3) The prohibited means of taking or killing of mammals are—
- (a) blind or mutilated animals used as live decoys;
  - (b) tape recorders;
  - (c) electrical and electronic devices capable of killing or stunning;
  - (d) artificial light sources;
  - (e) mirrors and other dazzling devices;

- (f) devices for illuminating targets;
  - (g) sighting devices for night shooting comprising an electronic image magnifier or image converter;
  - (h) explosives;
  - (i) nets which are non-selective according to their principle or their conditions of use;
  - (j) traps which are non-selective according to their principle or their conditions of use;
  - (k) crossbows;
  - (l) poisons and poisoned or anaesthetic bait;
  - (m) gassing or smoking out;
  - (n) semi-automatic or automatic weapons with a magazine capable of holding more than two rounds of ammunition.
- (4) The prohibited means of taking or killing fish are—
- (a) poison;
  - (b) explosives.
- (5) The prohibited modes of transport are—
- (a) aircraft;
  - (b) moving motor vehicles.
- (6) A person guilty of an offence under this regulation is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

### *Protection of plants*

#### **European protected species of plants**

**42.** The species of plants listed in Annex IV(b) to the Habitats Directive whose natural range includes any area in Great Britain are listed in Schedule 4 to these Regulations.

References in these Regulations to a “European protected species” of plant are to any of those species.

#### **Protection of wild plants of European protected species**

**43.—(1)** It is an offence deliberately to pick, collect, cut, uproot or destroy a wild plant of a European protected species.

(2) It is an offence to keep, transport, sell or exchange, or offer for sale or exchange, any live or dead wild plant of a European protected species, or any part of, or anything derived from, such a plant.

(3) Paragraphs (1) and (2) apply to all stages of the biological cycle of the plants to which they apply.

(4) A person shall not be guilty of an offence under paragraph (1), by reason of any act made unlawful by that paragraph if he shows that the act was an incidental result of a lawful operation and could not reasonably have been avoided.

(5) A person shall not be guilty of an offence under paragraph (2) if he shows that the plant or other thing in question had been lawfully sold (whether to him or any other person).

For this purpose “lawfully” means without any contravention of these Regulations or Part I of the Wildlife and Countryside Act 1981.

(6) In any proceedings for an offence under this regulation, the plant in question shall be presumed to have been a wild plant unless the contrary is shown.

(7) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

### *Power to grant licences*

#### **Grant of licences for certain purposes**

**44.**—(1) Regulations 39, 41 and 43 do not apply to anything done for any of the following purposes under and in accordance with the terms of a licence granted by the appropriate authority.

(2) The purposes referred to in paragraph (1) are—

- (a) scientific or educational purposes;
- (b) ringing or marking, or examining any ring or mark on, wild animals;
- (c) conserving wild animals or wild plants or introducing them to particular areas;
- (d) protecting any zoological or botanical collection;
- (e) preserving public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment;
- (f) preventing the spread of disease; or
- (g) preventing serious damage to livestock, foodstuffs for livestock, crops, vegetables, fruit, growing timber or any other form of property or to fisheries.

(3) The appropriate authority shall not grant a licence under this regulation unless they are satisfied—

- (a) that there is no satisfactory alternative, and
- (b) that the action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range.

(4) For the purposes of this regulation “the appropriate authority” means—

- (a) in the case of a licence under any of sub-paragraphs (a) to (d) of paragraph (2), the appropriate nature conservation body; and
- (b) in the case of a licence under any of sub-paragraphs (e) to (g) of that paragraph, the agriculture Minister.

(5) The agriculture Minister shall from time to time consult with the nature conservation bodies as to the exercise of his functions under this regulation; and he shall not grant a licence of any description unless he has been advised by the appropriate nature conservation body as to the circumstances in which, in their opinion, licences of that description should be granted.

#### **Licences: supplementary provisions**

**45.**—(1) A licence under regulation 44—

- (a) may be, to any degree, general or specific;
- (b) may be granted either to persons of a class or to a particular person; and
- (c) may be subject to compliance with any specified conditions.

(2) For the purposes of a licence under regulation 44 the definition of a class of persons may be framed by reference to any circumstances whatever including, in particular, their being authorised by any other person.

(3) A licence under regulation 44 may be modified or revoked at any time by the appropriate authority; but otherwise shall be valid for the period stated in the licence.

(4) A licence under regulation 44 which authorises any person to kill wild animals shall specify the area within which and the methods by which the wild animals may be killed and shall not be granted for a period of more than two years.

(5) It shall be a defence in proceedings for an offence under section 8(b) of the Protection of Animals Act 1911<sup>(53)</sup> or section 7(b) of the Protection of Animals (Scotland) Act 1912<sup>(54)</sup> (which restrict the placing on land of poison and poisonous substances) to show that—

- (a) the act alleged to constitute the offence was done under and in accordance with the terms of a licence under regulation 44, and
- (b) any conditions specified in the licence were complied with.

(6) The appropriate authority may charge for a licence under regulation 44 such reasonable sum (if any) as they may determine.

#### **False statements made for obtaining licence**

46.—(1) A person commits an offence who, for the purposes of obtaining, whether for himself or another, the grant of a licence under regulation 44—

- (a) makes a statement or representation, or furnishes a document or information, which he knows to be false in a material particular, or
- (b) recklessly makes a statement or representation, or furnishes a document or information, which is false in a material particular.

(2) A person guilty of an offence under this regulation is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

## PART IV

### ADAPTATION OF PLANNING AND OTHER CONTROLS

#### *Introductory*

#### **Application of provisions of this Part**

47.—(1) The requirements of—

- (a) regulations 48 and 49 (requirement to consider effect on European sites), and
- (b) regulations 50 and 51 (requirement to review certain existing decisions and consents, &c.),

apply, subject to and in accordance with the provisions of regulations 54 to 85, in relation to the matters specified in those provisions.

(2) Supplementary provision is made by—

- (a) regulation 52 (co-ordination where more than one competent authority involved), and
- (b) regulation 53 (compensatory measures where plan or project is agreed to notwithstanding a negative assessment of the implications for a European site).

<sup>(53)</sup> 1911 c. 27; section 8 was amended by section 1 of the Protection of Animals (Amendment) Act 1927 (c. 27).

<sup>(54)</sup> 1912 c. 14.



### *General provisions for protection of European sites*

#### **Assessment of implications for European site**

**48.**—(1) A competent authority, before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project which—

- (a) is likely to have a significant effect on a European site in Great Britain (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,

shall make an appropriate assessment of the implications for the site in view of that site's conservation objectives.

(2) A person applying for any such consent, permission or other authorisation shall provide such information as the competent authority may reasonably require for the purposes of the assessment.

(3) The competent authority shall 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 may specify.

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

(5) In the light of the conclusions of the assessment, and subject to regulation 49, the authority shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site.

(6) In considering whether a plan or project will adversely affect the integrity of the site, the authority shall have regard to the manner in which it is proposed to be carried out or to any conditions or restrictions subject to which they propose that the consent, permission or other authorisation should be given.

(7) This regulation does not apply in relation to a site which is a European site by reason only of regulation 10(1)(c) (site protected in accordance with Article 5(4)).

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

**49.**—(1) If they 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 (2), may be of a social or economic nature), the competent authority may agree to the plan or project notwithstanding a negative assessment of the implications for the site.

(2) 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) other reasons which in the opinion of the European Commission are imperative reasons of overriding public interest.

(3) Where a competent authority other than the Secretary of State desire to obtain the opinion of the European Commission as to whether reasons are to be considered imperative reasons of overriding public interest, they shall submit a written request to the Secretary of State—

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

(4) The Secretary of State may thereupon, if he thinks fit, seek the opinion of the Commission; and if he does so, he shall upon receiving the Commission's opinion transmit it to the authority.

(5) Where an authority other than the Secretary of State propose to agree to a plan or project under this regulation notwithstanding a negative assessment of the implications for a European site, they shall notify the Secretary of State.

Having notified the Secretary of State, they shall not agree to the plan or project before the end of the period of 21 days beginning with the day notified to them by the Secretary of State as that on which their notification was received by him, unless the Secretary of State notifies them that they may do so.

(6) In any such case the Secretary of State may give directions to the authority prohibiting them from agreeing to the plan or project, either indefinitely or during such period as may be specified in the direction.

This power is without prejudice to any other power of the Secretary of State in relation to the decision in question.

### **Review of existing decisions and consents, &c.**

**50.**—(1) Where before the date on which a site becomes a European site or, if later, the commencement of these Regulations, a competent authority have decided to undertake, or have given any consent, permission or other authorisation for, a plan or project to which regulation 48(1) would apply if it were to be reconsidered as of that date, the authority shall as soon as reasonably practicable, review their decision or, as the case may be, the consent, permission or other authorisation, and shall affirm, modify or revoke it.

(2) They shall for that purpose make an appropriate assessment of the implications for the site in view of that site's conservation objectives; and the provisions of regulation 48(2) to (4) shall apply, with the appropriate modifications, in relation to such a review.

(3) Subject to the following provisions of this Part, any review required by this regulation shall be carried out under existing statutory procedures where such procedures exist, and if none exist the Secretary of State may give directions as to the procedure to be followed.

(4) Nothing in this regulation shall affect anything done in pursuance of the decision, or the consent, permission or other authorisation, before the date mentioned in paragraph (1).

### **Consideration on review**

**51.**—(1) The following provisions apply where a decision, or a consent, permission or other authorisation, falls to be reviewed under regulation 50.

(2) Subject as follows, the provisions of regulation 48(5) and (6) and regulation 49 shall 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 authority reviewing it that other action taken or to be taken by them, or by another authority, will secure that the plan or project does not adversely affect the integrity of the site.

Where that object may be attained in a number of ways, the authority or authorities concerned shall seek to secure that the action taken is the least onerous to those affected.

(4) The Secretary of State may issue guidance to authorities for the purposes of paragraph (3) as to the manner of determining which of different ways should be adopted for securing that the plan or project does not have any such effect, and in particular—

(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;

and the authorities concerned shall have regard to any guidance so issued in discharging their functions under that paragraph.

(5) Any modification or revocation effected in pursuance of this regulation shall be carried out under existing statutory procedures where such procedures exist.

If none exist, the Secretary of State may give directions as to the procedure to be followed.

### **Co-ordination where more than one competent authority involved**

**52.**—(1) The following provisions apply where a plan or project—

- (a) is undertaken by more than one competent authority,
- (b) requires the consent, permission or other authorisation of more than one competent authority, or
- (c) is undertaken by one or more competent authorities and requires the consent, permission or other authorisation of one or more other competent authorities.

(2) Nothing in regulation 48(1) or 50(2) requires a competent authority to assess any implications of a plan or project which would be more appropriately assessed under that provision by another competent authority.

(3) The Secretary of State may issue guidance to authorities for the purposes of regulations 48 to 51 as to the circumstances in which an authority may or should adopt the reasoning or conclusions of another competent authority as to whether a plan or project—

- (a) is likely to have a significant effect on a European site, or
- (b) will adversely affect the integrity of a European site;

and the authorities involved shall have regard to any guidance so issued in discharging their functions under those regulations.

(4) In determining whether a plan or project should be agreed to under regulation 49(1) (considerations of overriding public interest) a competent authority other than the Secretary of State shall seek and have regard to the views of the other competent authority or authorities involved.

### **Compensatory measures**

**53.** Where in accordance with regulation 49 (considerations of overriding public interest)—

- (a) a plan or project is agreed to, notwithstanding a negative assessment of the implications for a European site, or
- (b) a decision, or a consent, permission or other authorisation, is affirmed on review, notwithstanding such an assessment,

the Secretary of State shall secure that any necessary compensatory measures are taken to ensure that the overall coherence of Natura 2000 is protected.

## *Planning*

### **Grant of planning permission**

**54.**—(1) Regulations 48 and 49 (requirement to consider effect on European site) apply, in England and Wales, in relation to—

- (a) granting planning permission on an application under Part III of the Town and Country Planning Act 1990<sup>(55)</sup>;
- (b) granting planning permission, or upholding a decision of the local planning authority to grant planning permission (whether or not subject to the same conditions and limitations

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(55) 1990 c. 8.

- as those imposed by the local planning authority), on determining an appeal under section 78(56) of that Act in respect of such an application;
- (c) granting planning permission under—
- (i) section 141(2)(a) of that Act (action by Secretary of State in relation to purchase notice),
  - (ii) section 177(1)(a)(57) of that Act (powers of Secretary of State on appeal against enforcement notice), or
  - (iii) section 196(5)(58) of that Act as originally enacted (powers of Secretary of State on reference or appeal as to established use certificate);
- (d) directing under section 90(1), (2) or (2A)(59) of that Act (development with government authorisation), or under section 5(1) of the Pipe-lines Act 1962(60), that planning permission shall be deemed to be granted;
- (e) making—
- (i) an order under section 102(61) of that Act (order requiring discontinuance of use or removal of buildings or works), including an order made under that section by virtue of section 104 (powers of Secretary of State), which grants planning permission, or
  - (ii) an order under paragraph 1 of Schedule 9(62) to that Act (order requiring discontinuance of mineral working), including an order made under that paragraph by virtue of paragraph 11 of that Schedule (default powers of Secretary of State), which grants planning permission,
- or confirming any such order under section 103 of that Act;
- (f) directing under—
- (i) section 141(3) of that Act (action by Secretary of State in relation to purchase notice), or
  - (ii) section 35(5) of the Planning (Listed Buildings and Conservation Areas) Act 1990(63) (action by Secretary of State in relation to listed building purchase notice),
- that if an application is made for planning permission it shall be granted.
- (2) Regulations 48 and 49 (requirement to consider effect on European site) apply, in Scotland, in relation to—
- (a) granting planning permission on an application under Part III of the Town and Country Planning (Scotland) Act 1972(64);
  - (b) granting planning permission, or upholding a decision of the planning authority to grant planning permission (whether or not subject to the same conditions and limitations as those imposed by the local planning authority), on determining an appeal under section 33 (appeals) of that Act in respect of such an application;
  - (c) granting planning permission under—
    - (i) section 172(2) of that Act (action by Secretary of State in relation to purchase notice),

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(56) Section 78 was amended by section 17(2) of the Planning and Compensation Act 1991 (c. 34).

(57) Section 177(1)(a) was substituted by paragraph 24(1)(a) of Schedule 7 to the Planning and Compensation Act 1991 (c. 34).

(58) Section 196(5) was repealed by paragraph 33(e) of Schedule 7 to the Planning and Compensation Act 1991 (c. 34), but that repeal does not apply to appeals arising out of applications made under section 192(1) (as originally enacted) before 27th July 1992.

(59) Section 90(2A) was inserted by section 16(1) of the Transport and Works Act 1992 (c. 42).

(60) 1962 c. 58.

(61) Section 102 was amended by paragraph 6 of Schedule 1, and paragraph 21 of Schedule 7, to the Planning and Compensation Act 1991 (c. 34).

(62) Paragraph 1 of Schedule 9 was amended by paragraph 15 of Schedule 1 to the Planning and Compensation Act 1991 (c. 34).

(63) 1990 c. 9.

(64) 1972 c. 52.

- (ii) section 85(5)(65) of that Act (powers of Secretary of State on appeal against enforcement notice), or
- (iii) section 91(3)(66) of that Act as originally enacted (powers of Secretary of State on reference or appeal as to established use certificate);
- (d) directing under section 37(1)(67) (development with government authorisation) of that Act, or under section 5(1) of the Pipe-lines Act 1962 or paragraph 7 of Schedule 8 to the Electricity Act 1989(68), that planning permission shall be deemed to be granted;
- (e) making an order under section 49(69) of that Act (order requiring discontinuance of use or removal of buildings or works), including an order made under that section by virtue of section 260 (default powers of Secretary of State), which grants planning permission, or confirming any such order;
- (f) directing under—
  - (i) section 172(3) of that Act (powers of Secretary of State in relation to purchase notice), or
  - (ii) paragraph 2(6) of Schedule 17 to that Act (powers of Secretary of State in relation to listed building purchase notice),that if an application is made for planning permission it shall be granted.

(3) Where regulations 48 and 49 apply, the competent authority may, if they consider that any adverse effects of the plan or project on the integrity of a European site would be avoided if the planning permission were subject to conditions or limitations, grant planning permission or, as the case may be, take action which results in planning permission being granted or deemed to be granted subject to those conditions or limitations.

(4) Where regulations 48 and 49 apply, outline planning permission shall not be granted unless the competent authority are satisfied (whether by reason of the conditions and limitations to which the outline planning permission is to be made subject, or otherwise) that no development likely adversely to affect the integrity of a European site could be carried out under the permission, whether before or after obtaining approval of any reserved matters.

In this paragraph “outline planning permission” and “reserved matters” have the same meaning as in section 92 of the Town and Country Planning Act 1990 or section 39 of the Town and Country Planning (Scotland) Act 1972.

### **Planning permission: duty to review**

**55.**—(1) Subject to the following provisions of this regulation, regulations 50 and 51 (requirement to review certain decisions and consents, &c.) apply to any planning permission or deemed planning permission, unless—

- (a) the development to which it related has been completed, or

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(65) Section 85(5) was amended by paragraph 20 of Schedule 13 to, and Part IV of Schedule 19 to the Planning and Compensation Act 1991 (c. 34).

(66) Section 91(3) was repealed by paragraph 26(b) of Schedule 13 to the Planning and Compensation Act 1991 (c. 34), but that repeal does not apply to appeals arising out of applications made under section 90(2) (as originally enacted) before 25th September 1992.

(67) Section 37(1) was amended by Part I of Schedule 4 to the Local Government and Planning (Scotland) Act 1982 (c. 43).

(68) 1989 c. 29; paragraph 7 is repealed insofar as it extends to England and Wales by Part II of Schedule 1 to the Planning (Consequential Provisions) Act 1990 (c. 11).

(69) Section 49 was amended by section 172(2) of the Local Government (Scotland) Act 1973 (c. 65), sections 26 and 35 of the Town and Country Planning (Minerals) Act 1981 (c. 36) and paragraph 5 of Schedule 8, and paragraph 16 of Schedule 13, to the Planning and Compensation Act 1991 (c. 34).

- (b) it was granted subject to a condition as to the time within which the development to which it related was to be begun and that time has expired without the development having been begun, or
  - (c) it was granted for a limited period and that period has expired.
- (2) Regulations 50 and 51 do not apply to planning permission granted or deemed to have been granted—
- (a) by a development order (but see regulations 60 to 64 below);
  - (b) by virtue of the adoption of a simplified planning zone scheme or of alterations to such a scheme (but see regulation 65 below);
  - (c) by virtue of the taking effect of an order designating an enterprise zone under Schedule 32 to the Local Government, Planning and Land Act 1980<sup>(70)</sup>, or by virtue of the approval of a modified enterprise zone scheme (but see regulation 66 below).
- (3) Planning permission deemed to be granted by virtue of—
- (a) a direction under section 90(1) of the Town and Country Planning Act 1990 or section 37(1) of the Town and Country Planning (Scotland) Act 1972 in respect of development for which an authorisation has been granted under section 1 or 3 of the Pipe-lines Act 1962<sup>(71)</sup>,
  - (b) a direction under section 5(1) of the Pipe-lines Act 1962,
  - (c) a direction under section 90(1) of the Town and Country Planning Act 1990 or section 37(1) of the Town and Country Planning (Scotland) Act 1972 in respect of development for which a consent has been given under section 36 or 37 of the Electricity Act 1989,
  - (d) a direction under section 90(2) of the Town and Country Planning Act 1990 or paragraph 7 of Schedule 8 to the Electricity Act 1989, or
  - (e) a direction under section 90(2A) of the Town and Country Planning Act 1990 (which relates to development in pursuance of an order under section 1 or 3 of the Transport and Works Act 1992<sup>(72)</sup>),

shall be reviewed in accordance with the following provisions of this Part in conjunction with the review of the underlying authorisation, consent or order.

(4) In the case of planning permission deemed to have been granted in any other case by a direction under section 90(1) of the Town and Country Planning Act 1990 or section 37(1) of the Town and Country Planning (Scotland) Act 1972, the local planning authority shall—

- (a) identify any such permission which they consider falls to be reviewed under regulations 50 and 51, and
- (b) refer the matter to the government department which made the direction;

and the department shall, if it agrees that the planning permission does fall to be so reviewed, thereupon review the direction in accordance with those regulations.

(5) Save as otherwise expressly provided, regulations 50 and 51 do not apply to planning permission granted or deemed to be granted by a public general Act of Parliament.

(6) Subject to paragraphs (3) and (4), where planning permission granted by the Secretary of State falls to be reviewed under regulations 50 and 51—

- (a) it shall be reviewed by the local planning authority, and

<sup>(70)</sup> 1980 c. 65.

<sup>(71)</sup> 1962 c. 58.

<sup>(72)</sup> 1992 c. 42.

- (b) the power conferred by section 97 of the Town and Country Planning Act 1990 or section 42 of the Town and Country Planning (Scotland) Act 1972 (revocation or modification of planning permission) shall be exercisable by that authority as in relation to planning permission granted on an application under Part III of that Act.

In a non-metropolitan county in England and Wales the function of reviewing any such planning permission shall be exercised by the district planning authority unless it relates to a county matter (within the meaning of Schedule 1 to the Town and Country Planning Act 1990) in which case it shall be exercised by the county planning authority.

### **Planning permission: consideration on review**

**56.**—(1) In reviewing any planning permission or deemed planning permission in pursuance of regulations 50 and 51, the competent authority shall, in England and Wales—

- (a) consider whether any adverse effects could be overcome by planning obligations under section 106(73) of the Town and Country Planning Act 1990 being entered into, and
- (b) if they consider that those effects could be so overcome, invite those concerned to enter into such obligations;

and so far as the adverse effects are not thus overcome the authority shall make such order under section 97 of that Act (power to revoke or modify planning permission), or under section 102 of or paragraph 1 of Schedule 9 to that Act (order requiring discontinuance of use, &c.), as may be required.

(2) In reviewing any planning permission or deemed planning permission in pursuance of regulations 50 and 51, the competent authority shall, in Scotland—

- (a) consider whether any adverse effects could be overcome by an agreement under section 50 (agreements regulating development or use of land) of the Town and Country Planning (Scotland) Act 1972 being entered into, and
- (b) if they consider that those effects could be so overcome, invite those concerned to enter into such an agreement;

and so far as the adverse effects are not thus overcome, the authority shall make such order under section 42 of that Act(74) (power to revoke or modify planning permission), or under section 49 of that Act(75) (orders requiring discontinuance of use, &c.) as may be required.

(3) Where the authority ascertain that the carrying out or, as the case may be, the continuation of the development would adversely affect the integrity of a European site, they nevertheless need not proceed under regulations 50 and 51 if and so long as they consider that there is no likelihood of the development being carried out or continued.

### **Effect of orders made on review: England and Wales**

**57.**—(1) An order under section 97 of the Town and Country Planning Act 1990(76) (power to revoke or modify planning permission) made pursuant to regulation 55 shall take effect upon service of the notices required by section 98(2) of that Act or, where there is more than one such notice and those notices are served at different times, upon the service of the last such notice to be served.

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(73) Section 106 was substituted by section 12(1) of the Planning and Compensation Act 1991 (c. 34).

(74) Section 42 was amended by section 172(2) of the Local Government (Scotland) Act 1973 (c. 65) and sections 26 and 35 of the Town and Country Planning (Minerals) Act 1981 (c. 36).

(75) Section 49 was amended by section 172(2) of the Local Government (Scotland) Act 1973 (c. 65), sections 26 and 35 of the Town and Country Planning (Minerals) Act 1981 (c. 36) and paragraph 5 of Schedule 8, and paragraph 16 of Schedule 13 to the Planning and Compensation Act 1991 (c. 34).

(76) 1990 c. 8.

(2) Where the Secretary of State determines not to confirm such an order, the order shall cease to have effect from the time of that determination, and the permission revoked or modified by the order shall thereafter have effect as if the order had never been made, and—

- (a) any period specified in the permission for the taking of any action, being a period which had not expired prior to the date upon which the order took effect under paragraph (1) above, shall be extended by a period equal to that during which the order had effect; and
- (b) there shall be substituted for any date specified in the permission as being a date by which any action should be taken, not being a date falling prior to the date upon which the order took effect under paragraph (1) above, such date as post— dates the specified date by a period equal to that during which the order had effect.

(3) An order under section 102 of, or under paragraph 1 of Schedule 9 to, the Town and Country Planning Act 1990 (order requiring discontinuance of use, &c.) made pursuant to regulation 55 shall insofar as it requires the discontinuance of a use of land or imposes conditions upon the continuance of a use of land, take effect upon service of the notices required by section 103(3) or, where there is more than one such notice and those notices are served at different times, upon service of the last such notice to be served.

(4) Where the Secretary of State determines not to confirm any such order, the order shall cease to have effect from the time of that determination and the use which by the order was discontinued or upon whose continuance conditions were imposed—

- (a) may thereafter be continued as if the order had never been made, and
- (b) shall be treated for the purposes of the Town and Country Planning Act 1990 as if it had continued without interruption or modification throughout the period during which the order had effect.

(5) An order under section 97 of that Act (power to revoke or modify planning permission) made in pursuance of regulation 55 shall not affect so much of the development authorised by the permission as was carried out prior to the order taking effect.

(6) An order under section 102 of, or under paragraph 1 of Schedule 9 to, that Act (order requiring discontinuance of use, &c.) made in pursuance of regulation 55 shall not affect anything done prior to the site becoming a European site or, if later, the commencement of these Regulations.

#### **Effect of orders made on review: Scotland**

**58.**—(1) An order under section 42 of the Town and Country Planning (Scotland) Act 1972 (power to revoke or modify planning permission) made pursuant to regulation 55 shall take effect upon service of the notices required by subsection (3) of that section or, where there is more than one such notice and those notices are served at different times, upon the service of the last such notice to be served.

(2) Where the Secretary of State determines not to confirm such an order, the order shall cease to have effect from the time of that determination, and the permission revoked or modified by the order shall thereafter have effect as if the order had never been made, and—

- (a) any period specified in the permission for the taking of any action, being a period which had not expired prior to the date upon which the order took effect under paragraph (1) above, shall be extended by a period equal to that during which the order had effect; and
- (b) there shall be substituted for any date specified in the permission as being a date by which any action should be taken, not being a date falling prior to that date upon which the order took effect under paragraph (1) above, such date as post— dates the specified date by a period equal to that during which the order had effect.

(3) An order under section 49 of the Town and Country Planning (Scotland) Act 1972 (order requiring discontinuance of use, &c.) made pursuant to regulation 55 shall, insofar as it requires the



discontinuance of a use of land or imposes conditions upon the continuance of a use of land, take effect upon service of the notices required by subsection (5) of that section or, where there is more than one such notice and those notices are served at different times, upon service of the last such notice to be served.

(4) Where the Secretary of State determines not to confirm any such order, the order shall cease to have effect from the time of that determination and the use which by the order was discontinued or upon whose continuance conditions were imposed—

- (a) may thereafter be continued as if the order had never been made, and
- (b) shall be treated for the purposes of the Town and Country Planning (Scotland) Act 1972 as if it had continued without interruption throughout the period during which the order had effect.

(5) An order under section 42 of that Act (power to modify or revoke planning permission) made in pursuance of regulation 55 shall not affect so much of the development authorised by the permission as was carried out prior to the site becoming a European site or, if later, the commencement of these Regulations.

(6) An order under section 49 of that Act (order requiring discontinuance of use, &c.) made in pursuance of regulation 55 above shall not affect any use made of the land prior to the site becoming a European site or, if later, the commencement of these Regulations.

#### **Planning permission: supplementary provisions as to compensation**

**59.** –

- (1) Where the Secretary of State determines not to confirm—
  - (a) an order under section 97 of the Town and Country Planning Act 1990 (revocation or modification of planning permission) which has taken effect under regulation 57(1), or
  - (b) an order under section 42 of the Town and Country Planning (Scotland) Act 1972 (revocation or modification of planning permission) which has taken effect under regulation 58(1),

and claim for compensation under section 107 of the Act of 1990 or section 153 of the Act of 1972 shall be limited to any loss or damage directly attributable to the permission being suspended or temporarily modified for the duration of the period between the order so taking effect and the Secretary of State determining not to confirm the order.

- (2) Where the Secretary of State determines not to confirm—
  - (a) an order under section 102 of the Town and Country Planning Act 1990 (order requiring discontinuance of use, &c.) which has taken effect under regulation 57(3) above, or
  - (b) an order under section 49 of the Town and Country Planning (Scotland) Act 1972 (order requiring discontinuance of use, &c.) which has taken effect under regulation 58(3) above,

any claim for compensation under section 115 of the Act of 1990 or section 159 of the Act of 1972 shall be limited to any loss or damage directly attributable to any right to continue a use of the land being, by virtue of the order, suspended or subject to conditions for the duration of the period between the order so taking effect and the Secretary of State determining not to confirm the order.

- (3) Where compensation is payable in respect of—
  - (a) an order under section 97 of the Town and Country Planning Act 1990, or
  - (b) any order mentioned in section 115(1) of that Act (compensation in respect of orders under s.102, &c.), or to which that section applies by virtue of section 115(5),

and the order has been made pursuant to regulation 50, the question as to the amount of the compensation shall be referred, by the authority liable to pay the compensation, to and be determined

by the Lands Tribunal unless and to the extent that in any particular case the Secretary of State has indicated in writing that such a reference and determination may be dispensed with.

- (4) Where compensation is payable in respect of—
- (a) an order under section 42 of the Town and Country Planning (Scotland) Act 1972 (revocation or modification of planning permission), or
  - (b) any order mentioned in section 153(1) of that Act (compensation in respect of orders under s.49),

and the order has been made pursuant to regulation 50, the question as to the amount of the compensation shall be referred, by the authority liable to pay the compensation, to and be determined by the Lands Tribunal for Scotland unless and to the extent that in any particular case the Secretary of State has indicated in writing that such a reference and determination may be dispensed with.

### **General development orders**

**60.**—(1) It shall be a condition of any planning permission granted by a general development order, whether made before or after the commencement of these Regulations, that development which—

- (a) is likely to have a significant effect on a European site in Great Britain (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,

shall not be begun until the developer has received written notification of the approval of the local planning authority under regulation 62.

(2) It shall be a condition of any planning permission granted by a general development order made before the commencement of these Regulations that development which—

- (a) is likely to have a significant effect on a European site in Great Britain (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,

and which was begun but not completed before the commencement of these Regulations, shall not be continued until the developer has received written notification of the approval of the local planning authority under regulation 62.

(3) Nothing in this regulation shall affect anything done before the commencement of these Regulations.

### **General development orders: opinion of appropriate nature conservation body**

**61.**—(1) Where it is intended to carry out development in reliance on the permission granted by a general development order, application may be made in writing to the appropriate nature conservation body for their opinion whether the development is likely to have such an effect as is mentioned in regulation 60(1)(a) or (2)(a).

The application shall give details of the development which is intended to be carried out.

(2) On receiving such an application, the appropriate nature conservation body shall consider whether the development is likely to have such an effect.

(3) Where they consider that they have sufficient information to conclude that the development will, or will not, have such an effect, they shall in writing notify the applicant and the local planning authority of their opinion.

(4) If they consider that they have insufficient information to reach either of those conclusions, they shall notify the applicant in writing indicating in what respects they consider the information

insufficient; and the applicant may supply further information with a view to enabling them to reach a decision on the application.

(5) The opinion of the appropriate nature conservation body, notified in accordance with paragraph (3), that the development is not likely to have such an effect as is mentioned in regulation 60(1)(a) or (2)(a) shall be conclusive of that question for the purpose of reliance on the planning permission granted by a general development order.

### **General development orders: approval of local planning authority**

**62.**—(1) Where it is intended to carry out development in reliance upon the permission granted by a general development order, application may be made in writing to the local planning authority for their approval.

(2) The application shall—

- (a) give details of the development which is intended to be carried out; and
- (b) be accompanied by—
  - (i) a copy of any relevant notification by the appropriate nature conservation body under regulation 61, and
  - (ii) any fee required to be paid.

(3) For the purposes of their consideration of the application the local planning authority shall assume that the development is likely to have such an effect as is mentioned in regulation 60(1)(a) or (2)(a).

(4) The authority shall send a copy of the application to the appropriate nature conservation body and shall take account of any representations made by them.

(5) If in their representations the appropriate nature conservation body state their opinion that the development is not likely to have such an effect as is mentioned in regulation 60(1)(a) or (2)(a), the local planning authority shall send a copy of the representations to the applicant; and the sending of that copy shall have the same effect as a notification by the appropriate nature conservation body of its opinion under regulation 61(3).

(6) In any other case the local planning authority shall, taking account of any representations made by the appropriate nature conservation body, make an appropriate assessment of the implications of the development for the European site in view of that site's conservation objectives.

In the light of the conclusions of the assessment the authority shall approve the development only after having ascertained that it will not adversely affect the integrity of the site.

### **General development orders: supplementary**

**63.**—(1) The local planning authority for the purposes of regulations 60 to 62 shall be the authority to whom an application for approval under regulation 62 would fall to be made if it were an application for planning permission.

(2) The fee payable in connection with an application for such approval is—

- (a) £25 in the case of applications made before 3rd January 1995, and
- (b) £30 in the case of applications made on or after that date.

(3) Approval required by regulation 60 shall be treated—

- (a) for the purposes of the provisions of the Town and Country Planning Act 1990(77), or the Town and Country Planning (Scotland) Act 1972(78), relating to appeals, as approval required by a condition imposed on a grant of planning permission; and

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(77) 1990 c. 8.

- (b) for the purposes of the provisions of any general development order relating to the time within which notice of a decision should be made, as approval required by a condition attached to a grant of planning permission.

### **Special development orders**

**64.**—(1) A special development order made after the commencement of these Regulations may not grant planning permission for development which—

- (a) is likely to have a significant effect on a European site in Great Britain (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;

and any such order made before the commencement of these Regulations shall, on and after that date, cease to have effect to grant such permission, whether or not the development authorised by the permission has been begun.

(2) Nothing in this regulation shall affect anything done before the commencement of these Regulations.

### **Simplified planning zones**

**65.** The adoption or approval of a simplified planning zone scheme after the commencement of these Regulations shall not have effect to grant planning permission for development which—

- (a) is likely to have a significant effect on a European site in Great Britain (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;

and every simplified planning zone scheme already in force shall cease to have effect to grant such permission, whether or not the development authorised by the permission has been begun.

### **Enterprise zones**

**66.** An order designating an enterprise zone, or the approval of a modified scheme, if made or given after the commencement of these Regulations, shall not have effect to grant planning permission for development which—

- (a) is likely to have a significant effect on a European site in Great Britain (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;

and where the order or approval was made or given before that date, the permission granted by virtue of the taking effect of the order or the modifications shall, from that date, cease to have effect to grant planning permission for such development, whether or not the development authorised by the permission has been begun.

### **Simplified planning zones and enterprise zones: supplementary provisions as to compensation**

**67.**—(1) Where in England and Wales—

- (a) planning permission is withdrawn by regulation 65 or 66, and
- (b) development authorised by the permission had been begun but not completed before the commencement of these Regulations, and

- (c) on an application made under Part III of the Town and Country Planning Act 1990 before the end of the period of 12 months beginning with the date of commencement of these Regulations, planning permission for the development is refused or is granted subject to conditions other than those imposed by the scheme,

section 107(1)(a) of that Act (compensation in respect of abortive expenditure) shall apply as if the permission granted by the scheme had been granted by the local planning authority under Part III of that Act and had been revoked or modified by an order under section 97 of that Act.

(2) Where in Scotland—

- (a) planning permission is withdrawn by regulation 65 or 66, and
- (b) development authorised by the permission had been begun but not completed before the commencement of these Regulations, and
- (c) on an application made under Part III of the Town and Country Planning (Scotland) Act 1972 before the end of the period of 12 months beginning with the date of commencement of these Regulations, planning permission for the development is refused or is granted subject to conditions other than those imposed by the scheme,

section 153(1)(a) of that Act (compensation in respect of abortive expenditure) shall apply as if the permission granted by the scheme had been granted by the local planning authority under Part III of that Act and had been revoked or modified by an order under section 42 of that Act.

(3) Paragraphs (1) and (2) above do not apply in relation to planning permission for the development of operational land by statutory undertakers.

### **Construction as one with planning legislation**

**68.** Regulations 54 to 67 shall be construed as one—

- (a) in England and Wales, with the Town and Country Planning Act 1990; and
- (b) in Scotland, with the Town and Country Planning (Scotland) Act 1972.

### *Highways and roads*

### **Construction or improvement of highways or roads**

**69.**—(1) Regulations 48 and 49 (requirement to consider effect on European site) apply in relation to any plan or project—

- (a) by the Secretary of State—
  - (i) to construct a new highway or to improve, within the meaning of the Highways Act 1980(**79**), an existing highway, or
  - (ii) to construct a new road or to improve, within the meaning of the Roads (Scotland) Act 1984(**80**), an existing road; or
- (b) by a local highway authority or local roads authority, to carry out within the boundaries of a road any works required for the improvement of the road.

(2) Regulations 50 and 51 (requirement to review certain decisions and consents, &c.) apply to any such plan or project as is mentioned in paragraph (1) unless the works have been completed before the site became a European site or, if later, the commencement of these Regulations.

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**(79)** 1980 c. 66; the expression “improvement” is defined in section 329(1) of the Act.

**(80)** 1984 c. 54; the expression “improvement” is defined in section 151(1) of the Act.

**Cycle tracks and other ancillary works**

70. As from the commencement of these Regulations, section 3(10) of the Cycle Tracks Act 1984<sup>(81)</sup> and section 152(4) of the Roads (Scotland) Act 1984 shall cease to have effect to deem planning permission to be granted for development which—

- (a) is likely to have a significant effect on a European site in Great Britain (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,

whether or not the development authorised by the permission has been begun.

*Electricity***Consents under Electricity Act 1989: application of general requirements**

71.—(1) Regulations 48 and 49 (requirement to consider effect on European site) apply in relation to the granting of—

- (a) consent under section 36 of the Electricity Act 1989<sup>(82)</sup> to construct, extend or operate a generating station, or
- (b) consent under section 37 of that Act to install an electric line above ground.

(2) Where in such a case the Secretary of State considers that any adverse effects of the plan or project on the integrity of a European site would be avoided if the consent were subject to conditions, he may grant consent subject to those conditions.

(3) Regulations 50 and 51 (requirement to review existing decisions and consents, &c.) apply to such a consent as is mentioned in paragraph (1) unless—

- (a) the works to which the consent relates have been completed before the site became a European site or, if later, the commencement of these Regulations, or
- (b) the consent was granted subject to a condition as to the time within which the works to which it relates were to be begun and that time has expired without them having been begun, or
- (c) it was granted for a limited period and that period has expired.

Where the consent is for, or includes, the operation of a generating station, the works shall be treated as completed when, in reliance on the consent, the generating station is first operated.

(4) Where on the review of such a consent the Secretary of State considers that any adverse effects on the integrity of a European site of the carrying out or, as the case may be, the continuation of the plan or project would be avoided by a variation of the consent, he may vary the consent accordingly.

(5) In conjunction with the review of any such consent the Secretary of State shall review any direction deeming planning permission to be granted for the plan or project and may vary or revoke it.

**Consents under the Electricity Act 1989: procedure on review**

72.—(1) Where the Secretary of State decides in pursuance of regulation 71 to revoke or vary a consent under the Electricity Act 1989, or a direction deeming planning permission to be granted, he shall serve notice on—

- (a) the person to whom the consent was granted or, as the case may be, in whose favour the direction was made,

<sup>(81)</sup> 1984 c. 38.

<sup>(82)</sup> 1989 c. 29.

(b) in the case of a consent under section 36 of the Electricity Act 1989, any other person proposing to operate the generating station in question, and  
(c) any other person who in his opinion will be affected by the revocation or variation, informing them of the decision and specifying a period of not less than 28 days within which any person on whom the notice is served may make representations to him.

(2) The Secretary of State shall also serve notice on—

(a) the relevant planning authority within the meaning of paragraph 2(6) of Schedule 8 to the Electricity Act 1989, and

(b) the appropriate nature conservation body,

informing them of the decision and inviting their representations within the specified period.

(3) The Secretary of State shall consider whether to proceed with the revocation or variation, and shall have regard to any representations made to him in accordance with paragraph (1) or (2).

(4) If within the specified period a person on whom notice was served under paragraph (1), or the relevant planning authority, so requires, the Secretary of State shall before deciding whether to proceed with the revocation or variation give—

(a) to them, and

(b) to any other person on whom notice under paragraph (1) or (2) was required to be served, an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.

#### **Consents under Electricity Act 1989: effect of review**

73.—(1) The revocation or variation pursuant to regulation 71 of a consent under section 36 or 37 of the Electricity Act 1989, or a direction deeming planning permission to be granted, shall take effect upon service of the notices required by regulation 72(1) or, where there is more than one such notice and those notices are served at different times, from the date on which the last of them was served.

(2) Where the Secretary of State decides not to proceed with the revocation or variation, the consent or direction shall have effect again from the time of that decision, and shall thereafter have effect as if—

(a) any period specified in the consent or direction for the taking of any action, being a period which had not expired prior to the date mentioned in paragraph (1), were extended by a period equal to that during which the revocation or variation had effect; and

(b) there were substituted for any date specified in the consent or direction as being a date by which any action should be taken, not being a date falling prior to that date mentioned in paragraph (1), such date as post-dates the specified date by a period equal to that during which the revocation or variation had effect;

(3) The revocation or variation pursuant to regulation 71 of a consent under section 36 or 37 of the Electricity Act 1989, or a direction deeming planning permission to be granted, shall not affect anything done under the consent or direction prior to the revocation or variation taking effect.

#### **Consents under Electricity Act 1989: compensation for revocation or variation**

74.—(1) Where a direction deeming planning permission to be granted is revoked or varied pursuant to regulation 71, that permission shall be treated—

(a) for the purposes of Part IV of the Town and Country Planning Act 1990 (compensation) as having been revoked or modified by order under section 97 of that Act, or

- (b) for the purposes of Part VIII of the Town and Country Planning (Scotland) Act 1972 (compensation) as having been revoked or modified by order under section 42 of that Act.
- (2) Where a consent under section 36 or 37 of the Electricity Act 1989 is revoked or varied pursuant to regulation 71, Part IV of the Town and Country Planning Act 1990 or Part VIII of the Town and Country Planning (Scotland) Act 1972 (compensation) shall apply as if—
  - (a) the consent had been planning permission granted on an application under that Act and had been revoked or modified by order under section 97 of the 1990 Act or section 42 of the 1972 Act; and
  - (b) each of those Parts provided that the Secretary of State was the person liable to pay any compensation provided for by that Part.

This paragraph shall not have effect to confer any right to compensation for any expenditure, loss or damage for which compensation is payable by virtue of paragraph (1) above.

(3) Where the Secretary of State decides not to proceed with the revocation or variation of a consent under section 36 or 37 of the Electricity Act 1989, or a direction deeming planning permission to be granted, any claim for compensation by virtue of this regulation shall be limited to any loss or damage directly attributable to the consent or direction ceasing to have effect or being varied for the duration of the period between the revocation or variation taking effect under regulation 73(1) and the Secretary of State deciding not to proceed with it.

(4) Where compensation is payable by virtue of this regulation, the question as to the amount of the compensation shall be referred to and determined by the Lands Tribunal, or the Lands Tribunal for Scotland, unless and to the extent that in any particular case the Secretary of State has indicated in writing that such a reference and determination may be dispensed with.

### *Pipe-lines*

#### **Authorisations under the Pipe-lines Act 1962: application of general requirements**

**75.**—(1) Regulations 48 and 49 (requirement to consider effect on European site) apply in relation to the granting of a pipe-line construction or diversion authorisation under the Pipe-lines Act 1962<sup>(83)</sup>.

(2) Where in such a case the Secretary of State considers that any adverse effects of the plan or project on the integrity of a European site would be avoided by granting an authorisation for the execution of works for the placing of the proposed pipe-line or, as the case may be, the portion of the pipe-line to be diverted, along a modified route, he may, subject to the provisions of Schedule 1 to the Pipe-lines Act 1962, grant such an authorisation.

(3) Regulation 50 and 51 (requirement to review existing decisions and consents, &c.) apply to a pipe-line construction or diversion authorisation under the Pipe-lines Act 1962 unless—

- (a) the works to which the authorisation relates have been completed before the site became a European site or, if later, the commencement of these Regulations, or
- (b) the authorisation was granted subject to a condition as to the time within which the works to which it relates were to be begun and that time has expired without them having been begun, or
- (c) it was granted for a limited period and that period has expired.

(4) Where on the review of such an authorisation the Secretary of State considers that any adverse effects on the integrity of a European site of the carrying out or, as the case may be, the continuation of the plan or project would be avoided by a variation of the authorisation, he may vary it accordingly.

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<sup>(83)</sup> 1962 c. 58.



(5) In conjunction with the review of any such authorisation the Secretary of State shall review any direction deeming planning permission to be granted for the plan or project and may vary or revoke it.

#### **Authorisations under the Pipe-lines Act 1962: procedure on review**

**76.**—(1) Where the Secretary of State decides in pursuance of regulation 75 to revoke or vary an authorisation under the Pipe-lines Act 1962, or a direction deeming planning permission to be granted, he shall serve notice on—

- (a) the person to whom the authorisation was granted or, as the case may be, in whose favour the direction was made, and
- (b) any other person who in his opinion will be affected by the revocation or variation,

informing them of the decision and specifying a period of not less than 28 days within which any person on whom the notice is serviced may make representations to him.

(2) The Secretary of State shall also serve notice on—

- (a) the local planning authority, and
- (b) the appropriate nature conservation body,

informing them of the decision and inviting their representations within the specified period.

(3) The Secretary of State shall consider whether to proceed with the revocation or variation, and shall have regard to any representations made to him in accordance with paragraph (1) or (2).

(4) If within the specified period a person on whom notice was served under paragraph (1), or the local planning authority, so requires, the Secretary of State shall before deciding whether to proceed with the revocation or variation give—

- (a) to them, and
- (b) to any other person on whom notice under paragraph (1) or (2) was required to be served,

an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.

#### **Authorisations under the Pipe-lines Act 1962: effect of review**

**77.**—(1) The revocation or variation pursuant to regulation 75 of an authorisation under the Pipe-lines Act 1962, or of a direction deeming planning permission to be granted, shall take effect upon service of the notices required by regulation 76(1) or, where there is more than one such notice and those notices are served at different times, upon the service of the last such notice to be served.

(2) Where the Secretary of State decides not to proceed with the revocation or variation, the authorisation or direction shall have effect again from the time of that decision, and shall thereafter have effect as if—

- (a) any period specified in the authorisation or direction for the taking of any action, being a period which had not expired prior to the date mentioned in paragraph (1), were extended by a period equal to that during which the revocation or variation had effect; and
- (b) there were substituted for any date specified in the authorisation or direction as being a date by which any action should be taken, not being a date falling prior to that date mentioned in paragraph (1), such date as post-dates the specified date by a period equal to that during which the revocation or variation had effect.

(3) The revocation or variation pursuant to regulation 75 of an authorisation under the Pipe-lines Act 1962, or a direction deeming planning permission to be granted, shall not affect anything done under the authorisation or direction prior to the revocation or variation taking effect.

**Authorisations under the Pipe-lines Act 1962: compensation for revocation or variation**

78.—(1) Where a direction deeming planning permission to be granted is revoked or varied pursuant to regulation 75, that permission shall be treated—

- (a) for the purposes of Part IV of the Town and Country Planning Act 1990<sup>(84)</sup> (compensation) as having been revoked or modified by order under section 97 of that Act, or
- (b) for the purposes of Part VIII of the Town and Country Planning (Scotland) Act 1972<sup>(85)</sup> (Compensation) as having been revoked or modified by order under section 42 of that Act.

(2) Where an authorisation under the Pipe-lines Act 1962 is revoked or varied pursuant to regulation 75, Part IV of the Town and Country Planning Act 1990 or Part VIII of the Town and Country Planning (Scotland) Act 1972 (compensation) shall apply as if—

- (a) the authorisation had been planning permission granted on an application under that Act and had been revoked or modified by order under section 97 of the 1990 Act or section 42 of the 1972 Act; and
- (b) each of those Parts provided that the Secretary of State was the person liable to pay any compensation provided for by that Part.

This paragraph shall not have effect to confer any right to compensation for any expenditure, loss or damage for which compensation is payable by virtue of paragraph (1) above.

(3) Where the Secretary of State decides not to proceed with the revocation or variation of an authorisation under the Pipe-lines Act 1962, or a direction deeming planning permission to be granted, any claim for compensation by virtue of this regulation shall be limited to any loss or damage directly attributable to the authorisation or direction ceasing to have effect or being varied for the duration of the period between the revocation or variation taking effect under regulation 77(1) and the Secretary of State deciding not to proceed with it.

(4) Where compensation is payable by virtue of this regulation, the question as to the amount of the compensation shall be referred to and determined by the Lands Tribunal, or the Lands Tribunal for Scotland, unless and to the extent that in any particular case the Secretary of State has indicated in writing that such a reference and determination may be dispensed with.

*Transport and works***Orders under the Transport and Works Act 1992: application of general requirements**

79.—(1) Regulations 48 and 49 (requirement to consider effect on European site) apply in relation to the making of an order under section 1 or 3 of the Transport and Works Act 1992<sup>(86)</sup>.

(2) Where in such a case the Secretary of State considers that any adverse effects of the plan or project on the integrity of a European site would be avoided by making modifications to the proposals, he may make an order subject to those modifications.

(3) Regulations 50 and 51 (requirement to review existing decisions and consents, &c.) apply to an order under section 1 or 3 of the Transport and Works Act 1992 unless the works to which the order relates have been completed before the site became a European site.

(4) Where on the review of such an order the Secretary of State considers that any adverse effects on the integrity of a European site of the carrying out or, as the case may be, the continuation of the plan or project would be avoided by a variation of the order, he may vary it accordingly.

<sup>(84)</sup> 1990 c. 8.

<sup>(85)</sup> 1972 c. 52.

<sup>(86)</sup> 1992 c. 42.

(5) In conjunction with the review of any such order the Secretary of State shall review any direction deeming planning permission to be granted for the plan or project and may vary or revoke it.

**Orders under the Transport and Works Act 1992: procedure on review**

**80.**—(1) Where the Secretary of State decides in pursuance of regulation 79 to revoke or vary an order the Transport and Works Act 1992, or a direction deeming planning permission to be granted, he shall serve notice on—

- (a) the person (if any) on whose application the order was made or, as the case may be, in whose favour the direction was made, and
- (b) any other person who in his opinion will be affected by the revocation or variation,

informing them of the decision and specifying a period of not less than 28 days within which any person on whom the notice is served may make representations to him.

(2) The Secretary of State shall also serve notice on—

- (a) the local planning authority, and
- (b) the appropriate nature conservation body,

informing them of the decision and inviting their representations within the specified period.

(3) The Secretary of State shall consider whether to proceed with the revocation or variation, and shall have regard to any representations made to him in accordance with paragraph (1) or (2).

(4) If within the specified period a person on whom notice was served under paragraph (1), or the local planning authority, so requires, the Secretary of State shall before deciding whether to proceed with the revocation or variation of the order or direction give—

- (a) to them,
- (b) to any other person on whom notice under paragraph (1) and (2) was required to be served,

an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.

**Order under the Transport and Works Act 1992: effect of review**

**81.**—(1) The revocation or variation pursuant to regulation 79 of an order under the Transport and Works Act 1992, or of a direction deeming planning permission to be granted, shall take effect upon service of the notices required by regulation 80(1) or, where there is more than one such notice and those notices are served at different times, upon the service of the last notice to be served.

(2) Where the Secretary of State decides not to proceed with the revocation or variation, the order or direction shall have effect again from the time of that decision, and shall thereafter have effect as if—

- (a) any period specified in the order or direction for the taking of any action, being a period which had not expired prior to the date mentioned in paragraph (1), were extended by a period equal to that during which the revocation or variation had effect; and
- (b) there were substituted for any date specified in the order or direction as being a date by which any action should be taken, not being a date falling prior to that date mentioned in paragraph (1), such date as post-dates the specified date by a period equal to that during which the revocation or variation had effect.

(3) The revocation or variation pursuant to regulation 79 of an order under section 1 or 3 of the Transport and Works Act 1992, or of a direction deeming planning permission to be granted, shall not affect anything done under the order or direction prior to the revocation or variation taking effect.

**Orders under the Transport and Works Act 1992: compensation for revocation or variation**

**82.**—(1) Where a direction deeming planning permission to be granted is revoked or varied pursuant to regulation 79, that permission shall be treated for the purposes of Part IV of the Town and Country Planning Act 1990 (compensation) as having been revoked or modified by order under section 97 of that Act.

(2) Where an order under section 1 or 3 of the Transport and Works Act 1992 is revoked or varied pursuant to regulation 79, Part IV of the Town and Country Planning Act 1990 shall apply as if—

- (a) the order had been planning permission granted on an application under that Act and had been revoked or modified by order under section 97 of that Act; and
- (b) that Part provided that the Secretary of State was the person liable to pay any compensation provided for by that Part.

This paragraph shall not have effect to confer any right to compensation for any expenditure, loss or damage for which compensation is payable by virtue of paragraph (1) above.

(3) Where the Secretary of State decides not to proceed with the revocation or variation of an order under section 1 or 3 of the Transport and Works Act 1992, or a direction deeming planning permission to be granted, any claim for compensation by virtue of this regulation shall be limited to any loss or damage directly attributable to the order or direction ceasing to have effect or being varied for the duration of the period between the revocation or variation taking effect under regulation 81(1) and the Secretary of State deciding not to proceed with it.

(4) Where compensation is payable by virtue of this regulation, the question as to the amount of the compensation shall be referred to and determined by the Lands Tribunal unless and to the extent that in any particular case the Secretary of State has indicated in writing that such a reference and determination may be dispensed with.

*Environmental controls***Authorisations under Part I of the Environmental Protection Act 1990**

**83.**—(1) Regulations 48 and 49 (requirement to consider effect on European site) apply in relation to the granting of an authorisation under Part I of the Environmental Protection Act 1990<sup>(87)</sup>(integrated pollution control and local authority air pollution control).

(2) Where in such a case the competent authority consider that any adverse effects of the plan or project on the integrity of a European site would be avoided if the authorisation were subject to conditions, they may grant an authorisation, or cause an authorisation to be granted, subject to those conditions.

(3) Regulations 50 and 51 (requirement to review existing decisions and consents, &c.) apply to any such authorisation as is mentioned in paragraph (1).

(4) Where on the review of such an authorisation the competent authority consider that any adverse effects on the integrity of a European site of the carrying out or, as the case may be, the continuation of activities authorised by it would be avoided by a variation of the authorisation, they may vary it, or cause it to be varied, accordingly.

(5) Where any question arises as to agreeing to a plan or project, or affirming an authorisation on review, under regulation 49 (considerations of overriding public interest), the competent authority shall refer the matter to the Secretary of State who shall determine the matter in accordance with that regulation and give directions to the authority accordingly.

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(87) 1990 c. 43.

### **Licences under Part II of the Environmental Protection Act 1990**

**84.**—(1) Regulations 48 and 49 (requirement to consider effect on European site) apply in relation to—

- (a) the granting of a waste management licence under Part II of the Environmental Protection Act 1990,
- (b) the passing of a resolution under section 54 of that Act (provisions as to land occupied by disposal authorities themselves), and
- (c) the granting of a disposal licence under Part I of the Control of Pollution Act 1974<sup>(88)</sup> and the passing of a resolution under section 11 of that Act<sup>(89)</sup>.

(2) Where in such a case the competent authority consider that any adverse effects of the plan or project on the integrity of a European site would be avoided by making any licence subject to conditions, they may grant a licence, or cause a licence to be granted, or, as the case may be, pass a resolution, subject to those conditions.

(3) Regulations 50 and 51 (requirement to review existing decisions and consents, &c.) apply to any such licence or resolution as is mentioned in paragraph (1).

(4) Where on the review of such a licence or resolution the competent authority consider that any adverse effects on the integrity of a European site of the carrying out or, as the case may be, the continuation of the activities authorised by it would be avoided by a variation of the licence or resolution, they may vary it, or cause it to be varied, accordingly.

### **Discharge consents under water pollution legislation**

**85.**—(1) Regulations 48 and 49 (requirement to consider effect on European site) apply in relation to the giving of consent under—

- (a) Chapter II of Part III to the Water Resources Act 1991<sup>(90)</sup> (control of pollution of water resources), or
- (b) Part II of the Control of Pollution Act 1974<sup>(91)</sup> (which makes corresponding provision for Scotland).

(2) Where in such a case the competent authority consider that any adverse effects of the plan or project on the integrity of a European site would be avoided by making any consent subject to conditions, they may give consent, or cause it to be given, subject to those conditions.

(3) Regulations 50 and 51 (requirement to review existing decisions and consents, &c.) apply to any such consent as is mentioned in paragraph (1).

(4) Where on the review of such a consent the competent authority consider that any adverse effects on the integrity of a European site of the carrying out or, as the case may be, the continuation of the activities authorised by it would be avoided by a variation of the consent, they may vary it, or cause it to be varied, accordingly.

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<sup>(88)</sup> 1974 c. 40.

<sup>(89)</sup> The relevant provisions of Part I, and section 11, were repealed by the Environmental Protection Act 1990 (c. 43) subject to savings (see section 77 of that Act).

<sup>(90)</sup> 1991 c. 57.

<sup>(91)</sup> 1974 c. 40.

## PART V

### SUPPLEMENTARY PROVISIONS

#### *Supplementary provisions as to management agreements*

#### **Powers of limited owners, &c. to enter into management agreements**

**86.**—(1) In the case of settled land in England and Wales—

- (a) the tenant for life may enter into a management agreement relating to the land, or any part of it, either for consideration or gratuitously;
- (b) the Settled Land Act 1925(**92**) shall apply as if the power conferred by sub-paragraph (a) had been conferred by that Act; and
- (c) for the purposes of section 72 of that Act (which relates to the mode of giving effect to a disposition by a tenant for life and to the operation thereof), and of any other relevant statutory provision, entering into a management agreement shall be treated as a disposition.

The above provisions of this paragraph shall be construed as one with the Settled Land Act 1925.

(2) Section 28 of the Law of Property Act 1925(**93**) (which confers the powers of a tenant for life on trustees for sale) shall apply as if the power of a tenant for life under paragraph (1)(a) above had been conferred by the Settled Land Act 1925.

(3) A university or college to which the Universities and College Estates Act 1925(**94**) applies may enter into a management agreement relating to any land belonging to it in England and Wales either for consideration or gratuitously.

That Act shall apply as if the power conferred by this paragraph had been conferred by that Act.

(4) In the case of glebe land or other land belonging to an ecclesiastical benefice—

- (a) the incumbent of the benefice, and
- (b) in the case of land which is part of the endowment of any other ecclesiastical corporation, the corporation,

may with the consent of the Church Commissioners enter into a management agreement either for consideration or gratuitously.

The Ecclesiastical Leasing Acts shall apply as if the power conferred by this paragraph had been conferred by those Acts, except that the consent of the patron of an ecclesiastical benefice shall not be requisite.

(5) In the case of any land in Scotland, any person being—

- (a) the liferenter, or
- (b) the heir of entail,

in possession of the land shall have power to enter into a management agreement relating to the land or any part of it.

(6) The Trusts (Scotland) Act 1921(**95**) shall have effect as if among the powers conferred on trustees by section 4 of that Act (which relates to the general powers of trustees) there were included a power to enter into management agreements relating to the trust estate or any part of it.

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(92) 1925 c. 18.

(93) 1925 c. 20.

(94) 1925 c. 24.

(95) 1921 c. 58.

*Supplementary provisions as to potentially damaging operations*

**Carrying out of operation after expiry of period**

**87.**—(1) If before the expiry of the period of four months referred to in regulation 19(2)(c) the relevant person agrees in writing with the appropriate nature conservation body that, subject as follows, the condition specified in that provision shall not apply in relation to the operation in question, then, subject as follows, regulation 19(2) shall as from the date of the agreement have effect in relation to the operation (as regards both the owner or the occupier of the land in question) as if sub-paragraph (c) were omitted.

(2) 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 he wishes to terminate the agreement, then as from the giving of the notice regulation 19(2) shall have effect in relation to the operation in question (as regards both the owner and the occupier of the land in question) as if paragraph (c) specified the condition that one month, or any longer period specified in the notice, has expired from the giving of the notice under this paragraph.

(3) In paragraphs (1) and (2) above “the relevant person”–

- (a) in a case where the notice under regulation 19(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.

**Duties of agriculture Ministers with respect to European sites**

**88.**—(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 Minister responsible for determining the application–

- (a) shall, so far as may be consistent with the purposes of the grant provisions, so exercise his functions thereunder as to further the conservation of the flora, fauna, or geological or physiographical 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, shall not make the grant except after considering the objection and, in the case of land in England, after consulting with the Secretary of State.

(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 shall, within three months of their receiving notice of the Minister’s decision, offer to enter into, in the terms of a draft submitted to the applicant, a management agreement–

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

(3) In this regulation–

“farm capital grant” means–

- (a) a grant under a scheme made under section 29 of the Agriculture Act 1970(96), or

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(96) 1970 c. 40; section 29 was amended by section 15(1) of the Agriculture (Miscellaneous Provisions) Act 1976 (c. 55).

- (b) a grant under regulations made under section 2(2) of the European Communities Act 1972<sup>(97)</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

“grant provisions” means—

- (i) in the case of such a grant as is mentioned in paragraph (a) above, the scheme under which the grant is made and section 29 of the Agriculture Act 1970, and
- (ii) in the case of such a grant as is mentioned in paragraph (b) above, the regulations under which the grant is made and the Community instrument in pursuance of which the regulations were made.

### **Payments under certain agreements offered by authorities**

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

- (a) a person who has given notice under regulation 19(1)(a) or 23(1)(a), or
- (b) a person whose application for a farm capital grant within the meaning of regulation 88 has been refused in consequence of an objection by that body.

(2) Subject to paragraph (3), the said payments shall be of such amounts as may be determined by the offeror in accordance with guidance given—

- (a) in England, by the Minister of Agriculture, Fisheries and Food and the Secretary of State, or
- (b) in Wales or Scotland, by the Secretary of State.

(3) If the offeree so requires within one month of receiving the offer, the determination of those amounts shall be referred to an arbitrator to be appointed, in default of agreement, by the Secretary of State.

(4) Where the amounts determined by the arbitrator exceed those determined by the offeror, the offeror shall—

- (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 offeror, withdraw the offer.

(5) In the application of this regulation in Scotland references to an arbitrator shall be construed as references to an arbiter.

### **Powers of entry**

**90.**—(1) A person authorised in writing by the appropriate nature conservation body may, at any reasonable time and (if required to do so) upon producing evidence that he is so authorised, enter any land—

- (a) to ascertain whether a special nature conservation order should be made in relation to that land, or if an offence under regulation 23 is being, or has been, committed on that land; or
- (b) to ascertain the amount of any compensation payable under regulation 25 in respect of an interest in that land.

But nothing in this paragraph shall authorise any person to enter a dwelling.

- (2) A person shall not demand admission as of right to any land which is occupied unless either—

(97) 1972 c. 68.



- (a) 24 hours' notice of the intended entry has been given to the occupier, or
- (b) the purpose of the entry is to ascertain if an offence under regulation 23 is being, or has been, committed on that land.

(3) A person who intentionally obstructs a person in the exercise of his powers under this regulation commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### **Compensation: amount and assessment**

**91.**—(1) The following provisions have effect as to compensation under regulation 25(1) (effect of special nature conservation order: decrease in value of agricultural unit).

(2) The amount of the compensation shall be the difference between the value of the interest in question and what it would have been had the order not been made.

(3) For this purpose—

- (a) an interest in land shall be valued as at the time when the order is made; and
- (b) where a person, by reason of his having more than one interest in land, makes more than one claim in respect of the same order, his various interests shall be valued together.

(4) Section 10 of the Land Compensation Act 1973(**98**) (mortgages, trusts for sale and settlements) or section 10 of the Land Compensation (Scotland) Act 1973(**99**) apply in relation to compensation under regulation 25(1) as in relation to compensation under Part I of that Act.

(5) For the purposes of assessing compensation under regulation 25(1), the rules set out in section 5 of the Land Compensation Act 1961(**100**) or section 12 of the Land Compensation (Scotland) Act 1963(**101**) 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.

### **Compensation: other supplementary provisions**

**92.**—(1) The following provisions have effect in relation to compensation under regulation 25 (compensation for effect of special nature conservation order).

(2) The compensation shall carry interest, at the rate for the time being prescribed under section 32 of the Land Compensation Act 1961 or section 40 of the Land Compensation (Scotland) Act 1963(**102**), from the date of the claim until payment.

(3) Except in so far as may be provided by regulations, any question of disputed compensation shall be referred to and determined by the Lands Tribunal or the Lands Tribunal for Scotland.

(4) In relation to the determination of any such question, the provisions of sections 2 and 4 of the Land Compensation Act 1961 or sections 9 and 11 of the Land Compensation (Scotland) Act 1963 (procedure and costs) shall apply, subject to any necessary modifications and to the provisions of any regulations.

### **Compensation: procedural provisions**

**93.**—(1) The power to make regulations under section 30 of the Wildlife and Countryside Act 1981(**103**) (provisions as to compensation where order made under section 29 of that Act) shall be

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(98) 1973 c. 26.

(99) 1973 c. 56.

(100) 1961 c. 33.

(101) 1963 c. 51.

(102) 1963 c. 51.

(103) 1981 c. 69.

exercisable so as to make provision for the purposes of these Regulations corresponding to those for which provision may be made under that section.

(2) The references in regulation 25 to matters being prescribed by regulations, and in regulation 92(3) and (4) to matters being provided by regulations, are to their being so prescribed or provided.

(3) Any regulations in force under section 30 on the commencement of these Regulations shall have effect for the purposes of these Regulations as if made under that section as applied by this regulation.

#### *Supplementary provisions as to byelaws*

#### **Procedure for making byelaws, penalties, &c.**

**94.**—(1) Sections 236 to 238 of the Local Government Act 1972(**104**) or sections 201 to 204 of the Local Government (Scotland) Act 1973(**105**) (procedure, &c. for byelaws; offences against byelaws; evidence of byelaws) apply to all byelaws made under section 20 of the National Parks and Access to the Countryside Act 1949(**106**) as it applies by virtue of regulation 28 as if the appropriate nature conservation body were a local authority within the meaning of that Act.

(2) In relation to byelaws so made the confirming authority for the purposes of the said section 236 or section 201 shall be the Secretary of State.

(3) The appropriate nature conservation body shall have power to enforce byelaws made by them: Provided that nothing in this paragraph shall be construed as authorising the institution of proceedings in Scotland for an offence.

#### **Powers of entry**

**95.**—(1) For the purpose of surveying land, or of estimating its value, in connection with any claim for compensation payable under regulation 30 in respect of that or any other land, an officer of the Valuation Office or person duly authorised in writing by the authority from whom the compensation is claimed may enter upon the land.

(2) A person authorised under this regulation to enter upon any land shall, if so required, produce evidence of his authority before entering.

(3) A person shall not under this regulation demand admission as of right to any land which is occupied unless at least 14 days' notice in writing of the intended entry has been given to the occupier.

(4) A person who intentionally obstructs a person in the exercise of his powers under this regulation commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

#### **Compensation: England and Wales**

**96.**—(1) The following provisions have effect as to compensation under regulation 30 (compensation for effect of byelaws) in respect of land in England and Wales.

(2) Any dispute arising on a claim for any such compensation shall be determined by the Lands Tribunal.

(3) For the purposes of any such reference to the Lands Tribunal, section 4 of the Land Compensation Act 1961 (which relates to costs) has effect with the substitution for references to

(104) 1972 c. 70.

(105) 1973 c. 65.

(106) 1949 c. 97.

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 of that Act (which provides rules for valuation 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 shall 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) a mortgagee shall not be entitled to any such compensation in respect of his interest as such; and
- (d) any compensation payable in respect of the interest subject to the mortgage shall be paid to the mortgagee or, where there is more than one mortgagee, to the first mortgagee, and shall in either case be applied by him as if it were proceeds of sale.

### **Compensation: Scotland**

**97.—(1)** The following provisions have effect as to compensation under regulation 30 (compensation for effect of byelaws) in respect of land in Scotland.

(2) Any dispute arising on a claim for any such compensation shall be determined by the Lands Tribunal for Scotland.

(3) For the purposes of any such reference to the Lands Tribunal for Scotland section 8 of the Land Compensation (Scotland) Act 1963 (which relates to expenses) 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 12 of that Act (which provides rules for valuation 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 heritable security—

- (a) any such compensation in respect of the depreciation of that interest shall be calculated as if the interest were not subject to the heritable security;
- (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 creditor in a heritable security 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) a creditor in a heritable security shall not be entitled to any such compensation in respect of his interest as such; and
- (d) any compensation payable in respect of the interest subject to the heritable security shall be paid to the creditor or, where there is more than one creditor in a heritable security, to the creditor whose heritable security has priority over any other heritable securities secured on the land, and shall in either case be applied by him as if it were proceeds of sale.

*Supplementary provisions as to compulsory acquisition***Supplementary provisions as to acquisition of land**

**98.**—(1) The powers of compulsory acquisition conferred on the appropriate nature conservation body by regulation 32 are exercisable in any particular case on their being authorised so to do by the Secretary of State.

(2) In that regulation and in this regulation “land” includes any interest in land.

For this purpose “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.

(3) The Acquisition of Land Act 1981(**107**) applies in relation to any acquisition under these Regulations of land in England and Wales, and the Compulsory Purchase Act 1965(**108**) applies with any necessary modifications in relation to the acquisition of any interest in land in England and Wales.

(4) In relation to the compulsory acquisition of land in Scotland, the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947(**109**) shall apply as if these Regulations had been in force immediately before the commencement of that Act and as if in paragraph (a) of subsection (1) of section 1 thereof, in Part I of the First Schedule thereto and in the Second Schedule thereto references to a local authority included Scottish Natural Heritage:

Provided that section 2 of the said Act (which confers temporary powers for the speedy acquisition of land in urgent cases) shall not apply to any such compulsory acquisition as is mentioned in this paragraph.

The provisions of the Lands Clauses Acts incorporated with these Regulations by virtue of paragraph 1 of the Second Schedule to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947, as applied by this paragraph, shall apply with the necessary modifications in relation to the compulsory acquisition of any interest in land, being an interest not falling within the definition of “lands” contained in the Lands Clauses Acts.

**Powers of entry**

**99.**—(1) For the purpose of surveying land in connection with the acquisition thereof or of any interest therein, whether by agreement or compulsorily, in the exercise of any power conferred by these Regulations, a person duly authorised in writing by the authority having power so to acquire the land or interest may enter upon the land.

(2) A person authorised under this regulation to enter upon any land shall, if so required, produce evidence of his authority before entering.

(3) A person shall not under this regulation demand admission as of right to any land which is occupied unless at least 14 days' notice in writing of the intended entry has been given to the occupier.

(4) A person who intentionally obstructs a person in the exercise of his powers under this regulation commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

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(**107**)1981 c. 67.

(**108**)1965 c. 56.

(**109**)1947 c. 42.

*Supplementary provisions as to protection of species*

**Attempts and possession of means of committing offence**

**100.**—(1) A person who attempts to commit an offence under Part III of these Regulations is guilty of an offence and punishable in like manner as for that offence.

(2) A person who, for the purposes of committing an offence under Part III of these Regulations, has in his possession anything capable of being used for committing the offence is guilty of an offence and punishable in like manner as for that offence.

(3) References below to an offence under Part III include an offence under this regulation.

**Enforcement**

**101.**—(1) If a constable suspects with reasonable cause that any person is committing or has committed an offence under Part III of these Regulations, the constable may without warrant—

- (a) stop and search that person if the constable suspects with reasonable cause that evidence of the commission of the offence is to be found on that person;
- (b) search or examine any thing which that person may then be using or have in his possession if the constable suspects with reasonable cause that evidence of the commission of the offence is to be found on that thing;
- (c) seize and detain for the purposes of proceedings under that Part any thing which may be evidence of the commission of the offence or may be liable to be forfeited under regulation 103.

(2) If a constable suspects with reasonable cause that any person is committing an offence under Part III of these Regulations, he may, for the purposes of exercising the powers conferred by paragraph (1) or arresting a person in accordance with section 25 of the Police and Criminal Evidence Act 1984(**110**) for such an offence, enter any land other than a dwelling—house.

(3) If a justice of the peace is satisfied by information on oath that there are reasonable grounds for suspecting that an offence under regulation 39, 41 or 43 has been committed and that evidence of the offence may be found on any premises, he may grant a warrant to any constable (with or without other persons) to enter upon and search those premises for the purpose of obtaining that evidence.

In the application of this paragraph to Scotland, the reference to a justice of the peace includes a sheriff.

**Proceedings for offences: venue, time limits**

**102.**—(1) An offence under Part III of these Regulations shall, for the purposes of conferring jurisdiction, be deemed to have been committed in any place where the offender is found or to which he is first brought after the commission of the offence.

(2) Summary proceedings for—

- (a) any offence under regulation 39(1) involving the taking or killing of a wild animal, and
- (b) any offence under regulation 43(1),

may be brought within a period of six months from the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to his knowledge.

But no such proceedings shall be brought by virtue of this paragraph more than two years after the commission of the offence.

(3) For the purposes of paragraph (2) a certificate signed by or on behalf of the prosecutor and stating the date on which such evidence as aforesaid came to his knowledge shall be conclusive evidence of that fact; and a certificate stating that matter and purporting to be so signed shall be deemed to be so signed unless the contrary is proved.

#### **Power of court to order forfeiture**

**103.**—(1) The court by which a person is convicted of an offence under Part III of these Regulations—

- (a) shall order the forfeiture of any animal, plant or other thing in respect of which the offence was committed; and
- (b) may order the forfeiture of any vehicle, animal, weapon or other thing which was used to commit the offence.

(2) In paragraph (1)(b) “vehicle” includes aircraft, hovercraft and boat.

#### **Saving for other protective provisions**

**104.** Nothing in these Regulations shall be construed as excluding the application of the provisions of Part I of the Wildlife and Countryside Act 1981(**111**) (protection of wildlife) in relation to animals or plants also protected under Part III of these Regulations.

#### *General supplementary provisions*

#### **Powers of drainage authorities**

**105.**—(1) Where the appropriate nature conservation body or any other person enter into an agreement with a drainage authority for the doing by that authority of any work on land in a European site, no limitation imposed by law on the capacity of the drainage authority by virtue of its constitution shall operate so as to prevent the authority carrying out the agreement.

(2) In paragraph (1) “drainage authority” means the National Rivers Authority or an internal drainage board.

#### **Offences by bodies corporate, &c.**

**106.**—(1) Where an offence under these Regulations committed by a body corporate is proved to have committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, or a person purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

For this purpose “director”, in relation to a body corporate whose affairs are managed by its members, means any member of the body.

(2) Where an offence under these Regulations committed by a Scottish partnership is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, a partner, he (as well as the partnership) is guilty of the offence and liable to be proceeded against and punished accordingly.

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(111) 1981 c. 69.

### **Local inquiries**

**107.**—(1) The Secretary of State may cause a local inquiry to be held for the purposes of the exercise of any of his functions under these Regulations.

(2) The provisions of section 250(2) to (5) of the Local Government Act 1972(**112**) or section 210(4) to (8) of the Local Government (Scotland) Act 1973(**113**) (local inquiries: evidence and costs) apply in relation to an inquiry held under this regulation.

### **Service of notices**

**108.**—(1) Section 329 of the Town and Country Planning Act 1990(**114**) or section 269 of the Town and Country Planning (Scotland) Act 1972(**115**) (service of notices) apply to notices and other documents required or authorised to be served under these Regulations.

(2) Paragraph (1) does not apply to the service of any notice required or authorised to be served under the Acquisition of Land Act 1981(**116**) or the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947(**117**), as applied by these Regulations.

17th October 1994 *John Gummer*  
Secretary of State for the Environment

20th October 1994 *Ian Lang*  
Secretary of State for Scotland

18th October 1994 *John Redwood*  
Secretary of State for Wales

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(**112**) 1972 c. 70.  
(**113**) 1973 c. 65.  
(**114**) 1990 c. 8.  
(**115**) 1972 c. 52.  
(**116**) 1981 c. 67.  
(**117**) 1947 c. 42.

SCHEDULE 1

Regulation 22(3)

PROCEDURE IN CONNECTION WITH ORDERS UNDER REGULATION 22

*Coming into operation*

- 1.—(1) An original order or a restrictive amending order takes effect on its being made.
- (2) The Secretary of State shall consider every such order, and the order shall cease to have effect nine months after it is made unless he has previously given notice under paragraph 6 that he has considered it and does not propose to amend or revoke it, or has revoked it.
- (3) Subject to paragraphs 3(1) and 4(4), a revoking order, or an amending order which is not restrictive, does not take effect until confirmed by the Secretary of State.
- (4) An amending or revoking order requiring confirmation shall stand revoked if the Secretary of State gives notice under paragraph 6 below that it is not to be confirmed.

*Publicity for orders*

- 2.—(1) The Secretary of State shall, where an order has been made, give notice setting out the order (or describing its general effect) and stating that it has taken effect or, as the case may be, that it has been made and requires confirmation.
- (2) The notice shall—
  - (a) name a place in the area in which the land to which the order relates is situated where a copy of the order may be inspected free of charge at all reasonable hours; and
  - (b) specify the time (not being less than 28 days from the date of the first publication of the notice) within which, and the manner in which, representations or objections with respect to the order may be made.
- (3) The notice shall be given—
  - (a) by publication in the Gazette and also at least one local newspaper circulating in the area in which the land to which the order relates is situated;
  - (b) by serving a like notice—
    - (i) on every owner and occupier of that land (subject to sub-paragraph (4) below); and
    - (ii) on the local planning authority within whose area the land is situated.
- (4) The Secretary of State may, in any particular case, direct that it shall not be necessary to comply with sub-paragraph (3)(b)(i); but if he so directs in the case of any land, then in addition to publication the notice shall be addressed to “The owners and any occupiers” of the land (describing it) and a copy or copies of the notice shall be affixed to some conspicuous object or objects on the land.

*Unopposed orders*

- 3.—(1) Where an order has taken effect immediately and no representations or objections are duly made in respect of it or any so made are withdrawn, the Secretary of State shall, as soon as practicable after considering the order, decide either to take no action on it or to make an order amending or revoking it.

An amending or revoking order under this sub-paragraph takes effect immediately and does not require confirmation nor shall any representation or objection with respect to it be entertained.



(2) Where an order requiring confirmation is made and no representations or objections are duly made in respect of it, or any so made are withdrawn, the Secretary of State may confirm the order (with or without modification).

#### *Opposed orders*

4.—(1) If any representation or objection duly made with respect to an order is not withdrawn, then, as soon as practicable in the case of an order having immediate effect and before confirming an order requiring confirmation, the Secretary of State shall either—

- (a) cause a local inquiry to be held; or
- (b) afford any person by whom a representation or objection has been duly made and not withdrawn an opportunity of being heard by a person appointed by the Secretary of State for the purpose.

(2) On considering any representations or objections duly made and the report of any person appointed to hold the inquiry or to hear representations or objections, the Secretary of State—

- (a) if the order has already taken effect, shall decide either to take no action on the order, or to make an order amending or revoking it as he thinks appropriate in the light of the report, representations or objections; and
- (b) if the order requires confirmation, may confirm it (with or without modifications).

(3) The provisions of section 250(2) to (5) of the Local Government Act 1972(**118**) or section 210(4) to (8) of the Local Government (Scotland) Act 1973(**119**)(local inquiries: evidence and costs) apply in relation to an inquiry held under this paragraph.

(4) An amending or revoking order made by virtue of sub-paragraph (2) above takes effect immediately and does not require confirmation nor shall any representation or objection with respect to it be entertained.

#### *Restriction on power to amend orders or confirm them with modifications*

5. The Secretary of State shall not by virtue of paragraphs 3(1) or 4(2) amend an order which has taken effect, or confirm any other order with modifications, so as to extend the area to which the order applies.

#### *Notice of final decision on order*

6.—(1) The Secretary of State shall as soon as practicable after making an order by virtue of paragraphs 3(1) or 4(2) give notice—

- (a) setting out the order (or describing its effect) and stating that it has taken effect; and
- (b) naming a place in the area in which the land to which the order relates is situated where a copy of the order may be inspected free of charge at all reasonable hours.

(2) The Secretary of State shall give notice of any of the following decisions of his as soon as practicable after making the decision—

- (a) a decision under paragraph 3(1) or 4(2) to take no action on an order which has already taken effect;
- (b) a decision to confirm or not to confirm an order requiring confirmation under this Schedule.

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(118) 1972 c. 70.

(119) 1973 c. 65.

*Status: This is the original version (as it was originally made).*

- (3) A notice under this paragraph of a decision to confirm an order shall—
- (a) set out the order as confirmed (or describe its general effect) and state the day on which the order took effect; and
  - (b) name a place in the area in which the land to which the order relates is situated where a copy of the order as confirmed may be inspected free of charge at all reasonable hours.
- (4) Notice under this paragraph shall be given by publishing it in accordance with paragraph 2(3) and serving a copy of it on any person on whom a notice was required to be served under paragraph 2(3) or (4).

#### *Proceedings for questioning validity of orders*

7.—(1) This paragraph applies to any order which has taken effect and as to which the Secretary of State has given notice under paragraph 6 of a decision of his to take no action or to amend the order in accordance with paragraph 4; and in this paragraph “the relevant notice” means that notice.

(2) If any person is aggrieved by an order to which this paragraph applies and desires to question its validity on the ground that it is not within the powers of regulation 22, or that any of the requirements of this Schedule have not been complied with in relation to it, he may within six weeks from the date of the relevant notice make an application to the court under this paragraph.

(3) On any such application the court may, if satisfied that the order is not within those powers or that the interests of the applicant have been substantially prejudiced by a failure to comply with any of those requirements—

- (a) in England and Wales, quash the order, or any provision of the order, either generally or in so far as it affects the interests of the applicant; or
- (b) in Scotland, make such declarator as seems to the court to be appropriate.

(4) Except as provided by this paragraph, the validity of an order shall not be questioned in any legal proceedings whatsoever.

(5) In this paragraph “the court” means the High Court in relation to England and Wales and the Court of Session in relation to Scotland.

#### *Interpretation*

##### **8.** In this Schedule—

“amending order” and “revoking order” mean an order which amends or, as the case may be, revokes a previous order;

“the Gazette” means—

- (a) if the order relates in whole or in part to land in England and Wales, the London Gazette; and
- (b) if the order relates in whole or in part to land in Scotland, the Edinburgh Gazette;

“order” means an order under regulation 22;

“original order” means an order other than an amending or revoking order; and

“restrictive amending order” means an amending order which extends the area to which a previous order applies.

## SCHEDULE 2

Regulation 38

## EUROPEAN PROTECTED SPECIES OF ANIMALS

<i>Common name</i>	<i>Scientific name</i>
Bats, Horseshoe (all species)	Rhinolophidae
Bats, Typical (all species)	Vespertilionidae
Butterfly, Large Blue	Maculinea arion
Cat, Wild	Felis silvestris
Dolphins, porpoises and whales (all species)	Cetacea
Dormouse	Muscardinus avellanarius
Lizard, Sand	Lacerta agilis
Newt, Great Crested (or Warty)	Triturus cristatus
Otter, Common	Lutra lutra
Snake, Smooth	Coronella austriaca
Sturgeon	Acipenser sturio
Toad, Natterjack	Bufo calamita
Turtles, Marine	Caretta caretta
	Chelonia mydas
	Lepidochelys kempii
	Eretmochelys imbricata
	Dermochelys coriacea

NOTE. The common name or names given in the first column of this Schedule are included by way of guidance only; in the event of any dispute or proceedings, the common name or names shall not be taken into account.

## SCHEDULE 3

Regulation 41(1)(a)

## ANIMALS WHICH MAY NOT BE TAKEN OR KILLED IN CERTAIN WAYS

<i>Common name</i>	<i>Scientific name</i>
Barbel	Barbus barbus
Grayling	Thymallus thymallus
Hare, Mountain	Lepus timidus
Lamprey, River	Lampetra fluviatilis
Marten, Pine	Martes martes

NOTE. The common name or names given in the first column of this Schedule are included by way of guidance only; in the event of any dispute or proceedings, the common name or names shall not be taken into account.

**Status:** This is the original version (as it was originally made).

<i>Common name</i>	<i>Scientific name</i>
Polecat	Mustela putorius (otherwise known as Putorius putorius)
Salmon, Atlantic	Salmo salar (only in fresh water)
Seal, Bearded	Erignathus barbatus
Seal, Common	Phoca vitulina
Seal, Grey	Halichoerus grypus
Seal, Harp	Phoca groenlandica (otherwise known as Pagophilus groenlandicus)
Seal, Hooded	Cystophora cristata
Seal, Ringed	Phoca hispida (otherwise known as Pusa hispida)
Shad, Allis	Alosa alosa
Shad, Twaite	Alosa fallax
Vendace	Coregonus albula
Whitefish	Coregonus lavaretus

NOTE. The common name or names given in the first column of this Schedule are included by way of guidance only; in the event of any dispute or proceedings, the common name or names shall not be taken into account.

#### SCHEDULE 4

Regulation 42

#### EUROPEAN PROTECTED SPECIES OF PLANTS

<i>Common name</i>	<i>Scientific name</i>
Dock, Shore	Rumex rupestris
Fern, Killarney	Trichomanes speciosum
Gentian, Early	Gentianella anglica
Lady's-slipper	Cypripedium calceolus
Marshwort, Creeping	Apium repens
Naiad, slender	Najas flexilis
Orchid, Fen	Liparis loeselii
Plantain, Floating-leaved water	Luronium natans
Saxifrage, Yellow Marsh	Saxifraga hirculus

NOTE. The common name or names given in the first column of this Schedule are included by way of guidance only; in the event of any dispute or proceedings, the common name or names shall not be taken into account.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make provision for implementing Council Directive [92/43/EEC](#) on the conservation of natural habitats and of wild fauna and flora.

Part I contains introductory provisions.

Part II provides for the conservation of natural habitats and habitats of species, and in particular—

- regulations 7 to 15 make provision for the selection, registration and notification of sites to be protected under the Directive (“European sites”);
- regulations 16 and 17 make provision for management agreements for European sites;
- regulations 18 to 27 make provision in respect of European sites for the control of damaging operations and for special nature conservation orders;
- regulations 28 to 32 make provision for byelaws and compulsory purchase orders as respects European sites; and
- regulations 33 to 36 make special provision for the protection of European marine sites.

Part III provides for the protection of certain wild animals and plants and in particular—

- regulation 39 makes it an offence, subject to certain exceptions, deliberately to capture, kill or disturb those animals or to trade in them; and
- regulation 43 makes it an offence, subject to certain exceptions, to pick, collect, cut, uproot or destroy those plants or to trade in them.

Part IV makes provision for the adaptation of planning and certain other controls for the protection of European sites; in particular—

- regulations 48, 49 and 54 require the effect on a European site to be considered before a grant of planning permission and, subject to certain exceptions, restrict the grant of planning permission where the integrity of the European site would be adversely affected;
- regulations 50 and 51 and 55 to 58 require planning permissions granted before the date on which a site becomes a European site (or if later, the commencement of these Regulations) to be reviewed and in certain circumstances revoked where the integrity of the site would be adversely affected.

Equivalent provision for the requirement to consider the effect on a European site and for review is made as respects the construction or improvement of highways, roads or cycle tracks (regulations 69 and 70), consents under the Electricity Act 1989 (regulations 71 to 74), authorisations under the Pipe-lines Act 1962 (regulations 75 to 78), orders under the Transport and Works Act 1992 (regulations 79 to 82), authorisations and licences under the Environmental Protection Act 1990 (regulations 83 and 84) and discharge consents under water pollution legislation (regulation 85). Regulations 60 to 67 make special provision as respects general and special development orders, simplified planning zones and enterprise zones.