
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which extend to Scotland only, make further provision for the transposition of Council Directive [92/43/EEC](#) on the conservation of natural habitats and of wild fauna and flora (“the Habitats Directive”) (O.J. No. L 206, 22.7.1992, p.7).

Regulation 2 amends the Conservation (Natural Habitats, &c.) Regulations 1994 (S.I. [1994/2716](#) as relevantly amended by [S.S.I. 2004/475](#) and [2007/80](#)) as follows.

Paragraph (2) amends regulation 47 and provides that regulations 48 to 53, and new regulation 48A inserted by paragraph (3), apply to all plans and projects not currently subject to those provisions.

Paragraph (3) inserts new regulation 48A which empowers the Scottish Ministers to—

- (a) direct that a competent authority (other than the Scottish Ministers or the Secretary of State) send them a copy of a plan or project which may have a significant effect on a European site;
- (b) consider whether—
 - (i) such a plan or project requires to be subject to appropriate assessment in terms of Article 6.3 of the Habitats Directive, and if so to direct that such an assessment is carried out, or
 - (ii) any assessment which has been carried out is insufficient to comply with that Article and if so to direct that further assessment be carried out;
- (c) direct, in particular, the manner in which an assessment should be carried out or the matters it should cover in order to secure compliance with the Habitats Directive; and
- (d) issue a direction when an appropriate assessment has been conducted in accordance with the Habitats Directive to their satisfaction.

A plan or project under consideration is suspended from the time that the Scottish Ministers issue a direction under (b) until they issue a further direction under (d).

Paragraph (4) amends regulation 49 and provides that a competent authority (other than the Scottish Ministers or the Secretary of State) requires to consult with, and have regard to the opinion of, the Scottish Ministers in satisfying itself that there are no alternative solutions and on matters of imperative overriding public interest, in the case of a negative assessment. It also provides that competent authorities must comply with a direction issued under regulation 49(6).

Paragraph (5) amends regulation 50 to apply new regulation 48A to appropriate assessments conducted under regulation 50(2). Paragraph (6) makes a consequential amendment to regulation 52(2).