
STATUTORY INSTRUMENTS

1994 No. 2716

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

PART IV

ADAPTATION OF PLANNING AND OTHER CONTROLS

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.