

SCHEDULE 3

Regulations 13(3) and 24

NATURAL HABITATS

Definitions

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

(2) For the purposes of paragraphs 3 and 4 of this Schedule, the definition of “European site” in regulation 2 shall be extended by the insertion of the following paragraph—

- “(e) 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).”

Provision for the protection of European sites: new dredging projects

2.—(1) This paragraph applies in relation to every project in respect of which the regulator has determined under regulation 6, regulation 13(1) or regulation 18(3) that it would constitute a habitats project.

(2) A person applying under regulation 10, or under regulation 18, shall provide such information as the regulator may reasonably require for the purposes of the assessment under regulation 13(3) or that regulation as applied by regulation 19(3).

(3) For the purposes of the assessment, the regulator shall take appropriate scientific advice.

(4) The regulator may also take appropriate steps to obtain the opinion of the public for the purposes of the assessment.

(5) In the light of the conclusion of the assessment, and subject to sub-paragraphs (7) and (8) below, the regulator shall grant permission for the project only after having ascertained that it will not, either alone or in combination with other plans or projects, adversely affect the integrity of the European site.

(6) In considering whether a project will adversely affect the integrity of the site, the regulator shall have regard to—

- (a) the manner in which it is proposed to be carried out; and
- (b) any conditions or restrictions subject to which it is proposed that the permission should be granted.

(7) Where the regulator considers that any adverse effects of the project on the integrity of a European site would be avoided if the permission were subject to conditions, permission shall only be granted subject to those conditions.

(8) If the regulator is satisfied that, there being no alternative solutions, the project must be carried out for imperative reasons of overriding public interest (which, subject to sub-paragraph (9), may be of a social or economic nature), permission may be granted for the project notwithstanding a negative assessment of the implications for the site.

(9) Where the site concerned hosts a priority natural habitat type or a priority species, the reasons referred to in sub-paragraph (8) must be either—

- (a) reasons relating to human health, public safety or beneficial consequences of primary importance to the environment; or
- (b) other reasons of overriding public interest, provided the regulator has had due regard to the opinion of the European Commission in concluding that there are such reasons.

Provision for the protection of European sites: review of existing permissions

3.—(1) Where—

- (a) before the date on which a site becomes a European site, the regulator has granted permission under these Regulations for a project which the regulator considers would have constituted a habitats project, had the European site been designated at the date when the application for the permission was determined; and
- (b) none of the circumstances mentioned in sub-paragraph (2) apply;

the regulator shall, as soon as reasonably practicable after the date on which the site becomes a European site, review the permission.

(2) The circumstances referred to in sub-paragraph (1)(b) are—

- (a) the dredging to which the permission relates has been completed before the site became a European site;
- (b) the permission was granted subject to a condition as to the period within which the dredging to which it relates was to be begun and that period has expired without the dredging having been begun, and the permission is no longer capable of implementation without being varied by the regulator; and
- (c) the permission was granted for a limited period and that period has expired.

(3) The regulator shall, for the purpose of reviewing the permission, make an appropriate assessment of the implications of the dredging for the site in view of its conservation objectives; and the provisions of sub-paragraphs (3), (4), (5) and (6) of paragraph 2 shall apply, with appropriate modifications, in relation to such a review.

(4) Where a permission is reviewed under this regulation, the regulator may request the owner or the holder of the permission, as the case may be, to provide, within a specified period, any additional information which the regulator requires in order to carry out the review and if that information is not provided within the period specified, or such further period as the regulator may allow, the regulator may revoke the permission without completing the review.

(5) Having reviewed a permission under this paragraph, the regulator shall—

- (a) affirm or vary it in accordance with sub-paragraph (6), (7) or (8); or
- (b) in any other case revoke it.

(6) The permission may be affirmed if the regulator is satisfied that the project will not adversely affect the integrity of the European site.

(7) The permission may be varied if the regulator is satisfied that any adverse effects on the integrity of the European site of the carrying out or, as the case may be, the continuation of the project, would be avoided by a variation of the permission.

(8) Subject to sub-paragraph (10), if the regulator is satisfied that, there being no alternative solutions, the project must be carried out for imperative reasons of overriding public interest (which, except in cases to which sub-paragraph (9) applies, may be of a social or economic nature), the permission may be affirmed, notwithstanding a negative assessment of the implications for the site.

(9) Where the site concerned hosts a priority natural habitat type or a priority species, the reasons referred to in sub-paragraph (8) must be—

- (a) reasons relating to human health, public safety or beneficial consequences of primary importance to the environment; or
- (b) other reasons of overriding public interest, provided the regulator has had due regard to the opinion of the European Commission in concluding that there are such reasons.

(10) The regulator shall not affirm a permission under sub-paragraph (8) in any case where sub-paragraph (6) or (7) applies.

(11) Nothing in this paragraph shall affect anything done under the permission before the date on which the site became a European site.

Provision for the protection of European sites: review of existing agreements

4.—(1) As soon as reasonably practicable after commencement, the regulator shall serve on the parties to each agreement to which sub-paragraph (2) applies, a notice specifying a date for the purposes of sub-paragraph (5).

(2) This sub-paragraph applies to any written agreement—

- (a) entered into by an owner before commencement; and
- (b) which the regulator considers relates to dredging which constitutes a habitats project.

(3) As soon as reasonably practicable after a site becomes a European site, the regulator shall serve on the parties to each agreement to which sub-paragraph (4) applies, a notice specifying a date for the purposes of sub-paragraph (5).

(4) This sub-paragraph applies to any agreement—

- (a) entered into by an owner before commencement; and
- (b) which the regulator considers relates to dredging which constitutes a habitats project as a result of the designation of the European site.

(5) On and after the date specified in a notice under sub-paragraph (1) or sub-paragraph (3), the agreement shall have effect for all purposes as a permission granted as a result of an application under regulation 10 and which it is the regulator's duty to review under paragraph 3.

Procedure on review

5.—(1) Where, on a review under paragraph 3 or 4, the regulator decides to revoke or vary a permission granted, or having effect as if granted, under these Regulations, the regulator shall serve notice on—

- (a) the owner,
- (b) any holder of the permission, or the part affected, as the case may be, and
- (c) any other person who, in the regulator's opinion, will be affected by the revocation or variation,

informing them of the decision and specifying a period, being not less than 28 days from the date of the notice ("the specified period"), within which representations may be made in relation to that decision.

(2) The regulator shall also serve notice on any person or body from which scientific advice was obtained, informing them of the decision and inviting their representations within the specified period.

(3) If, within the specified period, a person on whom notice has been served under sub-paragraph (1) so requires, the regulator shall, before deciding whether to proceed with the revocation or variation, give—

- (a) to that person; and
- (b) to any other person or body on whom notice was served under that sub-paragraph or sub-paragraph (2),

an opportunity to make representations (whether in person or in writing) to a person appointed by the regulator for the purpose.

(4) The regulator shall decide, having regard, in particular, to—

- (a) any representations made in response to a notice served under sub-paragraph (1) or (2); and

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(b) if applicable, the report of any person appointed under sub-paragraph (3), whether to proceed with the revocation or variation of the permission.

(5) The regulator shall serve on any person on whom notice was served under—

(a) sub-paragraph (1), or

(b) sub-paragraph (2),

notice of the decision under sub-paragraph (4) stating—

(i) the main reasons for the decision;

(ii) the main considerations on which the decision is based; and

(iii) that the decision may be challenged and the procedures for doing so.

Effect of regulator's decision on review

6.—(1) Where the regulator has decided, under paragraph 5(1), to revoke or vary a permission granted, or having effect as if granted, under these Regulations, the permission shall be suspended or the variation shall take effect temporarily, as the case may be, subject to sub-paragraph (2), on the date on which notice is served under paragraph 5(1).

(2) Where more than one notice is served under paragraph 5(1) in respect of the same revocation or variation, and those notices are served on different days, the suspension or temporary variation shall take effect on the date on which the last of them is served.

(3) Where the regulator decides not to proceed with the revocation or variation of the permission under paragraph 5(4), it shall again have effect, or have effect on the terms on which that permission was effective prior to the temporary variation, as the case may be, from the date of the regulator's decision not so to proceed.

(4) In relation to a permission to which sub-paragraph (3) applies—

(a) where the regulator has decided not to revoke the permission—

(i) any period specified in the permission for the taking of any action, which expires after the date on which the permission was suspended under sub-paragraph (1) or sub-paragraph (2), shall be treated as extended by a period equal to that during which the permission was suspended; and

(ii) where a permission requires anything to be done by a specified date, which falls after the date upon which the permission was suspended, the specified date shall be postponed by a period equal to that during which the permission was suspended;

(b) where the regulator has decided not to vary the permission—

(i) any period specified in the permission for the taking of any action, which expires after the date on which the permission was varied temporarily under sub-paragraph (1) or sub-paragraph (2), shall, if the action relates to matters which are affected by the temporary variation, be treated as extended by a period equal to that during which the permission had effect as varied; and

(ii) where a permission requires any action to be taken by a specified date which falls after the date on which the permission was varied temporarily, the specified date shall, if the action relates to matters which are affected by the temporary variation, be postponed by a period equal to that during which the permission had effect as varied.

(5) A revocation or variation under paragraph 5(1), or the suspension or temporary variation of a permission under sub-paragraph (1), shall not affect anything done under the permission before the date determined in accordance with that sub-paragraph or, as the case may be, sub-paragraph (2).

Compensatory measures

7. Where—

- (a) a project is granted permission, notwithstanding a negative assessment of the implications for a European site; or
- (b) a permission is affirmed on review, notwithstanding such an assessment;

the regulator shall secure that any necessary compensatory measures are taken to ensure that the overall coherence of Natura 2000 is protected and shall ensure that the European Commission is informed of the compensatory measures taken.