
STATUTORY INSTRUMENTS

2010 No. 490

The Conservation of Habitats and Species Regulations 2010

PART 2

CONSERVATION OF NATURAL HABITATS AND HABITATS OF SPECIES

Control of potentially damaging operations

Notification of potentially damaging operations

19.—(1) This regulation and regulations 20 to 22 apply where a notification is in force under section 28(1) of the WCA 1981 (sites of special scientific interest) in relation to land which is or forms part of a European site.

(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—

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

(3) The appropriate nature conservation body must give notice of any amendment to—

- (a) every owner and occupier of land within the European site who in the opinion of that body may be affected by the amendment, and
- (b) the local planning authority in whose area the land is situated,

and after service of a notice under sub-paragraph (a) the notification has effect in relation to such an owner or occupier in its amended form.

(4) Any local land charge relating to a notification by virtue of section 28(9) of the WCA 1981 must be varied in accordance with the amendment to that notification.

Restriction on carrying out operations specified in notification

20.—(1) While a notification under section 28(1) of the WCA 1981 is in force in relation to any land which is or forms part of a European site, the owner or occupier of that land must not carry out, or cause or permit to be carried out, on that land any operation specified in the notification 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 where it is proposed to carry it out; and
- (b) one of the conditions specified in paragraph (2) is fulfilled.

(2) The conditions are—

(1) Section 28 was substituted by the Countryside and Rights of Way Act 2000 (c. 37), paragraph 1 of Schedule 9, and amended by the Natural Environment and Rural Communities Act 2006 (c. 16), paragraph 79 of Schedule 11.

- (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 passed since the notice under paragraph (1)(a) was given.
- (3) If before the end of the period of four months referred to in sub-paragraph (c) of paragraph (2) the relevant person agrees in writing with the appropriate nature conservation body that the condition specified in that sub-paragraph does not apply in relation to the operation in question, as from the date of the agreement paragraph (2) has effect in relation to the operation (as regards both the owner and the occupier of the land in question) as if that sub-paragraph were omitted.
- (4) 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 that person wishes to terminate the agreement, paragraph (2) has effect in relation to the operation in question (as regards both the owner and the occupier of the land in question) as if sub-paragraph (c) specified a period of one month from the giving of that notice, or any longer period specified in that notice.
- (5) 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.
- (6) For the purposes of paragraph (5) it is a reasonable excuse for a person to carry out an operation if—
- (a) 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) the operation was authorised by a planning permission granted on an application under Part 3 (control over development) of the TCPA 1990.
- (7) The appropriate nature conservation body may take such steps as may be necessary for the purpose of enforcing this regulation.
- (8) Proceedings for an offence under this regulation must not, without the consent of the Director of Public Prosecutions, be taken by a person other than the appropriate nature conservation body.
- (9) In paragraphs (3) and (4) “the relevant person”—
- (a) in a case where the notice under paragraph (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.

Assessment of implications for European sites

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

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

they must make an appropriate assessment of the implications for that 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) This regulation does not apply in relation to a site which is a European site by reason of regulation 8(1)(c) (site protected in accordance with Article 5(4) of the Habitats Directive).

Notification of appropriate authority in case of risk

22.—(1) Where 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 must notify the appropriate authority.

(2) Such notification must be given at least one month before the end of the period mentioned in regulation 20(2)(c).

Existing notices and consents

23.—(1) Any notice previously given under subsection (1)(a) of section 28E(2) (duties in relation to sites of special scientific interest) of the WCA 1981, or any consent previously given under section 28E(3)(a) of that Act, in relation to land which on or after 1st April 2010 becomes land within a European site, has effect, subject as follows, as if given under regulation 20(1)(a) or (2) (a), respectively.

(2) The appropriate nature conservation body must 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 must 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 after such notice has been given, the consent has effect in relation to an owner or occupier as so modified or withdrawn.

(4) The modification or withdrawal of a consent does 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 authorised by a consent by reason of the consent being modified or withdrawn, the period after which in accordance with regulation 20(2)(c) the operation may be carried out in the absence of consent is four months from the giving of notice of the modification or withdrawal under paragraph (3).

(6) Regulation 22 (notification of appropriate authority in case of risk) applies 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; and
- (b) for the reference to the period specified in regulation 20(2)(c) substitute a reference to the period specified in paragraph (5).

Farm capital grants

24.—(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 appropriate authority—

- (a) must, so far as may be consistent with the purposes of the grant provisions, exercise their functions so as to further the conservation of the flora, fauna, or geological or physiological 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, must not make the grant except after considering the objection.

(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

(2) Section 28E was inserted by the Countryside and Rights of Way Act 2000 (c. 37), paragraph 1 of Schedule 9, and amended by the Natural Environment and Rural Communities Act 2006 (c. 16), paragraphs 79 and 80 of Schedule 11.

activities in question will have such an effect as is mentioned in paragraph (1)(b), the appropriate nature conservation body must, within three months of their receiving notice of the appropriate authority's decision, offer to enter into a management agreement—

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

in the terms of a draft submitted to the applicant.

(3) In this regulation—

(a) “farm capital grant” means—

- (i) a grant under a scheme made under section 29 of the Agriculture Act 1970⁽³⁾ (farm capital grants), or
- (ii) a grant under regulations made under section 2(2) of the European Communities Act 1972⁽⁴⁾ 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

(b) “grant provisions” means—

- (i) in the case of a grant of a kind described in sub-paragraph (a)(i), the scheme under which the grant is made and section 29 of the Agriculture Act 1970, and
- (ii) in the case of a grant of a kind described in sub-paragraph (a)(ii), the regulations under which the grant is made and the EU instrument in pursuance of which the regulations were made.

(3) 1970 c. 40; section 29 was amended by the Agriculture (Miscellaneous Provisions) Act 1976 (c. 55), section 15; the Criminal Justice Act 1982 (c. 48), sections 37, 38 and 46; and the Statute Law (Repeals) Act 1986 (c. 12).

(4) 1972 c. 68.