STATUTORY INSTRUMENTS

2017 No. 1012

The Conservation of Habitats and Species Regulations 2017

PART 6

Assessment of plans and projects

CHAPTER 1

General provisions

General provisions for protection of European sites and European offshore marine sites

Assessment of implications for European sites and European offshore marine sites

63.—(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 or a European offshore marine 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,

must make an appropriate assessment of the implications of the plan or project for that site in view of that site's conservation objectives.

(2) A person applying for any such consent, permission or other authorisation must provide such information as the competent authority may reasonably require for the purposes of the assessment or to enable it to determine whether an appropriate assessment is required.

(3) The competent authority must 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 specifies.

(4) It must also, if it considers it appropriate, take the opinion of the general public, and if it does so, it must take such steps for that purpose as it considers appropriate.

(5) In the light of the conclusions of the assessment, and subject to regulation 64, the competent authority may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site or the European offshore marine site (as the case may be).

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

(7) This regulation does not apply in relation to—

(a) a site which is a European site by reason of regulation 8(1)(c);

(b) a site which is a European offshore marine site by reason of regulation 18(c) of the Offshore Marine Conservation Regulations; or

(c) a plan or project to which any of the following apply—

(i) the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001(**1**) (in so far as this regulation is not disapplied by regulation 4 (plans or projects relating to offshore marine area or offshore marine installations) in relation to plans or projects to which those Regulations apply);

(ii) the Environmental Impact Assessment (Agriculture) (England) (No. 2) Regulations 2006(**2**);

(iii) the Environmental Impact Assessment (Agriculture) (Wales) Regulations 2017(**3**); or

(iv) the Merchant Shipping (Ship-to-Ship Transfers) Regulations 2010(**4**).

(8) Where a plan or project requires an appropriate assessment both under this regulation and under the Offshore Marine Conservation Regulations, the assessment required by this regulation need not identify those effects of the plan or project that are specifically attributable to that part of it that is to be carried out in the United Kingdom, provided that an assessment made for the purpose of this regulation and the Offshore Marine Conservation Regulations assesses the effects of the plan or project as a whole.

(9) In paragraph (1) the reference to the competent authority deciding to undertake a plan or project includes the competent authority deciding to vary any plan or project undertaken or to be undertaken.

Considerations of overriding public interest

64.—(1) If the competent authority 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 (2), may be of a social or economic nature), it may agree to the plan or project notwithstanding a negative assessment of the implications for the European site or the European offshore marine site (as the case may be).

(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) any other reasons which the competent authority, having due regard to the opinion of the European Commission, considers to be imperative reasons of overriding public interest.

(3) Where a competent authority other than the Secretary of State or the Welsh Ministers desires to obtain the opinion of the European Commission as to whether reasons are to be considered imperative reasons of overriding public interest, it may submit a written request to the appropriate authority—

(a) identifying the matter on which an opinion is sought; and

(b) accompanied by any documents or information which may be required.

(4) The appropriate authority—

(a) may seek the opinion of the European Commission concerning the plan or project; and

(b) where such an opinion is received, must send it to the competent authority.

(**1**) S.I. 2001/1754, amended by S.I. 2007/77, 1842, 2010/1513, 2015/1431, 2016/529, 912, 1042 and 2017/582.
(**2**) S.I. 2006/2522, amended by S.I. 2009/1307, 3264, 2010/1159, 2011/1043, 1824 and 2017/593.
(**3**) S.I. 2017/565 (W. 134).
(**4**) S.I. 2010/1228, amended by S.I. 2011/974, 2183, 2012/742, 2013/755 (W. 90), 2014/3306 and 2015/664.

(5) Where a competent authority other than the Secretary of State or the Welsh Ministers proposes to agree to a plan or project under this regulation notwithstanding a negative assessment of the implications for the site concerned—

(a) it must notify the appropriate authority; and

(b) it must not agree to the plan or project before the end of the period of 21 days beginning with the day notified by the appropriate authority as that on which its notification was received, unless the appropriate authority notifies it that it may do so.

(6) Without prejudice to any other power, the appropriate authority may give directions to the competent authority in any such case prohibiting it from agreeing to the plan or project, either indefinitely or during such period as may be specified in the direction.

Review of existing decisions and consents

65.—(1) Where before the date on which a site becomes a European site or a European offshore marine site a competent authority has decided to undertake, or has given any consent, permission or other authorisation for, a plan or project to which regulation 63(1) would apply if it were to be reconsidered as of that date, the authority must, as soon as reasonably practicable—

(a) review its decision or, as the case may be, the consent, permission or other authorisation; and

(b) affirm, modify or revoke it.

(2) The authority must 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 63(2) to (4) and (8) apply, with the appropriate modifications, in relation to such a review.

(3) Subject to the provisions of Chapters 2 to 7, any review required by this regulation must be carried out under existing statutory procedures where such procedures exist, and if none exists, the appropriate authority may give directions as to the procedure to be followed.

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

Consideration on review

66.—(1) The following provisions apply where a decision, or a consent, permission or other authorisation, falls to be reviewed under regulation 65.

(2) Subject as follows, the provisions of regulations 63(5) and (6) and 64 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 competent authority reviewing it that other action taken or to be taken by it, or by another authority, will secure that the plan or project does not adversely affect the integrity of the site.

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

(5) The appropriate authority may issue guidance to competent 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.

(6) The competent authorities concerned must have regard to any such guidance.

(7) Any modification or revocation of a decision, or a consent, permission or other authorisation, must be carried out under existing statutory procedures where such procedures exist, and if none exists, the appropriate authority may give directions as to the procedure to be followed.

Co-ordination where more than one competent authority involved

67.—(1) This regulation applies 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 63(1) or 65(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 appropriate authority may issue guidance to competent authorities for the purposes of regulations 63 to 66 as to the circumstances in which a competent 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 a European offshore marine site; or

(b) will adversely affect the integrity of a European site or a European offshore marine site.

(4) The competent authorities concerned must have regard to any such guidance.

(5) In determining whether a plan or project should be agreed to under regulation 64, a competent authority other than the Secretary of State or the Welsh Ministers must seek and have regard to the views of the other competent authority or authorities involved.

Compensatory measures

68. Where in accordance with regulation 64—

(a) a plan or project is agreed to, notwithstanding a negative assessment of the implications for a European site or a European offshore marine site, or

(b) a decision, or a consent, permission or other authorisation, is affirmed on review, notwithstanding such an assessment,

the appropriate authority must secure that any necessary compensatory measures are taken to ensure that the overall coherence of Natura 2000 is protected.

Modifications of regulations 63 to 68 in certain cases

69.—(1) Where any provision of regulations 63 to 68 (a "general provision") applies in relation to a provision specified in paragraph (2), that general provision applies with the following modifications—

(a) any reference to the Welsh Ministers is omitted; and

(b) for any reference to the appropriate authority, substitute a reference to the Secretary of State.

(2) The provisions specified for the purposes of paragraph (1) are—

(a) regulation 70(1)(e)(i) and (2) (grant of planning permission) in so far as those provisions relate to a direction given by the Secretary of State under section 90 of the TCPA 1990

(development with government authorisation)(**5**) that planning permission is deemed to be granted; and

(b) regulations 84 and 85 (development consent under Planning Act 2008(**6**)).

(3) Where a general provision applies in relation to a provision specified in paragraph (4), that general provision applies with the following modifications—

(a) any reference to a competent authority is taken to include the Scottish Ministers;

(b) for any reference to the Welsh Ministers, substitute a reference to the Scottish Ministers; and

(c) for any reference to the appropriate authority—

(i) in a case where the competent authority for the purposes of a provision specified in paragraph (4) is the Scottish Ministers, substitute a reference to the Scottish Ministers; and

(ii) in any other case, substitute a reference to the Secretary of State.

(4) The provisions specified for the purposes of paragraph (3) are—

(a) in regulation 70—

(i) paragraph (1)(e)(ii) and (iii);

(ii) paragraph (1)(f), in so far as that paragraph relates to a direction under section 57(2ZA) of the Town and Country Planning (Scotland) Act 1997 (development with government authorisation)(**7**); and

(iii) paragraph (2) in so far as that paragraph relates to paragraph (1)(e)(ii) and (iii), and (1)(f) of that regulation;

(b) Chapter 4 (electricity); and

(c) Chapter 5 (pipe-lines).

(5) Where a general provision applies in relation to regulation 103 (marine works), and confers a function on the appropriate authority, that provision applies with the following modifications—

(a) in a case to which paragraph (6) applies, for any reference to the appropriate authority, substitute a reference to the Welsh Ministers; and

(b) in any other case, for any reference to the appropriate authority, substitute a reference to the Secretary of State.

(6) This paragraph applies where the function in question is exercisable in relation to—

(a) any application to the Welsh Ministers for an authorisation in respect of marine works;

(b) any application to any other authority for—

(i) an authorisation in respect of marine works, the refusal of which gives rise to a right of appeal to the Welsh Ministers;

(ii) an authorisation in respect of marine works in relation to which the Welsh Ministers exercise any power of direction or call-in; or

(iii) an authorisation of harbour works which are, or are to be, carried out in relation to a fishery harbour in Wales under legislation of a kind mentioned in regulation 103(6)(c);

(**5**) Section 90 was amended by the Planning and Compensation Act 1991 (c. 34), Schedule 6, paragraph 12; the Environment Act 1995 (c. 25), Schedule 10, paragraph 32(4); the Transport and Works Act 1992 (c. 42), section 16(1); the Growth and Infrastructure Act 2013 (c. 27), section 21(1) to (3); and the Planning (Wales) Act 2015 (anaw 4), section 33(1) and (3). It is prospectively amended by the Wales Act 2017 (c. 4), section 39(13), and the Neighbourhood Planning Act 2017 (c. 20), Schedule 3, paragraph 5, from a date or dates to be appointed.

(**6**) 2008 c. 29.

(**7**) 1997 c. 8. Section 57(2ZA) was inserted by the Growth and Infrastructure Act 2013, section 21(5).

(c) the grant of any application of a kind mentioned in sub-paragraph (a) or (b); or

(d) harbour works which—

(i) are, or are to be, carried out in relation to a fishery harbour in Wales; and

(ii) are authorised by, and are, or are to be, carried out in accordance with, any legislation of a kind mentioned in regulation 103(6)(c).

(7) In paragraph (6)—

"authorisation" means any licence, consent or other approval;

"marine works" and "harbour works" have the meanings given by regulation 103(5) and (7) respectively.

(8) Where a general provision applies in relation to a plan or project which does not relate to a matter specified in Chapters 2 to 9, to the extent that that general provision applies in relation to Scotland or Northern Ireland, that provision applies with the following modifications—

(a) any reference to the Welsh Ministers is omitted; and

(b) for any reference to the appropriate authority, substitute a reference to the Secretary of State.