STATUTORY INSTRUMENTS

2017 No. 1012

The Conservation of Habitats and Species Regulations 2017

PART 6

Assessment of plans and projects

CHAPTER 8

Land Use Plans

Land use plans

Assessment of implications for European sites and European offshore marine sites

105.—(1) Where a land use plan—

(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 the site,

the plan-making authority for that plan must, before the plan is given effect, make an appropriate assessment of the implications for the site in view of that site's conservation objectives.

(2) The plan-making 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.

(3) The plan-making authority 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.

(4) In the light of the conclusions of the assessment, and subject to regulation 107, the plan-making authority must give effect to the land use plan 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).

(5) A plan-making authority must provide such information as the appropriate authority may reasonably require for the purposes of the discharge by the appropriate authority of its obligations under this Chapter.

(6) This regulation does not apply in relation to a site which is—

(a) a European site by reason of regulation 8(1)(c), or

(b) a European offshore marine site by reason of regulation 18(c) of the Offshore Marine Conservation Regulations (site protected in accordance with Article 5(4) of the Habitats Directive).

[[F1](7) See regulation 110A for the assumptions about nutrient pollution standards to be made in certain circumstances.**]**

Textual Amendments

F1 Reg. 105(7) inserted (26.12.2023) by Levelling-up and Regeneration Act 2023 (c. 55), s. 255(6), **Sch. 15 para. 13** (with s. 247)

Assessment of implications for European site: neighbourhood development plans

106.—(1) A qualifying body which submits a proposal for a neighbourhood development plan must provide such information as the competent authority may reasonably require for the purposes of the assessment under regulation 105 or to enable it to determine whether that assessment is required.

(2) In this regulation, "qualifying body" means a parish council, or an organisation or body designated as a neighbourhood forum, authorised for the purposes of a neighbourhood development plan to act in relation to a neighbourhood area as a result of section 61F of the TCPA 1990 (authorisation to act in relation to neighbourhood areas) [M1], as applied by section 38C of the 2004 Planning Act (supplementary provisions) [M2].

(3) Where the competent authority decides to revoke or modify a neighbourhood development plan after it has been made, it must for that purpose make an appropriate assessment of the implications for any European site likely to be significantly affected in view of that site's conservation objectives; and regulation 105 and paragraph (1) apply with the appropriate modifications in relation to such a revocation or modification.

[[F2](3A) See regulation 110A for the assumptions about nutrient pollution standards to be made in certain circumstances.**]**

(4) This regulation applies in relation to England only.

Textual Amendments

F2 Reg. 106(3A) inserted (26.12.2023) by Levelling-up and Regeneration Act 2023 (c. 55), s. 255(6), **Sch. 15 para. 14** (with s. 247)

Marginal Citations

M1 Section 61F was inserted by the Localism Act 2011 (c. 20), **Schedule 9**, paragraphs 1 and 2. It is prospectively amended by the Neighbourhood Planning Act 2017 (c. 20), **section 5**, from a date to be appointed.

M2 Section 38C was inserted the Localism Act 2011 (c. 20), **Schedule 9**, paragraphs 5 and 7.

Considerations of overriding public interest

107.—(1) If the plan-making authority is satisfied that, there being no alternative solutions, the land use plan must be given effect for imperative reasons of overriding public interest (which, subject to paragraph (2), may be of a social or economic nature), it may give effect to the land use plan 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 plan-making authority, having due regard to the opinion of the **[**[F3]appropriate authority**]**, considers to be imperative reasons of overriding public interest.

(3) Where a plan-making authority other than the Secretary of State or the Welsh Ministers desire to obtain the opinion of the **[**[F4]appropriate authority**]** 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.

[[F5](4) In giving its opinion as to whether the reasons are imperative reasons of overriding public interest, the appropriate authority must have regard to the national interest, and provide its opinion to the competent authority.**]**

[[F6](4A) Before giving its opinion as to whether the reasons are imperative reasons of overriding public interest, the appropriate authority must consult the following, and have regard to their opinion—

(a) the Joint Nature Conservation Committee;

(b) where the appropriate authority is the Secretary of State, the devolved administrations;

(c) where the appropriate authority is the Welsh Ministers, the Secretary of State and the other devolved administrations; and

(d) any other person the appropriate authority considers appropriate.**]**

(5) Where a plan-making authority other than the Secretary of State or the Welsh Ministers propose to give effect to a land use plan under this regulation notwithstanding a negative assessment of the implications for the site concerned it must—

(a) notify the appropriate authority; and

(b) not give effect to the land use plan 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 notify it that it may do so.

(6) Without prejudice to any other power, the appropriate authority may give directions to the plan-making authority in any such case prohibiting it from giving effect to the land use plan, either indefinitely or during such period as may be specified in the direction.

Textual Amendments

F3 Words in reg. 107(2)(b) substituted (31.12.2020) by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **26(2)**; 2020 c. 1, Sch. 5 para. 1(1)

F4 Words in reg. 107(3) substituted (31.12.2020) by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **26(2)**; 2020 c. 1, Sch. 5 para. 1(1)

F5 Reg. 107(4) substituted (31.12.2020) by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **26(3)**; 2020 c. 1, Sch. 5 para. 1(1)

F6 Reg. 107(4A) inserted (31.12.2020) by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **26(4)**; 2020 c. 1, Sch. 5 para. 1(1)

Co-ordination for land use plan prepared by more than one authority

108.—(1) The following provisions apply where two or more local planning authorities prepare a joint local development document under section 28 (joint local development documents) or a joint local development plan under section 72 (joint local development plans) of the 2004 Planning Act [M3].

(2) Nothing in paragraph (1) of regulation 105 requires a local planning authority to assess any implications of a joint local development document or plan which would be more appropriately assessed under that provision by another local planning authority.

(3) The appropriate authority may issue guidance to local planning authorities for the purposes of regulation 105(1) as to the circumstances in which a local planning authority may or should adopt the reasoning or conclusions of another local planning authority as to whether a joint local planning document or plan—

(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 local planning authorities concerned must have regard to any such guidance.

(5) In determining whether a joint local development document or plan should be adopted under regulation 107, a local planning authority must seek and have regard to the views of the other local planning authorities concerned.

Marginal Citations

M3 Section 28 was amended by the Local Democracy, Economic Development and Construction Act 2009 (c. 20), **Schedule 5**, paragraphs 12 and 16; and the Neighbourhood Planning Act 2017 (c. 20), **section 9(1)** and (5) to (7). It is prospectively amended by the Localism Act 2011 (c. 20), **Schedule 8**, paragraphs 7 and 11, and Schedule 25, Part 16, from a date to be appointed.

Compensatory measures

109. Where in accordance with regulation 107 a land use plan is given effect notwithstanding a negative assessment of the implications for a European site or a European offshore marine site, the appropriate authority must secure that any necessary compensatory measures are taken to ensure that the overall coherence of Natura 2000 is protected.

Changes to legislation:
The Conservation of Habitats and Species Regulations 2017, Cross Heading: Land use plans is up to date with all changes known to be in force on or before 06 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.
View outstanding changes

Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:
Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- reg. 41(2)(aa) inserted by 2023 c. 55 Sch. 8 para. 38(5)
- reg. 108(6) inserted by 2023 c. 55 Sch. 8 para. 39(6)
- reg. 111(2)(aa)(ab) substituted for reg. 111(2)(a)(b) by 2023 c. 55 Sch. 8 para. 40(3)(a)