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STATUTORY INSTRUMENTS

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**2017 No. 1013**

**The Conservation of Offshore Marine  
Habitats and Species Regulations 2017**

**PART 2**

**CONSERVATION OF NATURAL HABITATS AND HABITATS OF SPECIES**

*Plans and projects*

**Meaning of “European site”**

**27.**—(1) In these Regulations a “European site” means any of the following located in the United Kingdom—

- (a) a special area of conservation;
- (b) a site of Community importance which has been placed on the list referred to in the third sub-paragraph of Article 4(2) of the Habitats Directive;
- (c) 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 mentioned in Article 5(2) or pending a decision of the Council under Article 5(3);
- (d) a site classified as a special protection area pursuant to Article 4(1) or (2) of the Wild Birds Directive; and
- (e) a site which has been proposed to the Commission by the Secretary of State or any of the devolved administrations as a site eligible for designation as a special area of conservation for the purposes of meeting the United Kingdom’s obligations under Article 4(1) of the Habitats Directive, until such time as—
  - (i) it is placed on the list of sites of Community importance referred to in the third sub-paragraph of Article 4(2) of the Habitats Directive, or
  - (ii) agreement is reached or a decision is taken pursuant to Article 4(2) of that Directive that the site is not to be placed on that list.

(2) For the purposes of paragraph (1), where consultation is initiated by the Commission in accordance with Article 5(1) of the Habitats Directive with respect to a site in the United Kingdom hosting a priority natural habitat type or priority species, the site is to be treated as having been placed on the list referred to in the third sub-paragraph of Article 4(2) of the Habitats Directive as from the date specified in paragraph (3).

(3) The date referred to in paragraph (2) is the date on which—

- (a) it is agreed between the Commission and the Secretary of State, within the six-month period mentioned in Article 5(2) of the Habitats Directive, that the site should be selected as a site of Community importance; or

- (b) the Council, acting on a proposal from the Commission in pursuance of Article 5(2) of the Habitats Directive, decides that the site should be so selected.
- (4) In this regulation “the United Kingdom” means the United Kingdom (including its internal waters) and the territorial sea adjacent to the United Kingdom.

### **Protection of European offshore marine sites and European sites**

**28.**—(1) Before deciding to undertake, or give any consent, permission or other authorisation for, a relevant plan or project, a competent authority must make an appropriate assessment of the implications of the plan or project for the site in view of that site’s conservation objectives.

(2) In paragraph (1), a “relevant plan or project” is a plan or project which—

- (a) is to be carried out on or in any part of the waters or on or in any part of the seabed or subsoil comprising the offshore marine area, or on or in relation to an offshore marine installation;
- (b) is likely to have a significant effect on a European offshore marine site or a European site (either alone or in combination with other plans or projects); and
- (c) is not directly connected with or necessary to the management of the site.

(3) A person applying to a competent authority for any consent, permission or other authorisation for a plan or project in the offshore marine area must provide such information as the competent authority may reasonably require—

- (a) to enable it to determine whether an assessment under paragraph (1) is required; or
- (b) for the purposes of an assessment under paragraph (1).

(4) The competent authority must for the purposes of the assessment—

- (a) where it relates to a European offshore marine site, consult the Joint Committee;
- (b) where it relates to a European site in England, consult Natural England;
- (c) where it relates to a European site in Wales, consult the Natural Resources Body for Wales;
- (d) where it relates to a European site in Scotland, consult Scottish Natural Heritage;
- (e) where it relates to a European site in Northern Ireland, consult the DAERA; and
- (f) if it considers it appropriate, take the opinion of the general public and if it does so, take such steps for that purpose as it considers appropriate.

(5) In the light of the conclusions of the assessment, and subject to regulation 29, the competent authority may agree to the plan or project only if it has ascertained that it will not adversely affect the integrity of the European offshore marine site or European site (as the case may be).

(6) In considering whether a plan or project will adversely affect the integrity of a site, the competent authority must have regard to the manner in which it is proposed to be carried out and to any conditions or restrictions subject to which the competent authority 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 offshore marine site by reason of regulation 18(c);
- (b) a site which is a European site by reason of regulation 27(1)(c);
- (c) the granting by the Secretary of State of any Petroleum Act approval, Petroleum Act authorisation, Petroleum or Energy Act consent, Petroleum Act licence, or Energy Act licence.

(8) Where a plan or project requires an appropriate assessment both under this regulation and under the Conservation Regulations, the assessment so far as relating to that part of it that is to be carried out in the offshore marine area need not identify the extent to which the effects of the plan or

project are specifically attributable to that part, provided that an assessment made for the purposes of this regulation and the Conservation Regulations assesses the effects of the plan or project as a whole.

(9) In paragraph (8) “the Conservation Regulations” means the 1994 Regulations or the 2017 Regulations (as the case may be).

(10) In this regulation—

“England” includes so much of the internal waters and territorial sea of the United Kingdom as are not part of Northern Ireland, Scotland or Wales; and

“Northern Ireland” has the same meaning as in the Northern Ireland Act 1998(1).

### **Considerations of overriding public interest**

**29.**—(1) If it is satisfied that, there being no alternative solutions, the plan or project referred to in regulation 28(1) 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) any other imperative reasons of overriding public interest.

(3) A competent authority may not agree to a plan or project under paragraph (1) for any reason referred to in paragraph (2)(b) unless it has had due regard to the opinion of the Commission in satisfying itself that there are such reasons.

(4) Where a competent authority other than the Secretary of State desires to obtain the opinion of the Commission as to whether reasons are to be considered imperative reasons of overriding public interest, it must submit a request to the Secretary of State—

- (a) identifying the matter on which an opinion is sought; and
- (b) accompanied by any documents or information that may be required.

(5) Where a competent authority in Scotland other than the Scottish Ministers submits a request to the Secretary of State under paragraph (4), it must notify the Scottish Ministers of that request.

(6) Where a competent authority in Wales other than the Welsh Ministers submits a request to the Secretary of State under paragraph (4), it must notify the Welsh Ministers of that request.

(7) Where a competent authority has submitted a request in accordance with paragraph (4), the Secretary of State may, if the Secretary of State thinks fit, seek the opinion of the Commission, and upon receipt of that opinion the Secretary of State must transmit it to the competent authority.

### **Agreement to plan or project: England and Northern Ireland**

**30.**—(1) Where a competent authority in England or in Northern Ireland proposes to agree to a plan or project under regulation 29 notwithstanding a negative assessment of the implications for a European offshore marine site or a European site—

- (a) it must notify the Secretary of State; 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 to it by the Secretary of State as that on which the authority’s notification was received by the Secretary of State, unless the Secretary of State authorises the authority to do so under paragraph (2)(b).

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(1) 1998 c. 47.

- (2) In any case within paragraph (1), the Secretary of State may—
- (a) at any time before the competent authority has agreed to the plan or project in question, give a direction to the competent authority prohibiting it from agreeing to the plan or project, either indefinitely or during such period as may be specified in the direction; or
  - (b) authorise the competent authority to agree to the plan or project subject to such conditions or restrictions as may be specified in the authorisation.
- (3) The Secretary of State may amend or revoke a direction or authorisation under paragraph (2) at any time before the competent authority has agreed to the plan or project in question.

### **Agreement to plan or project: Scotland**

**31.**—(1) Where a competent authority in Scotland other than the Scottish Ministers proposes to agree to a plan or project under regulation 29 notwithstanding a negative assessment of the implications for a European site in Scotland or for a European offshore marine site in the Scottish offshore region—

- (a) it must notify the Scottish Ministers; 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 to it by the Scottish Ministers as that on which the authority's notification was received by them, unless the Scottish Ministers authorise the authority to do so under paragraph (2)(b).
- (2) In any case within paragraph (1), the Scottish Ministers may—
- (a) at any time before the competent authority has agreed to the plan or project in question, give a direction to the competent authority prohibiting it from agreeing to the plan or project, either indefinitely or during such period as may be specified in the direction; or
  - (b) authorise the competent authority to agree to the plan or project subject to such conditions or restrictions as may be specified in the authorisation.
- (3) The Scottish Ministers may amend or revoke a direction or authorisation under paragraph (2) at any time before the competent authority has agreed to the plan or project in question.
- (4) Where a competent authority in Scotland agrees to a plan or project under regulation 29 notwithstanding a negative assessment of the implications for a European site in Scotland or for a European offshore marine site in the Scottish offshore region, it must notify the Secretary of State as soon as practicable following that agreement.
- (5) Where the Scottish Ministers propose to agree to a plan or project under regulation 29 notwithstanding a negative assessment of the implications for a European site outside Scotland or a European offshore marine site outside the Scottish offshore region—
- (a) they must notify the Secretary of State; and
  - (b) they may agree to the plan or project only after having been notified of the Secretary of State's agreement, which may be given subject to such conditions or restrictions as the Secretary of State may specify.
- (6) Where a competent authority in Scotland other than the Scottish Ministers proposes to agree to a plan or project under regulation 29 notwithstanding a negative assessment of the implications for a European site outside Scotland or a European offshore marine site outside the Scottish offshore region—
- (a) it must notify the Scottish Ministers and the Secretary of State; and
  - (b) it may agree to the plan or project only after having received notification from the Scottish Ministers that the Scottish Ministers and the Secretary of State have agreed that it may do so.

(7) In any case within paragraph (6), the Scottish Ministers may give a direction to the competent authority prohibiting it from agreeing to the plan or project, either indefinitely or during such period as may be specified in the direction, and may amend or revoke any such direction at any time before the competent authority has agreed to the plan or project in question.

(8) Any agreement between the Scottish Ministers and the Secretary of State that is the subject of a notification under paragraph (6)(b) may be subject to such conditions or restrictions as may be specified in the notification, and where the Scottish Ministers and the Secretary of State so agree, the Scottish Ministers may, at any time before the competent authority has agreed to the plan or project in question, amend or revoke a notification under paragraph (6)(b).

### **Agreement to plan or project: Wales**

**32.**—(1) Where a competent authority in Wales other than the Welsh Ministers proposes to agree to a plan or project under regulation 29 notwithstanding a negative assessment of the implications for a European site in Wales or for a European offshore marine site in the Welsh offshore region—

- (a) it must notify the Welsh Ministers; 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 to it by the Welsh Ministers as that on which the authority's notification was received by them, unless the Welsh Ministers authorise the authority to do so under paragraph (2)(b).

(2) In any case within paragraph (1), the Welsh Ministers may—

- (a) at any time before the competent authority has agreed to the plan or project in question, give a direction to the competent authority prohibiting it from agreeing to the plan or project, either indefinitely or during such period as may be specified in the direction; or
- (b) authorise the competent authority to agree to the plan or project subject to such conditions or restrictions as may be specified in the authorisation.

(3) The Welsh Ministers may amend or revoke a direction or authorisation under paragraph (2) at any time before the competent authority has agreed to the plan or project in question.

(4) Where a competent authority in Wales agrees to a plan or project under regulation 29 notwithstanding a negative assessment of the implications for a European site in Wales or for a European offshore marine site in the Welsh offshore region, it must notify the Secretary of State as soon as practicable following that agreement.

(5) Where the Welsh Ministers propose to agree to a plan or project under regulation 29 notwithstanding a negative assessment of the implications for a European site outside Wales or a European offshore marine site outside the Welsh offshore region—

- (a) they must notify the Secretary of State; and
- (b) they may agree to the plan or project only after having been notified of the Secretary of State's agreement, which may be given subject to such conditions or restrictions as the Secretary of State may specify.

(6) Where a competent authority in Wales other than the Welsh Ministers proposes to agree to a plan or project under regulation 29 notwithstanding a negative assessment of the implications for a European site outside Wales or a European offshore marine site outside the Welsh offshore region—

- (a) it must notify the Welsh Ministers and the Secretary of State; and
- (b) it may agree to the plan or project only after having received notification from the Welsh Ministers that the Welsh Ministers and the Secretary of State have agreed that it may do so.

(7) In any case within paragraph (6), the Welsh Ministers may give a direction to the competent authority prohibiting it from agreeing to the plan or project, either indefinitely or during such period

as may be specified in the direction, and may amend or revoke any such direction at any time before the competent authority has agreed to the plan or project in question.

(8) Any agreement between the Welsh Ministers and the Secretary of State that is the subject of a notification under paragraph (6)(b) may be subject to such conditions or restrictions as may be specified in the notification, and where the Welsh Ministers and the Secretary of State so agree, the Welsh Ministers may, at any time before the competent authority has agreed to the plan or project in question, amend or revoke a notification under paragraph (6)(b).

### **Review of existing decisions and consents**

**33.**—(1) Where, before the date on which a site becomes 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 28(1) would apply if it were to be considered at that date, the authority must as soon as reasonably practicable after that date review its decision, or as the case may be, consent, permission or other authorisation.

(2) Where, before the date on which a site becomes a European site or, if later, the commencement of these Regulations, a competent authority has decided to undertake, or has given any consent, permission or other authorisation for, a plan or project to which regulation 28(1) would apply if it were to be considered at that date, the authority must as soon as reasonably practicable after that date review its decision, or as the case may be, consent, permission or other authorisation.

(3) A competent authority must for the purpose of reviewing a decision, consent, permission or other authorisation under paragraph (1) or (2) make an appropriate assessment of the implications for the site in view of that site's conservation objectives, and the provisions of regulation 28(3), (4) and (8) apply, with the appropriate modifications, in relation to such a review.

(4) Where a competent authority reviews a decision, consent, permission or other authorisation under this regulation it must affirm, modify or revoke it.

(5) Subject to the following provisions of this Part, any review required by this regulation must be carried out under existing statutory procedures where such procedures exist, and if none exists the competent authority must determine the procedure to be followed, having regard to any guidance issued by the Secretary of State or, in relation to the Scottish offshore region, by the Scottish Ministers, or in relation to the Welsh offshore region, by the Welsh Ministers.

(6) Nothing in this regulation—

- (a) requires a review where a site is a European offshore marine site by reason of regulation 18(c);
- (b) requires a review where a site is a European site by reason of regulation 27(1)(c);
- (c) requires a review by the Secretary of State of a Petroleum Act approval, Petroleum Act authorisation, Petroleum or Energy Act consent, Petroleum Act licence or Energy Act licence;
- (d) requires a review of any plan or project in relation to which a review has been carried out under regulation 27 of the Offshore Marine Conservation (Natural Habitats, &c. Regulations 2007(2);
- (e) affects anything done in pursuance of the decision, or the consent, permission or other authorisation, before the date mentioned in paragraph (1) or (2) (as the case may be).

(7) The Secretary of State may not issue guidance under paragraph (5) which relates to a function within devolved competence without the consent of the Scottish Ministers or the Welsh Ministers, as the case may be.

(8) The Scottish Ministers may only issue guidance under paragraph (5)—

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(2) [S.I. 2007/1842](#), amended by [S.I. 2009/7](#), [2010/491](#) and [2012/1928](#), and revoked by these Regulations.

- (a) to a competent authority in Scotland; or
  - (b) where guidance is issued to a competent authority other than a competent authority in Scotland, subject to and in accordance with the agreement of the Secretary of State.
- (9) The Welsh Ministers may only issue guidance under paragraph (5)—
- (a) to a competent authority in Wales; or
  - (b) where guidance is issued to a competent authority other than a competent authority in Wales, subject to and in accordance with the agreement of the Secretary of State.
- (10) Regulations 90 and 91 of the 2017 Regulations (consents under Electricity Act 1989<sup>(3)</sup>; procedure on review and effect of review) apply in relation to any decision under paragraph (4) revoking or modifying a consent granted under section 36<sup>(4)</sup> or 37<sup>(5)</sup> of the Electricity Act 1989 as they apply in relation to a decision pursuant to regulation 90 of the 2017 Regulations revoking or varying any such consent, but with the modifications specified in paragraphs (11) and (12).
- (11) The modifications to regulation 90 referred to in paragraph (10) are—
- (a) in paragraph (1)—
    - (i) for “89(3), (5) or (6)” substitute “89(3) or (5)”; and
    - (ii) omit “or a direction deeming planning permission to be granted”;
  - (b) in paragraph (2)—
    - (i) in sub-paragraph (a), omit “or, as the case may be, in whose favour the direction was made”; and
    - (ii) in sub-paragraph (b), omit “in the case of a consent under section 36 of the Electricity Act 1989,”;
  - (c) omit paragraph (3)(a); and
  - (d) in paragraph (5)—
    - (i) omit “, or the relevant planning authority,”; and
    - (ii) in the words before sub-paragraph (a), omit “or the relevant planning authority (as the case may be)”.
- (12) The modifications to regulation 91 referred to in paragraph (10) are—
- (a) in paragraph (1)—
    - (i) for “89(3), (5) or (6)” substitute “89(3) or (5)”; and
    - (ii) omit “or a direction deeming planning permission to be granted”; and
  - (b) in paragraphs (2) and (3), omit “or direction” (in each place where it occurs).

### Consideration on review

**34.—**(1) The following provisions apply where a decision, or a consent, permission or other authorisation falls to be reviewed under regulation 33.

(2) Subject as follows, the provisions of regulation 28(4) and (5) and regulations 29 to 32 apply, with the appropriate modifications, in relation to the decision on the review.

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<sup>(3)</sup> 1989 c. 29.

<sup>(4)</sup> Section 36 was amended by the Energy Act 2004 (c. 20), section 93(1) and (3); the Planning Act 2008 (c. 29), paragraphs 31 and 32 of Schedule 2; the Marine and Coastal Access Act 2009 (c. 23), section 12(7)(a) and (8); the Energy Act 2016, section 78; the Wales Act 2017 (c. 4) section 39; and, in relation to Scotland, by S.I. 2006/1054, paragraph 1(1) and (2) of Schedule 1.

<sup>(5)</sup> Section 37 was amended by the Planning Act 2008 (c. 29), paragraphs 31 and 33 of Schedule 2; and the Wales Act 2017 (c. 4), section 42.

(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 competent authority, will secure that the plan or project does not adversely affect the integrity of the site.

(4) Where the avoidance of an adverse effect on the integrity of a site may be secured in a number of ways, the competent authority or authorities concerned must seek to ensure that the action taken is the least onerous to those affected.

(5) The Secretary of State may issue guidance to competent authorities for the purposes of paragraphs (3) and (4) as to the manner of determining which of different ways should be adopted for securing that a plan or project does not adversely affect the integrity of a site, and in particular as to—

- (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 Scottish Ministers and the Welsh Ministers may issue guidance to competent authorities in Scotland and competent authorities in Wales, respectively, for the purposes of paragraphs (3) and (4) as to the manner of determining which of different ways should be adopted for securing that a plan or project does not adversely affect the integrity of a site, and in particular as to—

- (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.

(7) A competent authority must have regard to any guidance issued by the Secretary of State under paragraph (5) in discharging its functions under paragraph (3) or (4).

(8) A competent authority in Scotland must have regard to any guidance issued by the Scottish Ministers under paragraph (6) in discharging its functions under paragraph (3) or (4).

(9) A competent authority in Wales must have regard to any guidance issued by the Welsh Ministers under paragraph (6) in discharging its functions under paragraph (3) or (4).

(10) Any modification or revocation under regulation 33(4) must be carried out under existing statutory procedures where such procedures exist, or if none exists, the competent authority must determine the procedure to be followed, having regard to any guidance given by the Secretary of State, or, in relation to a competent authority in Scotland, the Scottish Ministers, or in relation to a competent authority in Wales, the Welsh Ministers.

(11) The Secretary of State may not issue guidance under paragraph (5) which relates to a function within devolved competence without the consent of the Scottish Ministers or the Welsh Ministers (as the case may be).

### **Co-ordination where more than one competent authority is involved**

**35.—**(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 28(1) or 33(3) requires a competent authority to assess any implication 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 competent authorities for the purposes of regulations 28 to 34 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 offshore marine site or European site; or
  - (b) may adversely affect the integrity of a European offshore marine site or European site.
- (4) The Scottish Ministers may issue guidance to competent authorities in Scotland for the purposes of regulations 28, 29, 31, 33 and 34 as to the circumstances in which a competent authority in Scotland may or must 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 offshore marine site or European site; or
  - (b) may adversely affect the integrity of a European offshore marine site or European site.
- (5) The Welsh Ministers may issue guidance to competent authorities in Wales for the purposes of regulations 28, 29, and 32 to 34 as to the circumstances in which a competent authority in Wales may or must 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 offshore marine site or European site; or
  - (b) may adversely affect the integrity of a European offshore marine site or European site.
- (6) A competent authority must have regard to any guidance issued by the Secretary of State under paragraph (3) in discharging any of its functions under regulations 28 to 34.
- (7) A competent authority in Scotland must have regard to any guidance issued by the Scottish Ministers under paragraph (4) in discharging any of its functions under regulations 28, 29, 31, 33 and 34.
- (8) A competent authority in Wales must have regard to any guidance issued by the Welsh Ministers under paragraph (5) in discharging any of its functions under regulations 28, 29, and 32 to 34.
- (9) In determining whether a plan or project should be agreed to under regulation 29(1), a competent authority other than the Secretary of State must seek and have regard to the views of any other competent authority or authorities involved.
- (10) The Secretary of State may not issue any guidance under paragraph (3) which relates to a function within devolved competence without the consent of the Scottish Ministers or the Welsh Ministers (as the case may be).

### **Compensatory measures**

- 36.—**(1) This regulation applies where, notwithstanding a negative assessment of the implications for a European offshore marine site or European site—
- (a) a plan or project is agreed to in accordance with regulation 29; or
  - (b) a decision, or a consent, permission or other authorisation, is affirmed on review in accordance with regulations 29 and 34(3).
- (2) The appropriate authority must secure that any necessary compensatory measures are taken to ensure that the overall coherence of Natura 2000 is protected.
- (3) The appropriate authority is—
- (a) where the plan or project is agreed to, or the decision, consent, permission or other authorisation is affirmed, in the exercise of a function within devolved competence in respect of Scotland or by the Scottish Ministers, the Scottish Ministers;
  - (b) where the plan or project is agreed to, or the decision, consent, permission or other authorisation is affirmed, in the exercise of a function within devolved competence in respect of Wales or by the Welsh Ministers, the Welsh Ministers;

- (c) where the plan or project is agreed to, or the decision, consent, permission or other authorisation is affirmed, by a Northern Ireland department, that Northern Ireland department; and
- (d) in any other case, the Secretary of State.

**Notification of compensatory measures**

**37.—**(1) The appropriate authority must ensure that the Commission is notified of the compensatory measures that are taken pursuant to regulation 36(2).

(2) In this regulation “appropriate authority” is to be construed in accordance with regulation 36(3).