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STATUTORY INSTRUMENTS

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**1994 No. 2716**

**WILDLIFE  
COUNTRYSIDE**

**[<sup>F1</sup>The Conservation (Natural Habitats, &c.) Regulations 1994**

*Made* - - - - 20th October 1994

*Coming into force* - - 30th October 1994

The Secretary of State for the Environment, as respects England, the Secretary of State for Wales, as respects Wales, and the Secretary of State for Scotland, as respects Scotland, being designated<sup>(1)</sup> Ministers for the purposes of section 2(2) of the European Communities Act 1972<sup>(2)</sup> in relation to measures relating to the conservation of natural habitats and of wild fauna and flora, in exercise of the powers conferred upon them by the said section 2 and of all other powers enabling them in that behalf, hereby make the following Regulations, a draft of which has been laid before and approved by a resolution of each House of Parliament:—

**F1** Regulations revoked (E.W.) (1.4.2010 except so far as relating to the revocation in relation to W. of reg. 36 and specified words in reg. 3(3), 12.12.2014 in so far as not already in force) by [The Conservation of Habitats and Species Regulations 2010 \(S.I. 2010/490\)](#), regs. 1(2)(4)(b), **133(3)** (with regs. 125, 134)

**Modifications etc. (not altering text)**

- C1** Regulations applied (with modifications) by [S.I. 1995/2803](#), **Sch. 5 para. 20** (as inserted (E.W.) (1.4.1996) by [The National Park Authorities \(Wales\) \(Amendment\) Order 1996 \(S.I. 1996/534\)](#), art. 1, **Sch. para. 2**)
- C2** Regulations: certain functions transferred (1.7.1999 immediately after the coming into force of [Scotland Act 1998 \(c. 46\)](#), **s. 53**) by [The National Assembly for Wales \(Transfer of Functions\) Order 1999 \(S.I. 1999/672\)](#), arts. 1(2), 2, **Sch. 1**
- C3** Regulations applied (with modifications) (24.3.2005) by [The New Forest National Park Authority \(Establishment\) Order 2005 \(S.I. 2005/421\)](#), art. 1, **Sch. 3 para. 11**
- C4** Regulations applied (with modifications) (12.6.2006) by [The Town and Country Planning \(Application of Subordinate Legislation to the Crown\) \(Scotland\) Order 2006 \(S.S.I. 2006/270\)](#), arts. 1(1), **15**

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(1) S.I.1992/2870.  
(2) 1972 c. 68.

## PART I

### INTRODUCTORY PROVISIONS

#### Citation and commencement

1.—(1) These Regulations may be cited as the Conservation (Natural Habitats, &c.) Regulations 1994.

(2) These Regulations shall come into force on the tenth day after that on which they are made.

#### Commencement Information

II Reg. 1 in force at 30.10.1994, see [reg. 1\(2\)](#)

#### Interpretation and application

2.—(1) In these Regulations—

[<sup>F2</sup>“the 2004 Act” means the Nature Conservation (Scotland) Act 2004;]

[<sup>F3</sup>“the 2007 Regulations” means the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007;]

“agriculture Minister” means the Minister of Agriculture, Fisheries and Food or the Secretary of State;

[<sup>F4</sup>“British fishery limits” has the meaning given by the Fishery Limits Act 1976;]

“competent authority” shall be construed in accordance with regulation 6;

[<sup>F5</sup>“conservation” has the meaning given by Article 1(a) of the Habitats Directive;]

[<sup>F5</sup>“conservation status” and “favourable conservation status” have the meanings given by paragraphs (e) (in relation to habitats) and (i) (in relation to species) of Article 1 of the Habitats Directive;]

“destroy”, in relation to an egg, includes doing anything to the egg which is calculated to prevent it from hatching, and “destruction” shall be construed accordingly;

[<sup>F6</sup>“the Directives” means the Habitats Directive and the Wild Birds Directive;]

<sup>F7</sup>  
...

“enactment” includes a local enactment and an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978(3);

[<sup>F4</sup>“European offshore marine site” means a European offshore marine site within the meaning of regulation 15 (meaning of European offshore marine site) of the 2007 Regulations;]

“European site” has the meaning given by regulation 10 and “European marine site” means a European site which consists of, or so far as it consists of, marine areas;

“functions” includes powers and duties;

[<sup>F8</sup>“the Habitats Directive” means Council Directive [92/43/EEC](#) on the conservation of natural habitats and of wild fauna and flora as amended from time to time [<sup>F9</sup>, but subject to paragraph (2A)];]

[<sup>F10</sup>“land” includes buildings and other structures, land covered with water, and any right or interest in or over land;]

“livestock” includes any animal which is kept—

- (a) for the provision of food, skins or fur,
- (b) for the purpose of its use in the carrying on of any agricultural activity, or
- (c) for the provision or improvement of shooting or fishing;

[<sup>F11</sup>“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994;]

“local planning authority” means—

- (a) in England and Wales, except as otherwise provided, any authority having any function as a local planning authority or mineral planning authority under the Town and Country Planning Act 1990(4), and
- (b) in Scotland, a planning authority within the meaning of section 172(1) of the Local Government (Scotland) Act 1973(5);

“management agreement” means an agreement entered into, or having effect as if entered into, under regulation 16;

“marine area” means any land covered (continuously or intermittently) by tidal waters or any part of the sea in or adjacent to Great Britain up to the seaward limit of territorial waters;

“Natura 2000” means the European network of special areas of conservation, and special protection areas under the Wild Birds Directive, provided for by Article 3(1) of the Habitats Directive [<sup>F12</sup>(but see paragraphs (6) and (7))];

[<sup>F13</sup>“natural feature” in relation to land means—

- (a) any of its flora or fauna, or
- (b) any natural habitat existing on that land;]

“nature conservation body”, and “appropriate nature conservation body” in relation to England, Wales or Scotland, have the meaning given by regulation 4;

[<sup>F4</sup>“the offshore marine area” means—

- (a) any part of the seabed and subsoil situated in any area designated under section 1(7) of the Continental Shelf Act 1964; and
- (b) any part of the waters within British fishery limits (except the internal waters of, and the territorial sea adjacent to, the United Kingdom, the Channel Islands and the Isle of Man);]

[<sup>F4</sup>“offshore marine installation” means any artificial island, installation or structure (other than a ship) which is situated—

- (a) in any part of the waters in any area designated under section 1(7) of the Continental Shelf Act 1964; or
- (b) in any part of the waters in any area designated under section 84(4) of the Energy Act 2004;]

“planning authority”, in Scotland, means a planning authority within the meaning of section 172(1) of the Local Government (Scotland) Act 1973;

[<sup>F14</sup>“priority natural habitat types” has the meaning given by Article 1(d) of the Habitats Directive;]

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(4) 1990 c. 8.  
(5) 1973 c. 65.

[<sup>F14</sup>“priority species” has the meaning given by Article 1(h) of the Habitats Directive;]

“the register” means the register of European sites in Great Britain provided for by regulation 11;

“relevant authorities”, in relation to marine areas and European marine sites, shall be construed in accordance with regulation 5;

[<sup>F15</sup>“the requirements of the Directives” is to be interpreted in accordance with regulation 2A(3) and (4);]

[<sup>F15</sup>“the retained transposing regulations” means—

- (a) the Conservation of Habitats and Species Regulations 2017;
- (b) the Conservation of Offshore Marine Habitats and Species Regulations 2017;
- (c) the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995; and
- (d) these Regulations,]

[<sup>F15</sup>“the other retained transposing regulations” means the retained transposing regulations other than these Regulations;]

[<sup>F16</sup>“Scottish marine area” means the area of sea within the seaward limits of the territorial sea of the United Kingdom adjacent to Scotland;]

[<sup>F17</sup>“site” has the meaning given by Article 1(j) of the Habitats Directive;]

[<sup>F17</sup>“site of Community importance” has the meaning given by Article 1(k) of the Habitats Directive;]

[<sup>F17</sup>“special area of conservation” has the meaning given by Article 1(l) of the Habitats Directive and includes any such site designated after exit day under the retained transposing regulations;]

[<sup>F18</sup>“statutory undertaker” has the meaning given in section 58(1) of the 2004 Act;]

[<sup>F19</sup>“the UK site network” means the network of sites in the United Kingdom’s territory consisting of such sites as—

- (a) immediately before exit day formed part of Natura 2000; or
- (b) at any time on or after exit day are European sites, European marine sites and European offshore marine sites for the purposes of any of the retained transposing regulations;]

[<sup>F19</sup>“the United Kingdom’s territory” means the United Kingdom and the offshore marine area;]

[<sup>F20</sup>“wild bird” means a bird which is—

- (a) a member of a species referred to in Article 1 of the Wild Birds Directive; and
- (b) wild; and]

[<sup>F21</sup>“the Wild Birds Directive” means Directive [2009/147/EC](#) of the European Parliament and of the Council on the conservation of wild birds, as amended from time to time [<sup>F22</sup>, but subject to paragraph (2A)].]

[<sup>F23</sup>(1A) An animal shall not be treated as bred in captivity for the purposes of Part III of these Regulations unless its parents were lawfully held in captivity—

- (a) where the animal is of a viviparous species, when it was born;
- (b) where the animal is of an oviparous species, when the egg was laid.

(1B) The reference in paragraph (1A) to “lawfully” means without any contravention of these Regulations or Part I of the Wildlife and Countryside Act 1981.]

[<sup>F24</sup>(2) Unless the context otherwise requires, expressions not defined in paragraph (1) which are used in these Regulations and also in the Habitats Directive have the same meaning as in that Directive.]

[<sup>F25</sup>(2ZA) Unless the context otherwise requires, expressions [<sup>F26</sup>not defined in paragraph (1) which are] used in the Wild Birds Directive and in these Regulations have the same meaning as in that Directive.]

[<sup>F27</sup>(2A) In these Regulations references to any Annex to the Habitats Directive or, as the case may be, any Annex to the Wild Birds Directive, are references to that Annex as it had effect immediately before exit day, or as subsequently amended under regulation 114.]

[<sup>F28</sup>(2B) Any reference to a numbered provision of these Regulations is—

(a) in relation to England and Wales, to the provision of that number which has effect in England and Wales; and

(b) in relation to Scotland, to the provision of that number which has effect in Scotland.]

(3) In these Regulations, unless otherwise indicated—

(a) any reference to a numbered regulation or Schedule is to the regulation or Schedule in these Regulations which bears that number, and

(b) any reference in a regulation or Schedule to a numbered paragraph is to the paragraph of that regulation or Schedule which bears that number.

(4) Subject to regulation 68 (which provides for Part IV to be construed as one with the Town and Country Planning Act 1990), these Regulations apply to the Isles of Scilly as if the Isles were a county and the Council of the Isles were a county council.

(5) For the purposes of these Regulations the territorial waters of the United Kingdom adjacent to Great Britain shall be treated as part of Great Britain and references to England, Wales and Scotland shall be construed as including the adjacent territorial waters.

For the purposes of this paragraph—

(a) territorial waters include any waters landward of the baselines from which the breadth of the territorial sea is measured; and

(b) any question as to whether territorial waters are to be treated as adjacent to England, Wales or Scotland shall be determined by the Secretary of State or, for any purpose in relation to which the Minister of Agriculture, Fisheries and Food has responsibility, by the Secretary of State and that Minister acting jointly.

[<sup>F29</sup>(6) For the purposes of—

(a) these Regulations; and

(b) any guidance issued before exit day by the Scottish Ministers or the appropriate nature conservation body relating to the application of these Regulations,

on or after exit day references to “Natura 2000” (other than in this regulation) are to be construed as references to the UK site network.

(7) Paragraph (6) does not affect the interpretation of these Regulations as they had effect, or any guidance as it applied, before exit day.]

**F2** Words in [reg. 2\(1\)](#) inserted (S.) (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), [regs. 1\(1\), 4\(a\)\(i\)](#) (with [regs. 20, 21](#))

**F3** Words in [reg. 2\(1\)](#) inserted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), [regs. 2\(1\), 5\(2\)\(a\)](#) (with [reg. 9](#))

**F4** Words in [reg. 2\(1\)](#) inserted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), [regs. 2\(1\), 5\(2\)\(d\)](#) (with [reg. 9](#))

- F5** Words in reg. 2(1) inserted (31.12.2020) by The Conservation (Natural Habitats, &c.) (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/113), regs. 1, **4(2)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F6** Words in reg. 2 inserted (16.8.2012) by The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2012 (S.S.I. 2012/228), regs. 1(1), **3(1)(a)**
- F7** Words in reg. 2 omitted (16.8.2012) by virtue of The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2012 (S.S.I. 2012/228), regs. 1(1), **3(1)(b)**
- F8** Words in reg. 2(1) substituted (S.) (15.2.2007) by The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2007 (S.S.I. 2007/80), regs. 2, **5(a)**
- F9** Words in reg. 2(1) inserted (31.12.2020) by The Conservation (Natural Habitats, &c.) (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/113), regs. 1, **4(2)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F10** Words in reg. 2(1) substituted (S.) (29.11.2004) by The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2004 (S.S.I. 2004/475), regs. 1(1), **4(a)(iii)** (with regs. 20, 21)
- F11** Words in reg. 2 inserted (16.8.2012) by The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2012 (S.S.I. 2012/228), regs. 1(1), **3(1)(c)**
- F12** Words in reg. 2(1) inserted (31.12.2020) by The Conservation (Natural Habitats, &c.) (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/113), regs. 1, **4(2)(c)**; 2020 c. 1, Sch. 5 para. 1(1)
- F13** Words in reg. 2(1) inserted (S.) (29.11.2004) by The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2004 (S.S.I. 2004/475), regs. 1(1), **4(a)(iv)** (with regs. 20, 21)
- F14** Words in reg. 2(1) inserted (31.12.2020) by virtue of The Conservation (Natural Habitats, &c.) (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/113), regs. 1, **4(2)(d)**; 2020 c. 1, Sch. 5 para. 1(1)
- F15** Words in reg. 2(1) inserted (31.12.2020) by The Conservation (Natural Habitats, &c.) (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/113), regs. 1, **4(2)(e)**; 2020 c. 1, Sch. 5 para. 1(1)
- F16** Words in reg. 2 inserted (16.8.2012) by The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2012 (S.S.I. 2012/228), regs. 1(1), **3(1)(d)**
- F17** Words in reg. 2(1) inserted (31.12.2020) by virtue of The Conservation (Natural Habitats, &c.) (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/113), regs. 1, **4(2)(f)**; 2020 c. 1, Sch. 5 para. 1(1)
- F18** Words in reg. 2(1) substituted (S.) (29.11.2004) by The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2004 (S.S.I. 2004/475), regs. 1(1), **4(a)(v)** (with regs. 20, 21)
- F19** Words in reg. 2(1) inserted (31.12.2020) by The Conservation (Natural Habitats, &c.) (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/113), regs. 1, **4(2)(g)**; 2020 c. 1, Sch. 5 para. 1(1)
- F20** Words in reg. 2 inserted (16.8.2012) by The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2012 (S.S.I. 2012/228), regs. 1(1), **3(1)(e)**
- F21** Words in reg. 2(1) substituted (6.4.2011) by The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2011 (S.S.I. 2011/155), regs. 1(1), **3(a)**
- F22** Words in reg. 2(1) inserted (31.12.2020) by The Conservation (Natural Habitats, &c.) (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/113), regs. 1, **4(2)(h)**; 2020 c. 1, Sch. 5 para. 1(1)
- F23** Reg. 2(1A)(1B) inserted (S.) (29.11.2004) by The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2004 (S.S.I. 2004/475), regs. 1(1), **4(b)** (with regs. 20, 21)
- F24** Reg. 2(2) substituted (31.12.2020) by The Conservation (Natural Habitats, &c.) (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/113), regs. 1, **4(3)**; 2020 c. 1, Sch. 5 para. 1(1)
- F25** Reg. 2(2ZA) inserted (6.4.2011) by The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2011 (S.S.I. 2011/155), regs. 1(1), **3(b)**
- F26** Words in reg. 2(2ZA) inserted (31.12.2020) by The Conservation (Natural Habitats, &c.) (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/113), regs. 1, **4(4)**; 2020 c. 1, Sch. 5 para. 1(1)

- F27** Reg. 2(2A) inserted (31.12.2020) by The Conservation (Natural Habitats, &c.) (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/113), regs. 1, **4(5)**; 2020 c. 1, Sch. 5 para. 1(1)
- F28** Reg. 2(2B) inserted (S.) (21.8.2007) by The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007 (S.I. 2007/1843), regs. 2(1), **5(3)** (with reg. 9)
- F29** Reg. 2(6)(7) inserted (31.12.2020) by The Conservation (Natural Habitats, &c.) (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/113), regs. 1, **4(6)**; 2020 c. 1, Sch. 5 para. 1(1)

#### **Commencement Information**

- I2** Reg. 2 in force at 30.10.1994, see [reg. 1\(2\)](#)

### **[<sup>F30</sup> Interpretation: the Directives**

- 2A.**—(1) The Habitats Directive is to be construed for the purposes of these Regulations as if—
- any reference to “the European territory of the Member States to which the Treaty applies” included a reference to the United Kingdom;
  - any reference to “Member State” or “Member States” included a reference to the United Kingdom;
  - any reference to “of Community interest” included, in relation to the United Kingdom, a reference to “of national interest”;
  - in Article 1(d) and (h), references to “the Community” were references to “the European Union or the United Kingdom”; and
  - in Article 1(l), the reference to “a site of Community importance designated by the Member States” included, in relation to the United Kingdom, a reference to a site of national importance designated under any of the retained transposing regulations.
- (2) The Wild Birds Directive is to be construed for the purposes of these Regulations as if—
- any reference to “the European territory of the Member States to which the Treaty applies” included a reference to the United Kingdom; and
  - any reference to “Member State” or “Member States” included a reference to the United Kingdom.
- (3) Any reference in these Regulations to “the requirements of the Directives” is to be construed as if the objectives of the Directives included the objectives referred to in regulation 9D(2).
- (4) The Scottish Ministers may, after consultation with the appropriate nature conservation body and such other bodies or persons as they consider appropriate, issue guidance as to the interpretation of the requirements of the Directives.
- (5) Any guidance issued under paragraph (4) must be published by the Scottish Ministers in such manner as they consider appropriate.]

- F30** Reg. 2A inserted (31.12.2020) by The Conservation (Natural Habitats, &c.) (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/113), regs. 1, **5**; 2020 c. 1, Sch. 5 para. 1(1)

### **[<sup>F31</sup> Duties relating to compliance with the Directives**

**3.**—(1) The Scottish Ministers, the appropriate nature conservation body and, in relation to the Scottish marine area, a competent authority must exercise their functions which are relevant to nature conservation, including marine conservation, so as to secure compliance with the requirements of the Directives.

- (2) Paragraph (1) applies in particular to functions under the following enactments:—

the Dockyard Ports Regulation Act 1865;  
the Hill Farming Act 1946;  
Part III of the National Parks and Access to the Countryside Act 1949;  
the Land Drainage (Scotland) Act 1958;  
the Harbours Act 1964;  
<sup>[F32]</sup>the Forestry and Land Management (Scotland) Act 2018];  
section 49A of the Countryside (Scotland) Act 1967 (management agreements);  
section 15 of the Countryside Act 1968 (areas of special scientific interest);  
Part II of the Control of Pollution Act 1974 (pollution of water);  
Part I and section 35 of the Wildlife and Countryside Act 1981;  
sections 120 to 122 of the Civic Government (Scotland) Act 1982 (control of the seashore, adjacent waters and inland waters);  
sections 2, 3, 5, 7 and 11 of the Natural Heritage (Scotland) Act 1991;  
the Sea Fisheries Acts within the meaning of section 1 of the Sea Fisheries (Wildlife Conservation) Act 1992 (conservation in the exercise of sea fisheries functions);  
the Environment Act 1995;  
the Deer (Scotland) Act 1996;  
the Town and Country Planning (Scotland) Act 1997;  
the National Parks (Scotland) Act 2000;  
Part 1 of the Land Reform (Scotland) Act 2003 (access rights);  
Part 1 of the Water Environment and Water Services (Scotland) Act 2003(7) (protection of the water environment);  
Part 2 of the Nature Conservation (Scotland) Act 2004 (conservation and enhancement of natural features);  
the Natural Environment and Rural Communities Act 2006;  
the Flood Risk Management (Scotland) Act 2009;  
the Marine (Scotland) Act 2010;  
the Water Environment (Controlled Activities) (Scotland) Regulations 2011; and  
these Regulations.

(3) Without prejudice to the preceding provisions, a competent authority, in exercising their functions, must have regard to the requirements of the Directives so far as they may be affected by the exercise of those functions.]

<sup>[F33]</sup>(4) In complying with their duties under paragraphs (1) and (3), the Scottish Ministers, the appropriate nature conservation body and a competent authority must have regard to any guidance issued under regulation 2A(4).]

**F31** Regs. 3-3B substituted for reg. 3 (S.) (16.8.2012) by The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2012 (S.S.I. 2012/228), regs. 1(1), 4

**F32** Words in reg. 3(2) substituted (18.3.2021) by The Forestry and Land Management (Scotland) Act 2018 (Consequential, Saving and Transitional Provisions) Regulations 2021 (S.S.I. 2021/44), regs. 1(1), 2(2)

**F33** Reg. 3(4) inserted (31.12.2020) by The Conservation (Natural Habitats, &c.) (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/113), regs. 1, 6; 2020 c. 1, Sch. 5 para. 1(1)

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(7) The expression “harbour authority” is defined in section 57 of that Act.



### Commencement Information

**I3** Reg. 3 in force at 30.10.1994, see [reg. 1\(2\)](#)

### [<sup>F34</sup>Reports

**3ZA.**—(1) Within six years from exit day, and at least every six years thereafter, the Scottish Ministers must publish, in such form as they see fit, a report on the implementation of the measures taken for the purpose of giving effect to the provisions of the Directives, and the achievement of the objectives set out in Article 2 of the Habitats Directive and Articles 2 and 3 of the Wild Birds Directive.

(2) The report under paragraph (1) must include in particular—

- (a) information concerning conservation measures taken under Article 6(1) of the Habitats Directive;
- (b) information on provisions mentioned in Article 12 of the Wild Birds Directive;
- (c) an evaluation of the impact of those conservation measures on the conservation status of—
  - (i) the natural habitat types listed in Annex I of the Habitats Directive, and
  - (ii) the species listed in Annex II of that Directive; and
- (d) the main results of the surveillance and monitoring undertaken under regulations 37A and 41A.]

**F34** Reg. 3ZA inserted (31.12.2020) by [The Conservation \(Natural Habitats, &c.\) \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019 \(S.S.I. 2019/113\)](#), regs. 1, 7; 2020 c. 1, Sch. 5 para. 1(1)

### [<sup>F31</sup>Duties in relation to wild bird habitat

**3A.**—(1) Without prejudice to regulation 3(1), the Scottish Ministers, the appropriate nature conservation body and, in relation to the Scottish marine area, a competent authority must take such steps in the exercise of their functions as they consider appropriate to secure the objective in paragraph (3), so far as lies within their powers.

(2) Except in relation to the Scottish marine area, the Scottish Environment Protection Agency, <sup>F35</sup>... local authorities and National Park authorities must take such steps in the exercise of their functions as they consider appropriate to contribute to the achievement of the objective in paragraph (3).

(3) The objective is the preservation, maintenance and re-establishment of a sufficient diversity and area of habitat for wild birds in Scotland in implementation of Article 3 of the Wild Birds Directive (including by means of the upkeep, management and creation of such habitat, as appropriate), having regard to the requirements of Article 2 of that Directive.

(4) Paragraphs (1) and (2) apply in particular to functions under the following enactments:—

- sections [<sup>F36</sup>23A to 24] of the Hill Farming Act 1946;
- sections 16 to 18, 20 and 21 of the National Parks and Access to the Countryside Act 1949 (agreements for management of nature reserves, powers of compulsory acquisition of land for nature reserves, and powers to make byelaws for the protection of nature reserves);
- section 49A of the Countryside (Scotland) Act 1967 (management agreements);
- [<sup>F37</sup>the Forestry and Land Management (Scotland) Act 2018];
- section 15 of the Countryside Act 1968 (areas of special scientific interest);

sections 14D to 14P of the Wildlife and Countryside Act 1981 (species control orders);  
 sections 7, 8 and 10 of the Deer (Scotland) Act 1996;  
 section 1 of the National Parks (Scotland) Act 2000;  
 section 22 of the Water Environment and Water Services (Scotland) Act 2003;  
 Part 2 of the Nature Conservation (Scotland) Act 2004 (conservation and enhancement of natural features);  
 the Marine (Scotland) Act 2010;  
 the Water Environment (Controlled Activities) (Scotland) Regulations 2011; and  
 any function exercisable in relation to town and country planning.

(5) In section 79(3)(a) of the Marine (Scotland) Act 2010 (creation of network of conservation sites), the reference to “the conservation or improvement of the marine environment” includes the objective in paragraph (3), and accordingly the duty in section 103 (reports to Parliament) of that Act applies in relation to that objective.

(6) In considering which measures may be appropriate for the purpose of securing or contributing to the objective in paragraph (3), regard may be had to economic and recreational requirements.

(7) The Scottish Ministers must take any measures they consider necessary to facilitate or co-ordinate arrangements to secure the taking of steps under paragraphs (1) and (2) by the persons mentioned in those paragraphs.

(8) So far as lies within its powers, a competent authority must use all reasonable endeavours to avoid pollution or deterioration of habitats of wild birds in Scotland.]

- F31** Regs. 3-3B substituted for reg. 3 (S.) (16.8.2012) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2012 \(S.S.I. 2012/228\)](#), regs. 1(1), **4**
- F35** Words in reg. 3A(2) omitted (18.3.2021) by virtue of [The Forestry and Land Management \(Scotland\) Act 2018 \(Consequential, Saving and Transitional Provisions\) Regulations 2021 \(S.S.I. 2021/44\)](#), regs. 1(1), **2(3)(a)**
- F36** Words in reg. 3A(4) substituted (1.11.2019) by [The Conservation \(Natural Habitats, &c.\) \(Miscellaneous Amendments\) \(Scotland\) Regulations 2019 \(S.S.I. 2019/364\)](#), regs. 1(2), **3**
- F37** Words in reg. 3A(4) substituted (18.3.2021) by [The Forestry and Land Management \(Scotland\) Act 2018 \(Consequential, Saving and Transitional Provisions\) Regulations 2021 \(S.S.I. 2021/44\)](#), regs. 1(1), **2(3)(b)**

### [<sup>F31</sup>Review and guidance

**3B.**—(1) The appropriate nature conservation body must from time to time—

- (a) review the extent to which the objective in regulation 3A(3) has been met, other than in relation to the Scottish marine area;
- (b) set out the conclusions of the review in a report, including any recommendations for further action; and
- (c) send the report to the Scottish Ministers.

(2) In carrying out the review, the appropriate nature conservation body must, so far as is reasonable, take account of any measures taken which contribute to the achievement of that objective, whether or not taken pursuant to a requirement imposed by any enactment.

(3) After consultation with the appropriate nature conservation body, the Scottish Ministers must give guidance to the Scottish Environment Protection Agency, <sup>F38</sup>... local authorities and National Park authorities—

- (a) to facilitate the determination by those bodies of the extent to which the diversity and area of wild bird habitat is sufficient; and
  - (b) on the steps that it may be appropriate to take pursuant to regulation 3A(1) or (2).
- (4) In exercising a function to which regulation 3A(1) or (2) applies, a body to which guidance has been given under paragraph (3) of this regulation must have regard to that guidance.]

- F31** Regs. 3-3B substituted for reg. 3 (S.) (16.8.2012) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2012 \(S.S.I. 2012/228\)](#), regs. 1(1), 4
- F38** Words in reg. 3B(3) omitted (18.3.2021) by virtue of [The Forestry and Land Management \(Scotland\) Act 2018 \(Consequential, Saving and Transitional Provisions\) Regulations 2021 \(S.S.I. 2021/44\)](#), regs. 1(1), 2(4)

### <sup>F39</sup> **Nature conservation bodies**

4.—(1) Subject to paragraph (2), in these Regulations “nature conservation body” means Natural England, the Countryside Council for Wales or Scottish Natural Heritage; and references to “the appropriate nature conservation body”, in relation to England, Wales or Scotland shall be construed accordingly.

(2) In Parts IV and IVA of these Regulations, “nature conservation body” also includes the Joint Nature Conservation Committee, and references to “the appropriate nature conservation body” in relation to a European offshore marine site shall be construed as meaning the Joint Nature Conservation Committee.]

- F39** Reg. 4 substituted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), 5(6) (with reg. 9)

### **Relevant authorities in relation to marine areas and European marine sites**

5. For the purposes of these Regulations the relevant authorities, in relation to a marine area or European marine site, are such of the following as have functions in relation to land or waters within or adjacent to that area or site—

- (a) a nature conservation body;
- (b) a county council, district council, London borough council or, in Scotland, a regional, islands or district council;
- (c) the National Rivers Authority, a water undertaker or sewerage undertaker, or an internal drainage board;
- (d) a navigation authority within the meaning of the Water Resources Act 1991(6);
- (e) a harbour authority within the meaning of the Harbours Act 1964(7);
- (f) a lighthouse authority;
- (g) <sup>F40</sup>the Scottish Environment Protection Agency] or a district salmon fishery board;
- (h) a local fisheries committee constituted under the Sea Fisheries Regulation Act 1966(8) or any authority exercising the powers of such a committee;
- <sup>F41</sup>(i) a National Park authority established by order under section 6 of the National Parks (Scotland) Act 2000.]

(6) The expression “navigation authority” is defined in section 221(1) of that Act.

(7) The expression “harbour authority” is defined in section 57 of that Act.

(8) 1966 c. 38.

- F40** Words in reg. 5(g) substituted (S.) (1.4.1996) by The Environment Act 1995 (Consequential and Transitional Provisions) (Scotland) Regulations 1996 (S.I. 1996/973), reg. 1, **Sch. para. 18**
- F41** Reg. 5(i) inserted (S.) (15.2.2007) by The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2007 (S.S.I. 2007/80), regs. 2, 7

#### Commencement Information

- I4** Reg. 5 in force at 30.10.1994, see reg. 1(2)

### Competent authorities generally

**6.**—(1) For the purposes of these Regulations the expression “competent authority” includes any Minister, government department, public or statutory undertaker, public body of any description or person holding a public office.

The expression also includes any person exercising any function of a competent authority in the United Kingdom.

(2) In paragraph (1)—

- (a) “public body” includes any local authority, joint board or joint committee; and
- (b) “public office” means—
- (a) an office under Her Majesty,
- (b) an office created or continued in existence by a public general Act of Parliament, or
- (c) an office the remuneration in respect of which is paid out of money provided by Parliament [<sup>F42</sup>or money paid out of the Scottish Consolidated Fund].

(3) In paragraph (2)(a)—

“local authority”—

- (a) in relation to England, means a county council, district council or London borough council, the Common Council of the City of London, the sub-treasurer of the Inner Temple, the under treasurer of the Middle Temple or a parish council,
- (b) in relation to Wales, means a county council, [<sup>F43</sup>county borough,] council or community council, and

<sup>F44</sup>(c) .....

“joint board” and “joint committee” in relation to England and Wales mean—

- (a) a joint or special planning board constituted for a National Park by order under paragraph 1 or 3 of Schedule 17 to the Local Government Act 1972<sup>(9)</sup>, or a joint planning board within the meaning of section 2 of the Town and Country Planning Act 1990, and
- (b) a joint committee appointed under section 102(1)(b) of the Local Government Act 1972, and in relation to Scotland have the same meaning as in the Local Government (Scotland) Act 1973<sup>(10)</sup>.

**F42** Words in reg. 6(2)(c) inserted (1.7.1999) by The Scotland Act 1998 (Consequential Modifications) (No.2) Order 1999 (S.I. 1999/1820), art. 1(2), **Sch. 2 para. 155** (with art. 5)

**F43** Words in reg. 6(3) substituted (1.4.1996) by The Local Government Reorganisation (Wales) (Consequential Amendments) Order 1996 (S.I. 1996/525), arts. 1, 3, **Sch. para. 18(2)**

<sup>(9)</sup> 1972 c. 70.

<sup>(10)</sup> 1973 c. 65; the expressions “joint board” and “joint committee” are defined in section 235(1) of the Act.

**F44** Reg. 6(3)(c) omitted (16.8.2012) by virtue of The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2012 (S.S.I. 2012/228), regs. 1(1), 3(2)

**Commencement Information**

**I5** Reg. 6 in force at 30.10.1994, see **reg. 1(2)**

## PART II

### CONSERVATION OF NATURAL HABITATS AND HABITATS OF SPECIES

#### *European sites*

#### <sup>F45</sup>**Duty to designate special areas of conservation**

7.—(1) The Scottish Ministers must, having regard to the priorities established under regulation 8, designate as special areas of conservation such sites in Scotland as they consider to be of national importance.

(2) Sites of national importance are sites which contribute significantly to the objective in paragraph (3)(a) or the objective in paragraph (3)(b).

(3) The objectives referred to in paragraph (2) are—

- (a) the maintenance, or restoration, at favourable conservation status in their natural range of the natural habitat types listed in Annex I to the Habitats Directive or the species listed in Annex II to that Directive; and
- (b) the maintenance of biological diversity within the Atlantic biogeographic region.

(4) For animal species which range over wide areas, those sites determined to be of national importance must correspond to places within the natural range of such species, which is distinct in providing the physical or biological factors essential to their life and reproduction.

(5) For aquatic species which range over wide areas, such sites are to be determined to be of national importance only where there is a clearly identifiable area which is distinct in providing the physical and biological factors essential to their life and reproduction.

(6) In determining which sites are of national importance for the purposes of paragraph (1), the Scottish Ministers must—

- (a) apply the Annex III criteria;
- (b) make their determination only on the basis of relevant scientific information; and
- (c) have regard to the importance of the population of a species or area of a habitat found in the United Kingdom for the purpose of meeting the objectives in paragraph (3).

(7) For the purposes of paragraph (6)(a), the Annex III criteria are to be construed as if—

- (a) for “Community importance” there were substituted “national importance”;
- (b) a reference to a “Member State” is to be taken to be a reference to the Scottish Ministers;
- (c) for “continuous ecosystem situated on both sides of one or more internal Community frontiers” there were substituted “continuous ecosystem extending beyond the borders of the United Kingdom”; and
- (d) for “the biogeographical regions concerned and/or for the whole of the territory referred to in Article 2” there were substituted “the Atlantic biogeographical region”;

(8) In applying the Annex III criteria, the Scottish Ministers must—

- (a) in relation to the application of stage 1 of those criteria, have regard to the advice of the appropriate nature conservation body; and
  - (b) in relation to the application of stage 2 of those criteria, have regard to the advice of the Joint Nature Conservation Committee.
- (9) In this regulation, “the Annex III criteria” means the criteria set out in Annex III to the Habitats Directive.]

**F45** Reg. 7 substituted (31.12.2020) by [The Conservation \(Natural Habitats, &c.\) \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019 \(S.S.I. 2019/113\)](#), regs. 1, **8**; 2020 c. 1, Sch. 5 para. 1(1)

**[<sup>F46</sup>Priorities for designating special areas of conservation**

**8.**—(1) The Scottish Ministers must, in accordance with paragraph (2), establish priorities for designating as special areas of conservation such sites as they have determined to be sites of national importance.

- (2) Priorities for the purpose of paragraph (1) must be established in the light of—
  - (a) the importance of the sites for the maintenance at, or restoration to, a favourable conservation status of—
    - (i) a natural habitat type specified in Annex I to the Habitats Directive; or
    - (ii) a species specified in Annex II to the Habitats Directive;
  - (b) the importance of such sites for the coherence of the UK site network; and
  - (c) the threats of degradation or destruction to which the sites are exposed.]

**F46** Reg. 8 substituted (31.12.2020) by [The Conservation \(Natural Habitats, &c.\) \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019 \(S.S.I. 2019/113\)](#), regs. 1, **8**; 2020 c. 1, **Sch. 5 para. 1(1)**

**Consultation as to inclusion of site omitted from the list**

<sup>F47</sup> **9.** . . . . .

**F47** Reg. 9 omitted (31.12.2020) by virtue of [The Conservation \(Natural Habitats, &c.\) \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019 \(S.S.I. 2019/113\)](#), regs. 1, **9**; 2020 c. 1, Sch. 5 para. 1(1)

**[<sup>F48</sup>Special protection area: classification of sites**

**9A.**—(1) The Scottish Ministers must classify as special protection areas such sites (including sites in the Scottish inshore region) as they consider necessary to ensure that the objective specified in paragraph (2) is attained.

(2) The objective referred to in paragraph (1) is that those sites across the United Kingdom’s territory which are most suitable in number and size for—

- (a) the conservation of species listed in Annex 1 to the Wild Birds Directive which naturally occur in that territory, and
- (b) the conservation of naturally occurring migratory species of birds not listed in Annex 1 which naturally occur in that territory,

are classified as special protection areas, in so far as they consist of sites in Scotland.

(3) The Scottish Ministers must make their decision as to the sites to be classified under paragraph (1) only on the basis of relevant scientific information and—

- (a) in the case of a site to be classified for the purpose mentioned in paragraph (2)(a), on the basis of criteria set out in Article 4(1) of the Wild Birds Directive, and
- (b) in the case of a site to be classified for the purpose mentioned in paragraph (2)(b), on the basis of criteria set out in Article 4(2) of that Directive.

(4) In this regulation—

<sup>F49</sup>(a) . . . . .

(b) “Scottish inshore region” means the area of sea within the seaward limits of the territorial sea adjacent to Scotland.]

[<sup>F50</sup>(5) In applying the criteria referred to in paragraphs (3)(a) and (b) in relation to any species, references in Articles 4(1) and 4(2) of the Wild Birds Directive to classifying the most suitable territories “in the geographical sea and land area where this Directive applies” are to be construed as referring to the most suitable territories in the United Kingdom’s territory, having regard to the importance of such territories for ensuring the survival and reproduction of that species in their area of distribution.]

- F48** Regs. 9A-9C inserted (6.4.2011) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2011 \(S.S.I. 2011/155\)](#), regs. 1(1), 4
- F49** Reg. 9A(4)(a) omitted (31.12.2020) by virtue of [The Conservation \(Natural Habitats, &c.\) \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019 \(S.S.I. 2019/113\)](#), regs. 1, **10(2)**; 2020 c. 1, Sch. 5 para. 1(1)
- F50** Reg. 9A(5) inserted (31.12.2020) by [The Conservation \(Natural Habitats, &c.\) \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019 \(S.S.I. 2019/113\)](#), regs. 1, **10(3)**; 2020 c. 1, Sch. 5 para. 1(1)

[<sup>F48</sup>**Special protection area: notification of proposal**

**9B.**—(1) The Scottish Ministers must if they propose to classify a site as a special protection area give to the appropriate nature conservation body—

- (a) notice of that proposal, and
- (b) an accompanying statement of the reasons for that proposal.

(2) The appropriate nature conservation body must on being given notice of a proposal, provide a copy of the proposal and the accompanying statement—

- (a) to such persons as the Scottish Ministers may direct, and
- (b) where, in their opinion, it is appropriate to do so to—
  - (i) any other person (including owners or occupiers of land or premises), and
  - (ii) every competent authority which exercises functions in relation to the site, or in relation to an area adjacent to the site.

(3) The appropriate nature conservation body must when they provide a copy of a proposal and accompanying document to any such person or authority specify the period of not less than 12 weeks (the “consultation period”) during which representations may be made to them with respect to the proposal by that person or authority.

(4) The appropriate nature conservation body must as soon as reasonably practicable after expiry of the consultation period provide to the Scottish Ministers a report (the “consultation report”)—

- (a) describing any representations made in that period, or
- (b) stating that no representations have been made.

(5) The Scottish Ministers must consider the consultation report when determining whether to classify a site as a special protection area.

(6) The Scottish Ministers may—

- (a) give guidance to the appropriate nature conservation body for the purpose of the exercise by them of functions under this regulation, and
- (b) vary or revoke a direction under paragraph (2)(a).

(7) The appropriate nature conservation body must have regard to any guidance under paragraph (6)(a) in discharging a function referred to in that paragraph.]

**F48** Regs. 9A-9C inserted (6.4.2011) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2011 \(S.S.I. 2011/155\)](#), regs. 1(1), 4

#### [<sup>F48</sup>Special protection area: hearing and representations in respect of a proposal

**9C.**—(1) The Scottish Ministers may give any person the opportunity of—

- (a) making written representations to, or
- (b) being heard by,

a person appointed by them for the purpose of deciding whether to classify a site as a special protection area.

(2) Any person being heard by the appointed person may—

- (a) be represented by another person,
- (b) call persons to give evidence,
- (c) make written representations before or at the hearing,
- (d) put questions to any person who gives evidence at the hearing, including any person who gives expert evidence.

(3) The Scottish Ministers must have regard to the report of an appointed person when deciding whether to so classify a site.]

**F48** Regs. 9A-9C inserted (6.4.2011) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2011 \(S.S.I. 2011/155\)](#), regs. 1(1), 4

#### [<sup>F51</sup>Management objectives of the UK site network

**9D.**—(1) The Scottish Ministers must, in co-operation with any other authority having a corresponding responsibility, manage, and where necessary adapt, the UK site network, so far as it consists of European sites in Scotland, with a view to contributing to the achievement of the management objectives of the UK site network.

(2) The management objectives of the UK site network are—

- (a) to maintain at or, where appropriate, restore to a favourable conservation status in their natural range (so far as it lies in the United Kingdom's territory, and so far as is proportionate)—
  - (i) the natural habitat types listed in Annex I to the Habitats Directive; and
  - (ii) the species listed in Annex II to that Directive whose natural range includes any part of the United Kingdom's territory; and



- (b) to contribute, in their area of distribution, to ensuring the survival and reproduction, and securing compliance with the requirements of Article 2 of the Wild Birds Directive for the purposes of the duty in regulation 3(1), of—
  - (i) species of birds listed in Annex I to the Wild Birds Directive which naturally occur in the United Kingdom’s territory; and
  - (ii) regularly occurring migratory species of birds not listed in that Annex which naturally occur in the United Kingdom’s territory.
- (3) In complying with the obligation in paragraph (1), the Scottish Ministers must have regard —
  - (a) in relation to any European site which is not of a kind mentioned in regulation 10(1)(d), to the considerations mentioned in paragraph (4); and
  - (b) in relation to European sites of a kind mentioned in regulation 10(1)(d), to the considerations mentioned in paragraph (5).
- (4) The considerations referred to in paragraph (3)(a) are—
  - (a) the importance of the sites for the maintenance at, or restoration to, a favourable conservation status, throughout their natural range, of the natural habitat types and species mentioned in paragraph (2)(a);
  - (b) the importance of the sites for the coherence of the UK site network; and
  - (c) the threats of degradation or destruction (including deterioration and disturbance of protected features) to which the sites are exposed.
- (5) The considerations referred to in paragraph (3)(b) are—
  - (a) the importance of the sites for ensuring the survival and reproduction of, and securing compliance with the requirements of Article 2 of the Wild Birds Directive for the purposes of the duty in regulation 3(1) in relation to, the species of birds mentioned in paragraph (2)(b), in their area of distribution;
  - (b) in the case of migratory species, the importance of their breeding, moulting and wintering areas and staging points along their migration routes;
  - (c) the importance of the sites for the coherence of UK site network; and
  - (d) the threats of degradation or destruction (including deterioration and disturbance of protected features) to which the sites are exposed.
- (6) In paragraph (2)(a), “proportionate” means proportionate to the relative importance of—
  - (a) the part of the natural range lying in the United Kingdom’s territory; and
  - (b) the part of the natural range lying outside the United Kingdom’s territory,for achieving a favourable conservation status.]

**F51** Reg. 9D inserted (31.12.2020) by [The Conservation \(Natural Habitats, &c.\) \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019 \(S.S.I. 2019/113\)](#), regs. 1, **11**; 2020 c. 1, Sch. 5 para. 1(1)

**Meaning of “European site” in these Regulations**

- 10.**—(1) In these Regulations a “European site” means—
- (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 [<sup>F52</sup>before exit day],
  - <sup>F53</sup>(c) .....

- (d) an area classified [<sup>F54</sup>before exit day] pursuant to [<sup>F55</sup>Article 4(1) or (2) of Council Directive 1979/409/EEC on the conservation of wild birds or] Article 4(1) or (2) of the Wild Birds Directive [<sup>F56</sup>or classified after exit day under the retained transposing regulations][<sup>F57</sup>, or]
  - [<sup>F58</sup>(e) a site which before exit day has been proposed to the European Commission in accordance with Article 4(1) of the Habitats Directive until such time as—
    - (i) the site is designated as a special area of conservation under regulation 7 or under the equivalent provision in the other retained transposing regulations; or
    - (ii) the Scottish Ministers give notice of their intention not to designate the site, setting out the reasons for their decision, in accordance with regulation 112(3).]
- <sup>F59</sup>(2) .....

<b>F52</b>	Words in reg. 10(1)(b) inserted (31.12.2020) by The Conservation (Natural Habitats, &c.) (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/113), regs. 1, <b>12(2)(a)</b> ; 2020 c. 1, Sch. 5 para. 1(1)
<b>F53</b>	Reg. 10(1)(c) omitted (31.12.2020) by virtue of The Conservation (Natural Habitats, &c.) (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/113), regs. 1, <b>12(2)(b)</b> ; 2020 c. 1, Sch. 5 para. 1(1)
<b>F54</b>	Words in reg. 10(1)(d) inserted (31.12.2020) by The Conservation (Natural Habitats, &c.) (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/113), regs. 1, <b>12(2)(c)(i)</b> ; 2020 c. 1, Sch. 5 para. 1(1)
<b>F55</b>	Words in reg. 10(1)(d) inserted (14.9.2015) by The Town and Country Planning (Miscellaneous Amendments) (Scotland) Regulations 2015 (S.S.I. 2015/249), regs. 1, <b>2(2)</b>
<b>F56</b>	Words in reg. 10(1)(d) inserted (31.12.2020) by The Conservation (Natural Habitats, &c.) (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/113), regs. 1, <b>12(2)(c)(ii)</b> ; 2020 c. 1, Sch. 5 para. 1(1)
<b>F57</b>	Reg. 10(1)(e) and word inserted (S.) (29.11.2004) by The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2004 (S.S.I. 2004/475), regs. 1(1), <b>6(b)</b> (with regs. 20, 21)
<b>F58</b>	Reg. 10(1)(e) substituted (31.12.2020) by The Conservation (Natural Habitats, &c.) (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/113), regs. 1, <b>12(2)(d)</b> ; 2020 c. 1, Sch. 5 para. 1(1)
<b>F59</b>	Reg. 10(2) omitted (31.12.2020) by virtue of The Conservation (Natural Habitats, &c.) (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/113), regs. 1, <b>12(3)</b> ; 2020 c. 1, Sch. 5 para. 1(1)
<b>Commencement Information</b>	
<b>I6</b>	Reg. 10 in force at 30.10.1994, see <b>reg. 1(2)</b>

*Register of European sites*

**Duty to compile and maintain register of European sites**

- 11.—(1) The Secretary of State [<sup>F60</sup>must make arrangements for the establishment and maintenance of] a register of European sites in Great Britain.
- (2) [<sup>F61</sup>The register must specify]—
- (a) special areas of conservation, as soon as they are designated by him;
  - (b) sites of Community importance [<sup>F62</sup>which before exit day were] placed on the list referred to in the third sub-paragraph of Article 4(2) of the Habitats Directive, until they are designated as special areas of conservation;

- <sup>F63</sup>(c) .....
- (d) areas classified by him pursuant to Article 4(1) or (2) of the Wild Birds Directive, as soon as they are so classified or, if they have been classified before the commencement of these Regulations, as soon as practicable after commencement [<sup>F64</sup>; and]
- <sup>F65</sup>(e) any site in Scotland which before exit day has been proposed to the European Commission in accordance with Article 4(1) of the Habitats Directive until such time as regulation 10(1) (e)(i) or (ii) applies.]
- (3) He may, if appropriate, amend [<sup>F66</sup>, or make arrangements for the amendment of,] the entry in the register relating to a European site.
- (4) He shall remove [<sup>F67</sup>, or make arrangements for the removal of] the relevant entry–
- <sup>F68</sup>(a) relating to a site which is no longer a European site; or]
- (b) if a site otherwise ceases to fall within any of the categories listed in paragraph (2) above.
- (5) [<sup>F69</sup>The register must be] available for public inspection at all reasonable hours and free of charge.
- <sup>F70</sup>(6) The arrangements mentioned in paragraph (1) may in particular authorise the appropriate nature conservation body to establish and maintain the register.]

- F60** Words in [reg. 11\(1\)](#) substituted (6.12.2019) by [The Conservation \(Natural Habitats, &c.\) Amendment \(No. 2\) \(Scotland\) Regulations 2019 \(S.S.I. 2019/320\)](#), regs. 1(1), **3(1)(a)**
- F61** Words in [reg. 11\(2\)](#) substituted (6.12.2019) by [The Conservation \(Natural Habitats, &c.\) Amendment \(No. 2\) \(Scotland\) Regulations 2019 \(S.S.I. 2019/320\)](#), regs. 1(1), **3(1)(b)**
- F62** Words in [reg. 11\(2\)\(b\)](#) substituted (31.12.2020) by [The Conservation \(Natural Habitats, &c.\) \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019 \(S.S.I. 2019/113\)](#), regs. 1, **13(2)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F63** [Reg. 11\(2\)\(c\)](#) omitted (31.12.2020) by virtue of [The Conservation \(Natural Habitats, &c.\) \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019 \(S.S.I. 2019/113\)](#), regs. 1, **13(2)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F64** [Reg. 11\(2\)\(e\)](#) and word inserted (S.) (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), **7** (with regs. 20, 21)
- F65** [Reg. 11\(2\)\(e\)](#) substituted (31.12.2020) by [The Conservation \(Natural Habitats, &c.\) \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019 \(S.S.I. 2019/113\)](#), regs. 1, **13(2)(c)**; 2020 c. 1, Sch. 5 para. 1(1)
- F66** Words in [reg. 11\(3\)](#) inserted (6.12.2019) by [The Conservation \(Natural Habitats, &c.\) Amendment \(No. 2\) \(Scotland\) Regulations 2019 \(S.S.I. 2019/320\)](#), regs. 1(1), **3(1)(c)**
- F67** Words in [reg. 11\(4\)](#) inserted (6.12.2019) by [The Conservation \(Natural Habitats, &c.\) Amendment \(No. 2\) \(Scotland\) Regulations 2019 \(S.S.I. 2019/320\)](#), regs. 1(1), **3(1)(d)**
- F68** [Reg. 11\(4\)\(a\)](#) substituted (31.12.2020) by [The Conservation \(Natural Habitats, &c.\) \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019 \(S.S.I. 2019/113\)](#), regs. 1, **13(3)**; 2020 c. 1, Sch. 5 para. 1(1)
- F69** Words in [reg. 11\(5\)](#) substituted (6.12.2019) by [The Conservation \(Natural Habitats, &c.\) Amendment \(No. 2\) \(Scotland\) Regulations 2019 \(S.S.I. 2019/320\)](#), regs. 1(1), **3(1)(e)**
- F70** [Reg. 11\(6\)](#) inserted (6.12.2019) by [The Conservation \(Natural Habitats, &c.\) Amendment \(No. 2\) \(Scotland\) Regulations 2019 \(S.S.I. 2019/320\)](#), regs. 1(1), **3(1)(f)**

#### Commencement Information

- I7** [Reg. 11](#) in force at 30.10.1994, see [reg. 1\(2\)](#)

### Notification to appropriate nature conservation body

12.—(1) The Secretary of State shall notify the appropriate nature conservation body as soon as may be <sup>[F71]</sup>after—

- (a) a site becomes a European site;
- (b) the specification of a European site is amended;
- (c) a site ceases to fall within any of the categories listed in regulation 11(2).]

<sup>[F72]</sup>(2) Except where arrangements are made authorising the appropriate conservation body to establish and maintain the register, the notification under paragraph (1) of a site becoming a European site must be accompanied by a copy of the register entry.]

<sup>[F73]</sup>(3) Except where arrangements are made authorising the appropriate conservation body to establish and maintain the register, the notification under paragraph (1) of the amendment of the specification of a European site must be accompanied by a copy of the amended entry.]

(4) Each nature conservation body shall keep copies of the register entries relating to European sites in their area available for public inspection at all reasonable hours and free of charge.

- F71** Words in [reg. 12\(1\)](#) substituted (6.12.2019) by [The Conservation \(Natural Habitats, &c.\) Amendment \(No. 2\) \(Scotland\) Regulations 2019 \(S.S.I. 2019/320\)](#), regs. 1(1), **3(2)(a)**
- F72** [Reg. 12\(2\)](#) substituted (6.12.2019) by [The Conservation \(Natural Habitats, &c.\) Amendment \(No. 2\) \(Scotland\) Regulations 2019 \(S.S.I. 2019/320\)](#), regs. 1(1), **3(2)(b)**
- F73** [Reg. 12\(3\)](#) substituted (6.12.2019) by [The Conservation \(Natural Habitats, &c.\) Amendment \(No. 2\) \(Scotland\) Regulations 2019 \(S.S.I. 2019/320\)](#), regs. 1(1), **3(2)(c)**

#### Commencement Information

- I8** Reg. 12 in force at 30.10.1994, see [reg. 1\(2\)](#)

### Notice to landowners, relevant authorities, &c.

13.—(1) As soon as practicable after a nature conservation body receive notification under regulation 12 they shall give notice to—

- (a) every owner or occupier of land within the site,
- (b) every local planning authority in whose area the site, or any part of it, is situated, and
- (c) such other persons or bodies as the Secretary of State may direct.

(2) Notice of the inclusion of a site in the register, or of the amendment of an entry in the register, shall be accompanied by a copy of so much of the relevant register entry as relates to land owned or occupied by or, as the case may be, to land within the area of, the person or authority to whom the notice is given.

(3) The Secretary of State may give directions as to the form and content of notices to be given under this regulation.

#### Commencement Information

- I9** Reg. 13 in force at 30.10.1994, see [reg. 1\(2\)](#)

### Local registration: England and Wales

14. An entry in the register relating to a European site in England and Wales is a local land charge.

**Commencement Information**

**I10** Reg. 14 in force at 30.10.1994, see [reg. 1\(2\)](#)

**Local registers: Scotland**

**15.—(1)** A planning authority in Scotland shall keep available at their principal office for free public inspection a register of all the European sites of which they have been given notice under regulation 13(1)(b).

(2) A planning authority in Scotland may keep available at any other of their offices for free public inspection such part of the register referred to in paragraph (1) as appears to them to relate to that part of their area in which such office is situated.

(3) A planning authority shall supply to any person, on payment of such reasonable fee as they may determine, a copy, certified by the proper officer of the authority to be a true copy, of any entry in the register kept by them under paragraph (1).

**Commencement Information**

**I11** Reg. 15 in force at 30.10.1994, see [reg. 1\(2\)](#)

*Management agreements*

**Management agreements**

**16.—(1)** The appropriate nature conservation body may enter into an agreement (a “management agreement”) with every owner, lessee and occupier of land forming part of a European site, or land adjacent to such a site, for the management, conservation, restoration or protection of the site, or any part of it.

(2) A management agreement may impose such restrictions as may be expedient for the purposes of the agreement on the exercise of rights over the land by the persons who can be bound by the agreement.

(3) A management agreement—

- (a) may provide for the management of the land in such manner, the carrying out thereon of such work and the doing thereon of such other things as may be expedient for the purposes of the agreement;
- (b) may provide for any of the matters mentioned in sub-paragraph (a) being carried out, or for the costs thereof being defrayed, either by the said owner or other persons or by the appropriate nature conservation body, or partly in one way and partly in another;
- (c) may contain such other provisions as to the making of payments by the appropriate nature conservation body, and in particular for the payment by them of compensation for the effect of the restrictions mentioned in paragraph (2), as may be specified in the agreement.

(4) Where land in England and Wales is subject to a management agreement, the appropriate nature conservation body shall, as respects the enforcement of the agreement against persons other than the original contracting party, have the like rights as if—

- (a) they had at all material times been the absolute owners in possession of ascertained land adjacent to the land subject to the agreement and capable of being benefited by the agreement, and

(b) the management agreement had been expressed to be for the benefit of that adjacent land; and section 84 of the Law of Property Act 1925<sup>(11)</sup> (which enables the [<sup>F74</sup>Upper Tribunal] to discharge or modify restrictive covenants) shall not apply to the agreement.

(5) A management agreement affecting land in Scotland may be registered either—

(a) in a case where the land affected by the agreement is registered in that register, in the Land Register of Scotland, or

(b) in any other case, in the General Register of Sasines;

and, on being so recorded, it shall be enforceable at the instance of the appropriate nature conservation body against any person having an interest in the land and against any person deriving title from him:

Provided that a management agreement shall not be so enforceable against a third party who has *bona fide* onerously acquired right (whether completed by infestment or not) to his interest in the land prior to the agreement being recorded as aforesaid, or against any person deriving title from such third party.

**F74** Words in [reg. 16\(4\)](#) substituted (1.6.2009) by [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 1, [Sch. 2 para. 46](#) (with [Sch. 5](#))

#### Commencement Information

**I12** Reg. 16 in force at 30.10.1994, see [reg. 1\(2\)](#)

### Continuation in force of existing agreement, &c.

17.—(1) [<sup>F75</sup>Any agreement previously entered into under—

(a) section 16 of the National Parks and Access to the Countryside Act 1949<sup>(12)</sup> (nature reserves),

(b) section 15 of the Countryside Act 1968<sup>(13)</sup> (areas of special scientific interest), or

(c) section 49A of the Countryside (Scotland) Act 1967<sup>(14)</sup> (management agreements),

in relation to land which on or after the commencement of these Regulations becomes land within a European site, or adjacent to such a site, shall have effect as if entered into under regulation 16 above.

Regulation 32(1)(b) (power of compulsory acquisition in case of breach of agreement) shall apply accordingly.]

(2) [<sup>F75</sup>Any other thing done or deemed to have been done under any provision of Part III or VI of the National Parks and Access to the Countryside Act 1949, or under section 49A of the Countryside (Scotland) Act 1967, in respect of any land prior to that land becoming land within a European site, or adjacent to such a site, shall continue to have effect as if done under the corresponding provision of these Regulations.]

For the purposes of this paragraph Part III of the 1949 Act shall be deemed to include section 15 of the Countryside Act 1968 and anything done or deemed to be done under that section and to which this paragraph applies shall have effect as if done or deemed to be done under section 16 of the 1949 Act.

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<sup>(11)</sup> 1925 c. 20; by virtue of section 28(1) of the Law of Property Act 1969 (c. 59) section 84 has effect as set out in Schedule 3 to that Act.

<sup>(12)</sup> 1949 c. 97; section 16 was amended by paragraph 1 of Schedule 1 to the Nature Conservancy Council Act 1973 (c. 54).

<sup>(13)</sup> 1968 c. 41; section 15 was amended by paragraph 9 of Schedule 1 to the Nature Conservancy Council Act 1973 (c. 54).

<sup>(14)</sup> 1967 c. 86; section 49A was inserted by section 9 of the Countryside (Scotland) Act 1981 (c. 44).

(3) Any reference in an outlying enactment to a nature reserve within the meaning of section 15 of the National Parks and Access to the Countryside Act 1949 shall be construed as including a European site.

For this purpose an “outlying enactment” means an enactment not contained in, or in an instrument made under, the National Parks and Access to the Countryside Act 1949 or the Wildlife and Countryside Act 1981(15).

**F75** Reg. 17(1)(2) omitted (S.) (29.11.2004) by virtue of [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), **8** (with regs. 20, 21)

**Commencement Information**

**I13** Reg. 17 in force at 30.10.1994, see [reg. 1\(2\)](#)

*[<sup>F76</sup>Control of potentially damaging operations]*

**F76** Regs. 18-22 substituted (S.) for regs. 18-22 and cross-headings (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), **9** (with regs. 20, 21)

**[<sup>F77</sup>Notification of potentially damaging operations**

**18.—(1)** Any person who intentionally or recklessly damages any natural feature by reason of which land is a European site is, subject to paragraph (2), guilty of an offence.

(2) Any person who does anything which would, but for this paragraph, amount to an offence under paragraph (1) is not guilty of the offence if it is shown that—

- (a) the act was the incidental result of a lawful operation,
- (b) the person who carried out the lawful operation—
  - (i) took reasonable precautions for the purpose of avoiding carrying out the act, or
  - (ii) did not foresee, and could not reasonably have foreseen, that the act would be an incidental result of the carrying out of the lawful operation, and
- (c) that person took such steps as were reasonably practicable in all the circumstances to minimise the damage caused.

(3) Any person guilty of an offence under paragraph (1) is liable—

- (a) on summary conviction, to a fine not exceeding level 5 on the standard scale,
- (b) on conviction on indictment, to a fine.]

**F77** Regs. 18-22 substituted (S.) for regs. 18-22 and cross-headings (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), **9** (with regs. 20, 21)

**Commencement Information**

**I14** Reg. 18 in force at 30.10.1994, see [reg. 1\(2\)](#)

### **[<sup>F77</sup>Application of Chapters 2, 3 and 4 of Part 2 of the 2004 Act**

**19.**—(1) Subject to paragraph (2) and regulations 20 to 22, the following provisions of Part 2 of the 2004 Act apply, for the purposes of these Regulations, in relation to European sites—

- (a) Chapter 2 (nature conservation orders) and schedule 2 (nature conservation orders and related orders: procedure);
- (b) Chapter 3 (land management orders) and schedule 3 (land management orders and related orders: procedure); and
- (c) in Chapter 4—
  - (i) section 39 (acquisition of land by SNH);
  - (ii) section 40 (restoration orders);
  - (iii) section 41 (signs, etc.);
  - (iv) section 43 (powers of investigation etc.: police);
  - (v) section 44 (powers of entry: authorised persons) and schedule 4 (powers of entry of authorised persons: further provision); and
  - (vi) section 46 (offences: penalties and time limits);

(2) For the purposes of these Regulations, any reference in the provisions referred to in paragraph (1)(a) to (c)—

- (a) to a “natural feature” shall be construed as if it was a reference to a “natural feature” within the meaning of regulation 2 of these Regulations;
- (b) to a “site of special scientific interest” shall be construed as if it was a reference to a European site;
- (c) to the 2004 Act or any Part thereof, shall be construed as if it was a reference to these Regulations;
- (d) to a term defined in the 2004 Act shall, unless the context otherwise requires, bear the same meaning as in that Act.]

**F77** Regs. 18-22 substituted (S.) for regs. 18-22 and cross-headings (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), 9 (with regs. 20, 21)

#### **Commencement Information**

**I15** Reg. 19 in force at 30.10.1994, see [reg. 1\(2\)](#)

### **[<sup>F77</sup>Chapter 2 of Part 2 of the 2004 Act**

**20.** The provisions of Chapter 2 of Part 2 of the 2004 Act apply for the purposes of these Regulations as if—

- (a) in section 23 (nature conservation orders)—
  - (i) [<sup>F78</sup>in subsection (2)(a) for “special interest,” there were substituted “significance in relation to the requirements of the Directives (within the meaning of regulation 2(1) of the Conservation (Natural Habitats, &c.) Regulations 1994 (S.I. 1994/2716)),”]
  - (ii) [<sup>F79</sup>in subsection (2)(b), after “an international obligation” there were inserted “and the requirements of the Directives (within the meaning of regulation 2(1) of the Conservation (Natural Habitats, &c.) Regulations 1994 (S.I. 1994/2716))”]



- (iii) in subsection (3)(b) for the words from “special interest” to “features,” there was substituted “significance in relation to the <sup>F80</sup>requirements of the Directives (within the meaning of regulation 2(1) of the Conservation (Natural Habitats, &c.) Regulations 1994 (S.I. 1994/2716))”] and
- (b) in section 27 (offences in relation to nature conservation orders) the reference to “£40,000” was a reference to “level 5 on the standard scale”.]

- F77** Regs. 18-22 substituted (S.) for regs. 18-22 and cross-headings (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), **9** (with regs. 20, 21)
- F78** Reg. 20(a)(i) substituted (31.12.2020) by [The Conservation \(Natural Habitats, &c.\) \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019 \(S.S.I. 2019/113\)](#), regs. 1, **14(2)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F79** Reg. 20(a)(ii) substituted (31.12.2020) by [The Conservation \(Natural Habitats, &c.\) \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019 \(S.S.I. 2019/113\)](#), regs. 1, **14(2)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F80** Words in reg. 20(a)(iii) substituted (31.12.2020) by [The Conservation \(Natural Habitats, &c.\) \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019 \(S.S.I. 2019/113\)](#), regs. 1, **14(2)(c)**; 2020 c. 1, Sch. 5 para. 1(1)

#### Commencement Information

- I16** Reg. 20 in force at 30.10.1994, see [reg. 1\(2\)](#)

### <sup>F77</sup>Chapter 3 of Part 2 of the 2004 Act

21. The provisions of Chapter 3 of Part 2 of the 2004 Act apply for the purposes of these Regulations as if—

- (a) any reference to a “management agreement” included a reference to a management agreement entered into under regulation 16 of these Regulations;
- (b) in section 29(2)(b) (proposals for land management orders) for “specified in an SSSI notification” there was substituted “by reason of which land is a European site”;
- (c) in section 36(3)(a) (offences in relation to land management orders) the reference to “£40,000” was a reference to “level 5 on the standard scale”.]

- F77** Regs. 18-22 substituted (S.) for regs. 18-22 and cross-headings (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), **9** (with regs. 20, 21)

#### Commencement Information

- I17** Reg. 21 in force at 30.10.1994, see [reg. 1\(2\)](#)

### <sup>F81</sup>Special nature conservation orders]

- F81** Regs. 18-22 substituted (S.) for regs. 18-22 and cross-headings (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), **9** (with regs. 20, 21)

## [<sup>F77</sup>Chapter 4 of Part 2 of the 2004 Act

**22.** The provisions of Chapter 4 of Part 2 of the 2004 Act referred to in regulation 19(1)(c) apply for the purposes of these Regulations as if—

- (a) any reference to “protected natural feature” was a reference to a natural feature—
  - (i) by reason of which the land is a European site; or
  - (ii) by reason of which a nature conservation order has effect;
- (b) in section 40 (restoration orders)—
  - (i) in subsection (1)(b), the reference to “19(3)” was omitted; and
  - (ii) in subsection (4)(a), the reference to “£40,000” was a reference to “level 5 on the standard scale”;
- (c) in section 41(1) (signs etc.) for the words from “any land” to the end there was substituted “a European site”;
- (d) in section 43 (powers of investigation etc.: police) the references to “this Part” in each place where they occur were references to regulations 18 to 22 of these Regulations; and
- (e) in section 44 (powers of entry: authorised persons)—
  - (i) in subsection (i)—
    - (a) paragraphs (a) and (j) were omitted;
    - (b) in paragraphs (c) and (d), the reference to “management agreement” included a reference to a management agreement entered into under regulation 16 of these Regulations;
    - (c) in paragraph (f), for the words from “section 19(1)” to “20” there were substituted references to regulations 18 to 22 of these Regulations;
    - (d) in paragraph (l), the reference to “section 48(10)” was a reference to regulation 108 of these Regulations; and
  - (ii) in subsection (2)(c), the reference to “section 48(10)” was a reference to regulation 108 of these Regulations.]

**F77** Regs. 18-22 substituted (S.) for regs. 18-22 and cross-headings (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), **9** (with regs. 20, 21)

### Commencement Information

**I18** Reg. 22 in force at 30.10.1994, see [reg. 1\(2\)](#)

## Restriction on carrying out operations specified in order

<sup>F82</sup>**23.** . . . . .

**F82** Regs. 23-27 revoked (S.) (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), **22(a)** (with regs. 20, 21); and Regulations revoked (E.W.) (1.4.2010 except so far as relating to the revocation in relation to W. of reg. 36 and specified words in reg. 3(3)) by [The Conservation of Habitats and Species Regulations 2010 \(S.I. 2010/490\)](#), regs. 1(2)(4)(b), **133(3)** (with regs. 125, 134)

## Supplementary provisions as to consents

### <sup>F82</sup>24. ....

**F82** Regs. 23-27 revoked (S.) (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), **22(a)** (with regs. 20, 21); and Regulations revoked (E.W.) (1.4.2010 except so far as relating to the revocation in relation to W. of reg. 36 and specified words in reg. 3(3)) by [The Conservation of Habitats and Species Regulations 2010 \(S.I. 2010/490\)](#), regs. 1(2)(4)(b), **133(3)** (with regs. 125, 134)

## Compensation for effect of notice

### <sup>F82</sup>25. ....

**F82** Regs. 23-27 revoked (S.) (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), **22(a)** (with regs. 20, 21); and Regulations revoked (E.W.) (1.4.2010 except so far as relating to the revocation in relation to W. of reg. 36 and specified words in reg. 3(3)) by [The Conservation of Habitats and Species Regulations 2010 \(S.I. 2010/490\)](#), regs. 1(2)(4)(b), **133(3)** (with regs. 125, 134)

## Restoration where order contravened

### <sup>F82</sup>26. ....

**F82** Regs. 23-27 revoked (S.) (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), **22(a)** (with regs. 20, 21); and Regulations revoked (E.W.) (1.4.2010 except so far as relating to the revocation in relation to W. of reg. 36 and specified words in reg. 3(3)) by [The Conservation of Habitats and Species Regulations 2010 \(S.I. 2010/490\)](#), regs. 1(2)(4)(b), **133(3)** (with regs. 125, 134)

## Continuation in force of existing orders, &c.

### <sup>F82</sup>27. ....

**F82** Regs. 23-27 revoked (S.) (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), **22(a)** (with regs. 20, 21); and Regulations revoked (E.W.) (1.4.2010 except so far as relating to the revocation in relation to W. of reg. 36 and specified words in reg. 3(3)) by [The Conservation of Habitats and Species Regulations 2010 \(S.I. 2010/490\)](#), regs. 1(2)(4)(b), **133(3)** (with regs. 125, 134)

## Interpretation

### <sup>F1</sup>27A. ....

## *Byelaws*

### **Power to make byelaws**

**28.**—(1) The appropriate nature conservation body may make byelaws for the protection of a European site under section 20 of the National Parks and Access to the Countryside Act 1949<sup>(16)</sup> (byelaws for protection of nature reserves).

(2) Without prejudice to the generality of paragraph (1), byelaws under that section as it applies by virtue of this regulation may make provision of any of the following kinds.

(3) They may—

- (a) provide for prohibiting or restricting the entry into, or movement within, the site of persons, vehicles, boats and animals;
- (b) prohibit or restrict the killing, taking, molesting or disturbance of living creatures of any description in the site, the taking, destruction or disturbance of eggs of any such creature, the taking of, or interference with, vegetation of any description in the site, or the doing of anything in the site which will interfere with the soil or damage any object in the site;
- (c) contain provisions prohibiting the depositing of rubbish and the leaving of litter in the site;
- (d) prohibit or restrict, or provide for prohibiting or restricting, the lighting of fires in the site or the doing of anything likely to cause a fire in the site.

(4) They may prohibit or restrict any activity referred to in paragraph (3) within such area surrounding or adjoining the site as appears to the appropriate nature conservation body requisite for the protection of the site.

(5) They may provide for the issue, on such terms and subject to such conditions as may be specified in the byelaws, of permits authorising—

- (a) entry into the site or any such surrounding or adjoining area as is mentioned in paragraph (4), or
- (b) the doing of anything within the site, or any such surrounding or adjoining area,

where such entry, or doing that thing, would otherwise be unlawful under the byelaws.

(6) They may be made so as to relate either to the whole or to any part of the site, or of any such surrounding or adjoining area as is mentioned in paragraph (4), and may make different provision for different parts thereof.

(7) This regulation does not apply in relation to a European marine site (but see regulation 36).

#### **Commencement Information**

**I19** Reg. 28 in force at 30.10.1994, see [reg. 1\(2\)](#)

### **Byelaws: limitation on effect**

**29.** Byelaws under section 20 of the National Parks and Access to the Countryside Act 1949 as it applies by virtue of regulation 28 shall not interfere with—

- (a) the exercise by any person of a right vested in him as owner, lessee or occupier of land in the European site, or in any such surrounding or adjoining area as is mentioned in paragraph (4) of that regulation;

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<sup>(16)</sup> 1949 c. 97; section 20 was amended by paragraph 1 of Schedule 1 to the Nature Conservancy Council Act 1973 (c. 54), paragraph 28(1) of Schedule 4 to the Telecommunications Act 1984 (c. 12) and paragraph 13(1) of Schedule 25 to the Water Act 1989 (c. 15).

- (b) the exercise of any public right of way;
- (c) the exercise of any functions of statutory undertakers;
- (d) the exercise of any functions of an internal drainage board, a district salmon fishery board or the Commissioners appointed under the Tweed Fisheries Act 1969(17); or
- [<sup>F83</sup>(e) the provision of an electronic communications code network or the exercise of any right conferred by or in accordance with the electronic communications code on the provider of any such network.]

**F83** Reg. 29(e) substituted (17.9.2003) by [The Communications Act 2003 \(Consequential Amendments\) Order 2003 \(S.I. 2003/2155\)](#), art. 1(1), **Sch. 1 para. 36**

**Commencement Information**

**I20** Reg. 29 in force at 30.10.1994, see [reg. 1\(2\)](#)

**Compensation for effect of byelaws**

**30.** Where the exercise of any right vested in a person, whether by reason of his being entitled to any interest in land or by virtue of a licence or agreement, is prevented or hindered by the coming into operation of byelaws under section 20 of the National Parks and Access to the Countryside Act 1949 as it applies by virtue of regulation 28, he shall be entitled to receive from the appropriate nature conservation body compensation in respect thereof.

**Commencement Information**

**I21** Reg. 30 in force at 30.10.1994, see [reg. 1\(2\)](#)

**Continuation in force of existing byelaws**

**31.** Any byelaws in force under section 20 of the National Parks and Access to the Countryside Act 1949 in relation to land which on or after the commencement of these Regulations becomes land within a European site, or adjacent to such a site, shall have effect as if made under the said section 20 as it applies by virtue of regulation 28 and shall be construed as if originally so made.

**Commencement Information**

**I22** Reg. 31 in force at 30.10.1994, see [reg. 1\(2\)](#)

*Powers of compulsory acquisition*

**Powers of compulsory acquisition**

<sup>F84</sup>**32.** . . . . .

**F84** Reg. 32 revoked (S.) (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), [regs. 1\(1\), 22\(b\)](#) (with [regs. 20, 21](#)); and Regulations revoked (E.W.) (1.4.2010 except so far as relating to the revocation in relation to W. of [reg. 36](#) and

specified words in reg. 3(3) by [The Conservation of Habitats and Species Regulations 2010 \(S.I. 2010/490\)](#), regs. 1(2)(4)(b), **133(3)** (with regs. 125, 134)

### *Special provisions as to European marine sites*

#### **Marking of site and advice by nature conservation bodies**

**33.**—(1) The appropriate nature conservation body may [<sup>F85</sup>deposit or remove] markers indicating the existence and extent of a European marine site.

This power is exercisable subject to the obtaining of any necessary [<sup>F86</sup>marine licence under Part 4 of the Marine (Scotland) Act 2010].

(2) As soon as possible after a site becomes a European marine site, the appropriate nature conservation body shall advise other relevant authorities as to—

- (a) the conservation objectives for that site, and
- (b) any operations which may cause deterioration of natural habitats or the habitats of species, or disturbance of species, for which the site has been designated.

**F85** Words in [reg. 33\(1\)](#) substituted (6.4.2011) by [The Marine \(Scotland\) Act 2010 \(Transitional and Consequential Provisions\) Order 2011 \(S.S.I. 2011/202\)](#), arts. 1, **11(a)**

**F86** Words in [reg. 33\(1\)](#) substituted (6.4.2011) by [The Marine \(Scotland\) Act 2010 \(Transitional and Consequential Provisions\) Order 2011 \(S.S.I. 2011/202\)](#), arts. 1, **11(b)**

#### **Commencement Information**

**I23** Reg. 33 in force at 30.10.1994, see [reg. 1\(2\)](#)

#### **Management scheme for European marine site**

**34.**—(1) The relevant authorities, or any of them, may establish for a European marine site a management scheme under which their functions (including any power to make byelaws) shall be exercised so as to secure in relation to that site compliance with the requirements of the Habitats Directive.

(2) Only one management scheme may be made for each European marine site.

(3) A management scheme may be amended from time to time.

(4) As soon as a management scheme has been established, or is amended, a copy of it shall be sent by the relevant authority or authorities concerned to the appropriate nature conservation body.

#### **Commencement Information**

**I24** Reg. 34 in force at 30.10.1994, see [reg. 1\(2\)](#)

#### **Direction to establish or amend management scheme**

**35.**—(1) The relevant Minister may give directions to the relevant authorities, or any of them, as to the establishment of a management scheme for a European marine site.

(2) Directions may, in particular—

- (a) require conservation measures specified in the direction to be included in the scheme;
- (b) appoint one of the relevant authorities to co-ordinate the establishment of the scheme;

- (c) set time limits within which any steps are to be taken;
- (d) provide that the approval of the Minister is required before the scheme is established; and
- (e) require any relevant authority to supply to the Minister such information concerning the establishment of the scheme as may be specified in the direction.

(3) The relevant Minister may give directions to the relevant authorities, or any of them, as to the amendment of a management scheme for a European marine site, either generally or in any particular respect.

(4) Any direction under this regulation shall be in writing and may be varied or revoked by a further direction.

(5) In this regulation “the relevant Minister” means, in relation to a site in England, the Secretary of State and the Minister of Agriculture, Fisheries and Food acting jointly and in any other case the Secretary of State.

**Commencement Information**

**I25** Reg. 35 in force at 30.10.1994, see [reg. 1\(2\)](#)

**Byelaws for protection of European marine site**

**36.**—(1) The appropriate nature conservation body may make byelaws for the protection of a European marine site under section 37 of the Wildlife and Countryside Act 1981 (byelaws for protection of marine nature reserves).

(2) The provisions of subsections (2) to (11) of that section apply in relation to byelaws made by virtue of this regulation with the substitution for the references to marine nature reserves of references to European marine sites.

(3) Nothing in byelaws made by virtue of this regulation shall interfere with the exercise of any functions of a relevant authority, any functions conferred by or under an enactment (whenever passed) or any right of any person (whenever vested).

**Commencement Information**

**I26** Reg. 36 in force at 30.10.1994, see [reg. 1\(2\)](#)

*Miscellaneous*

**Nature conservation policy in planning contexts**

**37.**—(1) For the purposes of [<sup>F87</sup>section 15(1)(a) of the Town and Country Planning (Scotland) Act 1997, the reference to policies as to the development and use of land] shall be taken to include policies encouraging the management of features of the landscape which are of major importance for wild flora and fauna.

Such features are those which, by virtue of their linear and continuous structure (such as rivers with their banks or the traditional systems of marking field boundaries) or their function as stepping stones (such as ponds or small woods), are essential for the migration, dispersal and genetic exchange of wild species.

<sup>F88</sup>(2) .....

<sup>F89</sup>(3) .....

- F87** Words in reg. 37(1) substituted (16.8.2012) by The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2012 (S.S.I. 2012/228), regs. 1(1), **5(a)** (with reg. 5(2))
- F88** Reg. 37(2) omitted (16.8.2012) by virtue of The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2012 (S.S.I. 2012/228), regs. 1(1), **5(b)** (with reg. 5(2))
- F89** Reg. 37(3) revoked (1.4.2010) by The Conservation of Habitats and Species Regulations 2010 (S.I. 2010/490), regs. 1(2), **133(2)(a)** (with regs. 125, 134)

#### Commencement Information

- I27** Reg. 37 in force at 30.10.1994, see **reg. 1(2)**

### [<sup>F90</sup>Surveillance of conservation status of habitats and species

**37A.**—(1) The Scottish Ministers shall make arrangements [<sup>F91</sup>in accordance with paragraphs (5) to (7)] for the carrying out of surveillance of the conservation status of natural habitats of [<sup>F92</sup>national] interest and species of [<sup>F92</sup>national] interest, and in particular priority natural habitat types and priority species.

(2) Where, in the case of any species of wild fauna and flora listed in Annex V to the Habitats Directive, the Scottish Ministers consider that the results of surveillance under paragraph (1) makes it necessary to do so, they shall make arrangements for ensuring that the taking in the wild of specimens of such species, and their exploitation, is compatible with their being maintained at favourable conservation status.

(3) The arrangements to be made under paragraph (2) shall include arrangements for the carrying out of surveillance of the conservation status of the species in question, for the purpose of establishing whether the taking in the wild of specimens of such species, and their exploitation, is compatible with their being maintained at favourable conservation status.

(4) The Scottish Ministers shall, from time to time, review the arrangements they have made under paragraphs (1), (2) or (3) and if they think it appropriate, revise those arrangements.

[<sup>F93</sup>(5) The arrangements made by the Scottish Ministers under paragraph (1) shall ensure that Scottish Natural Heritage implements a strategy for the surveillance of the conservation status of relevant habitats and species in Scotland.

(6) In implementing that strategy Scottish Natural Heritage shall—

- (a) assess how and to what extent surveillance of the conservation status of relevant habitats and species needs to be carried out, having regard to—
  - (i) whether a habitat or species is a priority natural habitat type or a priority species; and
  - (ii) the conservation status of the habitat or species; and
- (b) ensure that surveillance is carried out on an ongoing basis.

(7) Surveillance for the purposes of this regulation may be carried out by—

- (a) Scottish Natural Heritage; or
- (b) any other body or person pursuant to an agreement with Scottish Natural Heritage, provided that Scottish Natural Heritage is satisfied as to the standards and methods of surveillance used by that body or person.

(8) In paragraphs (5) and (6) a relevant habitat or species means a habitat or species of a type referred to in paragraph (1).]]

[<sup>F94</sup>(9) In this regulation—



“natural habitats of national interest” means natural habitat types listed in Annex I to the Habitats Directive;

“species of national interest” means species of wild fauna and flora listed in Annex II, IV or V to the Habitats Directive.]

- F90** Reg. 37A inserted (S.) (15.2.2007) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2007 \(S.S.I. 2007/80\)](#), regs. 2, **9**
- F91** Words in [reg. 37A\(1\)](#) inserted (26.1.2009) by [The Conservation \(Natural Habitats, &c.\) Amendment \(No. 2\) \(Scotland\) Regulations 2008 \(S.S.I. 2008/425\)](#), regs. 1(1), **3(a)**
- F92** Word in [reg. 37A\(1\)](#) substituted (31.12.2020) by [The Conservation \(Natural Habitats, &c.\) \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019 \(S.S.I. 2019/113\)](#), regs. 1, **15(2)**; 2020 c. 1, Sch. 5 para. 1(1)
- F93** [Reg. 37A\(5\)-\(8\)](#) inserted (26.1.2009) by [The Conservation \(Natural Habitats, &c.\) Amendment \(No. 2\) \(Scotland\) Regulations 2008 \(S.S.I. 2008/425\)](#), regs. 1(1), **3(b)**
- F94** [Reg. 37A\(9\)](#) inserted (31.12.2020) by [The Conservation \(Natural Habitats, &c.\) \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019 \(S.S.I. 2019/113\)](#), regs. 1, **15(3)**; 2020 c. 1, Sch. 5 para. 1(1)

#### **Protection of certain animals and plants from exploitation**

<sup>F1</sup>**37B.** .....

#### **Introduction of new species from ships**

<sup>F1</sup>**37C.** .....

#### **Licensing the introduction of new species**

<sup>F1</sup>**37D.** .....

#### **False statements made for obtaining a licence under regulation 37D**

<sup>F1</sup>**37E.** .....

## PART III

### PROTECTION OF SPECIES

#### *Protection of animals*

#### **European protected species of animals**

**38.** The species of animals listed in Annex IV(a) to the Habitats Directive whose natural range includes any area in Great Britain are listed in Schedule 2 to these Regulations.

References in these Regulations to a “European protected species” of animal are to any of those species.

#### **Commencement Information**

**I28** Reg. 38 in force at 30.10.1994, see [reg. 1\(2\)](#)

**[<sup>F95</sup>Protection of wild animals of European protected species**

**39.**—(1) It is an offence—

- (a) deliberately or recklessly to capture, injure or kill a wild animal of a European protected species;
- (b) deliberately or recklessly—
  - (i) to harass a wild animal or group of wild animals of a European protected species;
  - (ii) to disturb such an animal while it is occupying a structure or place which it uses for shelter or protection;
  - (iii) to disturb such an animal while it is rearing or otherwise caring for its young;
  - (iv) to obstruct access to a breeding site or resting place of such an animal, or otherwise to deny the animal use of the breeding site or resting place;
  - (v) to disturb such an animal in a manner that is, or in circumstances which are, likely to significantly affect the local distribution or abundance of the species to which it belongs; <sup>F96</sup> ...
  - (vi) to disturb such an animal in a manner that is, or in circumstances which are, likely to impair its ability to survive, breed or reproduce, or rear or otherwise care for its young; [<sup>F97</sup> or
  - (vii) to disturb such an animal while it is migrating or hibernating;]
- (c) deliberately or recklessly to take or destroy the eggs of such an animal; or
- (d) to damage or destroy a breeding site or resting place of such an animal.

(2) Subject to the provisions of this Part, it is an offence to deliberately or recklessly disturb any dolphin, porpoise or whale (cetacean).

(3) It is an offence for any person—

- (a) on or after 1st May 2007 to possess or control;
- (b) on or after 1st May 2007 to transport;
- (c) to sell or exchange; or
- (d) to offer for sale or exchange,

anything to which paragraph (4) applies.

(4) This paragraph applies to—

- (a) any live or dead animal or part of an animal—
  - (i) which has been taken from the wild; and
  - (ii) which is of a species or subspecies listed in Annex IV(a) to the Habitats Directive; and
- (b) anything derived from, such an animal or part of such an animal.

(5) The offences in paragraph (1), (2) and (3) apply to all stages of the life of the animals to which they apply.

(6) Subject to paragraph (7), a person shall not be guilty of an offence under paragraph (3) if that person shows that the animal, or part of the animal in question, or the animal or part of the animal from which the thing in question is derived, was lawfully taken from the wild.

(7) The defence under paragraph (6) does not apply—

- (a) in respect of the offences in paragraph (3)(a) or (b) if—
  - (i) the animal in question is an animal of a European protected species, or the part or thing in question is derived from such an animal; and

- (ii) the animal, part or thing in question was in the defender's possession, or transported by the defender, for the purpose of sale or exchange;
  - (b) in respect of the offences in paragraph (3)(c) or (d), if the animal is an animal of a European protected species, or the part or thing in question is derived from such an animal.
- (8) For the purposes of paragraph (6) an animal, or part of an animal, shall be treated as having been lawfully taken from the wild if—
  - [<sup>F98</sup>(aa) it was taken from the wild in the United Kingdom, without contravention of the law and before 10th June 1994;]
  - (a) it was taken from the wild in the European territory of a member State to which the Habitats Directive applies without contravention of the law of that member State and before the implementation date; or
  - (b) it was taken from the wild elsewhere without contravention of the law of the country or territory from where it was taken.
- (9) A person shall not be guilty of an offence under paragraph (3) if that person shows that the animal, or the animal from which the part or thing in question is derived—
  - (a) is of a species listed in the second column of the table in Schedule 2A and was from a population occurring in a country or area which is specified in respect of that species in the third column of that Schedule;
  - (b) is of the species *Capra aegagrus* and was not from a naturally occurring population;
  - (c) is of the species *Ovis gmelini musimon* and was not from a naturally occurring population in Corsica or Sardinia; or
  - (d) is of the species *Coregonus oxyrinchus* and either was from Finland or was not from an anadromous population.
- (10) Subject to the provisions of this Part, it is an offence to knowingly cause or permit to be done an act which is made unlawful by any of the provisions of this regulation.
- (11) Unless the contrary is shown, in any proceedings—
  - (a) for an offence under paragraph (1) or (2), the animal in question shall be presumed to have been a wild animal; and
  - (b) for an offence under paragraph (3) (as the case may be)—
    - (i) the animal or part of the animal in question shall be presumed to have been taken from the wild; or
    - (ii) the part or thing in question shall be presumed to be from an animal or part of an animal taken from the wild.
- (12) [<sup>F99</sup>A person guilty of an offence under this regulation is liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding £40,000 (or both),
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine (or both).]
- <sup>F100</sup>(13) . . . . .
- (14) In this regulation—
  - “the implementation date” means—
    - (a) where the relevant State became a member State before 10th June 1994, 10th June 1994; and
    - (b) in any other case, the date on which the relevant State became a member State; and

“relevant State” means the State in whose territory the animal, or part of it, was taken from the wild.]

- F95** Reg. 39 substituted (S.) (15.2.2007) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2007 \(S.S.I. 2007/80\)](#), regs. 2, **10** (with reg. 31)
- F96** Word in reg. 39(1)(b)(v) omitted (26.1.2009) by virtue of [The Conservation \(Natural Habitats, &c.\) Amendment \(No. 2\) \(Scotland\) Regulations 2008 \(S.S.I. 2008/425\)](#), regs. 1(1), **4(a)**
- F97** Reg. 39(1)(b)(vii) and word inserted (26.1.2009) by [The Conservation \(Natural Habitats, &c.\) Amendment \(No. 2\) \(Scotland\) Regulations 2008 \(S.S.I. 2008/425\)](#), regs. 1(1), **4(b)**
- F98** Reg. 39(8)(aa) inserted (31.12.2020) by [The Conservation \(Natural Habitats, &c.\) \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019 \(S.S.I. 2019/113\)](#), regs. 1, **16**; 2020 c. 1, Sch. 5 para. 1(1)
- F99** Reg. 39(12) substituted (30.11.2020) by [Animals and Wildlife \(Penalties, Protections and Powers\) \(Scotland\) Act 2020 \(asp 14\)](#), ss. **9(2)**, 22(2); S.S.I. 2020/379, reg. 2(1), sch. (with reg. 3)
- F100** Reg. 39(13) omitted (25.2.2008) by virtue of [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2008 \(S.S.I. 2008/17\)](#), regs. 1(1), **2(3)**

#### [<sup>F101</sup> Exceptions from regulation 39

**40.**—(1) A person shall not be guilty of an offence under regulation 39(1)(a) or (b), (2), or (3) (a) or (b), if that person shows that what was done—

- (a) was in relation to an animal that had been seriously disabled otherwise than by that person's unlawful act and there was no reasonable chance of its recovering; and
- (b) was done solely for one or more of the purposes of—
  - (i) ending the animal's life in a humane manner; or
  - (ii) where the animal's life had been so ended, disposing of it (otherwise than by sale or exchange) as soon as practicable after it was dead.

(2) A person shall not be guilty of the offence under regulation 39(1)(a) of deliberately or recklessly capturing a wild animal of a European protected species, or an offence under regulation 39(3)(a) or (b), if that person shows that what was done—

- (a) was in relation to an animal that had been disabled otherwise than by that person's unlawful act; and
- (b) was done solely for one or more of the purposes of—
  - (i) tending it and releasing it when no longer disabled; or
  - (ii) releasing it after it had been tended,

and was done in a manner or in circumstances unlikely to cause the animal unnecessary suffering.

(3) A person shall not be guilty of an offence by reason of any act made unlawful by regulation 39 if that person shows that the act was carried out in relation to an animal bred and, at the time the act was carried out, lawfully held in captivity.

[<sup>F102</sup>(4) The exceptions to regulation 39 in paragraphs (1) and (2) shall not apply where it is shown that—

- (a) there was a satisfactory alternative to what was done; or
- (b) what was done was detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range.]]

- F101** Reg. 40 substituted (S.) (15.2.2007) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2007 \(S.S.I. 2007/80\)](#), regs. 2, **11**

**F102** Reg. 40(4) inserted (26.1.2009) by [The Conservation \(Natural Habitats, &c.\) Amendment \(No. 2\) \(Scotland\) Regulations 2008 \(S.S.I. 2008/425\)](#), regs. 1(1), 5

### Prohibition of certain methods of taking or killing wild animals

- 41.**—(1) This regulation applies in relation to the taking or killing of a wild animal—
- (a) of any of the species listed in Schedule 3 to these Regulations (which shows the species listed in Annex V(a) to the Habitats Directive, and to which Article 15 applies, whose natural range includes any area of Great Britain), or
  - (b) of a European protected species, where the taking or killing of such animals is permitted in accordance with these Regulations.
- (2) It is an offence to use for the purpose of taking or killing any such wild animal—
- [<sup>F103</sup>(a) any means listed in paragraphs 1 or 2 of Schedule 3A;
  - (b) any form of taking or killing from the modes of transport listed in paragraph 3 of Schedule 3A; or]
  - (c) any other means of taking or killing which is indiscriminate and capable of causing the local disappearance of, or serious disturbance to, a population of any species of animal listed in Schedule 3 to these Regulations or any European protected species of animal.
- <sup>F104</sup>(3) .....
- <sup>F104</sup>(4) .....
- <sup>F104</sup>(5) .....
- [<sup>F105</sup>(6) A person guilty of an offence under this regulation is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding £40,000 (or both),
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine (or both).]

**F103** Reg. 41(2)(a)(b) substituted (31.12.2020) by [The Conservation \(Natural Habitats, &c.\) \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019 \(S.S.I. 2019/113\)](#), regs. 1, **17(2)**; 2020 c. 1, Sch. 5 para. 1(1)

**F104** Reg. 41(3)-(5) omitted (31.12.2020) by virtue of [The Conservation \(Natural Habitats, &c.\) \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019 \(S.S.I. 2019/113\)](#), regs. 1, **17(3)**; 2020 c. 1, Sch. 5 para. 1(1)

**F105** Reg. 41(6) substituted (30.11.2020) by [Animals and Wildlife \(Penalties, Protections and Powers\) \(Scotland\) Act 2020 \(asp 14\)](#), ss. **9(3)**, 22(2); S.S.I. 2020/379, reg. 2(1), sch. (with reg. 3)

### Commencement Information

**I29** Reg. 41 in force at 30.10.1994, see [reg. 1\(2\)](#)

### [<sup>F106</sup>Monitoring incidental capture and killing

**41A.**—(1) Scottish Natural Heritage must make arrangements in accordance with paragraphs (2) to (5) for monitoring the incidental capture or killing (a “monitoring system”) of animals of the species listed in Annex IV(a) to the Habitats Directive.

(2) Scottish Natural Heritage must, from time to time, review the monitoring system and, if they think it appropriate, revise it.

(3) In light of the information gathered from the monitoring system, Scottish Natural Heritage must—

- (a) make arrangements for the carrying out of such research, or
- (b) where appropriate, advise the Scottish Ministers on such conservation measures

as appears or appear to Scottish Natural Heritage to be necessary to ensure that such incidental capture or killing does not have a significant negative impact on the species in question.

(4) In implementing that monitoring system Scottish Natural Heritage must, in relation to the species of animal listed in Annex IV(a) to the Habitats Directive which are found in Scotland—

- (a) identify the risks of incidental capture or killing to which those species are subject, and the activities which give rise to such risks;
- (b) maintain a record of instances of incidental capture or killing of animals of those species of which Scottish Natural Heritage is aware as a result of the surveillance carried out under regulation 37A, the monitoring carried out under this regulation, or otherwise;
- (c) assess to what extent monitoring of incidental capture or killing is needed, having regard to—
  - (i) the risks identified under sub-paragraph (a);
  - (ii) the instances of incidental capture or killing recorded under sub-paragraph (b);
  - (iii) whether the species is a priority species; and
  - (iv) the conservation status of the species; and
- (d) ensure that monitoring of incidental capture or killing is carried out.

(5) Monitoring for the purposes of this regulation may be carried out by—

- (a) Scottish Natural Heritage; or
- (b) any other body or person—
  - (i) pursuant to an agreement with Scottish Natural Heritage, provided that Scottish Natural Heritage is satisfied as to the standards and methods of monitoring used by that body or person; or
  - (ii) as a condition of a licence or other authorisation granted by a competent authority.

(6) The Scottish Ministers may, from time to time, give directions to Scottish Natural Heritage as to the exercise of its functions under paragraphs (1) to (5).]

**F106** Reg. 41A substituted (26.1.2009) by [The Conservation \(Natural Habitats, &c.\) Amendment \(No. 2\) \(Scotland\) Regulations 2008 \(S.S.I. 2008/425\)](#), regs. 1(1), 6

**Protection from incidental capture and killing**

<sup>F1</sup>**41B.** .....

*Protection of plants*

**European protected species of plants**

**42.** The species of plants listed in Annex IV(b) to the Habitats Directive whose natural range includes any area in Great Britain are listed in Schedule 4 to these Regulations.

References in these Regulations to a “European protected species” of plant are to any of those species.

### Commencement Information

**I30** Reg. 42 in force at 30.10.1994, see [reg. 1\(2\)](#)

### [<sup>F107</sup> Protection of certain wild plants

**43.**—(1) It is an offence deliberately or recklessly to pick, collect, cut, uproot or destroy a wild plant of a European protected species.

(2) It is an offence for any person—

- (a) on or after 1st May 2007 to possess or control;
- (b) on or after 1st May 2007 to transport;
- (c) to sell or exchange; or
- (d) to offer for sale or exchange,

anything to which paragraph (3) applies.

(3) This paragraph applies to—

- (a) any live or dead plant, or part of a plant—
  - (i) which has been taken in the wild; and
  - (ii) which is of a species or subspecies listed in Annex II(b) (other than any bryophyte) or IV(b) to the Habitats Directive; and
- (b) anything derived from such a plant or part of such a plant.

(4) The offences in paragraphs (1) and (2) apply to all stages of the biological cycle of the plants to which they apply.

(5) Subject to paragraph (6), a person shall not be guilty of an offence under paragraph (2) if that person shows that the plant or part of the plant in question, or the plant or part of the plant from which the thing in question is derived, was lawfully taken in the wild.

(6) The defence under paragraph (5) does not apply—

- (a) in the case of the offences in paragraph (2)(a) or (b) if—
  - (i) the plant in question is a plant of a European protected species, or the part or thing in question is derived from such a plant; and
  - (ii) the plant, part or thing in question was in the defender's possession or control, or transported by the defender, for the purpose of sale or exchange;
- (b) in the case of the offences in paragraph (2)(c) or (d) if the plant in question is a plant of a European protected species, or the part or thing in question is derived from such a plant.

(7) For the purposes of paragraph (5) a plant, or part of a plant, shall be treated as having been lawfully taken in the wild if—

[<sup>F108</sup>(aa) it was taken from the wild in the United Kingdom, without contravention of the law and before 10th June 1994;]

- (a) it was taken in the wild in the European territory of a member State to which the Habitats Directive applies without contravention of the law of that member State and before the implementation date; or
- (b) it was taken in the wild elsewhere without contravention of the law of the country or territory in which it was taken.

(8) Subject to the provisions of this Part, any person who knowingly causes or permits to be done an act which is made unlawful by any of the provisions of this regulation shall be guilty of an offence.

- (9) Unless the contrary is shown, in any proceedings—
- (a) for an offence under paragraph (1), the plant in question shall be presumed to have been a wild plant; and
  - (b) for an offence under paragraph (2) (as the case may be)—
    - (i) the plant or part of the plant in question shall be presumed to have been taken in the wild; or
    - (ii) the part or thing in question shall be presumed to be from a plant or part of a plant taken in the wild.

(10) A person guilty of an offence under this regulation is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale, or to both.

(11) In this regulation—

“the implementation date” means—

- (a) where the relevant State became a member State before 10th June 1994, 10th June 1994; and
- (b) in any other case, the date on which the relevant State became a member State; and

“relevant State” means the State in whose territory the plant, or part of it, was taken in the wild.]

**F107** Reg. 43 substituted (S.) (15.2.2007) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2007 \(S.S.I. 2007/80\)](#), regs. 2, **14** (with reg. 31)

**F108** Reg. 43(7)(aa) inserted (31.12.2020) by [The Conservation \(Natural Habitats, &c.\) \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019 \(S.S.I. 2019/113\)](#), regs. 1, **18**; 2020 c. 1, Sch. 5 para. 1(1)

### *Power to grant licences*

#### **Grant of licences for certain purposes**

**44.**—(1) Regulations 39, 41 and 43 do not apply to anything done for any of the following purposes under and in accordance with the terms of a licence granted by the appropriate authority.

(2) The purposes referred to in paragraph (1) are—

- (a) scientific [<sup>F109</sup>, research] or educational purposes;
- (b) ringing or marking, or examining any ring or mark on, wild animals;
- (c) conserving wild animals [<sup>F110</sup>, including wild birds,] or wild plants or introducing them to particular areas;
- [<sup>F111</sup>(ca) conserving natural habitats;]
- (d) protecting any zoological or botanical collection;
- (e) preserving public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment;
- (f) preventing the spread of disease; or
- (g) preventing serious damage to livestock, foodstuffs for livestock, crops, vegetables, fruit, growing timber or any other form of property or to fisheries.



[<sup>F112</sup>(2A) Subject to paragraph (2B), the appropriate authority may grant a licence to permit the taking or the possession or control of certain specimens of any of the species listed in Annex IV to the Habitats Directive notwithstanding that the licence is for a purpose not falling within paragraph (2).

(2B) The appropriate authority shall only grant a licence under paragraph (2A) where it is satisfied that the grant of the licence would be compatible with the restrictions in Article 16(1)(e) of the Habitats Directive.

(2C) Regulations 39, 41 and 43 do not apply to anything done under and in accordance with the terms of a licence granted by the appropriate authority under paragraph (2A).]

(3) The appropriate authority shall not grant a licence under this regulation unless they are satisfied—

- (a) that there is no satisfactory alternative, and
- (b) that the action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range.

(4) For the purposes of this regulation “the appropriate authority” means—

- (a) in the case of a licence under any of sub-paragraphs (a) to (d) of paragraph (2), the appropriate nature conservation body; and

[<sup>F113</sup>(b) in the case of any other licence granted under this regulation, the Scottish Ministers.]

[<sup>F114</sup>(5) The Scottish Ministers shall from time to time consult with the nature conservation bodies as to the exercise of the Scottish Ministers' functions under this regulation; and they shall not grant a licence of any description unless they have been advised by the appropriate nature conservation body as to the circumstances in which, in the opinion of the appropriate nature conservation body, licences of that description should be granted.]

**F109** Word in reg. 44(2)(a) inserted (S.) (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), **14(a)** (with regs. 20, 21)

**F110** Words in reg. 44(2)(c) inserted (S.) (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), **14(b)** (with regs. 20, 21)

**F111** Reg. 44(2)(ca) inserted (S.) (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), **14(c)** (with regs. 20, 21)

**F112** Reg. 44(2A)-(2C) inserted (S.) (15.2.2007) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2007 \(S.S.I. 2007/80\)](#), regs. 2, **15(a)**

**F113** Reg. 44(4)(b) substituted (S.) (15.2.2007) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2007 \(S.S.I. 2007/80\)](#), regs. 2, **15(b)**

**F114** Reg. 44(5) substituted (S.) (15.2.2007) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2007 \(S.S.I. 2007/80\)](#), regs. 2, **15(c)**

#### Commencement Information

**I31** Reg. 44 in force at 30.10.1994, see [reg. 1\(2\)](#)

#### [<sup>F115</sup>Delegation of licence granting power: Scotland

**44A.**—(1) The Scottish Ministers may delegate their functions in relation to licences under regulation 44 to the appropriate nature conservation body.

- (2) A delegation may be, to any degree, general or specific and may in particular relate to—
- (a) a particular type of animal or plant,
  - (b) a particular licence or type of licence, or
  - (c) a particular area.

(3) Unless it specifies otherwise, a delegation relating to a particular licence (or type of licence) includes the power to modify or revoke the licence (or licences of that type) where granted before the delegation.

(4) A delegation is to be made by written direction.

(5) The Scottish Ministers may modify or revoke a direction under paragraph (4).

(6) The requirement on the Scottish Ministers under regulation 44(5) to take advice from the appropriate nature conservation body does not apply in the period when a direction under paragraph (4) has effect, in respect of any licence granted under the direction.

(7) Where a direction is revoked, any existing licence granted under the direction continues to have effect (unless the revoking direction provides otherwise).]

**F115** Reg. 44A inserted (6.4.2011) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2011 \(S.S.I. 2011/155\)](#), regs. 1(1), 6

### Licences: supplementary provisions

**45.**—(1) [<sup>F116</sup>Subject to the provisions of this regulation,] A licence under regulation 44—

- (a) may be, to any degree, general or specific;
- (b) may be granted either to persons of a class or to a particular person; and
- (c) may be subject to compliance with any specified conditions.

(2) For the purposes of a licence under regulation 44 the definition of a class of persons may be framed by reference to any circumstances whatever including, in particular, their being authorised by any other person.

(3) A licence under regulation 44 may be modified or revoked at any time by the appropriate authority; but otherwise shall be valid for the period stated in the licence.

(4) A licence under regulation 44 which authorises any person to kill wild animals shall specify the area within which and the methods by which the wild animals may be killed and shall not be granted for a period of more than two years.

[<sup>F117</sup>(4A) A licence granted under regulation 44(2A) shall specify—

- (a) the species of animal or plant the specimens of which the person authorised by the licence may take or possess or control;
- (b) the maximum number of specimens which the person authorised by the licence may take or possess or control, or which particular specimens that person may take or possess or control; and
- (c) the conditions subject to which the action authorised by the licence may be taken and in particular—
  - (i) the methods, means or arrangements by which specimens may be taken or be in the possession or control of the person authorised by the licence;
  - (ii) when or over what period the action authorised by the licence may be taken; and
  - (iii) where it authorises any person to take specimens, the area from which they may be taken.]

(5) It shall be a defence in proceedings for an offence under section 8(b) of the Protection of Animals Act 1911<sup>(18)</sup> or section 7(b) of the Protection of Animals (Scotland) Act 1912<sup>(19)</sup> (which restrict the placing on land of poison and poisonous substances) to show that—

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<sup>(18)</sup> 1911 c. 27; section 8 was amended by section 1 of the Protection of Animals (Amendment) Act 1927 (c. 27).

- (a) the act alleged to constitute the offence was done under and in accordance with the terms of a licence under regulation 44, and
  - (b) any conditions specified in the licence were complied with.
- (6) The appropriate authority may charge for a licence under regulation 44 such reasonable sum (if any) as they may determine.

[<sup>F118</sup>(7) Within two years from exit day, and thereafter within two years of the publication of the last such report, the Scottish Ministers must publish, in such form as they see fit, a report on licences granted under regulation 44 in the preceding two years.

- (8) The reports made under paragraph (7) must specify—
- (a) the species which are subject to the licence and the reason for granting it, including the nature of the risk, with, if appropriate, a reference to alternatives rejected and scientific data used;
  - (b) in relation to any animal species, any means authorised for the capture or killing of the species and the reasons for the use of that means;
  - (c) when and where the licence was granted; and
  - (d) the supervisory measures taken to check that the required conditions of the licence have been complied with, any monitoring that has been carried out of compliance with the conditions of the licence, and the results of that monitoring.]

**F116** Words in reg. 45(1) inserted (S.) (15.2.2007) by The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2007 (S.S.I. 2007/80), regs. 2, **16(a)**

**F117** Reg. 45(4A) inserted (S.) (15.2.2007) by The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2007 (S.S.I. 2007/80), regs. 2, **16(b)**

**F118** Reg. 45(7)(8) inserted (31.12.2020) by The Conservation (Natural Habitats, &c.) (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/113), regs. 1, **19**; 2020 c. 1, Sch. 5 para. 1(1)

#### Commencement Information

**I32** Reg. 45 in force at 30.10.1994, see **reg. 1(2)**

#### False statements made for obtaining licence

**46.**—(1) A person commits an offence who, for the purposes of obtaining, whether for himself or another, the grant of a licence under regulation 44—

- (a) makes a statement or representation, or furnishes a document or information, which he knows to be false in a material particular, or
- (b) recklessly makes a statement or representation, or furnishes a document or information, which is false in a material particular.

(2) A person guilty of an offence under this regulation is liable on summary conviction [<sup>F119</sup>to imprisonment for a term not exceeding six months or] to a fine not exceeding level [<sup>F120</sup>5] on the standard scale [<sup>F121</sup>, or to both].

**F119** Words in reg. 46(2) inserted (S.) (29.11.2004) by The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2004 (S.S.I. 2004/475), regs. 1(1), **15(a)** (with regs. 20, 21)

**F120** Word in reg. 46(2) substituted (S.) (29.11.2004) by The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2004 (S.S.I. 2004/475), regs. 1(1), **15(b)** (with regs. 20, 21)

**F121** Words in [reg. 46\(2\)](#) inserted (S.) (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), **15(c)** (with regs. 20, 21)

**Commencement Information**

**I33** Reg. 46 in force at 30.10.1994, see [reg. 1\(2\)](#)

**[<sup>F122</sup>Offence of breaching licence condition**

**46A.**—(1) It is an offence for any person authorised by virtue of a licence granted under regulation 44 on or after 15th May 2007 to contravene, or fail to comply with, any condition imposed on the grant of a licence.

(2) A person shall not be guilty of an offence under paragraph (1) if that person shows that—

- (a) that person took all reasonable precautions and exercised all due diligence to avoid commission of the offence; or
- (b) the commission of the offence was otherwise due to matters beyond that person's control.

(3) A person guilty of an offence under paragraph (1) is liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the standard scale, or to both.]

**F122** [Reg. 46A](#) inserted (S.) (15.2.2007) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2007 \(S.S.I. 2007/80\)](#), regs. 2, 17

## PART IV

### ADAPTATION OF PLANNING AND OTHER CONTROLS

#### *Introductory*

#### **Application of provisions of this Part**

**47.**—(1) The requirements of ... regulations 48 [<sup>F123</sup>, 48A] and 49 (requirement to consider effect on European sites [<sup>F124</sup>: in Great Britain and European offshore marine sites]), and ... regulations 50 and 51 (requirement to review certain existing decisions and consents, [<sup>F125</sup>&c.) apply—]

[<sup>F126</sup>(a)] subject to and in accordance with the provisions of regulations [<sup>F127</sup>53A] to 85, in relation to the matters specified in those provisions [<sup>F128</sup>, and

(b) in relation to all other plans and projects.]

(2) Supplementary provision is made by—

- (a) regulation 52 (co-ordination where more than one competent authority involved), and
- (b) regulation 53 (compensatory measures where plan or project is agreed to notwithstanding a negative assessment of the implications for a European site [<sup>F129</sup>: in Great Britain or European offshore marine site]).

[<sup>F130</sup>(3) Nothing in these Regulations requires an appropriate assessment of any plan or project 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.]

[<sup>F131</sup>(3A) This Part does not apply to any plan or project to which the Environmental Impact Assessment and Natural Habitats (Extraction of Minerals by Marine Dredging) (Scotland) Regulations 2007 apply.]

- F123** Word in reg. 47(1) inserted (29.6.2007) by The Conservation (Natural Habitats, &c.) Amendment (No. 2) (Scotland) Regulations 2007 (S.S.I. 2007/349), regs. 1(1), **2(2)(b)**
- F124** Words in reg. 47(1)(a) inserted (21.8.2007) by The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007 (S.I. 2007/1843), regs. 2(1), **5(22)(a)** (with reg. 9)
- F125** Words in reg. 47(1) substituted (29.6.2007) by The Conservation (Natural Habitats, &c.) Amendment (No. 2) (Scotland) Regulations 2007 (S.S.I. 2007/349), regs. 1(1), **2(2)(d)**
- F126** Word in reg. 47(1) inserted (29.6.2007) by The Conservation (Natural Habitats, &c.) Amendment (No. 2) (Scotland) Regulations 2007 (S.S.I. 2007/349), regs. 1(1), **2(2)(e)**
- F127** Word in reg. 47(1) substituted (29.11.2004) by The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2004 (S.S.I. 2004/475), regs. 1(1), **16(a)** (with regs. 20, 21)
- F128** Reg. 47(1)(b) and word inserted (29.6.2007) by The Conservation (Natural Habitats, &c.) Amendment (No. 2) (Scotland) Regulations 2007 (S.S.I. 2007/349), regs. 1(1), **2(2)(f)**
- F129** Words in reg. 47(2)(b) inserted (21.8.2007) by The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007 (S.I. 2007/1843), regs. 2(1), **5(22)(b)** (with reg. 9)
- F130** Reg. 47(3) inserted (21.8.2007) by The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007 (S.I. 2007/1843), regs. 2(1), **5(22)(c)** (with reg. 9)
- F131** Reg. 47(3A) inserted (23.11.2007) by The Environmental Impact Assessment and Natural Habitats (Extraction of Minerals by Marine Dredging) (Scotland) Regulations 2007 (S.S.I. 2007/485), regs. 1(1), **24(1)** (with reg. 3)

#### Commencement Information

- I34** Reg. 47 in force at 30.10.1994, see **reg. 1(2)**

### *General provisions for protection of European sites*

#### Assessment of implications for European site

**48.**—(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 in Great Britain [<sup>F132</sup>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,

shall make an appropriate assessment of the implications for the site in view of that site's conservation objectives.

(2) A person applying for any such consent, permission or other authorisation shall provide such information as the competent authority may reasonably require for the purposes of the assessment [<sup>F133</sup>or to enable the competent authority to determine whether an appropriate assessment is required].

(3) The competent authority shall 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 may specify.

(4) They shall also, if they consider it appropriate, take the opinion of the general public; and if they do so, they shall take such steps for that purpose as they consider appropriate.

(5) In the light of the conclusions of the assessment, and subject to regulation 49, the authority shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site [<sup>F134</sup>or 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 authority shall have regard to the manner in which it is proposed to be carried out or to any conditions or restrictions subject to which they propose that the consent, permission or other authorisation should be given.

<sup>F135</sup>(7) .....

**F132** Words in [reg. 48\(1\)\(a\)](#) inserted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), [regs. 2\(1\), 5\(23\)\(a\)](#) (with [reg. 9](#))

**F133** Words in [reg. 48\(2\)](#) inserted (S.) (15.2.2007) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2007 \(S.S.I. 2007/80\)](#), [regs. 2, 18](#)

**F134** Words in [reg. 48\(5\)](#) inserted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), [regs. 2\(1\), 5\(23\)\(c\)](#) (with [reg. 9](#))

**F135** [Reg. 48\(7\)](#) omitted (31.12.2020) by virtue of [The Conservation \(Natural Habitats, &c.\) \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019 \(S.S.I. 2019/113\)](#), [regs. 1, 20](#); 2020 c. 1, Sch. 5 para. 1(1)

#### Commencement Information

**I35** [Reg. 48](#) in force at 30.10.1994, see [reg. 1\(2\)](#)

### [<sup>F136</sup>Directions as regards plans and projects

**48A.**—(1) The Scottish Ministers may at any time direct a competent authority (other than the Scottish Ministers or the Secretary of State) to send to them a copy of a plan or project—

- (a) which is being prepared by the competent authority, or which is to be or has been undertaken by the competent authority; or
- (b) which is to be or has been consented to, permitted or otherwise authorised by the competent authority,

and which in the opinion of the Scottish Ministers may have a significant effect on a European site in Great Britain.

(2) The Scottish Ministers shall consider any plan or project in respect of which they have issued a direction under paragraph (1), together with such information in relation to it as they may reasonably require the competent authority to provide.

(3) Where the Scottish Ministers are satisfied that—

- (a) the plan or project falls within [regulation 48\(1\)](#) and no appropriate assessment has been carried out; or
- (b) an appropriate assessment has been carried out which does not comply with the Habitats Directive and these Regulations,

they may direct the competent authority to carry out an appropriate assessment in accordance with the Habitats Directive and these Regulations.

(4) A direction under paragraph (3) shall be issued as soon as reasonably practicable, and may, in particular, specify—

- (a) the manner in which an appropriate assessment must be carried out; and
- (b) the matters to be covered by the appropriate assessment.

(5) Where a direction is issued under paragraph (3), the plan or project and any operation or activity carried out under it is suspended until such time as the Scottish Ministers direct that they are satisfied that an appropriate assessment has been carried out in accordance with the Habitats Directive and these Regulations.

(6) The Scottish Ministers shall issue a direction under paragraph (5) as soon as reasonably practicable after they are satisfied that an appropriate assessment has been carried out in accordance with the Habitats Directive and these Regulations.

(7) The Scottish Ministers shall consult with the appropriate nature conservation body as to the exercise of the Scottish Ministers' functions under paragraphs (1) to (6) of this regulation.

(8) Where a direction is issued under paragraph (3), the Scottish Ministers shall send to the competent authority a summary in writing of their reasons.

(9) A competent authority shall comply with any direction given to it under paragraph (1) or (3).]

**F136** Reg. 48A inserted (S.) (29.6.2007) by [The Conservation \(Natural Habitats, &c.\) Amendment \(No. 2\) \(Scotland\) Regulations 2007 \(S.S.I. 2007/349\)](#), regs. 1(1), **2(3)**

### Considerations of overriding public interest

**49.**—(1) If they are 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), the competent authority may agree [<sup>F137</sup>, subject to paragraph (1A),] to the plan or project notwithstanding a negative assessment of the implications for the site.

[<sup>F138</sup>(1A) A competent authority other than the Scottish Ministers or the Secretary of State shall consult the Scottish Ministers for the purpose of satisfying itself under paragraph (1), and shall have regard to the opinion of the Scottish Ministers.]

(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

[<sup>F139</sup>(b) any other imperative reasons of overriding public interest, provided that the competent authority has had regard to the opinion of the [<sup>F140</sup>Scottish Ministers] in satisfying itself that there are such reasons.]

(3) Where a competent authority other than the Secretary of State desire to obtain [<sup>F141</sup>, for the purposes of paragraph (2)(b), the opinion of the Scottish Ministers as to whether reasons are to be considered imperative reasons of overriding public interest, they must submit a written request to the Scottish Ministers]—

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

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

[<sup>F142</sup>(4) In giving, for the purposes of paragraph (2)(b), their opinion as to whether the reasons are imperative reasons of overriding public interest, the Scottish Ministers must have regard to the national interest, and provide their opinion to the competent authority.]

[<sup>F143</sup>(4A) Before giving, for the purposes of paragraph (2)(b), their opinion as to whether the reasons are imperative reasons of overriding public interest, the Scottish Ministers must consult the following, and have regard to their opinion—

(a) the Joint Nature Conservation Committee;

(b) the Secretary of State;

(c) the Department of Agriculture, Environment and Rural Affairs in Northern Ireland;

(d) the Welsh Ministers; and

(e) any other person the Scottish Ministers consider appropriate.]

(5) Where an authority other than the Secretary of State propose to agree to a plan or project under this regulation notwithstanding a negative assessment of the implications for <sup>F144</sup>the site concerned], they shall notify the Secretary of State.

Having notified the Secretary of State, they shall not agree to the plan or project before the end of the period of 21 days beginning with the day notified to them by the Secretary of State as that on which their notification was received by him, unless the Secretary of State notifies them that they may do so.

(6) In any such case the Secretary of State may give directions to the authority prohibiting them from agreeing to the plan or project, either indefinitely or during such period as may be specified in the direction.

This power is without prejudice to any other power of the Secretary of State in relation to the decision in question.

<sup>F145</sup>(7) A competent authority shall comply with any direction given to it under paragraph (6).]

**F137** Words in [reg. 49\(1\)](#) inserted (S.) (29.6.2007) by [The Conservation \(Natural Habitats, &c.\) Amendment \(No. 2\) \(Scotland\) Regulations 2007 \(S.S.I. 2007/349\)](#), regs. 1(1), **2(4)(a)**

**F138** [Reg. 49\(1A\)](#) inserted (S.) (29.6.2007) by [The Conservation \(Natural Habitats, &c.\) Amendment \(No. 2\) \(Scotland\) Regulations 2007 \(S.S.I. 2007/349\)](#), regs. 1(1), **2(4)(b)**

**F139** [Reg. 49\(2\)\(b\)](#) substituted (S.) (15.2.2007) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2007 \(S.S.I. 2007/80\)](#), regs. 2, **19**

**F140** Words in [reg. 49\(2\)\(b\)](#) substituted (31.12.2020) by [The Conservation \(Natural Habitats, &c.\) \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019 \(S.S.I. 2019/113\)](#), regs. 1, **21(2)**; 2020 c. 1, Sch. 5 para. 1(1)

**F141** Words in [reg. 49\(3\)](#) substituted (31.12.2020) by [The Conservation \(Natural Habitats, &c.\) \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019 \(S.S.I. 2019/113\)](#), regs. 1, **21(3)**; 2020 c. 1, Sch. 5 para. 1(1)

**F142** [Reg. 49\(4\)](#) substituted (31.12.2020) by [The Conservation \(Natural Habitats, &c.\) \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019 \(S.S.I. 2019/113\)](#), regs. 1, **21(4)**; 2020 c. 1, Sch. 5 para. 1(1)

**F143** [Reg. 49\(4A\)](#) inserted (31.12.2020) by [The Conservation \(Natural Habitats, &c.\) \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019 \(S.S.I. 2019/113\)](#), regs. 1, **21(5)**; 2020 c. 1, Sch. 5 para. 1(1)

**F144** Words in [reg. 49\(5\)](#) substituted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(24)(b)** (with [reg. 9](#))

**F145** [Reg. 49\(7\)](#) inserted (S.) (29.6.2007) by [The Conservation \(Natural Habitats, &c.\) Amendment \(No. 2\) \(Scotland\) Regulations 2007 \(S.S.I. 2007/349\)](#), regs. 1(1), **2(4)(c)**

#### Commencement Information

**I36** [Reg. 49](#) in force at 30.10.1994, see [reg. 1\(2\)](#)

#### Review of existing decisions and consents, &c.

**50.**—(1) Where before the date on which a site becomes a European site <sup>F146</sup>or a European offshore marine site] or, if later, the commencement of these Regulations, a competent authority have decided to undertake, or have given any consent, permission or other authorisation for, a plan or project to which regulation 48(1) would apply if it were to be reconsidered as of that date, the authority shall as soon as reasonably practicable, review their decision or, as the case may be, the consent, permission or other authorisation, and shall affirm, modify or revoke it.

(2) They shall 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 48(2) to (4) <sup>F147</sup>and regulation 48A] shall apply, with the appropriate modifications, in relation to such a review.



(3) Subject to the following provisions of this Part, any review required by this regulation shall be carried out under existing statutory procedures where such procedures exist, and if none exist the Secretary of State may give directions as to the procedure to be followed.

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

**F146** Words in [reg. 50\(1\)](#) inserted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), [regs. 2\(1\), 5\(25\)](#) (with [reg. 9](#))

**F147** Words in [reg. 50\(2\)](#) inserted (S.) (29.6.2007) by [The Conservation \(Natural Habitats, &c.\) Amendment \(No. 2\) \(Scotland\) Regulations 2007 \(S.S.I. 2007/349\)](#), [regs. 1\(1\), 2\(5\)](#)

#### **Commencement Information**

**I37** Reg. 50 in force at 30.10.1994, see [reg. 1\(2\)](#)

### **Consideration on review**

**51.—**(1) The following provisions apply where a decision, or a consent, permission or other authorisation, falls to be reviewed under regulation 50.

(2) Subject as follows, the provisions of regulation 48(5) and (6) and regulation 49 shall 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 authority reviewing it that other action taken or to be taken by them, or by another authority, will secure that the plan or project does not adversely affect the integrity of the site.

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

(4) The Secretary of State may issue guidance to 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;

and the authorities concerned shall have regard to any guidance so issued in discharging their functions under that paragraph.

(5) Any modification or revocation effected in pursuance of this regulation shall be carried out under existing statutory procedures where such procedures exist.

If none exist, the Secretary of State may give directions as to the procedure to be followed.

#### **Commencement Information**

**I38** Reg. 51 in force at 30.10.1994, see [reg. 1\(2\)](#)

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

**52.—**(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) <sup>[F148]</sup>Subject to regulation 48A,] Nothing in regulation 48(1) or 50(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 Secretary of State may issue guidance to authorities for the purposes of regulations 48 to 51 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 site <sup>[F149]</sup>or a European offshore marine site], or

(b) will adversely affect the integrity of a European site <sup>[F149]</sup>or a European offshore marine site];

and the authorities involved shall have regard to any guidance so issued in discharging their functions under those regulations.

(4) In determining whether a plan or project should be agreed to under regulation 49(1) (considerations of overriding public interest) a competent authority other than the Secretary of State shall seek and have regard to the views of the other competent authority or authorities involved.

**F148** Words in [reg. 52\(2\)](#) inserted (S.) (29.6.2007) by [The Conservation \(Natural Habitats, &c.\) Amendment \(No. 2\) \(Scotland\) Regulations 2007 \(S.S.I. 2007/349\)](#), regs. 1(1), **2(6)**

**F149** Words in [reg. 52\(3\)\(a\)\(b\)](#) inserted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(26)** (with [reg. 9](#))

#### Commencement Information

**I39** Reg. 52 in force at 30.10.1994, see [reg. 1\(2\)](#)

### Compensatory measures

**53.** Where in accordance with regulation 49 (considerations of overriding public interest)—

(a) a plan or project is agreed to, notwithstanding a negative assessment of the implications for a European site <sup>[F150]</sup>or European offshore marine site], or

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

the Secretary of State shall secure that any necessary compensatory measures are taken to ensure that the overall coherence of Natura 2000 is protected.

**F150** Words in [reg. 53](#) inserted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(27)** (with [reg. 9](#))

#### Commencement Information

**I40** Reg. 53 in force at 30.10.1994, see [reg. 1\(2\)](#)

### <sup>[F151]</sup>Control of operations requiring consent

**53A.**—(1) Regulations 48 and 49 (requirement to consider effect on <sup>[F152]</sup>European sites in Great Britain and European offshore marine sites]) apply in relation to the granting of any consent under—

(a) section 13(4) of the 2004 Act to permit a public body to carry out an operation; or

(b) section 16(3) of the 2004 Act to permit an owner or occupier of land within a site of special scientific interest to carry out an operation requiring consent on the land.

(2) Where in such a case SNH considers that any adverse effects of the plan or project on the integrity of a European site [<sup>F153</sup>or European offshore marine site] would be avoided if the consent were subject to conditions, it may grant consent subject to those conditions.

(3) Where, in any case, whether in pursuance of sections 13(4) or 16(3) of the 2004 Act or otherwise, in light of the conclusions of an appropriate assessment made under regulation 48(1), SNH has not given consent for an operation, but it considers that there is a risk that the operation may nevertheless be carried out, it shall notify Scottish Ministers.]

**F151** Reg. 53A inserted (S.) (29.11.2004) by The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2004 (S.S.I. 2004/475), regs. 1(1), **16(b)** (with regs. 20, 21)

**F152** Words in reg. 53A(1) substituted (S.) (21.8.2007) by The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007 (S.I. 2007/1843), regs. 2(1), **5(28)(a)** (with reg. 9)

**F153** Words in reg. 53A(2) inserted (S.) (21.8.2007) by The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007 (S.I. 2007/1843), regs. 2(1), **5(28)(b)** (with reg. 9)

#### <sup>F154</sup>Marine licences

**F154** Reg. 53B and cross-heading inserted (6.12.2019) by The Conservation (Natural Habitats, &c.) Amendment (No. 2) (Scotland) Regulations 2019 (S.S.I. 2019/320), regs. 1(1), **4**

#### **Marine licences: duty to review**

**53B.**—(1) Subject to paragraph (3), regulations 50 (review of existing decisions and consents, &c.) and 51 (consideration on review) do not apply where—

- (a) a licence was granted by the Scottish Ministers; and
- (b) the conditions in paragraph (2) are met in accordance with that licence.

(2) The conditions mentioned in paragraph (1) are—

- (a) if the activity to which the licence relates includes an activity mentioned in items 1 or 2 of section 21(1) of the 2010 Act, that the substance or object has been fully deposited;
- (b) if the activity to which the licence relates includes an activity mentioned in items 3 to 7, 9 or 10 of section 21(1) of the 2010 Act, that the activity to which the licence relates has been completed;
- (c) if the activity to which the licence relates includes an activity mentioned in item 8 of section 21(1) of the 2010 Act, that the explosive substance or article has been fully used, or fully deposited and used.

(3) If a licence was granted by the Scottish Ministers and the activity to which that licence relates includes the construction, alteration or improvement of a generating station, regulations 50 and 51 do not apply to that licence after the date on which that generating station is first operated.

(4) In this regulation—

“the 2010 Act” means the Marine (Scotland) Act 2010;

“activity” means a licensable marine activity and is to be construed in accordance with section 21 of the 2010 Act;

“generating station” has the meaning given by section 64(1) of the Electricity Act 1989;

“licence” means a marine licence granted under Part 4 of the 2010 Act.]

## *Planning*

### **Grant of planning permission**

**54.**—(1) Regulations 48 and 49 (requirement to consider effect on [<sup>F155</sup>European sites in Great Britain and European offshore marine sites]) apply, in England and Wales, in relation to—

- (a) granting planning permission on an application under Part III of the Town and Country Planning Act 1990**(20)**;
- (b) granting planning permission, or upholding a decision of the local planning authority to grant planning permission (whether or not subject to the same conditions and limitations as those imposed by the local planning authority), on determining an appeal under section 78**(21)** of that Act in respect of such an application;
- (c) granting planning permission under—
  - (i) section 141(2)(a) of that Act (action by Secretary of State in relation to purchase notice),
  - (ii) section 177(1)(a)**(22)** of that Act (powers of Secretary of State on appeal against enforcement notice), or
  - (iii) section 196(5)**(23)** of that Act as originally enacted (powers of Secretary of State on reference or appeal as to established use certificate);
- (d) directing under section 90(1), (2) or (2A)**(24)** of that Act (development with government authorisation), or under section 5(1) of the Pipe-lines Act 1962**(25)**, that planning permission shall be deemed to be granted;
- (e) making—
  - (i) an order under section 102**(26)** of that Act (order requiring discontinuance of use or removal of buildings or works), including an order made under that section by virtue of section 104 (powers of Secretary of State), which grants planning permission, or
  - (ii) an order under paragraph 1 of Schedule 9**(27)** to that Act (order requiring discontinuance of mineral working), including an order made under that paragraph by virtue of paragraph 11 of that Schedule (default powers of Secretary of State), which grants planning permission,
 or confirming any such order under section 103 of that Act;
- (f) directing under—
  - (i) section 141(3) of that Act (action by Secretary of State in relation to purchase notice), or
  - (ii) section 35(5) of the Planning (Listed Buildings and Conservation Areas) Act 1990**(28)** (action by Secretary of State in relation to listed building purchase notice), that if an application is made for planning permission it shall be granted.

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**(20)** 1990 c. 8.

**(21)** Section 78 was amended by section 17(2) of the Planning and Compensation Act 1991 (c. 34).

**(22)** Section 177(1)(a) was substituted by paragraph 24(1)(a) of Schedule 7 to the Planning and Compensation Act 1991 (c. 34).

**(23)** Section 196(5) was repealed by paragraph 33(e) of Schedule 7 to the Planning and Compensation Act 1991 (c. 34), but that repeal does not apply to appeals arising out of applications made under section 192(1) (as originally enacted) before 27th July 1992.

**(24)** Section 90(2A) was inserted by section 16(1) of the Transport and Works Act 1992 (c. 42).

**(25)** 1962 c. 58.

**(26)** Section 102 was amended by paragraph 6 of Schedule 1, and paragraph 21 of Schedule 7, to the Planning and Compensation Act 1991 (c. 34).

**(27)** Paragraph 1 of Schedule 9 was amended by paragraph 15 of Schedule 1 to the Planning and Compensation Act 1991 (c. 34).

**(28)** 1990 c. 9.

(2) Regulations 48 and 49 (requirement to consider effect on [<sup>F156</sup>European sites in Great Britain and European offshore marine sites]) apply, in Scotland, in relation to—

- (a) granting planning permission on an application under Part III of the Town and Country Planning (Scotland) Act 1972<sup>(29)</sup>;
- (b) granting planning permission, or upholding a decision of the planning authority to grant planning permission (whether or not subject to the same conditions and limitations as those imposed by the local planning authority), on determining an appeal under section 33 (appeals) of that Act in respect of such an application;
- (c) granting planning permission under—
  - (i) section 172(2) of that Act (action by Secretary of State in relation to purchase notice),
  - (ii) section 85(5)<sup>(30)</sup> of that Act (powers of Secretary of State on appeal against enforcement notice), or
  - (iii) section 91(3)<sup>(31)</sup> of that Act as originally enacted (powers of Secretary of State on reference or appeal as to established use certificate);
- (d) directing under section 37(1)<sup>(32)</sup> (development with government authorisation) of that Act, or under <sup>F157</sup>... that planning permission shall be deemed to be granted;
- (e) making an order under section 49<sup>(33)</sup> of that Act (order requiring discontinuance of use or removal of buildings or works), including an order made under that section by virtue of section 260 (default powers of Secretary of State), which grants planning permission, or confirming any such order;
- (f) directing under—
  - (i) section 172(3) of that Act (powers of Secretary of State in relation to purchase notice), or
  - (ii) paragraph 2(6) of Schedule 17 to that Act (powers of Secretary of State in relation to listed building purchase notice),

that if an application is made for planning permission it shall be granted.

(3) Where regulations 48 and 49 apply, the competent authority may, if they consider that any adverse effects of the plan or project on the integrity of a European site [<sup>F158</sup>or European offshore marine site] would be avoided if the planning permission were subject to conditions or limitations, grant planning permission or, as the case may be, take action which results in planning permission being granted or deemed to be granted subject to those conditions or limitations.

(4) Where regulations 48 and 49 apply, [<sup>F159</sup>planning permission in principle] shall not be granted unless the competent authority are satisfied (whether by reason of the conditions and limitations to which the [<sup>F159</sup>planning permission in principle] is to be made subject, or otherwise) that no development likely adversely to affect the integrity of a European site [<sup>F160</sup>or European offshore marine site] could be carried out under the permission, whether before or after obtaining [<sup>F161</sup>any approval, consent or agreement required by a condition imposed on the grant of the permission].

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<sup>(29)</sup> 1972 c. 52.

<sup>(30)</sup> Section 85(5) was amended by paragraph 20 of Schedule 13 to, and Part IV of Schedule 19 to the Planning and Compensation Act 1991 (c. 34).

<sup>(31)</sup> Section 91(3) was repealed by paragraph 26(b) of Schedule 13 to the Planning and Compensation Act 1991 (c. 34), but that repeal does not apply to appeals arising out of applications made under section 90(2) (as originally enacted) before 25th September 1992.

<sup>(32)</sup> Section 37(1) was amended by Part I of Schedule 4 to the Local Government and Planning (Scotland) Act 1982 (c. 43).

<sup>(33)</sup> Section 49 was amended by section 172(2) of the Local Government (Scotland) Act 1973 (c. 65), sections 26 and 35 of the Town and Country Planning (Minerals) Act 1981 (c. 36) and paragraph 5 of Schedule 8, and paragraph 16 of Schedule 13, to the Planning and Compensation Act 1991 (c. 34).

[<sup>F162</sup>In this paragraph “planning permission in principle” has the same meaning as in section 59 of the Town and Country Planning (Scotland) Act 1997].

- F155** Words in [reg. 54\(1\)](#) substituted (E.W.) (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), [regs. 2\(1\)](#), **5(29)(a)** (with [reg. 9](#))
- F156** Words in [reg. 54\(2\)](#) substituted (S.) (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), [regs. 2\(1\)](#), **5(29)(b)** (with [reg. 9](#))
- F157** Words in [reg. 54\(2\)\(d\)](#) revoked (1.4.2010) by [The Conservation of Habitats and Species Regulations 2010 \(S.I. 2010/490\)](#), [regs. 1\(2\)](#), **133(2)(b)** (with [regs. 125, 134](#))
- F158** Words in [reg. 54\(3\)](#) inserted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), [regs. 2\(1\)](#), **5(29)(c)** (with [reg. 9](#))
- F159** Words in [reg. 54\(4\)](#) substituted (S.) (3.8.2009) by [The Planning etc. \(Scotland\) Act 2006 \(Development Management and Appeals\) \(Saving, Transitional and Consequential Provisions\) Order 2009 \(S.S.I. 2009/222\)](#), [arts. 1\(1\)](#), **14(2)(a)**
- F160** Words in [reg. 54\(4\)](#) inserted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), [regs. 2\(1\)](#), **5(29)(d)** (with [reg. 9](#))
- F161** Words in [reg. 54\(4\)](#) substituted (S.) (3.8.2009) by [The Planning etc. \(Scotland\) Act 2006 \(Development Management and Appeals\) \(Saving, Transitional and Consequential Provisions\) Order 2009 \(S.S.I. 2009/222\)](#), [arts. 1\(1\)](#), **14(2)(b)**
- F162** Words in [reg. 54\(4\)](#) substituted (S.) (3.8.2009) by [The Planning etc. \(Scotland\) Act 2006 \(Development Management and Appeals\) \(Saving, Transitional and Consequential Provisions\) Order 2009 \(S.S.I. 2009/222\)](#), [arts. 1\(1\)](#), **14(2)(c)**

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**Commencement Information**

- I41** [Reg. 54](#) in force at 30.10.1994, see [reg. 1\(2\)](#)

**Planning permission: duty to review**

**55.—(1)** Subject to the following provisions of this regulation, regulations 50 and 51 (requirement to review certain decisions and consents, &c.) apply to any planning permission or deemed planning permission, unless—

- (a) the development to which it related has been completed, or
- (b) it was granted subject to a condition as to the time within which the development to which it related was to be begun and that time has expired without the development having been begun, or
- (c) it was granted for a limited period and that period has expired.

(2) Regulations 50 and 51 do not apply to planning permission granted or deemed to have been granted—

- (a) by a development order (but see regulations 60 to 64 below);
- (b) by virtue of the adoption of a simplified planning zone scheme or of alterations to such a scheme (but see regulation 65 below);
- (c) by virtue of the taking effect of an order designating an enterprise zone under Schedule 32 to the Local Government, Planning and Land Act 1980(34), or by virtue of the approval of a modified enterprise zone scheme (but see regulation 66 below).

(3) Planning permission deemed to be granted by virtue of—

- (a) a direction under section 90(1) of the Town and Country Planning Act 1990 or section 37(1) of the Town and Country Planning (Scotland) Act 1972 in respect of

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(34) 1980 c. 65.

development for which an authorisation has been granted under section 1 or 3 of the Pipelines Act 1962<sup>(35)</sup>,

- (b) a direction under section 5(1) of the Pipelines Act 1962,
- (c) a direction under section 90(1) of the Town and Country Planning Act 1990 or section 37(1) of the Town and Country Planning (Scotland) Act 1972 in respect of development for which a consent has been given under section 36 or 37 of the Electricity Act 1989,
- (d) a direction under section 90(2) of the Town and Country Planning Act 1990 or paragraph 7 of Schedule 8 to the Electricity Act 1989, or
- (e) a direction under section 90(2A) of the Town and Country Planning Act 1990 (which relates to development in pursuance of an order under section 1 or 3 of the Transport and Works Act 1992<sup>(36)</sup>),

shall be reviewed in accordance with the following provisions of this Part in conjunction with the review of the underlying authorisation, consent or order.

(4) In the case of planning permission deemed to have been granted in any other case by a direction under section 90(1) of the Town and Country Planning Act 1990 or section 37(1) of the Town and Country Planning (Scotland) Act 1972, the local planning authority shall—

- (a) identify any such permission which they consider falls to be reviewed under regulations 50 and 51, and
- (b) refer the matter to the government department which made the direction;

and the department shall, if it agrees that the planning permission does fall to be so reviewed, thereupon review the direction in accordance with those regulations.

(5) Save as otherwise expressly provided, regulations 50 and 51 do not apply to planning permission granted or deemed to be granted by a public general Act of Parliament.

(6) Subject to paragraphs (3) and (4), where planning permission granted by the Secretary of State falls to be reviewed under regulations 50 and 51—

- (a) it shall be reviewed by the local planning authority, and
- (b) the power conferred by section 97 of the Town and Country Planning Act 1990 or section 42 of the Town and Country Planning (Scotland) Act 1972 (revocation or modification of planning permission) shall be exercisable by that authority as in relation to planning permission granted on an application under Part III of that Act.

In a non-metropolitan county in England <sup>F163</sup>... the function of reviewing any such planning permission shall be exercised by the district planning authority unless it relates to a county matter (within the meaning of Schedule 1 to the Town and Country Planning Act 1990) in which case it shall be exercised by the county planning authority.

**F163** Words in reg. 55(6) omitted (E.W.) (1.4.1996) by virtue of The Local Government Reorganisation (Wales) (Consequential Amendments) Order 1996 (S.I. 1996/525), arts. 1, 3, Sch. para. 18(4)

#### Commencement Information

**I42** Reg. 55 in force at 30.10.1994, see reg. 1(2)

(35) 1962 c. 58.

(36) 1992 c. 42.

**Planning permission: consideration on review**

56.—(1) In reviewing any planning permission or deemed planning permission in pursuance of regulations 50 and 51, the competent authority shall, in England and Wales—

- (a) consider whether any adverse effects could be overcome by planning obligations under section 106(37) of the Town and Country Planning Act 1990 being entered into, and
- (b) if they consider that those effects could be so overcome, invite those concerned to enter into such obligations;

and so far as the adverse effects are not thus overcome the authority shall make such order under section 97 of that Act (power to revoke or modify planning permission), or under section 102 of or paragraph 1 of Schedule 9 to that Act (order requiring discontinuance of use, &c.), as may be required.

(2) In reviewing any planning permission or deemed planning permission in pursuance of regulations 50 and 51, the competent authority shall, in Scotland—

- (a) consider whether any adverse effects could be overcome by an agreement under section 50 (agreements regulating development or use of land) of the Town and Country Planning (Scotland) Act 1972 being entered into, and
- (b) if they consider that those effects could be so overcome, invite those concerned to enter into such an agreement;

and so far as the adverse effects are not thus overcome, the authority shall make such order under section 42 of that Act(38) (power to revoke or modify planning permission), or under section 49 of that Act(39) (orders requiring discontinuance of use, &c.) as may be required.

(3) Where the authority ascertain that the carrying out or, as the case may be, the continuation of the development would adversely affect the integrity of a European site [<sup>F164</sup>or European offshore marine site], they nevertheless need not proceed under regulations 50 and 51 if and so long as they consider that there is no likelihood of the development being carried out or continued.

**F164** Words in reg. 56(3) inserted (21.8.2007) by The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007 (S.I. 2007/1843), regs. 2(1), 5(30) (with reg. 9)

**Commencement Information**

**I43** Reg. 56 in force at 30.10.1994, see reg. 1(2)

**Effect of orders made on review: England and Wales**

<sup>F1</sup>57. ....

**Effect of orders made on review: Scotland**

58.—(1) An order under section 42 of the Town and Country Planning (Scotland) Act 1972 (power to revoke or modify planning permission) made pursuant to regulation 55 shall take effect upon service of the notices required by subsection (3) of that section or, where there is more than one such notice and those notices are served at different times, upon the service of the last such notice to be served.

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(37) Section 106 was substituted by section 12(1) of the Planning and Compensation Act 1991 (c. 34).  
(38) Section 42 was amended by section 172(2) of the Local Government (Scotland) Act 1973 (c. 65) and sections 26 and 35 of the Town and Country Planning (Minerals) Act 1981 (c. 36).  
(39) Section 49 was amended by section 172(2) of the Local Government (Scotland) Act 1973 (c. 65), sections 26 and 35 of the Town and Country Planning (Minerals) Act 1981 (c. 36) and paragraph 5 of Schedule 8, and paragraph 16 of Schedule 13 to the Planning and Compensation Act 1991 (c. 34).



(2) Where the Secretary of State determines not to confirm such an order, the order shall cease to have effect from the time of that determination, and the permission revoked or modified by the order shall thereafter have effect as if the order had never been made, and—

- (a) any period specified in the permission for the taking of any action, being a period which had not expired prior to the date upon which the order took effect under paragraph (1) above, shall be extended by a period equal to that during which the order had effect; and
- (b) there shall be substituted for any date specified in the permission as being a date by which any action should be taken, not being a date falling prior to that date upon which the order took effect under paragraph (1) above, such date as post— dates the specified date by a period equal to that during which the order had effect.

(3) An order under section 49 of the Town and Country Planning (Scotland) Act 1972 (order requiring discontinuance of use, &c.) made pursuant to regulation 55 shall, insofar as it requires the discontinuance of a use of land or imposes conditions upon the continuance of a use of land, take effect upon service of the notices required by subsection (5) of that section or, where there is more than one such notice and those notices are served at different times, upon service of the last such notice to be served.

(4) Where the Secretary of State determines not to confirm any such order, the order shall cease to have effect from the time of that determination and the use which by the order was discontinued or upon whose continuance conditions were imposed—

- (a) may thereafter be continued as if the order had never been made, and
- (b) shall be treated for the purposes of the Town and Country Planning (Scotland) Act 1972 as if it had continued without interruption throughout the period during which the order had effect.

(5) An order under section 42 of that Act (power to modify or revoke planning permission) made in pursuance of regulation 55 shall not affect so much of the development authorised by the permission as was carried out prior to the site becoming a European site or, if later, the commencement of these Regulations.

(6) An order under section 49 of that Act (order requiring discontinuance of use, &c.) made in pursuance of regulation 55 above shall not affect any use made of the land prior to the site becoming a European site [<sup>F165</sup>or European offshore marine site] or, if later, the commencement of these Regulations.

**F165** Words in reg. 58(6) inserted (S.) (21.8.2007) by The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007 (S.I. 2007/1843), regs. 2(1), 5(32) (with reg. 9)

#### **Commencement Information**

**I44** Reg. 58 in force at 30.10.1994, see reg. 1(2)

### **Planning permission: supplementary provisions as to compensation**

**59.** —

- (1) Where the Secretary of State determines not to confirm—
- (a) an order under section 97 of the Town and Country Planning Act 1990 (revocation or modification of planning permission) which has taken effect under regulation 57(1), or
  - (b) an order under section 42 of the Town and Country Planning (Scotland) Act 1972 (revocation or modification of planning permission) which has taken effect under regulation 58(1),

and claim for compensation under section 107 of the Act of 1990 or section 153 of the Act of 1972 shall be limited to any loss or damage directly attributable to the permission being suspended or temporarily modified for the duration of the period between the order so taking effect and the Secretary of State determining not to confirm the order.

(2) Where the Secretary of State determines not to confirm—

- (a) an order under section 102 of the Town and Country Planning Act 1990 (order requiring discontinuance of use, &c.) which has taken effect under regulation 57(3) above, or
- (b) an order under section 49 of the Town and Country Planning (Scotland) Act 1972 (order requiring discontinuance of use, &c.) which has taken effect under regulation 58(3) above,

any claim for compensation under section 115 of the Act of 1990 or section 159 of the Act of 1972 shall be limited to any loss or damage directly attributable to any right to continue a use of the land being, by virtue of the order, suspended or subject to conditions for the duration of the period between the order so taking effect and the Secretary of State determining not to confirm the order.

(3) Where compensation is payable in respect of—

- (a) an order under section 97 of the Town and Country Planning Act 1990, or
- (b) any order mentioned in section 115(1) of that Act (compensation in respect of orders under s.102, &c.), or to which that section applies by virtue of section 115(5),

and the order has been made pursuant to regulation 50, the question as to the amount of the compensation shall be referred, by the authority liable to pay the compensation, to and be determined by the [<sup>F166</sup>Upper Tribunal] unless and to the extent that in any particular case the Secretary of State has indicated in writing that such a reference and determination may be dispensed with.

(4) Where compensation is payable in respect of—

- (a) an order under section 42 of the Town and Country Planning (Scotland) Act 1972 (revocation or modification of planning permission), or
- (b) any order mentioned in section 153(1) of that Act (compensation in respect of orders under s.49),

and the order has been made pursuant to regulation 50, the question as to the amount of the compensation shall be referred, by the authority liable to pay the compensation, to and be determined by the Lands Tribunal for Scotland unless and to the extent that in any particular case the Secretary of State has indicated in writing that such a reference and determination may be dispensed with.

**F166** Words in [reg. 59\(3\)](#) substituted (1.6.2009) by [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 1, [Sch. 2 para. 47](#) (with [Sch. 5](#))

#### Commencement Information

**I45** Reg. 59 in force at 30.10.1994, see [reg. 1\(2\)](#)

### General development orders

**60.**—(1) It shall be a condition of any planning permission granted by a general development order, whether made before or after the commencement of these Regulations, that development which—

- (a) is likely to have a significant effect on a European site in Great Britain [<sup>F167</sup>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,

shall not be begun until the developer has received written notification of the approval of the local planning authority under regulation 62.

(2) It shall be a condition of any planning permission granted by a general development order made before the commencement of these Regulations that development which—

- (a) is likely to have a significant effect on a European site in Great Britain (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,

and which was begun but not completed before the commencement of these Regulations, shall not be continued until the developer has received written notification of the approval of the local planning authority under regulation 62.

(3) Nothing in this regulation shall affect anything done before the commencement of these Regulations.

**F167** Words in [reg. 60\(1\)\(a\)](#) inserted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(33)** (with [reg. 9](#))

**Modifications etc. (not altering text)**

- C5** [Reg. 60](#) excluded (31.10.2002) by [The Felixstowe Dock and Railway Harbour Revision Order 2002 \(S.I. 2002/2618\)](#), arts. 1, **17**
- C6** [Reg. 60](#) excluded (30.8.2004) by [The Associated British Ports \(Immingham Outer Harbour\) Harbour Revision Order 2004 \(S.I. 2004/2190\)](#), arts. 1, **18** (with art. 20)
- C7** [Reg. 60](#) excluded (12.10.2006) by [The Humber Sea Terminal \(Phase III\) Harbour Revision Order 2006 \(S.I. 2006/2604\)](#), arts. 1(1), **19(1)** (with art. 19(2))
- C8** [Reg. 60](#) excluded (19.3.2010) by [The Portland Harbour Revision Order 2010 \(S.I. 2010/703\)](#), arts. 1(1), **17(1)** (with art. 17(2))
- C9** [Reg. 60](#) excluded (19.8.2014) by [The Port of Ardersier Harbour Revision Order 2014 \(S.S.I. 2014/224\)](#), arts. 1(1), **33(1)** (with arts. 31, 32, 33(2), 34)

**Commencement Information**

- I46** [Reg. 60](#) in force at 30.10.1994, see [reg. 1\(2\)](#)

**General development orders: opinion of appropriate nature conservation body**

**61.—(1)** Where it is intended to carry out development in reliance on the permission granted by a general development order, application may be made in writing to the appropriate nature conservation body for their opinion whether the development is likely to have such an effect as is mentioned in regulation 60(1)(a) or (2)(a).

The application shall give details of the development which is intended to be carried out.

(2) On receiving such an application, the appropriate nature conservation body shall consider whether the development is likely to have such an effect.

(3) Where they consider that they have sufficient information to conclude that the development will, or will not, have such an effect, they shall in writing notify the applicant and the local planning authority of their opinion.

(4) If they consider that they have insufficient information to reach either of those conclusions, they shall notify the applicant in writing indicating in what respects they consider the information insufficient; and the applicant may supply further information with a view to enabling them to reach a decision on the application.

(5) The opinion of the appropriate nature conservation body, notified in accordance with paragraph (3), that the development is not likely to have such an effect as is mentioned in regulation 60(1)(a) or (2)(a) shall be conclusive of that question for the purpose of reliance on the planning permission granted by a general development order.

### Commencement Information

**I47** Reg. 61 in force at 30.10.1994, see [reg. 1\(2\)](#)

### General development orders: approval of local planning authority

**62.**—(1) Where it is intended to carry out development in reliance upon the permission granted by a general development order, application may be made in writing to the local planning authority for their approval.

(2) The application shall—

- (a) give details of the development which is intended to be carried out; and
- (b) be accompanied by—

- (i) a copy of any relevant notification by the appropriate nature conservation body under regulation 61, and
- (ii) any fee required to be paid.

(3) For the purposes of their consideration of the application the local planning authority shall assume that the development is likely to have such an effect as is mentioned in regulation 60(1)(a) or (2)(a).

(4) The authority shall send a copy of the application to the appropriate nature conservation body and shall take account of any representations made by them.

(5) If in their representations the appropriate nature conservation body state their opinion that the development is not likely to have such an effect as is mentioned in regulation 60(1)(a) or (2)(a), the local planning authority shall send a copy of the representations to the applicant; and the sending of that copy shall have the same effect as a notification by the appropriate nature conservation body of its opinion under regulation 61(3).

(6) In any other case [<sup>F168</sup>in which the application has been sent to the appropriate nature conservation body,] the local planning authority shall, taking account of any representations made by the appropriate nature conservation body, make an appropriate assessment of the implications of the development for the European site [<sup>F169</sup>or European offshore marine site] in view of that site's conservation objectives.

In the light of the conclusions of the assessment the authority shall approve the development only after having ascertained that it will not adversely affect the integrity of the site.

**F168** Words in [reg. 62\(6\)](#) inserted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), [regs. 2\(1\), 5\(34\)\(a\)](#) (with [reg. 9](#))

**F169** Words in [reg. 62\(6\)](#) inserted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), [regs. 2\(1\), 5\(34\)\(b\)](#) (with [reg. 9](#))

### Commencement Information

**I48** Reg. 62 in force at 30.10.1994, see [reg. 1\(2\)](#)

### General development orders: supplementary

**63.**—(1) The local planning authority for the purposes of regulations 60 to 62 shall be the authority to whom an application for approval under regulation 62 would fall to be made if it were an application for planning permission.

(2) The fee payable in connection with an application for such approval is—

- (a) £25 in the case of applications made before 3rd January 1995, and
  - (b) £30 in the case of applications made on or after that date.
- (3) Approval required by regulation 60 shall be treated—
- (a) for the purposes of the provisions of the Town and Country Planning Act 1990(40), or the Town and Country Planning (Scotland) Act 1972(41), relating to appeals, as approval required by a condition imposed on a grant of planning permission; and
  - (b) for the purposes of the provisions of any general development order relating to the time within which notice of a decision should be made, as approval required by a condition attached to a grant of planning permission.

**Commencement Information**

**I49** Reg. 63 in force at 30.10.1994, see [reg. 1\(2\)](#)

**Special development orders**

**64.**—(1) A special development order made after the commencement of these Regulations may not grant planning permission for development which—

- (a) is likely to have a significant effect on a European site in Great Britain (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;

and any such order made before the commencement of these Regulations shall, on and after that date, cease to have effect to grant such permission, whether or not the development authorised by the permission has been begun.

(2) Nothing in [<sup>F170</sup>paragraph (1)] shall affect anything done before the commencement of these Regulations.

[<sup>F171</sup>(3) A special development order made on or after 21st August 2007 may not grant planning permission for development which is likely to have a significant effect on a European offshore marine site (either alone or in combination with other plans or projects).]

**F170** Words in [reg. 64\(2\)](#) substituted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(35)(a)** (with [reg. 9](#))

**F171** [Reg. 64\(3\)](#) inserted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(35)(b)** (with [reg. 9](#))

**Commencement Information**

**I50** Reg. 64 in force at 30.10.1994, see [reg. 1\(2\)](#)

**Local development orders**

<sup>F1</sup>**64A.** . . . . .

(40) 1990 c. 8.  
(41) 1972 c. 52.

### Simplified planning zones

**65.** The adoption or approval of a simplified planning zone scheme after the commencement of these Regulations shall not have effect to grant planning permission for development which—

- (a) is likely to have a significant effect on a European site in Great Britain (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;

and every simplified planning zone scheme already in force shall cease to have effect to grant such permission, whether or not the development authorised by the permission has been begun.

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#### Commencement Information

**I51** Reg. 65 in force at 30.10.1994, see [reg. 1\(2\)](#)

### [<sup>F172</sup>Simplified planning zones and European offshore marine sites

**65A.** The adoption or approval of a simplified planning zone scheme on or after 21st August 2007 shall not have effect to grant planning permission for development which is likely to have a significant effect on a European offshore marine site (either alone or in combination with other plans or projects).]

**F172** [Reg. 65A](#) inserted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), [regs. 2\(1\), 5\(37\)](#) (with [reg. 9](#))

### Enterprise zones

**66.** An order designating an enterprise zone, or the approval of a modified scheme, if made or given after the commencement of these Regulations, shall not have effect to grant planning permission for development which—

- (a) is likely to have a significant effect on a European site in Great Britain (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;

and where the order or approval was made or given before that date, the permission granted by virtue of the taking effect of the order or the modifications shall, from that date, cease to have effect to grant planning permission for such development, whether or not the development authorised by the permission has been begun.

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#### Commencement Information

**I52** Reg. 66 in force at 30.10.1994, see [reg. 1\(2\)](#)

### [<sup>F173</sup>Enterprise zones and European offshore marine sites

**66A.** An order designating an enterprise zone, or the approval of a modified scheme, if made or given on or after 21st August 2007, shall not have effect to grant planning permission for development which is likely to have a significant effect on a European offshore marine site (either alone or in combination with other plans or projects).]

**F173** Reg. 66A inserted (21.8.2007) by The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007 (S.I. 2007/1843), regs. 2(1), **5(38)** (with reg. 9)

### **Simplified planning zones and enterprise zones: supplementary provisions as to compensation**

**67.**—(1) Where in England and Wales—

- (a) planning permission is withdrawn by regulation 65 or 66, and
- (b) development authorised by the permission had been begun but not completed before the commencement of these Regulations, and
- (c) on an application made under Part III of the Town and Country Planning Act 1990 before the end of the period of 12 months beginning with the date of commencement of these Regulations, planning permission for the development is refused or is granted subject to conditions other than those imposed by the scheme,

section 107(1)(a) of that Act (compensation in respect of abortive expenditure) shall apply as if the permission granted by the scheme had been granted by the local planning authority under Part III of that Act and had been revoked or modified by an order under section 97 of that Act.

(2) Where in Scotland—

- (a) planning permission is withdrawn by regulation 65 or 66, and
- (b) development authorised by the permission had been begun but not completed before the commencement of these Regulations, and
- (c) on an application made under Part III of the Town and Country Planning (Scotland) Act 1972 before the end of the period of 12 months beginning with the date of commencement of these Regulations, planning permission for the development is refused or is granted subject to conditions other than those imposed by the scheme,

section 153(1)(a) of that Act (compensation in respect of abortive expenditure) shall apply as if the permission granted by the scheme had been granted by the local planning authority under Part III of that Act and had been revoked or modified by an order under section 42 of that Act.

(3) Paragraphs (1) and (2) above do not apply in relation to planning permission for the development of operational land by statutory undertakers.

#### **Commencement Information**

**I53** Reg. 67 in force at 30.10.1994, see **reg. 1(2)**

### **Grant of development consent**

<sup>F174</sup>**67A.** . . . . .

**F174** Reg. 67A revoked (1.4.2010) by The Conservation of Habitats and Species Regulations 2010 (S.I. 2010/490), regs. 1(2), **133(2)(c)** (with regs. 125, 134)

### **Development consent: review**

<sup>F175</sup>**67B.** . . . . .

**F175** Reg. 67B revoked (1.4.2010) by The Conservation of Habitats and Species Regulations 2010 (S.I. 2010/490), regs. 1(2), **133(2)(c)** (with regs. 125, 134)

### [<sup>F176</sup> Interpretation

**68.**—(1) Regulations 54 to 67 shall be construed—

- (a) in England and Wales, as one with the Town and Country Planning Act 1990; and
- (b) in Scotland, as one with the Town and Country Planning (Scotland) Act 1997.

<sup>F177</sup>(2) .....

**F176** Reg. 68 substituted (1.10.2009) by The Conservation (Natural Habitats, &c.) (Amendment) (No. 2) Regulations 2009 (S.I. 2009/2438), regs. 1(1), **6(2)**

**F177** Reg. 68(2) revoked (1.4.2010) by The Conservation of Habitats and Species Regulations 2010 (S.I. 2010/490), regs. 1(2), **133(2)(c)** (with regs. 125, 134)

### Commencement Information

**I54** Reg. 68 in force at 30.10.1994, see **reg. 1(2)**

## *Highways and roads*

### Construction or improvement of highways or roads

**69.**—(1) Regulations 48 and 49 (requirement to consider effect on [<sup>F178</sup>European sites in Great Britain and European offshore marine sites]) apply in relation to any plan or project—

- (a) by the Secretary of State—
  - (i) to construct a new highway or to improve, within the meaning of the Highways Act 1980(**42**), an existing highway, or
  - (ii) to construct a new road or to improve, within the meaning of the Roads (Scotland) Act 1984(**43**), an existing road; or
- (b) by a local highway authority or local roads authority, to carry out within the boundaries of a road any works required for the improvement of the road.

(2) Regulations 50 and 51 (requirement to review certain decisions and consents, &c.) apply to any such plan or project as is mentioned in paragraph (1) unless the works have been completed before the site became a European site [<sup>F179</sup>or European offshore marine site] or, if later, the commencement of these Regulations.

**F178** Words in reg. 69(1) substituted (21.8.2007) by The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007 (S.I. 2007/1843), regs. 2(1), **5(39)(a)** (with reg. 9)

**F179** Words in reg. 69(2) inserted (21.8.2007) by The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007 (S.I. 2007/1843), regs. 2(1), **5(39)(b)** (with reg. 9)

### Commencement Information

**I55** Reg. 69 in force at 30.10.1994, see **reg. 1(2)**

(42) 1980 c. 66; the expression “improvement” is defined in section 329(1) of the Act.

(43) 1984 c. 54; the expression “improvement” is defined in section 151(1) of the Act.



**[<sup>F180</sup>Core and other paths**

**69A.**—(1) Regulations 48 and 49 (requirement to consider effect on [<sup>F181</sup>European sites in Great Britain and European offshore marine sites]) apply in relation to a local authority’s proposal—

- (a) to draw up or change a plan for core paths under section 17 of the Land Reform (Scotland) Act 2003 (asp 2);
- (b) to enter a path agreement under section 21 of that Act;
- (c) to create or maintain a path delineated under such an agreement;
- (d) as to how any such path is to be created or maintained;
- (e) to make a path order under section 22 of that Act;
- (f) as to how any path delineated under such an order is to be created or maintained.

(2) Regulations 50 and 51 (requirement to review certain decisions) apply to any decision by a local authority in relation to any of the things mentioned in paragraph (1).]

**F180** S. 69A inserted (S.) (9.2.2005) by [Land Reform \(Scotland\) Act 2003 \(asp 2\)](#), s. 100(3), **Sch. 2 para. 16**; [S.S.I. 2005/17](#), **art. 2(b)**

**F181** Words in s. 69A substituted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), **regs. 2(1), 5(40)** (with **reg. 9**)

**Cycle tracks and other ancillary works**

**70.** As from the commencement of these Regulations, section 3(10) of the Cycle Tracks Act 1984(**44**) and section 152(4) of the Roads (Scotland) Act 1984 shall cease to have effect to deem planning permission to be granted for development which—

- (a) is likely to have a significant effect on a European site in Great Britain (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,

whether or not the development authorised by the permission has been begun.

**Commencement Information**

**I56** Reg. 70 in force at 30.10.1994, see **reg. 1(2)**

*Electricity*

**Consents under Electricity Act 1989: application of general requirements**

<sup>F182</sup>**71.** . . . . .

**F182** [Regs. 71-74](#) revoked (1.4.2010) by [The Conservation of Habitats and Species Regulations 2010 \(S.I. 2010/490\)](#), **regs. 1(2), 133(2)(d)** (with **regs. 125, 134**)

**Consents under the Electricity Act 1989: procedure on review**

<sup>F182</sup>**72.** . . . . .

**F182** Regs. 71-74 revoked (1.4.2010) by [The Conservation of Habitats and Species Regulations 2010 \(S.I. 2010/490\)](#), regs. 1(2), **133(2)(d)** (with regs. 125, 134)

**Consents under Electricity Act 1989: effect of review**

<sup>F182</sup>**73.** . . . . .

**F182** Regs. 71-74 revoked (1.4.2010) by [The Conservation of Habitats and Species Regulations 2010 \(S.I. 2010/490\)](#), regs. 1(2), **133(2)(d)** (with regs. 125, 134)

**Consents under Electricity Act 1989: compensation for revocation or variation**

<sup>F182</sup>**74.** . . . . .

**F182** Regs. 71-74 revoked (1.4.2010) by [The Conservation of Habitats and Species Regulations 2010 \(S.I. 2010/490\)](#), regs. 1(2), **133(2)(d)** (with regs. 125, 134)

*Pipe-lines*

**Authorisations under the Pipe-lines Act 1962: application of general requirements**

<sup>F183</sup>**75.** . . . . .

**F183** Regs. 75-78 revoked (1.4.2010) by [The Conservation of Habitats and Species Regulations 2010 \(S.I. 2010/490\)](#), regs. 1(2), **133(2)(e)** (with regs. 125, 134)

**Authorisations under the Pipe-lines Act 1962: procedure on review**

<sup>F183</sup>**76.** . . . . .

**F183** Regs. 75-78 revoked (1.4.2010) by [The Conservation of Habitats and Species Regulations 2010 \(S.I. 2010/490\)](#), regs. 1(2), **133(2)(e)** (with regs. 125, 134)

**Authorisations under the Pipe-lines Act 1962: effect of review**

<sup>F183</sup>**77.** . . . . .

**F183** Regs. 75-78 revoked (1.4.2010) by [The Conservation of Habitats and Species Regulations 2010 \(S.I. 2010/490\)](#), regs. 1(2), **133(2)(e)** (with regs. 125, 134)

**Authorisations under the Pipe-lines Act 1962: compensation for revocation or variation**

<sup>F183</sup>**78.** . . . . .

**F183** Regs. 75-78 revoked (1.4.2010) by [The Conservation of Habitats and Species Regulations 2010 \(S.I. 2010/490\)](#), regs. 1(2), **133(2)(e)** (with regs. 125, 134)

### *Transport and works*

#### **Orders under the Transport and Works Act 1992: application of general requirements**

**79.**—(1) Regulations 48 and 49 (requirement to consider effect on European site) apply in relation to the making of an order under section 1 or 3 of the Transport and Works Act 1992<sup>(45)</sup>.

(2) Where in such a case the Secretary of State considers that any adverse effects of the plan or project on the integrity of a European site would be avoided by making modifications to the proposals, he may make an order subject to those modifications.

(3) Regulations 50 and 51 (requirement to review existing decisions and consents, &c.) apply to an order under section 1 or 3 of the Transport and Works Act 1992 unless the works to which the order relates have been completed before the site became a European site.

(4) Where on the review of such an order the Secretary of State considers that any adverse effects on the integrity of a European site of the carrying out or, as the case may be, the continuation of the plan or project would be avoided by a variation of the order, he may vary it accordingly.

(5) In conjunction with the review of any such order the Secretary of State shall review any direction deeming planning permission to be granted for the plan or project and may vary or revoke it.

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#### **Commencement Information**

**I57** Reg. 79 in force at 30.10.1994, see [reg. 1\(2\)](#)

#### **Orders under the Transport and Works Act 1992: procedure on review**

**80.**—(1) Where the Secretary of State decides in pursuance of regulation 79 to revoke or vary an order the Transport and Works Act 1992, or a direction deeming planning permission to be granted, he shall serve notice on—

- (a) the person (if any) on whose application the order was made or, as the case may be, in whose favour the direction was made, and
- (b) any other person who in his opinion will be affected by the revocation or variation,

informing them of the decision and specifying a period of not less than 28 days within which any person on whom the notice is served may make representations to him.

(2) The Secretary of State shall also serve notice on—

- (a) the local planning authority, and
- (b) the appropriate nature conservation body,

informing them of the decision and inviting their representations within the specified period.

(3) The Secretary of State shall consider whether to proceed with the revocation or variation, and shall have regard to any representations made to him in accordance with paragraph (1) or (2).

(4) If within the specified period a person on whom notice was served under paragraph (1), or the local planning authority, so requires, the Secretary of State shall before deciding whether to proceed with the revocation or variation of the order or direction give—

- (a) to them,
- (b) to any other person on whom notice under paragraph (1) and (2) was required to be served,

an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.

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(45) 1992 c. 42.

**Commencement Information**

**I58** Reg. 80 in force at 30.10.1994, see [reg. 1\(2\)](#)

**Order under the Transport and Works Act 1992: effect of review**

**81.**—(1) The revocation or variation pursuant to regulation 79 of an order under the Transport and Works Act 1992, or of a direction deeming planning permission to be granted, shall take effect upon service of the notices required by regulation 80(1) or, where there is more than one such notice and those notices are served at different times, upon the service of the last notice to be served.

(2) Where the Secretary of State decides not to proceed with the revocation or variation, the order or direction shall have effect again from the time of that decision, and shall thereafter have effect as if—

- (a) any period specified in the order or direction for the taking of any action, being a period which had not expired prior to the date mentioned in paragraph (1), were extended by a period equal to that during which the revocation or variation had effect; and
- (b) there were substituted for any date specified in the order or direction as being a date by which any action should be taken, not being a date falling prior to that date mentioned in paragraph (1), such date as post-dates the specified date by a period equal to that during which the revocation or variation had effect.

(3) The revocation or variation pursuant to regulation 79 of an order under section 1 or 3 of the Transport and Works Act 1992, or of a direction deeming planning permission to be granted, shall not affect anything done under the order or direction prior to the revocation or variation taking effect.

**Commencement Information**

**I59** Reg. 81 in force at 30.10.1994, see [reg. 1\(2\)](#)

**Orders under the Transport and Works Act 1992: compensation for revocation or variation**

**82.**—(1) Where a direction deeming planning permission to be granted is revoked or varied pursuant to regulation 79, that permission shall be treated for the purposes of Part IV of the Town and Country Planning Act 1990 (compensation) as having been revoked or modified by order under section 97 of that Act.

(2) Where an order under section 1 or 3 of the Transport and Works Act 1992 is revoked or varied pursuant to regulation 79, Part IV of the Town and Country Planning Act 1990 shall apply as if—

- (a) the order had been planning permission granted on an application under that Act and had been revoked or modified by order under section 97 of that Act; and
- (b) that Part provided that the Secretary of State was the person liable to pay any compensation provided for by that Part.

This paragraph shall not have effect to confer any right to compensation for any expenditure, loss or damage for which compensation is payable by virtue of paragraph (1) above.

(3) Where the Secretary of State decides not to proceed with the revocation or variation of an order under section 1 or 3 of the Transport and Works Act 1992, or a direction deeming planning permission to be granted, any claim for compensation by virtue of this regulation shall be limited to any loss or damage directly attributable to the order or direction ceasing to have effect or being varied for the duration of the period between the revocation or variation taking effect under regulation 81(1) and the Secretary of State deciding not to proceed with it.

(4) Where compensation is payable by virtue of this regulation, the question as to the amount of the compensation shall be referred to and determined by the [<sup>F184</sup>Upper Tribunal] unless and to the extent that in any particular case the Secretary of State has indicated in writing that such a reference and determination may be dispensed with.

**F184** Words in reg. 82(4) substituted (1.6.2009) by The Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009 (S.I. 2009/1307), art. 1, **Sch. 2 para. 50** (with Sch. 5)

**Commencement Information**

**I60** Reg. 82 in force at 30.10.1994, see **reg. 1(2)**

*Environmental controls*

**Authorisations under Part I of the Environmental Protection Act 1990**

[<sup>F185</sup>83.—<sup>F186</sup>(1) .....

<sup>F186</sup>(2) .....

(3) Regulations 50 and 51 (requirement to review existing decisions and consents, &c.) apply to any [<sup>F187</sup>authorisation under Part I of the Environmental Protection Act 1990].

(4) Where on the review of such an authorisation the competent authority consider that any adverse effects on the integrity of a European site of the carrying out or, as the case may be, the continuation of activities authorised by it would be avoided by a variation of the authorisation, they may vary it, or cause it to be varied, accordingly.

(5) Where any question arises as to <sup>F188</sup>... affirming an authorisation on review, under regulation 49 (considerations of overriding public interest), the competent authority shall refer the matter to the Secretary of State who shall determine the matter in accordance with that regulation and give directions to the authority accordingly.]

**F185** Regs. 83, 84 omitted (E.W.) (6.4.2008) by virtue of The Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), reg. 1(1)(b), **Sch. 21 para. 35(2)** (with regs. 69-72)

**F186** Reg. 83(1)(2) omitted (21.8.2007) by virtue of The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007 (S.I. 2007/1843), regs. 2(1), **5(44)(a)** (with reg. 9)

**F187** Words in reg. 83(3) substituted (21.8.2007) by The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007 (S.I. 2007/1843), regs. 2(1), **5(44)(b)** (with reg. 9)

**F188** Words in reg. 83(5) omitted (21.8.2007) by virtue of The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007 (S.I. 2007/1843), regs. 2(1), **5(44)(c)** (with reg. 9)

**Commencement Information**

**I61** Reg. 83 in force at 30.10.1994, see **reg. 1(2)**

**Licences under Part II of the Environmental Protection Act 1990**

[<sup>F185</sup>84.—(1) Regulations 48 and 49 (requirement to consider effect on [<sup>F189</sup>European sites in Great Britain and European offshore marine sites]) apply in relation to—

- (a) the granting of a waste management licence under Part II of the Environmental Protection Act 1990 [<sup>F190</sup>, and]
- (b) the passing of a resolution under section 54 of that Act (provisions as to land occupied by disposal authorities themselves). <sup>F191</sup>...

<sup>F192</sup>(c) .....

(2) Where in such a case the competent authority consider that any adverse effects of the plan or project on the integrity of a European site [<sup>F193</sup>or European offshore marine site] would be avoided by making any licence subject to conditions, they may grant a licence, or cause a licence to be granted, or, as the case may be, pass a resolution, subject to those conditions.

(3) Regulations 50 and 51 (requirement to review existing decisions and consents, &c.) apply to any such licence or resolution as is mentioned in paragraph (1).

(4) Where on the review of such a licence or resolution the competent authority consider that any adverse effects on the integrity of a European site [<sup>F194</sup>or European offshore marine site] of the carrying out or, as the case may be, the continuation of the activities authorised by it would be avoided by a variation of the licence or resolution, they may vary it, or cause it to be varied, accordingly.]

- F185** Regs. 83, 84 omitted (E.W.) (6.4.2008) by virtue of [The Environmental Permitting \(England and Wales\) Regulations 2007 \(S.I. 2007/3538\)](#), reg. 1(1)(b), **Sch. 21 para. 35(2)** (with regs. 69-72)
- F189** Words in reg. 84(1) substituted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(45)(a)(i)** (with reg. 9)
- F190** Words in reg. 84(1)(a) inserted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(45)(a)(ii)** (with reg. 9)
- F191** Word in reg. 84(1)(b) omitted (21.8.2007) by virtue of [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(45)(a)(iii)** (with reg. 9)
- F192** Reg. 84(1)(c) omitted (21.8.2007) by virtue of [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(45)(a)(iv)** (with reg. 9)
- F193** Words in reg. 84(2) inserted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(45)(b)** (with reg. 9)
- F194** Words in reg. 84(4) inserted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(45)(c)** (with reg. 9)

#### Commencement Information

- I62** Reg. 84 in force at 30.10.1994, see [reg. 1\(2\)](#)

#### <sup>F195</sup>Permits under [<sup>F196</sup>the Pollution Prevention and Control (Scotland) Regulations 2012]

**84A.**—(1) Regulations 48 and 49 (requirement to consider effect on [<sup>F197</sup>European sites in Great Britain and European offshore marine sites]) apply in relation to the granting of a permit under [<sup>F198</sup>the Pollution Prevention and Control (Scotland) Regulations 2012].

(2) Where in such a case the competent authority consider that any adverse effects of the plan or project on the integrity of a European site [<sup>F199</sup>or European offshore marine site] would be avoided if the permit were subject to conditions, they may grant a permit, or cause a permit to be granted, subject to those conditions.

(3) Regulations 50 and 51 (requirement to review existing decisions and consents, &c.) apply to any such permit as is mentioned in paragraph (1).

(4) Where on the review of such a permit the competent authority consider that any adverse effects on the integrity of a European site [<sup>F200</sup>or European offshore marine site] of the carrying out or, as the case may be, the continuation of activities authorised by it would be avoided by a variation of the permit, they may vary it, or cause it to be varied, accordingly.]

(5) Where any question arises as to agreeing to a plan or project, of affirming a permit on review, under regulation 49 (considerations of overriding public interest), the competent authority shall refer the matter to the Scottish Ministers who shall determine the matter in accordance with that regulation and give directions to the authority accordingly.]

- F195** Reg. 84A inserted (S.) (28.9.2000) by The Pollution Prevention and Control (Scotland) Regulations 2000 (S.S.I. 2000/323), reg. 1(1), **sch. 10 para. 12** (with reg. 34)
- F196** Words in reg. 84A heading substituted (7.1.2013) by The Pollution Prevention and Control (Scotland) Regulations 2012 (S.S.I. 2012/360), reg. 1(2), **sch. 11 para. 7(2)** (with reg. 71)
- F197** Words in reg. 84A(1) substituted (21.8.2007) by The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007 (S.I. 2007/1843), regs. 2(1), **5(47)(a)** (with reg. 9)
- F198** Words in reg. 84A(1) substituted (7.1.2013) by The Pollution Prevention and Control (Scotland) Regulations 2012 (S.S.I. 2012/360), reg. 1(2), **sch. 11 para. 7(2)** (with reg. 71)
- F199** Words in reg. 84A(2) inserted (21.8.2007) by The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007 (S.I. 2007/1843), regs. 2(1), **5(47)(b)** (with reg. 9)
- F200** Words in reg. 84A(4) inserted (21.8.2007) by The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007 (S.I. 2007/1843), regs. 2(1), **5(47)(c)** (with reg. 9)

**[<sup>F201</sup>Abstraction and works authorised under water legislation**

**84B.**—(1) Regulations 48 and 49 apply in relation to—

- (a) the grant of an authorisation under regulation 8 (registration) or 9 (water use licence);
- (b) the variation under regulation 19 (variation of authorisation) in accordance with either regulation 20 (procedure for variation) or regulation 21 (request for variation), as the case may be, or the partial variation under regulation 25(4) (determination of application for surrender) of an authorisation; and
- (c) the determination of an appeal under regulation 47 (determination of appeals) against a decision of the Scottish Environment Protection Agency referred to in regulation 46(a), (b), (c), (d), (e), (ee) or (g),

of the Water Environment (Controlled Activities) (Scotland) Regulations 2005 (“the 2005 Regulations”).

(2) In a case referred to in paragraph (1), where the competent authority considers that any adverse effects of the plan or project on the integrity of a European site [<sup>F202</sup>or European offshore marine site] would be avoided if the grant or variation of the authorisation were subject to conditions or, as the case may be, further conditions, it may grant or vary the authorisation subject to those conditions.

(3) Regulations 50 and 51 apply to authorisations under regulation 8 or 9 of the 2005 Regulations.

(4) Where on the review of an authorisation under regulation 8 or 9 of the 2005 Regulations, the competent authority considers that any adverse effects on the integrity of a European site [<sup>F203</sup>or European offshore marine site] of the carrying out or, as the case may be, the continuation of the activity authorised would be avoided by a variation of the authorisation, it may vary the authorisation, or cause it to be varied, accordingly.]

- F201** Reg. 84B inserted (S.) (15.2.2007) by The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2007 (S.S.I. 2007/80), regs. 2, **20**
- F202** Words in reg. 84B(2) inserted (S.) (21.8.2007) by The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007 (S.I. 2007/1843), regs. 2(1), **5(49)(a)** (with reg. 9)
- F203** Words in reg. 84B(4) inserted (S.) (21.8.2007) by The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007 (S.I. 2007/1843), regs. 2(1), **5(49)(b)** (with reg. 9)

**Marine works**

<sup>F1</sup>**84C.** . . . . .

### [<sup>F204</sup> Derogations under the Nitrate Pollution Prevention Regulations 2008

**84D.**—(1) Regulations 48 (assessment of implications for European site) and 49 (considerations of overriding public interest) apply in relation to the granting of a derogation under Part 3A of the Nitrate Pollution Prevention Regulations 2008.

(2) Where regulations 48 and 49 apply, the competent authority may, if they consider any adverse effects of the plan or project on the integrity of a European site or European offshore marine site would be avoided if the derogation were subject to conditions, grant the derogation, subject to those conditions.]

**F204** Reg. 84D inserted (28.12.2009) by [The Nitrate Pollution Prevention \(Amendment\) Regulations 2009](#) (S.I. 2009/3160), regs. 1(b), **11(2)**

### Derogations under the Nitrate Pollution Prevention (Wales) Regulations 2008

<sup>F1</sup>**84E.** .....

### Discharge consents under water pollution legislation

**85.**—(1) Regulations 48 and 49 (requirement to consider effect on European site) apply in relation to the giving of consent under—

(a) Chapter II of Part III to the Water Resources Act 1991(**46**) (control of pollution of water resources), <sup>F205</sup> ...

<sup>F205</sup>(b) .....

(2) Where in such a case the competent authority consider that any adverse effects of the plan or project on the integrity of a European site would be avoided by making any consent subject to conditions, they may give consent, or cause it to be given, subject to those conditions.

(3) Regulations 50 and 51 (requirement to review existing decisions and consents, &c.) apply to any such consent as is mentioned in paragraph (1).

(4) Where on the review of such a consent the competent authority consider that any adverse effects on the integrity of a European site of the carrying out or, as the case may be, the continuation of the activities authorised by it would be avoided by a variation of the consent, they may vary it, or cause it to be varied, accordingly.

**F205** Reg. 85(1)(b) and word omitted (S.) (15.2.2007) by virtue of [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2007](#) (S.S.I. 2007/80), regs. 2, **21**

### Commencement Information

**I63** Reg. 85 in force at 30.10.1994, see [reg. 1\(2\)](#)



## [<sup>F206</sup>PART IVA

### APPROPRIATE ASSESSMENTS FOR LAND USE PLANS

**F206** Pt. 4A inserted (S.) (15.2.2007) by The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2007 (S.S.I. 2007/80), reg. 2, sch. 1

#### Interpretation

**85A.**—(1) In this Part—

“the 1997 Planning Act” means the Town and Country Planning (Scotland) Act 1997;

[<sup>F207</sup>“land use plan” means a strategic development plan or local development plan or supplementary guidance as provided for in Part 2 of the 1997 Planning Act;]

“plan making authority” means—

- (a) a planning authority;
- (b) the Loch Lomond and the Trossachs National Park Authority and the Cairngorms National Park Authority;
- (c) [<sup>F208</sup>the Scottish Ministers when exercising powers under section 13 (approval or rejection of strategic development plans), 20 (constitution of local development plans) or section [<sup>F209</sup>23B] (default powers of the Scottish Ministers) of the 1997 Planning Act];

“planning authority” has the meaning given in section 1 of the 1997 Planning Act.

(2) References in this Part to giving effect to a land use plan are to—

- (a) the adoption by a planning authority, the Loch Lomond and the Trossachs National Park Authority or the Cairngorms National Park Authority of [<sup>F210</sup>a local development plan under section 20] of the 1997 Planning Act;

[ the adoption of supplementary guidance under section 22 of the 1997 Planning Act;]  
<sup>F211</sup>(aa)

- (b) the approval by the Scottish Ministers of [<sup>F212</sup>a strategic development plan under section 13 or a local development plan under section 20] of the 1997 Planning Act.

**F207** Words in reg. 85A(1) substituted (S.) (28.2.2009) by The Planning etc. (Scotland) Act 2006 (Development Planning) (Saving, Transitional and Consequential Provisions) Order 2008 (S.S.I. 2008/427), arts. 1(1), **8(2)(a)**

**F208** Words in reg. 85A(1) substituted (S.) (28.2.2009) by The Planning etc. (Scotland) Act 2006 (Development Planning) (Saving, Transitional and Consequential Provisions) Order 2008 (S.S.I. 2008/427), arts. 1(1), **8(2)(b)**

**F209** Word in reg. 85A(1) substituted (S.) (16.11.2009) by The Town and Country Planning (Miscellaneous Amendments) (Scotland) (No. 2) Regulations 2009 (S.S.I. 2009/343), regs. 1, **2(2)**

**F210** Words in reg. 85A(2)(a) substituted (S.) (28.2.2009) by The Planning etc. (Scotland) Act 2006 (Development Planning) (Saving, Transitional and Consequential Provisions) Order 2008 (S.S.I. 2008/427), arts. 1(1), **8(3)(a)**

**F211** Reg. 85A(2)(aa) inserted (S.) (28.2.2009) by The Planning etc. (Scotland) Act 2006 (Development Planning) (Saving, Transitional and Consequential Provisions) Order 2008 (S.S.I. 2008/427), arts. 1(1), **8(3)(b)**

**F212** Words in reg. 85A(2)(b) substituted (S.) (28.2.2009) by The Planning etc. (Scotland) Act 2006 (Development Planning) (Saving, Transitional and Consequential Provisions) Order 2008 (S.S.I. 2008/427), arts. 1(1), **8(3)(c)**

**Assessment of implications for European site**

**85B.**—(1) Where a land use plan—

- (a) is likely to have a significant effect on a European site in Great Britain [<sup>F213</sup>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 land use plan shall, 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 shall 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 may specify.

(3) The plan-making authority shall, if it considers it appropriate, take the opinion of the general public, and in doing so, shall take such steps for that purpose as it considers appropriate.

(4) In the light of the conclusions of the assessment, and subject to regulation 85C (considerations of overriding public interest), the plan-making authority shall give effect to the land use plan only after having ascertained that it will not adversely affect the integrity of the European site [<sup>F214</sup>or the European offshore marine site (as the case may be)].

(5) A plan-making authority other than the Scottish Ministers shall provide such information as the Scottish Ministers may reasonably require—

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

<sup>F215</sup>(6) .....

<p><b>F213</b> Words in reg. 85B(2) inserted (S.) (21.8.2007) by virtue of <i>The Conservation (Natural Habitats, &amp;c.) (Amendment) Regulations 2007 (S.I. 2007/1843)</i>, regs. 2(1), <b>5(51)(a)</b> (with reg. 9)</p> <p><b>F214</b> Words in reg. 85B(4) inserted (S.) (21.8.2007) by virtue of <i>The Conservation (Natural Habitats, &amp;c.) (Amendment) Regulations 2007 (S.I. 2007/1843)</i>, regs. 2(1), <b>5(51)(b)</b> (with reg. 9)</p> <p><b>F215</b> Reg. 85B(6) omitted (31.12.2020) by virtue of <i>The Conservation (Natural Habitats, &amp;c.) (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/113)</i>, regs. 1, <b>22</b>; 2020 c. 1, Sch. 5 para. 1(1)</p>
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**Considerations of overriding public interest**

**85C.**—(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 [<sup>F216</sup>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 of overriding public interest provided the competent authority has had regard to the opinion of the [<sup>F217</sup>Scottish Ministers] in satisfying themselves that there are such reasons.

(3) Where a plan-making authority, other than the Scottish Ministers, desires to obtain the opinion of the [<sup>F218</sup>Scottish Ministers] as to whether reasons are to be considered imperative reasons of overriding public interest, it shall submit a written request to the Scottish Ministers—

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

[<sup>F219</sup>(4) In giving their opinion as to whether the reasons are imperative reasons of overriding public interest, the Scottish Ministers must have regard to the national interest, and provide their opinion to the plan-making authority.]

[<sup>F220</sup>(4A) Before giving their opinion as to whether the reasons are imperative reasons of overriding public interest, the Scottish Ministers must consult the following, and have regard to their opinion—

- (a) the Joint Nature Conservation Committee;
- (b) the Secretary of State;
- (c) the Department of Agriculture, Environment and Rural Affairs in Northern Ireland;
- (d) the Welsh Ministers; and
- (e) any other person the Scottish Ministers consider appropriate.]

(5) Where a plan-making authority other than the Scottish Ministers proposes to give effect to a land use plan under this regulation notwithstanding a negative assessment of the implications for [<sup>F221</sup>the site concerned], it shall notify the Scottish Ministers.

(6) Having notified the Scottish Ministers under paragraph (5), the authority in question shall not give effect to the land use plan 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 notification was received by them, unless the Scottish Ministers notify the authority that it may do so.

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

**F216** Words in reg. 85C(1) inserted (S.) (21.8.2007) by virtue of [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(52)(a)** (with reg. 9)

**F217** Words in reg. 85C(2)(b) substituted (31.12.2020) by [The Conservation \(Natural Habitats, &c.\) \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019 \(S.S.I. 2019/113\)](#), regs. 1, **23(2)**; 2020 c. 1, Sch. 5 para. 1(1)

**F218** Words in reg. 85C(3) substituted (31.12.2020) by [The Conservation \(Natural Habitats, &c.\) \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019 \(S.S.I. 2019/113\)](#), regs. 1, **23(2)**; 2020 c. 1, Sch. 5 para. 1(1)

**F219** Reg. 85C(4) substituted (31.12.2020) by [The Conservation \(Natural Habitats, &c.\) \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019 \(S.S.I. 2019/113\)](#), regs. 1, **23(3)**; 2020 c. 1, Sch. 5 para. 1(1)

**F220** Reg. 85C(4A) inserted (31.12.2020) by [The Conservation \(Natural Habitats, &c.\) \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019 \(S.S.I. 2019/113\)](#), regs. 1, **23(4)**; 2020 c. 1, Sch. 5 para. 1(1)

**F221** Words in reg. 85C(5) substituted (S.) (21.8.2007) by virtue of [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(52)(b)** (with reg. 9)

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

**85D.**—(1) This regulation applies where two or more planning authorities prepare [<sup>F222</sup>a strategic development plan under section 4 or a joint local development plan under section 16] of the 1997 Planning Act.

(2) Nothing in regulation 85B(1) requires a planning authority to assess any implications of [<sup>F223</sup>a strategic development plan or a joint local development plan] which would be more appropriately assessed under that provision by another planning authority.

(3) The Scottish Ministers may issue guidance to planning authorities for the purposes of regulation 85B(1) as to the circumstances in which a planning authority may or should adopt the reasoning or conclusions of another planning authority as to whether [<sup>F224</sup>a strategic development plan or a joint local development plan]—

- (a) is likely to have a significant effect on a European site [<sup>F225</sup>or a European offshore marine site], or
- (b) will adversely affect the integrity of a European site [<sup>F226</sup>or a European offshore marine site].

(4) The planning authorities involved shall have regard to any guidance issued under paragraph (3) in discharging their functions under regulation 85B(1).

(5) In determining whether [<sup>F227</sup>a strategic development plan or a joint local development plan] should be adopted under regulation 85C(1) a planning authority shall seek and have regard to the views of other planning authorities involved.

**F222** Words in reg. 85D(1) substituted (S.) (28.2.2009) by [The Planning etc. \(Scotland\) Act 2006 \(Development Planning\) \(Saving, Transitional and Consequential Provisions\) Order 2008 \(S.S.I. 2008/427\)](#), arts. 1(1), **8(4)(a)**

**F223** Words in reg. 85D(2) substituted (S.) (28.2.2009) by [The Planning etc. \(Scotland\) Act 2006 \(Development Planning\) \(Saving, Transitional and Consequential Provisions\) Order 2008 \(S.S.I. 2008/427\)](#), arts. 1(1), **8(4)(b)**

**F224** Words in reg. 85D(3) substituted (S.) (28.2.2009) by [The Planning etc. \(Scotland\) Act 2006 \(Development Planning\) \(Saving, Transitional and Consequential Provisions\) Order 2008 \(S.S.I. 2008/427\)](#), arts. 1(1), **8(4)(b)**

**F225** Words in reg. 85D(3)(a) inserted (S.) (21.8.2007) by virtue of [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(53)** (with reg. 9)

**F226** Words in reg. 85D(3)(b) inserted (S.) (21.8.2007) by virtue of [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(53)** (with reg. 9)

**F227** Words in reg. 85D(5) substituted (S.) (28.2.2009) by [The Planning etc. \(Scotland\) Act 2006 \(Development Planning\) \(Saving, Transitional and Consequential Provisions\) Order 2008 \(S.S.I. 2008/427\)](#), arts. 1(1), **8(4)(c)**

### Compensatory measures

**85E.** Where in accordance with regulation 85C a land use plan is given effect, notwithstanding a negative assessment of the implications for a European site [<sup>F228</sup> or a European offshore marine site], the Scottish Ministers shall secure that any necessary compensatory measures are taken to ensure that the overall coherence of Natura 2000 is protected.]

**F228** Words in reg. 85E inserted (S.) (21.8.2007) by virtue of [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(54)** (with reg. 9)

## National Policy Statements

<sup>F229</sup>**85F.** .....

**F229** Reg. 85F revoked (1.4.2010) by [The Conservation of Habitats and Species Regulations 2010 \(S.I. 2010/490\)](#), regs. 1(2), **133(2)(f)** (with regs. 125, 134)

## PART V

### SUPPLEMENTARY PROVISIONS

#### *Supplementary provisions as to management agreements*

#### **Powers of limited owners, &c. to enter into management agreements**

**86.**—(1) In the case of settled land in England and Wales—

- (a) the tenant for life may enter into a management agreement relating to the land, or any part of it, either for consideration or gratuitously;
- (b) the Settled Land Act 1925<sup>(47)</sup> shall apply as if the power conferred by sub-paragraph (a) had been conferred by that Act; and
- (c) for the purposes of section 72 of that Act (which relates to the mode of giving effect to a disposition by a tenant for life and to the operation thereof), and of any other relevant statutory provision, entering into a management agreement shall be treated as a disposition.

The above provisions of this paragraph shall be construed as one with the Settled Land Act 1925.

(2) Section 28 of the Law of Property Act 1925<sup>(48)</sup> (which confers the powers of a tenant for life on trustees for sale) shall apply as if the power of a tenant for life under paragraph (1)(a) above had been conferred by the Settled Land Act 1925.

(3) A university or college to which the Universities and College Estates Act 1925<sup>(49)</sup> applies may enter into a management agreement relating to any land belonging to it in England and Wales either for consideration or gratuitously.

That Act shall apply as if the power conferred by this paragraph had been conferred by that Act.

(4) In the case of glebe land or other land belonging to an ecclesiastical benefice—

- (a) the incumbent of the benefice, and
- (b) in the case of land which is part of the endowment of any other ecclesiastical corporation, the corporation,

may with the consent of the Church Commissioners enter into a management agreement either for consideration or gratuitously.

The Ecclesiastical Leasing Acts shall apply as if the power conferred by this paragraph had been conferred by those Acts, except that the consent of the patron of an ecclesiastical benefice shall not be requisite.

(5) In the case of any land in Scotland, any person being—

- (a) the liferenter, or

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<sup>(47)</sup> 1925 c. 18.

<sup>(48)</sup> 1925 c. 20.

<sup>(49)</sup> 1925 c. 24.

(b) the heir of entail,  
in possession of the land shall have power to enter into a management agreement relating to the land or any part of it.

(6) The Trusts (Scotland) Act 1921(50) shall have effect as if among the powers conferred on trustees by section 4 of that Act (which relates to the general powers of trustees) there were included a power to enter into management agreements relating to the trust estate or any part of it.

**Commencement Information**

**I64** Reg. 86 in force at 30.10.1994, see [reg. 1\(2\)](#)

*Supplementary provisions as to potentially damaging operations*

**Carrying out of operation after expiry of period**

<sup>F230</sup>**87.** . . . . .

**F230** Regs. 87-93 revoked (S.) (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), [regs. 1\(1\), 22\(c\)](#) (with [regs. 20, 21](#)); and Regulations revoked (E.W.) (1.4.2010 except so far as relating to the revocation in relation to W. of reg. 36 and specified words in reg. 3(3)) by [The Conservation of Habitats and Species Regulations 2010 \(S.I. 2010/490\)](#), [regs. 1\(2\)\(4\)\(b\), 133\(3\)](#) (with [regs. 125, 134](#))

**Duties of agriculture Ministers with respect to European sites**

<sup>F231</sup>**88.** . . . . .

**F231** Regs. 87-93 revoked (S.) (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), [regs. 1\(1\), 22\(c\)](#) (with [regs. 20, 21](#)); and Regulations revoked (E.W.) (1.4.2010 except so far as relating to the revocation in relation to W. of reg. 36 and specified words in reg. 3(3)) by [The Conservation of Habitats and Species Regulations 2010 \(S.I. 2010/490\)](#), [regs. 1\(2\)\(4\)\(b\), 133\(3\)](#) (with [regs. 125, 134](#))

**Payments under certain agreements offered by authorities**

<sup>F232</sup>**89.** . . . . .

**F232** Regs. 87-93 revoked (S.) (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), [regs. 1\(1\), 22\(c\)](#) (with [regs. 20, 21](#)); and Regulations revoked (E.W.) (1.4.2010 except so far as relating to the revocation in relation to W. of reg. 36 and specified words in reg. 3(3)) by [The Conservation of Habitats and Species Regulations 2010 \(S.I. 2010/490\)](#), [regs. 1\(2\)\(4\)\(b\), 133\(3\)](#) (with [regs. 125, 134](#))

**Powers of entry**

<sup>F233</sup>**90.** . . . . .

**F233** Regs. 87-93 revoked (S.) (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), **22(c)** (with regs. 20, 21); and Regulations revoked (E.W.) (1.4.2010 except so far as relating to the revocation in relation to W. of reg. 36 and specified words in reg. 3(3)) by [The Conservation of Habitats and Species Regulations 2010 \(S.I. 2010/490\)](#), regs. 1(2)(4)(b), **133(3)** (with regs. 125, 134)

### Compensation: amount and assessment

<sup>F234</sup>**91.** . . . . .

**F234** Regs. 87-93 revoked (S.) (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), **22(c)** (with regs. 20, 21); and Regulations revoked (E.W.) (1.4.2010 except so far as relating to the revocation in relation to W. of reg. 36 and specified words in reg. 3(3)) by [The Conservation of Habitats and Species Regulations 2010 \(S.I. 2010/490\)](#), regs. 1(2)(4)(b), **133(3)** (with regs. 125, 134)

### Compensation: other supplementary provisions

<sup>F235</sup>**92.** . . . . .

**F235** Regs. 87-93 revoked (S.) (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), **22(c)** (with regs. 20, 21); and Regulations revoked (E.W.) (1.4.2010 except so far as relating to the revocation in relation to W. of reg. 36 and specified words in reg. 3(3)) by [The Conservation of Habitats and Species Regulations 2010 \(S.I. 2010/490\)](#), regs. 1(2)(4)(b), **133(3)** (with regs. 125, 134)

### Compensation: procedural provisions

<sup>F236</sup>**93.** . . . . .

**F236** Regs. 87-93 revoked (S.) (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), **22(c)** (with regs. 20, 21); and Regulations revoked (E.W.) (1.4.2010 except so far as relating to the revocation in relation to W. of reg. 36 and specified words in reg. 3(3)) by [The Conservation of Habitats and Species Regulations 2010 \(S.I. 2010/490\)](#), regs. 1(2)(4)(b), **133(3)** (with regs. 125, 134)

### *Supplementary provisions as to byelaws*

### Procedure for making byelaws, penalties, &c.

**94.**—(1) Sections 236 to 238 of the Local Government Act 1972(**51**) or sections 201 to 204 of the Local Government (Scotland) Act 1973(**52**) (procedure, &c. for byelaws; offences against byelaws; evidence of byelaws) apply to all byelaws made under section 20 of the National Parks and Access to the Countryside Act 1949(**53**) as it applies by virtue of regulation 28 as if the appropriate nature conservation body were a local authority within the meaning of that Act.

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(51) 1972 c. 70.  
(52) 1973 c. 65.  
(53) 1949 c. 97.

(2) In relation to byelaws so made the confirming authority for the purposes of the said section 236 or section 201 shall be the Secretary of State.

(3) The appropriate nature conservation body shall have power to enforce byelaws made by them: Provided that nothing in this paragraph shall be construed as authorising the institution of proceedings in Scotland for an offence.

**Commencement Information**

**I65** Reg. 94 in force at 30.10.1994, see [reg. 1\(2\)](#)

**Powers of entry**

**95.**—(1) For the purpose of surveying land, or of estimating its value, in connection with any claim for compensation payable under regulation 30 in respect of that or any other land, an officer of the Valuation Office or person duly authorised in writing by the authority from whom the compensation is claimed may enter upon the land.

(2) A person authorised under this regulation to enter upon any land shall, if so required, produce evidence of his authority before entering.

(3) A person shall not under this regulation demand admission as of right to any land which is occupied unless at least 14 days' notice in writing of the intended entry has been given to the occupier.

(4) A person who intentionally obstructs a person in the exercise of his powers under this regulation commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

**Commencement Information**

**I66** Reg. 95 in force at 30.10.1994, see [reg. 1\(2\)](#)

**Compensation: England and Wales**

<sup>F1</sup>**96.** . . . . .

**Compensation: Scotland**

**97.**—(1) The following provisions have effect as to compensation under regulation 30 (compensation for effect of byelaws) in respect of land in Scotland.

(2) Any dispute arising on a claim for any such compensation shall be determined by the Lands Tribunal for Scotland.

(3) For the purposes of any such reference to the Lands Tribunal for Scotland section 8 of the Land Compensation (Scotland) Act 1963 (which relates to expenses) has effect with the substitution for references to the acquiring authority, of references to the authority from whom the compensation in question is claimed.

(4) Rules (2) to (4) of the Rules set out in section 12 of that Act (which provides rules for valuation on a compulsory acquisition) apply to the calculation of any such compensation, in so far as it is calculated by reference to the depreciation of the value of an interest in land.

(5) In the case of an interest in land subject to a heritable security—

(a) any such compensation in respect of the depreciation of that interest shall be calculated as if the interest were not subject to the heritable security;



- (b) a claim or application for the payment of any such compensation may be made by any person who when the byelaws giving rise to the compensation were made was the creditor in a heritable security of the interest, or by any person claiming under such a person, but without prejudice to the making of a claim or application by any other person;
- (c) a creditor in a heritable security shall not be entitled to any such compensation in respect of his interest as such; and
- (d) any compensation payable in respect of the interest subject to the heritable security shall be paid to the creditor or, where there is more than one creditor in a heritable security, to the creditor whose heritable security has priority over any other heritable securities secured on the land, and shall in either case be applied by him as if it were proceeds of sale.

**Commencement Information**

**I67** Reg. 97 in force at 30.10.1994, see [reg. 1\(2\)](#)

*Supplementary provisions as to compulsory acquisition*

**Supplementary provisions as to acquisition of land**

<sup>F237</sup>**98.** . . . . .

**F237** Regs. 98, 99 revoked (S.) (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), [regs. 1\(1\), 22\(d\)](#) (with [regs. 20, 21](#)); and Regulations revoked (E.W.) (1.4.2010 except so far as relating to the revocation in relation to W. of reg. 36 and specified words in reg. 3(3)) by [The Conservation of Habitats and Species Regulations 2010 \(S.I. 2010/490\)](#), [regs. 1\(2\)\(4\)\(b\), 133\(3\)](#) (with [regs. 125, 134](#))

**Powers of entry**

<sup>F238</sup>**99.** . . . . .

**F238** Regs. 98, 99 revoked (S.) (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), [regs. 1\(1\), 22\(d\)](#) (with [regs. 20, 21](#)); and Regulations revoked (E.W.) (1.4.2010 except so far as relating to the revocation in relation to W. of reg. 36 and specified words in reg. 3(3)) by [The Conservation of Habitats and Species Regulations 2010 \(S.I. 2010/490\)](#), [regs. 1\(2\)\(4\)\(b\), 133\(3\)](#) (with [regs. 125, 134](#))

*Supplementary provisions as to protection of species*

**Attempts and possession of means of committing offence**

**100.**—(1) A person who attempts to commit an offence under Part III of these Regulations is guilty of an offence and punishable in like manner as for that offence.

(2) A person who, for the purposes of committing an offence under Part III of these Regulations, has in his possession anything capable of being used for committing the offence is guilty of an offence and punishable in like manner as for that offence.

(3) References below to an offence under Part III include an offence under this regulation.

### Commencement Information

**I68** Reg. 100 in force at 30.10.1994, see [reg. 1\(2\)](#)

### Enforcement

**101.**—(1) If a constable suspects with reasonable cause that any person is committing or has committed an offence under Part III of these Regulations, the constable may without warrant—

- (a) stop and search that person if the constable suspects with reasonable cause that evidence of the commission of the offence is to be found on that person;
- (b) [<sup>F239</sup>search for,] search or examine any thing which that person may then be using or [<sup>F240</sup>may have used, or may have or have had in his possession,] if the constable suspects with reasonable cause that evidence of the commission of the offence is to be found [<sup>F241</sup>in or] on that thing;
- [<sup>F242</sup>(ba) arrest that person;]
- (c) seize and detain for the purposes of proceedings under that Part any thing which may be evidence of the commission of the offence or may be liable to be forfeited under regulation 103.

(2) If a constable suspects with reasonable cause that any person is committing [<sup>F243</sup>or has committed] an offence under Part III of these Regulations, he may, for the purposes of exercising the powers conferred by paragraph (1) or arresting a person in accordance with section 25 of the Police and Criminal Evidence Act 1984(<sup>54</sup>) for such an offence, enter any land other than a [<sup>F244</sup>dwelling or lockfast premises].

(3) If a justice of the peace is satisfied by [<sup>F245</sup>evidence ] on oath that there are reasonable grounds for suspecting that an offence under regulation 39, 41 or 43 has been committed and that evidence of the offence may be found on any premises, he may grant a warrant to any constable [<sup>F246</sup>to enter those premises, if necessary using reasonable force, and search them] for the purpose of obtaining that evidence.

In the application of this paragraph to Scotland, the reference to a justice of the peace includes a sheriff.

[<sup>F247</sup>(4) A warrant under paragraph (3) continues in force until the purpose for which the entry is required has been satisfied or, if earlier, the expiry of such period as the warrant may specify.

(5) A constable authorised by virtue of this regulation to enter any land must, if required to do so by the occupier or anyone acting on the occupier's behalf, produce evidence of the constable's authority.

- (6) A constable who enters any land in the exercise of a power conferred by this regulation—
  - (a) may—
    - (i) be accompanied by any other persons; and
    - (ii) take any machinery, other equipment or materials on to the land, for the purpose of assisting the constable in the exercise of that power;
  - (b) may take samples of any articles or substances found there and remove the samples from the land.

(7) A power specified in paragraph (6)(a) or (b) which is exercisable under a warrant is subject to the terms of the warrant.

(8) A constable leaving any land which has been entered in exercise of a power conferred by paragraph (2) or by a warrant under paragraph (3), being either unoccupied land or land from which the occupier is temporarily absent, must leave it as effectively secured against unauthorised entry as the constable found it.]

- F239** Words in reg. 101(1)(b) inserted (S.) (29.11.2004) by The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2004 (S.S.I. 2004/475), regs. 1(1), **17(a)(i)** (with regs. 20, 21)
- F240** Words in reg. 101(1)(b) substituted (S.) (29.11.2004) by The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2004 (S.S.I. 2004/475), regs. 1(1), **17(a)(ii)** (with regs. 20, 21)
- F241** Words in reg. 101(1)(b) inserted (S.) (29.11.2004) by The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2004 (S.S.I. 2004/475), regs. 1(1), **17(a)(iii)** (with regs. 20, 21)
- F242** Reg. 101(1)(ba) inserted (S.) (29.11.2004) by The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2004 (S.S.I. 2004/475), regs. 1(1), **17(b)** (with regs. 20, 21)
- F243** Words in reg. 101(2) inserted (S.) (29.11.2004) by The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2004 (S.S.I. 2004/475), regs. 1(1), **17(c)(i)** (with regs. 20, 21)
- F244** Words in reg. 101(2) substituted (S.) (29.11.2004) by The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2004 (S.S.I. 2004/475), regs. 1(1), **17(c)(ii)** (with regs. 20, 21)
- F245** Word in reg. 101(3) substituted (S.) (29.11.2004) by The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2004 (S.S.I. 2004/475), regs. 1(1), **17(d)(i)** (with regs. 20, 21)
- F246** Words in reg. 101(3) substituted (S.) (29.11.2004) by The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2004 (S.S.I. 2004/475), regs. 1(1), **17(d)(ii)** (with regs. 20, 21)
- F247** Reg. 101(4)-(8) inserted (S.) (29.11.2004) by The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2004 (S.S.I. 2004/475), regs. 1(1), **17(e)** (with regs. 20, 21)

#### Commencement Information

**I69** Reg. 101 in force at 30.10.1994, see **reg. 1(2)**

#### [<sup>F248</sup> Application of sections 19ZC and 19ZD of the Wildlife and Countryside Act 1981

**101A.**—(1) Subject to paragraphs (2) to (4), sections 19ZC (wildlife inspectors: Scotland) and 19ZD (power to take samples: Scotland) of the Wildlife and Countryside Act 1981 apply, for the purposes of these Regulations.

(2) For the purposes of these Regulations, any reference in section 19ZC or 19ZD of the Wildlife and Countryside Act 1981 to that Act or any part thereof, shall be construed as a reference to these Regulations.

(3) The provisions of section 19ZC of the Wildlife and Countryside Act 1981 apply for the purposes of these Regulations as if—

(a) in subsection (3)—

- (i) in paragraph (a), the reference to “section 6, 9(5) [<sup>F249</sup>111(1)] or 13(2)” was a reference to regulation [<sup>F250</sup>39(3)] or 43(2) of these Regulations;
- (ii) paragraphs (b) to (d) were omitted; and
- (iii) in paragraph (e)(i) and (ii), “registration or” was omitted;

(b) in subsection (4)—

- (i) in paragraph (a), for “paragraphs (a) to (c) do” there was substituted “paragraph (a) does”;
- (ii) in paragraph (a)(i) and (ii) “registration or” was omitted; and

- (iii) paragraph (b) was omitted;
- (c) in subsection (5), for the words from “section 6” to “[<sup>F251</sup>14K]” there was substituted a reference to regulation [<sup>F252</sup>39(3)] or 43(2) of these Regulations;
- (d) in subsection (6), “bird or other” was omitted in each place where it occurs;
- (e) for subsection (9) there was substituted–
  - “(9) In this section–
  - “relevant licence” means a licence under regulation 44 of the Conservation (Natural Habitats, &c.) Regulations 1994 which authorises anything which would otherwise be an offence under regulation [<sup>F253</sup>39(3)] or 43(2) of those Regulations;
  - “specimen” means any animal or plant or any part of, or anything derived from, an animal or plant.”; and
- (f) after subsection (9) there was inserted–
  - “(10) A person guilty of an offence under this section is liable on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale, or to both.”.
- (4) the provisions of section 19ZD of the Wildlife and Countryside Act 1981 apply for the purposes of these Regulations as if–
  - (a) in subsection (1)–
    - (i) the reference to “section 19” was a reference to regulation 101 of these Regulations; and
    - (ii) the reference to “this Part” was a reference to Part III of these Regulations;
  - (b) in subsection (2), the reference to “this Part” was a reference to Part III of these Regulations;
  - (c) in subsection (3)–
    - (i) for the words from “section 6” to “[<sup>F254</sup>14K]” there was substituted a reference to regulation [<sup>F255</sup>39(3)] or 43(2) of these Regulations; and
    - (ii) “to (d)” was omitted;
  - (d) in subsection (4), for the words from “section 6” to “[<sup>F256</sup>14K]” there was substituted a reference to regulation [<sup>F257</sup>39(3)] or 43(2) of these Regulations;
  - (e) in subsection (5), “bird, other” was omitted;
  - (f) in subsections (6) and (7), “bird or other” was omitted;
  - (g) in subsection (8), the reference to “section 19(2)” was a reference to regulation 101(2) of these Regulations;
  - (h) in subsection (10)(b)–
    - (i) for “a bird, other” there was substituted “an ”; and
    - (ii) “bird, other” was omitted; and
  - (i) after subsection (10) there was inserted–
    - “(11) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale, or to both.”.]

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**F248** Reg. 101A inserted (S.) (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), **18** (with regs. 20, 21)

- F249** Word in reg. 101A(3)(a)(i) inserted (2.7.2012) by The Wildlife and Natural Environment (Scotland) Act 2011 (Consequential Modifications) Order 2012 (S.S.I. 2012/215), reg. 1, **sch. para. 4(a)**
- F250** Word in reg. 101A(3)(a) substituted (S.) (15.2.2007) by The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2007 (S.S.I. 2007/80), regs. 2, **23**
- F251** Word in reg. 101A(3)(c) substituted (2.7.2012) by The Wildlife and Natural Environment (Scotland) Act 2011 (Consequential Modifications) Order 2012 (S.S.I. 2012/215), reg. 1, **sch. para. 4(b)**
- F252** Word in reg. 101A(3)(c) substituted (S.) (15.2.2007) by The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2007 (S.S.I. 2007/80), regs. 2, **23**
- F253** Word in reg. 101A(3)(e) substituted (S.) (15.2.2007) by The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2007 (S.S.I. 2007/80), regs. 2, **23**
- F254** Word in reg. 101A(4)(c)(i) substituted (2.7.2012) by The Wildlife and Natural Environment (Scotland) Act 2011 (Consequential Modifications) Order 2012 (S.S.I. 2012/215), reg. 1, **sch. para. 4(b)**
- F255** Word in reg. 101A(4)(c) substituted (S.) (15.2.2007) by The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2007 (S.S.I. 2007/80), regs. 2, **23**
- F256** Word in reg. 101A(4)(d) substituted (2.7.2012) by The Wildlife and Natural Environment (Scotland) Act 2011 (Consequential Modifications) Order 2012 (S.S.I. 2012/215), reg. 1, **sch. para. 4(b)**
- F257** Word in reg. 101A(4)(d) substituted (S.) (15.2.2007) by The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2007 (S.S.I. 2007/80), regs. 2, **23**

#### **Offences in connection with constables' powers to take samples**

**F1101B.** .....

#### **Wildlife inspectors**

**F1101C.** .....

#### **Powers of wildlife inspectors to enter premises**

**F1101D.** .....

#### **Wildlife inspectors' powers for examining specimens and taking samples**

**F1101E.** .....

#### **Offences in connection with wildlife inspectors' enforcement powers**

**F1101F.** .....

#### **Restrictions on taking samples from live specimens**

**F1101G.** .....

#### **Codes of practice**

**F1101H.** .....

#### **Advice and assistance from nature conservation bodies**

**F1101I.** .....

### Proceedings for offences: venue, time limits

**102.**—(1) An offence under Part III of these Regulations shall, for the purposes of conferring jurisdiction, be deemed to have been committed in any place where the offender is found or to which he is first brought after the commission of the offence.

(2) Summary proceedings [<sup>F258</sup>for any such offence][<sup>F259</sup>(other than for an offence under regulation 39 or 41)] may be brought within a period of six months from the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to his knowledge.

But no such proceedings shall be brought by virtue of this paragraph more than [<sup>F260</sup>three] years after the commission of the offence [<sup>F261</sup>or, in the case of a continuous contravention, after the last date on which the offence was committed].

(3) For the purposes of paragraph (2) a certificate signed by or on behalf of the prosecutor and stating the date on which such evidence as aforesaid came to his knowledge shall be conclusive evidence of that fact; and a certificate stating that matter and purporting to be so signed shall be deemed to be so signed unless the contrary is proved.

- F258** Words in [reg. 102\(2\)](#) substituted (S.) (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), **19(a)** (with regs. 20, 21)
- F259** Words in [reg. 102\(2\)](#) inserted (30.11.2020) by [Animals and Wildlife \(Penalties, Protections and Powers\) \(Scotland\) Act 2020 \(asp 14\)](#), ss. **9(4)**, 22(2); S.S.I. 2020/379, reg. 2(1), sch. (with reg. 3)
- F260** Word in [reg. 102\(2\)](#) substituted (S.) (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), **19(b)** (with regs. 20, 21)
- F261** Words in [reg. 102\(2\)](#) inserted (S.) (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), **19(c)** (with regs. 20, 21)

#### Commencement Information

**I70** Reg. 102 in force at 30.10.1994, see [reg. 1\(2\)](#)

### Power of court to order forfeiture

**103.**—(1) The court by which a person is convicted of an offence under Part III of these Regulations—

- (a) shall order the forfeiture of any animal, plant or other thing in respect of which the offence was committed; and
- (b) may order the forfeiture of any vehicle, animal, weapon or other thing which was used to commit the offence.

(2) In paragraph (1)(b) “vehicle” includes aircraft, hovercraft and boat.

#### Commencement Information

**I71** Reg. 103 in force at 30.10.1994, see [reg. 1\(2\)](#)

### Saving for other protective provisions

**104.** Nothing in these Regulations shall be construed as excluding the application of the provisions of Part I of the Wildlife and Countryside Act 1981(**55**) (protection of wildlife) in relation to animals or plants also protected under Part III of these Regulations.

**Commencement Information**

**I72** Reg. 104 in force at 30.10.1994, see [reg. 1\(2\)](#)

**[<sup>F262</sup> Application of criminal offences to the Crown**

**104A.**—(1) No contravention by the Crown of any provision of these Regulations makes the Crown criminally liable; but the Court of Session may, on the application of any public body or office holder having responsibility for enforcing that provision, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(2) Despite paragraph (1), the provisions of these Regulations apply to persons in the public service of the Crown as they apply to other persons.]

**F262** [Reg. 104A](#) inserted (S.) (15.2.2007) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2007 \(S.S.I. 2007/80\)](#), [regs. 2, 24](#)

*General supplementary provisions*

**Powers of drainage authorities**

**105.**—(1) Where the appropriate nature conservation body or any other person enter into an agreement with a drainage authority for the doing by that authority of any work on land in a European site, no limitation imposed by law on the capacity of the drainage authority by virtue of its constitution shall operate so as to prevent the authority carrying out the agreement.

(2) In paragraph (1) “drainage authority” means the National Rivers Authority or an internal drainage board.

**Commencement Information**

**I73** Reg. 105 in force at 30.10.1994, see [reg. 1\(2\)](#)

**Offences by bodies corporate, &c.**

**106.**—(1) Where an offence under these Regulations committed by a body corporate is proved to have committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, or a person purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

For this purpose “director”, in relation to a body corporate whose affairs are managed by its members, means any member of the body.

(2) Where an offence under these Regulations committed by a Scottish partnership is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, a partner, he (as well as the partnership) is guilty of the offence and liable to be proceeded against and punished accordingly.

**Commencement Information**

**I74** Reg. 106 in force at 30.10.1994, see [reg. 1\(2\)](#)

## Application of criminal offences to the Crown

<sup>F1</sup>**106A.** . . . . .

## Local inquiries

**107.**—(1) The Secretary of State may cause a local inquiry to be held for the purposes of the exercise of any of his functions under these Regulations.

(2) The provisions of section 250(2) to (5) of the Local Government Act 1972<sup>(56)</sup> or section 210(4) to (8) of the Local Government (Scotland) Act 1973<sup>(57)</sup> (local inquiries: evidence and costs) apply in relation to an inquiry held under this regulation.

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### Commencement Information

**I75** Reg. 107 in force at 30.10.1994, see [reg. 1\(2\)](#)

## Service of notices

**108.**—(1) Section 329 of the Town and Country Planning Act 1990<sup>(58)</sup> or section 269 of the Town and Country Planning (Scotland) Act 1972<sup>(59)</sup> (service of notices) apply to notices and other documents required or authorised to be served under these Regulations.

(2) Paragraph (1) does not apply to the service of any notice required or authorised to be served under the Acquisition of Land Act 1981<sup>(60)</sup> or the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947<sup>(61)</sup>, as applied by these Regulations.

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### Commencement Information

**I76** Reg. 108 in force at 30.10.1994, see [reg. 1\(2\)](#)

## <sup>F263</sup> Advisory role of the JNCC

**109.**—(1) The Joint Nature Conservation Committee may provide advice or make representations to any competent authority in relation to—

- (a) any question as to whether that authority is obliged to carry out an appropriate assessment in relation to a European offshore marine site under these Regulations;
- (b) any appropriate assessment on which that authority is obliged to consult the Committee under these Regulations;
- (c) any application made pursuant to regulation 62 of these Regulations and sent to the Committee by that authority pursuant to regulation 62(4); and
- (d) any decision of the Secretary of State in respect of which notice has been served on it by him under regulation 72(2)(b), 76(2)(b) or 80(2)(b) of these Regulations.

(2) The Joint Nature Conservation Committee may undertake, commission or support (whether by financial means or otherwise) such research and scientific work as it considers is required for the purposes of providing advice or making representations under this regulation.

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<sup>(56)</sup> 1972 c. 70.

<sup>(57)</sup> 1973 c. 65.

<sup>(58)</sup> 1990 c. 8.

<sup>(59)</sup> 1972 c. 52.

<sup>(60)</sup> 1981 c. 67.

<sup>(61)</sup> 1947 c. 42.



(3) In this regulation and regulation 110 of these Regulations, “research” includes inquiries and investigations.

**F263** Regs. 109, 110 inserted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(61)** (with reg. 9)

### **Advisory role of Natural England, the Countryside Council for Wales and Scottish Natural Heritage**

**110.**—(1) Natural England may—

- (a) provide advice and assistance, or make representations, to any competent authority on any matter which relates to England and is connected with the discharge of the competent authority’s functions under these Regulations; and
- (b) undertake, commission or support (whether by financial means or otherwise) such research and scientific work as it considers is required for the purposes of providing advice or assistance or making representations under sub-paragraph (a).

(2) The Countryside Council for Wales may—

- (a) provide advice and assistance, or make representations, to any competent authority on any matter which relates to Wales and is connected with the discharge of the competent authority’s functions under these Regulations; and
- (b) undertake, commission or support (whether by financial means or otherwise) such research and scientific work as it considers is required for the purposes of providing advice or assistance or making representations under sub-paragraph (a).

(3) Scottish Natural Heritage may—

- (a) provide advice and assistance, or make representations, to any competent authority on any matter which relates to Scotland and is connected with the discharge of the competent authority’s functions under these Regulations; and
- (b) undertake, commission or support (whether by financial means or otherwise) such research and scientific work as it considers is required for the purposes of providing advice or assistance or making representations under sub-paragraph (a).]]

**F263** Regs. 109, 110 inserted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(61)** (with reg. 9)

### **[<sup>F264</sup>Research**

**111.**—(1) The Scottish Ministers must take such steps to encourage research and scientific work as they consider necessary—

- (a) having regard to the objectives in Article 2, and the obligation in Article 11, of the Habitats Directive; and
- (b) for the purpose of the protection or management, and in relation to the use, of any population of wild bird.

<sup>F265</sup>(2) .....

(3) In deciding what steps to take under paragraph (1), the Scottish Ministers must have particular regard to the need for research and scientific work—

- (a) on the subjects listed in Annex V to the Wild Birds Directive; or
- (b) which may be required to implement Articles 4 and 10 of the Habitats Directive.]

**F264** Reg. 111 inserted (S.) (16.8.2012) by The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2012 (S.S.I. 2012/228), regs. 1(1), 6

**F265** Reg. 111(2) omitted (31.12.2020) by virtue of The Conservation (Natural Habitats, &c.) (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/113), regs. 1, 24; 2020 c. 1, Sch. 5 para. 1(1)

#### [<sup>F266</sup> **Transitional provisions: EU exit**

**112.**—(1) Where before exit day a site in Scotland has been adopted in accordance with the procedure set out in Article 4(2) of the Habitats Directive (list of sites of Community importance), the Scottish Ministers must designate that site as a special area of conservation as soon as possible and no later than six years from the date of adoption of that site.

(2) Paragraph (3) applies where a site in Scotland—

(a) has before exit day been proposed, in a list of sites transmitted to the European Commission, as eligible for identification as of Community importance in accordance with the procedure laid out in Article 4(2) of the Habitats Directive (list of sites of Community importance); and

(b) has not yet been so identified as being of Community importance.

(3) Where this paragraph applies, the Scottish Ministers must within six years of exit day designate the site as a special area of conservation or give notice of their intention not to designate the site as such and in that case must publish, in such form as they see fit, their reasons for not designating it.]

**F266** Regs. 112-115 inserted (31.12.2020) by The Conservation (Natural Habitats, &c.) (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/113), regs. 1, 25; 2020 c. 1, Sch. 5 para. 1(1)

#### [<sup>F266</sup> **Amendment of Schedules**

**113.**—(1) The Scottish Ministers may by regulations amend schedule 2 or 4 for the purpose of adding, to schedule 2 or 4, any species listed in Annex IV(a) or (b) to the Habitats Directive, where they are satisfied that the natural range of that species includes any area in Scotland.

(2) The Scottish Ministers may by regulations make such other amendments as they consider necessary for adapting schedules 2 to 4 to technical and scientific progress.

(3) Regulation 115 applies in relation to any amendment made under paragraph (1) or (2).]

**F266** Regs. 112-115 inserted (31.12.2020) by The Conservation (Natural Habitats, &c.) (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/113), regs. 1, 25; 2020 c. 1, Sch. 5 para. 1(1)

#### [<sup>F266</sup> **Amendment of the Annexes to the Directives**

**114.**—(1) Paragraph (2) applies for the purposes of the application of the Annexes so far as they are relevant to any reference in these Regulations to—

(a) the Directives;

(b) the Annexes; or

(c) any provisions of the Directives to which the Annexes relate.

(2) The Scottish Ministers may by regulations make such amendments to the Annexes as they consider necessary for the purpose of adapting them to technical and scientific progress.

- (3) Regulation 115 applies in relation to any amendment made under paragraph (2).
- (4) In this regulation, “the Annexes” means—
- (a) Annexes I to IV to the Habitats Directive; and
  - (b) Annexes I to V to the Wild Birds Directive.]

**F266** Regs. 112-115 inserted (31.12.2020) by [The Conservation \(Natural Habitats, &c.\) \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019 \(S.S.I. 2019/113\)](#), regs. 1, **25**; 2020 c. 1, Sch. 5 para. 1(1)

### [<sup>F266</sup>Regulations

**115.**—(1) Regulations made under regulation 113(2) amending schedule 2, or under regulation 114 amending Annex IV to the Habitats Directive, are subject to the affirmative procedure (see section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010).

- (2) Regulations made in any other case are subject to the negative procedure.]

**F266** Regs. 112-115 inserted (31.12.2020) by [The Conservation \(Natural Habitats, &c.\) \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019 \(S.S.I. 2019/113\)](#), regs. 1, **25**; 2020 c. 1, Sch. 5 para. 1(1)

*John Gummer*  
Secretary of State for the Environment

*Ian Lang*  
Secretary of State for Scotland

*John Redwood*  
Secretary of State for Wales

**Changes to legislation:** There are currently no known outstanding effects for the The Conservation (Natural Habitats, &c.) Regulations 1994. (See end of Document for details)

F267 SCHEDULE 1

Regulation 22(3)

**F267** Sch. 1 revoked (S.) (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), **22(e)** (with regs. 20, 21) and Regulations revoked (E.W.) (1.4.2010 except so far as relating to the revocation in relation to W. of reg. 36 and specified words in reg. 3(3)) by [The Conservation of Habitats and Species Regulations 2010 \(S.I. 2010/490\)](#), regs. 1(2)(4)(b), **133(3)** (with regs. 125, 134)

[F268] SCHEDULE 2

Regulation 38

EUROPEAN PROTECTED SPECIES OF ANIMALS

**F268** Regulations revoked (E.W.) (1.4.2010 except so far as relating to the revocation in relation to W. of reg. 36 and specified words in reg. 3(3), 12.12.2014 in so far as not already in force) by [The Conservation of Habitats and Species Regulations 2010 \(S.I. 2010/490\)](#), regs. 1(2)(4)(b), **133(3)** (with regs. 125, 134)

**Commencement Information**

**I77** Sch. 2 in force at 30.10.1994, see [reg. 1\(2\)](#)

<i>Common name</i>	<i>Scientific name</i>
Bats, Horseshoe (all species)	Rhinolophidae
Bats, Typical (all species)	Vespertilionidae
[F269] Beaver, Eurasian or European]	[F270] Castor fiber]
Butterfly, Large Blue	Maculinea arion
Cat, Wild	Felis silvestris
Dolphins, porpoises and whales (all species)	Cetacea
Dormouse	Muscardinus avellanarius
Lizard, Sand	Lacerta agilis
Newt, Great Crested (or Warty)	Triturus cristatus
Otter, Common	Lutra lutra
Snake, Smooth	Coronella austriaca
Sturgeon	Acipenser sturio
Toad, Natterjack	Bufo calamita
Turtles, Marine	Caretta caretta
	Chelonia mydas
	Lepidochelys kempii

NOTE. The common name or names given in the first column of this Schedule are included by way of guidance only; in the event of any dispute or proceedings, the common name or names shall not be taken into account.]

**Changes to legislation:** There are currently no known outstanding effects for the The Conservation (Natural Habitats, &c.) Regulations 1994. (See end of Document for details)

<i>Common name</i>	<i>Scientific name</i>
	Eretmochelys imbricata
	Dermochelys coriacea

NOTE. The common name or names given in the first column of this Schedule are included by way of guidance only; in the event of any dispute or proceedings, the common name or names shall not be taken into account.]

**F269** Words in Sch. 2 table inserted (1.5.2019) by The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2019 (S.S.I. 2019/64), regs. 1(1), **2(a)**

**F270** Words in Sch. 2 table inserted (1.5.2019) by The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2019 (S.S.I. 2019/64), regs. 1(1), **2(b)**

[<sup>F268</sup>[<sup>F271</sup>SCHEDULE 2A

Regulation 39(9)

EXCLUDED POPULATIONS OF CERTAIN SPECIES

**F271** Sch. 2A inserted: (S.) (15.2.2007) by The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2007 (S.S.I. 2007/80), reg. 2, **sch. 2**; and (E.W.) (21.8.2007) by The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007 (S.I. 2007/1843), regs. 2(1), 5(62), **Sch. 2** (with reg. 9)

<i>Common Name</i>	<i>Scientific Name</i>	<i>Excluded countries and areas</i>
Beaver, Eurasian	Castor fiber	Estonia, Finland, Latvia, Lithuania, Poland, and Sweden
Hamster, Common (or Black bellied)	Cricetus cricetus	Hungary
Wolf, Grey	Canis lupus	[ <sup>F272</sup> Bulgaria,] Estonia, Greece north of the 39th parallel, Latvia, Lithuania, Poland, Slovakia, Spain north of the Duero, and the reindeer management area in Finland as defined in paragraph 2 of Finnish Act No 848/90 of 14 September 1990 on reindeer management
Lynx, Eurasian	Lynx lynx	Estonia
Viper, Seoane's	Vipera seoanni	Spain

**F272** Word in Sch. 2A Table inserted (25.2.2008) by The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2008 (S.S.I. 2008/17), regs. 1(1), **2(4)**

**Changes to legislation:** There are currently no known outstanding effects for the The Conservation (Natural Habitats, &c.) Regulations 1994. (See end of Document for details)

NOTE: The common name or names given in the first column of this table are included by way of guidance only; in the event of dispute or proceedings, the common name or names must not be taken into account.]]

[<sup>F268</sup>SCHEDULE 3

Regulation 41(1)(a)

## ANIMALS WHICH MAY NOT BE TAKEN OR KILLED IN CERTAIN WAYS

**Commencement Information**

**I78** Sch. 3 in force at 30.10.1994, see [reg. 1\(2\)](#)

<i>Common name</i>	<i>Scientific name</i>
Barbel	<i>Barbus barbus</i>
Grayling	<i>Thymallus thymallus</i>
Hare, Mountain	<i>Lepus timidus</i>
Lamprey, River	<i>Lampetra fluviatilis</i>
Marten, Pine	<i>Martes martes</i>
Polecat	<i>Mustela putorius</i> (otherwise known as <i>Putorius putorius</i> )
Salmon, Atlantic	<i>Salmo salar</i> (only in fresh water)
Seal, Bearded	<i>Erignathus barbatus</i>
Seal, Common	<i>Phoca vitulina</i>
Seal, Grey	<i>Halichoerus grypus</i>
Seal, Harp	<i>Phoca groenlandica</i> (otherwise known as <i>Pagophilus groenlandicus</i> )
Seal, Hooded	<i>Cystophora cristata</i>
Seal, Ringed	<i>Phoca hispida</i> (otherwise known as <i>Pusa hispida</i> )
Shad, Allis	<i>Alosa alosa</i>
Shad, Twaite	<i>Alosa fallax</i>
Vendace	<i>Coregonus albula</i>
Whitefish	<i>Coregonus lavaretus</i>

NOTE. The common name or names given in the first column of this Schedule are included by way of guidance only; in the event of any dispute or proceedings, the common name or names shall not be taken into account.]

[<sup>F273</sup>SCHEDULE 3A

Regulation 41

PROHIBITED METHODS OF TAKING OR KILLING WILD ANIMALS

**F273** Sch. 3A inserted (31.12.2020) by The Conservation (Natural Habitats, &c.) (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/113), reg. 1, sch.; 2020 c. 1, Sch. 5 para. 1(1)

1. The prohibited means of taking or killing mammals are—
  - (a) the use of blind or mutilated animals as live decoys;
  - (b) tape recorders;
  - (c) electrical and electronic devices capable of killing or stunning;
  - (d) artificial light sources;
  - (e) mirrors and other dazzling devices;
  - (f) devices for illuminating targets;
  - (g) sighting devices for night shooting comprising an electronic image magnifier or image converter;
  - (h) explosives;
  - (i) nets which are non-selective according to their principle or their conditions of use;
  - (j) traps which are non-selective according to their principle or their conditions of use;
  - (k) crossbows;
  - (l) poisons and poisoned or anaesthetic bait;
  - (m) gassing or smoking out; and
  - (n) semi-automatic or automatic weapons with a magazine capable of holding more than two rounds of ammunition.
2. The prohibited methods of capturing or killing fish are—
  - (a) poison; and
  - (b) explosives.
3. The prohibited modes of transport are—
  - (a) aircraft; and
  - (b) moving motor vehicles.]

[<sup>F268</sup>SCHEDULE 4

Regulation 42

EUROPEAN PROTECTED SPECIES OF PLANTS

**Commencement Information**

**I79** Sch. 4 in force at 30.10.1994, see [reg. 1\(2\)](#)

**Changes to legislation:** There are currently no known outstanding effects for the The Conservation (Natural Habitats, &c.) Regulations 1994. (See end of Document for details)

<i>Common name</i>	<i>Scientific name</i>
Dock, Shore	<i>Rumex rupestris</i>
Fern, Killarney	<i>Trichomanes speciosum</i>
Gentian, Early	<i>Gentianella anglica</i>
Lady's-slipper	<i>Cypripedium calceolus</i>
Marshwort, Creeping	<i>Apium repens</i>
Naiad, slender	<i>Najas flexilis</i>
Orchid, Fen	<i>Liparis loeselii</i>
Plantain, Floating-leaved water	<i>Luronium natans</i>
Saxifrage, Yellow Marsh	<i>Saxifraga hirculus</i>

NOTE. The common name or names given in the first column of this Schedule are included by way of guidance only; in the event of any dispute or proceedings, the common name or names shall not be taken into account.]

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make provision for implementing Council Directive [92/43/EEC](#) on the conservation of natural habitats and of wild fauna and flora.

Part I contains introductory provisions.

Part II provides for the conservation of natural habitats and habitats of species, and in particular—  
 regulations 7 to 15 make provision for the selection, registration and notification of sites to be protected under the Directive (“European sites”);  
 regulations 16 and 17 make provision for management agreements for European sites;  
 regulations 18 to 27 make provision in respect of European sites for the control of damaging operations and for special nature conservation orders;  
 regulations 28 to 32 make provision for byelaws and compulsory purchase orders as respects European sites; and  
 regulations 33 to 36 make special provision for the protection of European marine sites.

Part III provides for the protection of certain wild animals and plants and in particular—  
 regulation 39 makes it an offence, subject to certain exceptions, deliberately to capture, kill or disturb those animals or to trade in them; and  
 regulation 43 makes it an offence, subject to certain exceptions, to pick, collect, cut, uproot or destroy those plants or to trade in them.

Part IV makes provision for the adaptation of planning and certain other controls for the protection of European sites; in particular—



regulations 48, 49 and 54 require the effect on a European site to be considered before a grant of planning permission and, subject to certain exceptions, restrict the grant of planning permission where the integrity of the European site would be adversely affected;

regulations 50 and 51 and 55 to 58 require planning permissions granted before the date on which a site becomes a European site (or if later, the commencement of these Regulations) to be reviewed and in certain circumstances revoked where the integrity of the site would be adversely affected.

Equivalent provision for the requirement to consider the effect on a European site and for review is made as respects the construction or improvement of highways, roads or cycle tracks (regulations 69 and 70), consents under the Electricity Act 1989 (regulations 71 to 74), authorisations under the Pipe-lines Act 1962 (regulations 75 to 78), orders under the Transport and Works Act 1992 (regulations 79 to 82), authorisations and licences under the Environmental Protection Act 1990 (regulations 83 and 84) and discharge consents under water pollution legislation (regulation 85). Regulations 60 to 67 make special provision as respects general and special development orders, simplified planning zones and enterprise zones.

**Changes to legislation:**

There are currently no known outstanding effects for the The Conservation (Natural Habitats, &c.) Regulations 1994.