

Special nature conservation orders

Power to make special nature conservation order

22.—(1) The Secretary of State may, after consultation with the appropriate nature conservation body, make in respect of any land within a European site an order (a “special nature conservation order”) specifying operations (whether on land specified in that order or elsewhere and whether or not within the European site) which appear to him to be likely capable of—~~to~~ destroying or damaging the flora, fauna, or geological or physiographical features by reason of which the land is a European site.

(2) A special nature conservation order may be amended or revoked by a further order.

(3) Schedule 1 has effect with respect to the making, confirmation and coming into operation of special nature conservation orders and amending or revoking orders.

(4) A special nature conservation order ~~in relation to specifying operations on~~ land within a European site in England and Wales is a local land charge.

(5) *[text relating to Scotland omitted]*

(6) A report submitted by a nature conservation body to the Secretary of State under paragraph 20 of Schedule 6 to the Environmental Protection Act 1990 *[text relating to Scotland omitted]* shall set out particulars of any land in their area as respects which a special nature conservation order has come into operation during the year to which the report relates.

(7) If an order under paragraph (1) specifies any operation of a kind not carried out, or proposed to be carried out, on land within a European site, the order shall specify the operation by reference to the place where it is being, or is proposed to be, carried out.

Restriction on carrying out operations specified in order

23.—(1) No person to whom notice is given in accordance with this regulation shall carry out on any land within a European site in respect of which a special nature conservation order is in force, or in the place by reference to which the operation is specified, any operation specified in the order, unless the notice condition specified in paragraph (1A) and the consent condition specified in paragraph (2) are fulfilled ~~the operation is carried out, or caused or permitted to be carried out, by the owner or occupier of the land and—~~

(1A) The notice condition is—

- (a) where the operation is carried out on land, that—
 - (i) the operation is carried out, or caused or permitted to be carried out, by the owner or occupier of the land; and
 - (ii) after notice is given, one of them has given the appropriate nature conservation body written notice of a proposal to carry out the operation, specifying its nature and where it is proposed to carry it out; and
- (b) one of them has in any other case, that, after the notice is given, the person proposing to carry out the operation has, after the making of the order, given the appropriate nature conservation body written notice of a proposal to carry out the operation, specifying its nature and the land on which where it is proposed to carry it out, and

~~(b) one of the conditions specified in paragraph (2) is fulfilled.~~

(2) ~~These~~ consent condition ~~is~~ are—

- (a) that the operation is carried out with the written consent of the appropriate nature conservation body; or

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(b) that the operation is carried out in accordance with the terms of a management agreement.

(2A) In respect of any land within a European site for which a special nature conservation order is made, the appropriate nature conservation body may serve a notice on any person carrying out, or proposing to carry out, any operation of a kind specified in that order which appears to them to be likely to destroy or damage the flora, fauna, or geological or physiographical features by reason of which the land is a European site.

(2B) The notice served under paragraph (2A) shall specify-

- (a) details of the operation;
- (b) details of the European site to which the notice relates; and
- (c) the date on which the notice takes effect.

(2C) Where it is not reasonably practicable to ascertain the identity of the person carrying out, or proposing to carry out, the operation, the Secretary of State may direct the appropriate nature conservation body that it may, instead of serving a notice under paragraph (2A), publish a notice in one local newspaper circulating in the area in which the land to which the notice relates is situated, and affix a copy or copies of the notice to some conspicuous object or objects on the land to which the notice relates.

(2D) For the purpose of this regulation and regulations 24 and 25, references to the giving of notice to a person include the service of a notice on a person under paragraph (2A) and the publication of a notice under paragraph (2C), and where a notice is published under paragraph (2C) any person carrying out an operation specified in the notice shall be taken to be a person to whom notice is given under paragraph (1).

(3) A person who, without reasonable excuse, contravenes paragraph (1) commits an offence and is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

(4) For the purposes of paragraph (3) it is a reasonable excuse for a person to carry out an operation—

- (a) that the operation was an emergency operation particulars of which (including details of the emergency) were notified to the appropriate nature conservation body as soon as practicable after the commencement of the operation; or
- (b) that the operation was authorised by a planning permission granted on an application under Part III of the Town and Country Planning Act 1990 [*text relating to Scotland omitted*].

Supplementary provisions as to consents

24.—(1) Where it appears to the appropriate nature conservation body that an application for consent under regulation 23(2)(a) relates to an operation which is or forms part of a plan or project which—

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

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

(2) In the light of the conclusions of the assessment, they may give consent for the operation only after having ascertained that the plan or project will not adversely affect the integrity of the site.

(3) Where the appropriate nature conservation body refuse consent in accordance with paragraph (2) they shall give reasons for their decision.

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(4) ~~The owner or occupier of the land~~ A person to whom notice is given in question may—

- (a) within two months ~~of~~ receiving notice of the refusal of consent, or
- (b) if no notice of a decision is received by him within three months of an application for consent being made,

by notice in writing to the appropriate nature conservation body require them to refer the matter forthwith to the Secretary of State.

(5) If on the matter being referred to the Secretary of State he is satisfied that, there being no alternative solutions, the plan or project must be carried out for imperative reasons of overriding public interest (which, subject to paragraph (6), may be of a social or economic nature), he may direct the appropriate nature conservation body to give consent to the operation.

(6) Where the site concerned hosts a priority natural habitat type or a priority species the reasons referred to in paragraph (5) must be either—

- (a) reasons relating to human health, public safety or beneficial consequences of primary importance to the environment, or
- (b) other reasons which in the opinion of the European Commission are imperative reasons of overriding public interest.

(7) Where the Secretary of State directs the appropriate nature conservation body to give consent under this regulation, he shall secure that such compensatory measures are taken as are necessary to ensure that the overall coherence of Natura 2000 is protected.

(8) This regulation does not apply in relation to a site which is a European site by reason only of regulation 10(1)(c) (site protected in accordance with Article 5(4)).

Compensation for effect of order

25.—(1) Where ~~a special nature conservation order is made~~ notice has been given under regulation 23, the appropriate nature conservation body shall pay compensation to any person having at the time ~~of the making of the order~~ at which notice is given—an interest in land comprised in an agricultural unit comprising land to which the ~~order~~ notice relates who, on a claim made to the appropriate nature conservation body within the time and in the manner prescribed by regulations, shows that the value of his interest is less than it would have been if ~~the order~~ notice had not been given ~~made~~.

(2) For this purpose an “agricultural unit” means land which is occupied as a unit for agricultural purposes, including any dwelling-house or other building occupied by the same person for the purpose of farming the land.

(3) No claim for compensation shall be made under this regulation in respect of a ~~notice~~ order unless the Secretary of State has given notice under paragraph 6(1) or (2) of Schedule 1 of his decision in respect of the order.

Restoration where order contravened

26.—(1) Where a person is convicted of an offence under regulation 23, the court by which he is convicted may, in addition to dealing with him in any other way, make an order requiring him to carry out, within such period as may be specified in the order, such operations for the purpose of restoring the land to its former condition as may be so specified.

(2) An order under this regulation made on conviction on indictment shall be treated for the purposes of section 30 of the Criminal Appeal Act 1968 (effect of appeals on orders for the restitution of property) as an order for the restitution of property.

(3) In the case of an order under this regulation made by a magistrates' court the period specified in the order shall not begin to run—

- (a) in any case until the expiration of the period for the time being prescribed by law for the giving of notice of appeal against a decision of a magistrates' court;
- (b) where notice of appeal is given within the period so prescribed, until determination of the appeal.

(4) At any time before an order under this regulation has been complied with or fully complied with, the court by which it was made may, on the application of the person against whom it was made, discharge or vary the order if it appears to the court that a change in circumstances has made compliance or full compliance with the order impracticable or unnecessary.

(5) If a person fails without reasonable excuse to comply with an order under this regulation, he commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale; and if the failure continues after conviction, he may be proceeded against for a further offence from time to time until the order is complied with.

(6) If, within the period specified in an order under this regulation, any operations specified in the order have not been carried out, the appropriate nature conservation body may enter the land and carry out those operations and recover from the person against whom the order was made any expenses reasonably incurred by them in doing so.

[text relating to Scotland omitted]

Continuation in force of existing orders, &c.

27.—(1) Where an order is in force under section 29 of the Wildlife and Countryside Act 1981 (special protection for certain areas of special scientific interest) in relation to land which on or after the commencement of these Regulations becomes land within a European site, the order shall have effect as if made under regulation 22 above.

(2) Any notice previously given under section 29(4)(a) (notice by owner or occupier of proposal to carry out operation) shall have effect as if given under regulation 23(1)(a) and, if the appropriate nature conservation body have neither given nor refused consent, shall be dealt with under these Regulations.

(3) Any consent previously given under section 29(5)(a) shall be reviewed by the appropriate nature conservation body as regards its compatibility with the conservation objectives of the site, and may be modified or withdrawn.

(4) Notice of any such modification or withdrawal of consent shall be given to every owner and occupier of land within the site who in the opinion of the appropriate nature conservation body may be affected by it; and the modification or withdrawal shall come into force in relation to an owner or occupier upon such notice being given to him.

(5) The modification or withdrawal of a consent shall not affect anything done in reliance on the consent before the modification or withdrawal takes effect.

(6) Section 29(5)(c), (6) and (7) shall cease to apply and the carrying out, or continuation, of any operation on land within a European site which is not otherwise authorised in accordance with these Regulations shall be subject to the prohibition in regulation 23(1).

SCHEDULE 1

Regulation 22(3)

Procedure in Connection with Orders Under Regulation 22

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Coming into operation

- 1.—(1) An original order or a restrictive amending order takes effect on its being made.
 - (2) The Secretary of State shall consider every such order, and the order shall cease to have effect nine months after it is made unless he has previously given notice under paragraph 6 that he has considered it and does not propose to amend or revoke it, or has revoked it.
 - (3) Subject to paragraphs 3(1) and 4(4), a revoking order, or an amending order which is not restrictive, does not take effect until confirmed by the Secretary of State.
 - (4) An amending or revoking order requiring confirmation shall stand revoked if the Secretary of State gives notice under paragraph 6 below that it is not to be confirmed.

Publicity for orders

- 2.—(1) The Secretary of State shall, where an order has been made, give notice setting out the order (or describing its general effect) and stating that it has taken effect or, as the case may be, that it has been made and requires confirmation.
 - (2) The notice shall—
 - (a) name a place in the area in which the land to which the order relates is situated where a copy of the order may be inspected free of charge at all reasonable hours; and
 - (b) specify the time (not being less than 28 days from the date of the first publication of the notice) within which, and the manner in which, representations or objections with respect to the order may be made.
 - (3) The notice shall be given—
 - (a) by publication in the Gazette and also at least one local newspaper circulating in the area in which the land to which the order relates is situated;
 - (b) by serving a like notice—
 - (i) on every owner and occupier of that land (subject to sub-paragraph (4) below); and
 - (ii) on the local planning authority within whose area the land is situated.
 - (4) The Secretary of State may, in any particular case, direct that it shall not be necessary to comply with sub-paragraph (3)(b)(i); but if he so directs in the case of [an order specifying any operation carried out, or proposed to be carried out, on any land](#), then in addition to publication the notice shall be addressed to “The owners and any occupiers”, [describing details of the operation and the details of the European site to which the order relates](#) of the land (describing it) and a copy or copies of the notice shall be affixed to some conspicuous object or objects on the land.

Unopposed orders

- 3.—(1) Where an order has taken effect immediately and no representations or objections are duly made in respect of it or any so made are withdrawn, the Secretary of State shall, as soon as practicable after considering the order, decide either to take no action on it or to make an order amending or revoking it.

An amending or revoking order under this sub-paragraph takes effect immediately and does not require confirmation nor shall any representation or objection with respect to it be entertained.

(2) Where an order requiring confirmation is made and no representations or objections are duly made in respect of it, or any so made are withdrawn, the Secretary of State may confirm the order (with or without modification).

Opposed orders

4.—(1) If any representation or objection duly made with respect to an order is not withdrawn, then, as soon as practicable in the case of an order having immediate effect and before confirming an order requiring confirmation, the Secretary of State shall either—

- (a) cause a local inquiry to be held; or
- (b) afford any person by whom a representation or objection has been duly made and not withdrawn an opportunity of being heard by a person appointed by the Secretary of State for the purpose.

(2) On considering any representations or objections duly made and the report of any person appointed to hold the inquiry or to hear representations or objections, the Secretary of State—

- (a) if the order has already taken effect, shall decide either to take no action on the order, or to make an order amending or revoking it as he thinks appropriate in the light of the report, representations or objections; and
- (b) if the order requires confirmation, may confirm it (with or without modifications).

(3) The provisions of section 250(2) to (5) of the Local Government Act 1972 [*text relating to Scotland omitted*] (local inquiries: evidence and costs) apply in relation to an inquiry held under this paragraph.

(4) An amending or revoking order made by virtue of sub-paragraph (2) above takes effect immediately and does not require confirmation nor shall any representation or objection with respect to it be entertained.

Restriction on power to amend orders or confirm them with modifications

5. The Secretary of State shall not by virtue of paragraphs 3(1) or 4(2) amend an order which has taken effect, or confirm any other order with modifications, so as to extend the area to which the order applies.

Notice of final decision on order

6.—(1) The Secretary of State shall as soon as practicable after making an order by virtue of paragraphs 3(1) or 4(2) give notice—

- (a) setting out the order (or describing its effect) and stating that it has taken effect; and
- (b) naming a place in the area in which the land to which the order relates is situated where a copy of the order may be inspected free of charge at all reasonable hours.

(2) The Secretary of State shall give notice of any of the following decisions of his as soon as practicable after making the decision—

- (a) a decision under paragraph 3(1) or 4(2) to take no action on an order which has already taken effect;
- (b) a decision to confirm or not to confirm an order requiring confirmation under this Schedule.

(3) A notice under this paragraph of a decision to confirm an order shall—

- (a) set out the order as confirmed (or describe its general effect) and state the day on which the order took effect; and
- (b) name a place in the area in which the land to which the order relates is situated where a copy of the order as confirmed may be inspected free of charge at all reasonable hours.

(4) Notice under this paragraph shall be given by publishing it in accordance with paragraph 2(3) and serving a copy of it on any person on whom a notice was required to be served under paragraph 2(3) or (4).

Proceedings for questioning validity of orders

7.—(1) This paragraph applies to any order which has taken effect and as to which the Secretary of State has given notice under paragraph 6 of a decision of his to take no action or to amend the order in accordance with paragraph 4; and in this paragraph “the relevant notice” means that notice.

(2) If any person is aggrieved by an order to which this paragraph applies and desires to question its validity on the ground that it is not within the powers of regulation 22, or that any of the requirements of this Schedule have not been complied with in relation to it, he may within six weeks from the date of the relevant notice make an application to the court under this paragraph.

(3) On any such application the court may, if satisfied that the order is not within those powers or that the interests of the applicant have been substantially prejudiced by a failure to comply with any of those requirements—

- (a) in England and Wales, quash the order, or any provision of the order, either generally or in so far as it affects the interests of the applicant; or
- (b) *[text relating to Scotland omitted]*

(4) Except as provided by this paragraph, the validity of an order shall not be questioned in any legal proceedings whatsoever.

(5) In this paragraph “the court” means the High Court in relation to England and Wales and the Court of Session in relation to Scotland.

Interpretation

8. In this Schedule—

“amending order” and “revoking order” mean an order which amends or, as the case may be, revokes a previous order;

“the Gazette” means—

- (a) if the order relates in whole or in part to land in England and Wales, the London Gazette; and
- (b) if the order relates in whole or in part to land in Scotland, the Edinburgh Gazette;

“order” means an order under regulation 22;

“original order” means an order other than an amending or revoking order; and

“restrictive amending order” means an amending order which extends the area to which a previous order applies.