

Department for Environment, Food and Rural Affairs

June 2009

Consultation on proposed minor amendments to the Conservation (Natural Habitats, &c.) Regulations 1994

About this consultation exercise

Summary

The Conservation (Natural Habitats, &c.) Regulations 1994 as amended ('the Habitats Regulations') transpose Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora ('Habitats Directive') into domestic legislation in Great Britain.

Defra is considering making amendments to regulations 22 - 27 and Schedule 1 of the Habitats Regulations (special nature conservation orders - SNCO) to make clear that these provisions can be used to restrict operations taking place on water as well as on land, in order to protect European sites. It is proposed that the amendments will cover both England and Wales.

The aim of this consultation is to set out our proposals for amendments to the Habitats Regulations, and to invite your comments.

What this consultation package contains

This package contains the Consultation Document, setting out the background and explaining the changes we propose to make and the rationale behind them. Details of the proposed textual amendments to the Regulations to give effect to the changes described below will be published on the Defra website shortly, and copies can be obtained by writing to the address given below.

Responses

Defra would welcome responses to this consultation paper by 3 August 2009. It would be helpful if in your response you could make clear the nature of your organisation (if any) where this is not readily apparent, and the capacity in which you are responding (e.g. an officer representing an organisation or an individual). It will also assist us in taking account of the points you raise if you make clear the section or consultation question to which they relate. Any responses received may be made public, unless you have specifically asked for them to remain confidential. Responses and general enquiries about this paper should be sent to: International Protected Areas Team, Department for Environment, Food and Rural Affairs, Zone 1/06, Temple Quay House, 2 The Square, Temple Quay, Bristol BS1 6PN or email: Habitats@defra.gsi.gov.uk

Introduction

The EC Habitats Directive

The main aim of the EC Habitats Directive (92/43/EEC) is to promote biodiversity by requiring Member States to take measures to maintain or restore natural habitats and wild species at a favourable conservation status, introducing robust protection for those habitats and species of European importance. In applying these measures, Member States are required to take account of economic, social and cultural requirements and regional and local characteristics. The Directive is transposed into the law in England, Scotland and Wales by the Conservation (Natural Habitats, &c.) Regulations 1994¹ (as amended).

Background

Regulations 22 – 27, and Schedule 1, of the Habitats Regulations contain powers to make special nature conservation orders in respect of any land within a European site specifying operations which appear to the Secretary of State to be likely to destroy or damage the flora, fauna, or geological or physiographical features of the site.

The effect of the order is that no person is permitted to carry out **on land within a European site** any operation specified in the Order, save in the circumstances set out in regulation 23(1) of the Habitats Regulations. One such circumstance is that the operation is carried out with the written consent of the appropriate nature conservation body.

Under regulation 24, where an operator seeks consent of the appropriate nature conservation body and it cannot be ruled out that the operation will not have a significant effect on the European site, the conservation body must undertake an appropriate assessment of the operation.

The existing regulations also provide that that carrying out a prohibited operation without a reasonable excuse is a criminal offence.

The proposed amendments

Defra is considering making amendments to regulations 22 - 27 and Schedule 1 of the Habitats Regulations to make clear that these provisions can be used to restrict operations taking place on water as well as those on land, in order to protect European sites. More details of the proposals are provided in the Discussion section below.

The proposed amendments are intended to come into force on 1 October 2009, and will have no effect on any special nature conservation orders currently in place

Discussion

Regulations 22 – 27, and Schedule 1, of the Habitats Regulations make provisions for the Secretary of State, after consultation with the appropriate nature conservation body, to make in respect of land within a European site a special nature conservation order (SNCO) specifying operations which appear to be likely to destroy or damage the interest

¹ SI 1994 2716 http://www.opsi.gov.uk/si/si1994/Uksi_19942716_en_1.htm

features of a European site. 'European site' is defined in regulation 10 of the Habitats Regulations but includes Special Areas of Conservation (SAC) designated by Member States under the Habitats Directive and Special Protection Areas (SPAs) classified under the Birds Directive². Collectively, the UK's SACs and SPAs form part of the European network of protected sites known as Natura 2000³.

Currently, regulation 23(1) provides that "no person shall carry out on any land within a European site...any operation specified in the order...". In our view this means that an order could not be used to restrict or prohibit operations being carried out on water that are likely to damage a European site. Nor could the power be used to prohibit operations undertaken outside the European site but which have a damaging effect on it. However, the Habitats Directive, which these regulations are designed to implement, does not restrict the obligation to prevent damage to sites to operations which take place on land, or within the sites themselves. We are therefore proposing minor changes to the Habitats Regulations to address these issues.

If circumstances require, the proposed changes would allow the Secretary of State, after consultation with the appropriate nature conservation body (eg Natural England or the Countryside Council for Wales) to restrict any person from carrying out an operation on **land or water, within or outside a European site**, which appears to the Secretary of State to be capable of destroying or damaging the interest features of a European site.

The amendments required to achieve the above objectives are relatively minor and generally involve removing the references to operations undertaken "on land" (for example in existing regulation 23[1]) and minor consequential amendments. In other words, the Habitats Regulations would simply refer to "operations" without referring to where they take place.

We also propose to make a procedural change to the order making process to enable the order to be targeted at specific persons or organisations, where such a course would be appropriate. This is necessary because the existing SNCO procedures are focussed on activities undertaken or permitted by owner/occupiers of the land.

The current procedures cater for this by requiring the order to be served on all such persons. However, by extending the scope of the powers to cover any operations capable of damaging a European site, we envisage that this will bring operations undertaken by persons who are not necessarily owners/occupiers within scope of the proposed SNCO powers. To cater for this we propose to introduce a new power for the appropriate nature conservation body to serve a notice on such persons (see below). Another benefit of this new step in the process is that it enables prohibitions to be targeted, rather than to necessarily apply to all persons carrying out a specific operation.

Under the proposed amendments, the two-stage process would be as follows:

(1) The Secretary of State can, as now, make a SNCO. The SNCO will specify operations (taking place on land and/or water) which appear to the Secretary of State to be capable of destroying or damaging the flora, fauna, or geographical or physiographical features by reason of which the land is a European site (effectively this would be a warning stage to those operating within or near a European site);

² http://ec.europa.eu/environment/nature/legislation/birdsdirective/index_en.htm

³ http://ec.europa.eu/environment/nature/natura2000/index_en.htm

(2) A new step so that when an SNCO has been made, it only applies to a person proposing to carry out such an operation where the appropriate nature conservation body has served a notice on that person. A notice would only be served where it appears that the operations are likely to destroy or damage the flora, fauna, or geological or physiographical features of the European site.

It will be a criminal offence for a person who has received a notice to carry out an operation which has been specified in the SNCO, unless one of the exceptions applies.

Where there are a number of unknown persons carrying out a damaging activity and it is not reasonably practicable to identify them, Defra proposes that the Secretary of State will have a power to direct the nature conservation body that it need not serve a notice on every person. Instead the nature conservation body must publish a notice in one local newspaper in the relevant area and fix copies of the notice to conspicuous objects on the land.

This approach will keep the current legislation largely intact in relation to the making of the SNCO itself, whilst enabling the effect of the order to be targeted specifically on those persons that receive a notice. The new notice serving power will entail some amendments to Regulation 23 and Schedule 1 of the Habitats Regulations, which sets out the procedures for making orders.

Consultation Questions

Question 1

- **Do you agree with the proposal to amend regulations 22 - 27 and Schedule 1 of the Habitat Regulations 1994 to provide that the powers to make special nature conservation orders can be used to restrict operations taking place on water as well as those on land in order to protect European sites?**

Question 2

- **Do you agree with the proposal to amend regulations 22 - 27 and Schedule 1 of the Habitat Regulations 1994 to provide that the powers to make special nature conservation orders can be used to restrict operations taking place outside, as well as within, European sites?**

Question 3

- **Do you agree with the proposal to introduce a two-stage process which involves the new stage of serving a notice on a person/persons proposing to undertake an operation capable of damaging a European site?**

Question 4

- **Are there any other comments relating to the proposed amendments that you would like to make?**