

# Appendix 3



CONSERVATION (NATURAL HABITATS, &C.) REGS 1994 (No. 2716)

- (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).

*General provisions for protection of European sites*

**Assessment of implications for European site**

48.—(1) A competent authority, before deciding to undertake, or give 3B-949.25 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 (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.

(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.

(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.

(7) 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)).

GENERAL NOTE

*General Approach to regulations 48, 49 and 53*

3B-949.25.1

The impact of the Habitats Directive (Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Fauna and Flora), see above paragraphs 2A-044 *et seq.*), and therefore of these transposing regulations, on the application of national development consent procedures which concern a "European Site" (regulation 10, above) is a major one, though not one which has always been fully appreciated: see *ADT Auctions v Secretary of State* [2000] J.P.L. 1155. Important guidance on the operation of the provisions of the Habitats Directive, which is therefore also applicable to these Regulations, can be found in the Commission's own "*Managing Natura 2000 Sites - The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC*" (2000) and the methodological guidance in the "Assessment of

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Plans & Projects Significantly Affecting Natura 2000 Sites” (November 2001).

Before granting consent, permission *etc.* for a project, regulations 47-49 and 53, and the Habitats Directive, require that:

- (1) There must be an assessment by the competent authority as to whether a project is likely to have “a significant effect” on a European Site (providing it is not directly connected with or necessary to the Site’s management) whether in combination with other plans or projects or alone. The trigger for assessment does not presume that the plan or project considered definitely has such effects, but rather follows from the mere possibility that such effects attach to the plan or project, so that an assessment is required if there is a probability or risk that the plan or project will have an effect on the site concerned (reg.48(1) and Art.6(3)). See *Landelijke Vereniging tot Behoud van de Waddenzee and Nederlandse Vereniging tot Bescherming van Vogels v Staatssecretaris van Landbouw* (“Waddenzee”) (ECJ, judgment 7.9.04) paragraphs 41 and 43.
- (2) If there is likely to be such a significant effect, the competent authority must carry out an appropriate assessment (reg.48(1) and Art.6(3) of the Habitats Directive). This will include SEA - see regulation 5 of the Environmental Assessment of Plans and Programmes Regulations (SI 2004/1633).
- (3) The appropriate assessment must consider the implications for the European Site “in view of” that site’s conservation objectives (reg.48(1) and Art.6(3)). Where a plan or project has an effect on a site, but is not likely to undermine its conservation objectives, it cannot be considered likely to have a significant effect on the site concerned but, conversely, where a plan or project is likely to undermine the conservation objectives it must be considered as likely to have a significant effect on the site concerned. See *Waddenzee*, above, para.s 47-48.
- (4) There are obligations with regard to information and consultation (regulation 48(3) & (4) and Art.6(3)).
- (5) The competent authority must have regard to the manner in which the project is proposed to be carried out or to any conditions or restrictions subject to which it is proposed that the consent, permission or other authorisation should be given (reg.48(6)).
- (6) In the light of the conclusions of the assessment, the competent authority shall agree to the project only after having ascertained that it will not adversely affect the integrity of the European Site (reg.48(5) and Art.6(3)). A strong line of ECJ authority including *Commission v Germany Case C-57-89R*[1991] ECR I-883 (“Leybucht Dykes”) and *Commission v Spain Case C-355/90*[1993] ECR I-4221 (“Santoa Marshes”) shows that an important purpose of habitat designation and preservation is as a preventative measure to avoid harm occurring as well as protecting that territory most necessary to ensure their survival.
- (7) If it cannot be ascertained that the project will not adversely affect the integrity of the European Site, the authority must then consider whether there are any alternative solutions (reg.49(1) and Art.6(4)). The decision on 20.4.04 of the Secretary of State for Transport to reject a proposed Harbour Revision Order for a deep water terminal at Dibden Bay, Southampton, shows that the UK at least requires the consideration of alternatives to be approached broadly and not simply by reference to local conditions.
- (8) If there are no alternative solutions (Art.6(4) uses the language “in the absence of alternative solutions”) and “notwithstanding a nega-

tive assessment of the implications for the site” consent or authorisation etc., may be granted for the project but only “for imperative reasons of overriding public interest” (“IROPI”) (reg.49(1) and Art.6(4)). However, IROPI does not apply where proposed SPA under the Wild Birds Directive is concerned and the original version of Art.4(4) of that Directive applies. See *Commission v France C-374/98*[2000] E.C.R. I-10799 (“Basses Corbières”) and, further, *Bown v Secretary of State for Transport, Local Government & the Regions* [2004] Env. L.R. 509.

- (9) IROPI may be of a social or economic nature (unless the site hosts a priority natural habitat type or a priority species in which case the considerations are significantly restricted) (reg.49(1) and Art.6(4)). In respect to the similar provisions of reg.44(2)(e), in *R (Newsum) v Welsh Assembly*[2004] EWCA Civ 1565, the Court of Appeal held there that in applying this provision it was necessary to identify an imperative reason which was both of overriding public interest and with beneficial consequences for the environment (para.19).
- (10) Even if the authority is satisfied that there are IROPI, notwithstanding a negative assessment of the implications for a European Site the Secretary of State is under a duty to secure that any necessary compensatory measures are taken to ensure that the overall coherence of Natura 2000 is protected (reg.53 and Art.6(4)). The significance of compensatory measures is referred to by the Commission’s “Managing Natura 2000”, above, at para.5.4.1 as —

“Compensatory measures *sensu stricto*: independent of the project, they are intended to compensate for the effects on a habitat affected negatively by the plan or project. For example, general tree-planting to soften a landscape impact does not compensate for the destruction of a wooded habitat with quite specific characteristics.”

**Definition of ‘plan or project’**

One of the most significant aspects of the Regulations and the Directive is the protection it affords to designated sites from the potentially adverse environmental impacts of development. As noted above, reg.48(1) and Art.6(3) require the competent authorities of the Member States to carry out an ‘appropriate assessment’ of any ‘plan or project’ not directly connected with, or necessary to the management of, the site, but which is likely to have a significant effect on it. The meaning of ‘plan or project’ was clarified by the ECJ in its judgment in *Waddenzee Case C-127/02*, above, 7.9.04. The ECJ, at para.24, approached the question by analogy with the definition of “project” in Directive 85/337 (the Environmental Assessment Directive). The definition in Art.1(2) of Directive 85/337 was of “the execution of construction works or of other installations or schemes, other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources”. The Court held at para.26:

“Such a definition of project is relevant to defining the concept of plan or project as provided for in the Habitats Directive, which, as is clear from the foregoing, seeks, as does Directive 85/337, to prevent activities which are likely to damage the environment from being authorised without prior assessment of their impact on the environment.”

This confirms the approach of the High Court in *R (on the application of Friends of the Earth) v Environment Agency*[2004] Env LR 31. Sullivan J. held that the words “plan or project” have a meaning autonomous of the references to them in the Conservation (Natural Habitats &c) Regulations 1994. They had to be given a broad interpretation consistent with the underlying purpose of the Directive in order to protect the Natura 2000 Network:

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para.60, at 629-30. Like the European Court of Justice, Sullivan J. compared the term in the Directive 85/337 and the interpretation of that document in the *House of Lords in R v North Yorkshire CC, ex parte Brown*[2000] 1 AC 397, per Lord Hoffmann at 404-5. Support was also provided by the Advocate General's Opinion in Case C-256/98 *Commission v France*[2000] ECR I-2487. Sullivan J. considered the threshold for determining whether a particular activity constituted a plan or project (at para.64, 630-1). In order to exclude a particular activity, it would be necessary to consider that it would not be likely to have significant effect on any European Site in the United Kingdom.

*Waddenzee* also dealt with the threshold issue. The ECJ reaffirmed that the condition for an assessment being required was that the plan or project had to be likely to have a significant effect on the site: para.40. Furthermore, the trigger for assessment pursuant to Art.6(3) does not presume that the plan or project considered definitely has such effects, but rather follows from the mere possibility that such an effect attaches to the plan or project (para.41). It followed that the requirement for an assessment pursuant to Art.6(3) would arise where there was a probability or risk that the plan or project would have an effect on the site concerned: para.43. In the light of the precautionary principle in Art.174(2) of the EC Treaty, such a risk would exist where it could not be excluded on the basis of objective information that the plan or project would have significant effects on the site concerned: paragraphs 44 and 45. Further, where a plan or project has an effect on a site, but is not likely to undermine its conservation objectives, it cannot be considered likely to have a significant effect on the site concerned: para.47. The converse is also true, so that where a plan or project is likely to undermine the conservation objectives it must be considered as likely to have a significant effect on the site concerned: para.48. The assessment of this risk must be considered in the light of the characteristics and specific environmental conditions of the site: paragraphs 48-9.

As to the form that the assessment must take, the ECJ held (para.53):

"[. . .] an appropriate assessment of the implications for the site concerned of the plan or project must precede its approval and take into account the cumulative effects which result from the combination of that plan or project with other plans or projects in view of the site's conservation objectives."

All the aspects of the plan or project which can either individually or in combination with aspects of other plans or projects affect the conservation objectives of the site must be identified in the light of the best scientific knowledge in the field. In turn, the conservation objectives may be established on the basis of the importance of the sites for the maintenance or restoration at a favourable conservation status of a natural habitat type in Annex I to the Habitats Directive or a species in Annex II and for the coherence of Natura 2000, and of the threats of degradation or destruction to which they are exposed: para.54.

*Waddenzee* also develops the understanding of the operation of Art.6(3) in one other important respect. The ECJ held (para.35) that the fact that a plan or project had been authorised in accordance with the procedure in Art.6(3) would render superfluous the concomitant application of the rule of general protection in Art.6(2). However, it then added (at para.37) that:

"[. . .] it cannot be precluded that such a plan or project subsequently proves likely to give rise to such deterioration or disturbance, even where the competent national authorities cannot be held responsible for any error. Under those conditions, application of Art.6(2) of the Habitats Directive makes it possible to satisfy the essential objective of the preservation and protection of the quality of the environment, including the conservation

of natural habitats and of wild fauna and flora, as stated in the first recital in the preamble to that directive.”

Although the ECJ's ultimate conclusion on this point does not make reference to this role for Art.6(2), it seems clearly established in para.37. The purpose of the directive is the protection of biodiversity. Thus, where it became evident during the course of operation of a plan or project that it would cause deterioration to designated habitats or species or disturbance to designated species, it will be necessary for Member States to take steps to avoid that disturbance or deterioration. This is the case even where the failure to predict the interference is not the fault of the authorities concerned. What matters is that biodiversity does not suffer as a result of the works carried out.

#### 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 to the plan or project notwithstanding a negative assessment of the implications for the site.** 3B-949.25.2

**(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) other reasons which in the opinion of the European Commission are imperative reasons of overriding public interest.**

**(3) Where a competent authority other than the Secretary of State desire to obtain the opinion of the European Commission as to whether reasons are to be considered imperative reasons of overriding public interest, they shall submit a written request to the Secretary of State—**

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

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

**(4) The Secretary of State may thereupon, if he thinks fit, seek the opinion of the Commission; and if he does so, he shall upon receiving the Commission's opinion transmit it to the authority.**

**(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 a European site, 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.**

#### GENERAL NOTE

See the commentary under regulation 48, at 3B-949.25. above

3B-949.25.3

[THE NEXT PARAGRAPH IS 3B-949.261

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Review of existing decisions and consents, &c.

- 3B-949.26** 50.—(1) Where before the date on which a site becomes a European 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) 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).

Consideration on review

- 3B-949.27** 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.

Co-ordination where more than one competent authority involved

- 3B-949.28** 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

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- (c) is undertaken by one or more competent authorities and requires the consent, permission or other authorisation of one or more other competent authorities.
- (2) Nothing in regulation 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 significant effect on a European site, or
  - (b) will adversely affect the integrity of a European 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.

[THE NEXT PARAGRAPH IS 3B-949.28.1]

**Compensatory measures**

53. Where in accordance with regulation 49 (considerations of overriding public interest)— 3B-949.28.1
- (a) a plan or project is agreed to, notwithstanding a negative assessment of the implications for a European 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.

**GENERAL NOTE**

See the commentary under regulation 48, at 3B-949.25.1 above 3B-949.28.1.1

[THE NEXT PARAGRAPH IS 3B-949.28.2]

*Planning*

**Grant of planning permission**

- 54.—(1) Regulations 48 and 49 (requirement to consider effect on European site) apply, in England and Wales, in relation to— 3B-949.28.2
- (a) granting planning permission on an application under Part III of the Town and Country Planning Act 1990;
  - (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 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) of that Act (powers of Secretary of State on appeal against enforcement notice), or

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- (iii) section 196(5) 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) of that Act (development with government authorisation), or under section 5(1) of the Pipelines Act 1962, that planning permission shall be deemed to be granted;
  - (e) making—
    - (i) an order under section 102 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 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 (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.
- (2) Regulations 48 and 49 (requirement to consider effect on European site) 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;
  - (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) of that Act (powers of Secretary of State on appeal against enforcement notice), or
    - (iii) section 91(3) 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) (development with government authorisation) of that Act, or under section 5(1) of the Pipelines Act 1962 or paragraph 7 of Schedule 8 to the Electricity Act 1989, that planning permission shall be deemed to be granted;
  - (e) making an order under section 49 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

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(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 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, outline planning permission shall not be granted unless the competent authority are satisfied (whether by reason of the conditions and limitations to which the outline planning permission is to be made subject, or otherwise) that no development likely adversely to affect the integrity of a European site could be carried out under the permission, whether before or after obtaining approval of any reserved matters.

In this paragraph "outline planning permission" and "reserved matters" have the same meaning as in section 92 of the Town and Country Planning Act 1990 or section 39 of the Town and Country Planning (Scotland) Act 1972.

**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— 3B-949.28.3

- (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, 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 development for which an authorisation has been granted under section 1 or 3 of the Pipe-lines Act 1962,
- (b) a direction under section 5(1) of the Pipe-lines 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

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(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), 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 and Wales 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.

**Planning permission: consideration on review**

3B-949.28.4 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 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