



THE HABITATS AND BIRDS DIRECTIVES, AND THE RAMSAR CONVENTION

MEMORANDUM OF UNDERSTANDING

BETWEEN THE MINISTRY OF DEFENCE AND THE DEPARTMENT FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS (DEFRA), THE OFFICE OF THE DEPUTY PRIME MINISTER (ODPM), THE WELSH ASSEMBLY GOVERNMENT (WAG), THE SCOTTISH EXECUTIVE (SE), AND THE NORTHERN IRELAND OFFICE (NIO).

INTRODUCTION

1. This Memorandum of Understanding relates to those areas of land or water (on shore and off shore) owned, occupied or used by the Ministry of Defence (MOD), including land owned by the Reserve Forces' and Cadets' Association (RFCA) and such rights as are taken over private land which:

- are European sites as defined by the Conservation (Natural Habitats &c) Regulations 1994, the Conservation (Natural Habitats &c) Regulations (Northern Ireland) 1995 (Natura 2000 sites) or:

- have been proposed by the Government to become European sites,



in respect of the Council Directive on the Conservation of Wild Birds 1979/409/EEC (The Birds Directive) and the Council Directive on the Conservation of Natural Habitats and of Wild Fauna and Flora 1992/43/EEC (The Habitats Directive). This Memorandum of Understanding (MOU) also relates to the Convention on Wetlands of International Importance Especially as Waterfowl Habitat (Ramsar 2.2. 1971). Ramsar sites in England, Wales and Scotland are to be considered as though designated as European Sites (see Ramsar sites in England: A Policy Statement – and the parallel Welsh statement. Also Scottish Executive Circular: June 2000).

2. It is recognised that the primary purpose for which MOD holds or uses land is for military requirements and in the interests of national defence. This MOU does not interfere with these purposes but recognises that the Directives and Regulations impose legal obligations on the Government as a whole with regard to the conservation of the natural habitats and species for which the areas became, or will become European sites. The MOU is intended to strengthen the relationship between MOD and DEFRA, ODPM, NAW, SE and NIO¹ and their respective conservation advisers² to ensure that obligations in respect of nature conservation are taken properly into account in accordance with the legal requirements.

¹ Hereafter referred to as the Government Departments, or country administrations.

² English Nature (EN), Scottish Natural Heritage (SNH) and the Countryside Council for Wales (CCW) are referred to hereafter as the Statutory Bodies. In Northern Ireland there is no separate nature conservation agency, such functions being contained within DOE (NI).



3. Existing Ramsar and candidate European sites will already have been notified to MOD and confirmed as SSSIs, or ASSIs in Northern Ireland, except for some in Scotland, and all marine sites. The country administrations will consult MOD before future areas are proposed as European and/or Ramsar sites.

MANAGEMENT PLANS

4. The principal tools for ensuring that the conservation value of European and Ramsar sites is maintained will be Integrated Land Management Plans and/or Conservation Management Plans, in accordance with Environmental Management Systems, agreed between Site Managers or RFCA Secretaries and the Statutory Bodies. These plans will aim to provide the basis for the necessary conservation measures for the natural habitats and species, whilst taking account of the primary holding of the land for defence purposes and existing military activities.

5. Management plans shall be agreed, where possible, in advance of identified areas becoming European or Ramsar sites, or as soon as possible thereafter, and regularly reviewed and amended as necessary with the agreement, as appropriate, of Site Managers, RFCA and the Statutory Bodies.

6. Review and/or amendment to the management plans may take place in the light of the results of monitoring; proposals to change or adapt existing military and land management



activities, or developments in scientific understanding of the natural habitats and species concerned.

PLANS AND PROJECTS

7. Where MOD proposes to undertake a change in land use, or intensification of military activity or a development which is “likely to have a significant effect” on the site, those changes shall be taken to be “plans or projects” within the meaning of Regulation 48 of the Conservation (Natural Habitats &c) Regulations 1994.

8. Without prejudice to the procedures outlined by individual UK Government Departments and their counterparts in the devolved administrations (the country administrations) in DOE Circular 18/84, Welsh Office Circular 37/84 and the Scottish and Northern Irish equivalents in respect of developments for which Crown exemption applies, where proposals arise for such plans or projects which are not directly connected with, or necessary to, the management of the site for nature conservation, MOD (through Defence Estates (DE)) will consult the relevant Statutory Body³ in advance of submitting any Notice of Proposed Development to the local Planning Authority.

³ In practice, project managers must, before deciding to undertake a plan or project, seek the views of officials of the statutory body to establish whether there is likely to be a significant effect and explore avoidance through notification, conditions or restrictions as necessary. This is likely to take place before the formal procedures outlined in this Memorandum.



9. Prior to submitting a plan or project to the relevant Statutory Body the MOD will carry out a sustainability appraisal and/or environmental impact assessment, as appropriate, in accordance with the Secretary of State's Policy Statement on the Management of Safety and Environmental Protection in the Ministry of Defence. The results of the appraisal/assessment will be passed to the relevant Statutory Body.

10. The relevant Statutory Body will advise on whether the plan or project is likely to have a significant effect in view of the site's conservation objectives⁴. Where, having regard to the advice of the Statutory Body, it is determined that an Appropriate Assessment is necessary, MOD will consult the Statutory Body and have regard to any representations made by that body. Following this, discussions should consider whether there are reasonable conditions or restrictions to which the plan or project may be made subject that may remove or reduce any negative conclusions of the assessment.

11. If, following advice and discussion with the relevant Statutory Body and having undertaken an Appropriate Assessment, MOD cannot ascertain that the proposal will not have an adverse effect on the integrity of the site, it will notify the relevant country administration.

⁴ The term 'likely significant effect' is not defined in the Directive nor in the Regulations. Guidance has been produced (Habitats Regulations Guidance Notes number 3) and agreed by the country administrations. However, only the courts can provide an authoritative interpretation.



12. If it cannot be ascertained that the plan or project will not affect the integrity of the site, MOD and the relevant country administration will liaise and reach collective agreement⁵, in the light of the defence importance of the proposal (as advised by MOD) and in the absence of suitable alternatives, as to whether the plan or project may be permitted to proceed for “imperative reasons of overriding public interest⁶”. Where the site concerned hosts a priority natural habitat type and/or a priority species, the only reasons which may be put forward are those relating to human health or public safety, or beneficial consequences of primary importance for the environment or other reasons which in the opinion of the European Commission are required, DEFRA in conjunction with the relevant country administration will seek that opinion. The plan or project will not proceed unless it is considered that it must do so for imperative reasons of overriding public interest. Where a damaging plan or project is to proceed, MOD and the relevant country administration shall secure any necessary compensatory measures to ensure that the overall coherence of the ‘Natura 2000’ network of European sites is protected.

13. MOD (through DE) and the relevant country administration will liaise over the collective position at every stage. In particular, MOD (through DE) will liaise with the relevant country administration to ensure that satisfactory proposals are in place to secure the

⁵ In the event of local disagreement, the case will be referred for determination to an interim Committee consisting of DE Director Estates and an equivalent Senior Civil Servant in the relevant Government Department or country administration. Only in exceptional cases will reference to Ministers be made. See para 9, et seq, for the procedure.

⁶ Government Position Statement May 1995 considers that, as a guiding principle and in the absence of alternatives, the interests of national security and defence will be imperative reasons of overriding public interest. In relation to Ramsar sites proposals to delete a site or restrict its boundaries may only be invoked in the “urgent national interest”



necessary measures required to compensate for the adverse effects on the habitats and species affected by the plan or project. DEFRA will take the lead in representing the UK Government's position in the European Commission or courts.

14. MOD (through DE) will call upon the relevant Statutory Body or country administration for advice as necessary in responding to questions or representations from outside bodies in respect of management plans, or plans or projects, and may authorise the relevant Statutory Body or country administration to explain the conservation issues directly. Similarly, MOD will call upon the relevant country administration for advice on decisions relating to "imperative reasons of overriding public interest", in relation to European sites and "urgent national interest" for Ramsar sites.

15. Subject to Ministerial approval, security considerations may require that compliance with the liaison procedure cannot be achieved. In such exceptional circumstances, MOD will endeavour to ensure that legal obligations are met and will also endeavour to follow the principles of the Memorandum as far as possible.

CONCLUSIONS

16. The content of this Memorandum will be communicated to all appropriate staff within MOD, RFCA, country administrations and Statutory Bodies. Its application will be kept under review.



17. These staff shall make and maintain close working relationships and endeavour to develop an understanding of their respective interests and requirements through dialogue, meetings and training workshops.

18. No action arising from this Memorandum will override statutory duties or responsibilities.

Original Signed in February 2003 by:

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