**EXPLANATORY MEMORANDUM TO**

**THE SITES OF SPECIAL SCIENTIFIC INTEREST (APPEALS) REGULATIONS 2009**

**2009 No. 197**

**1.** This explanatory memorandum has been prepared by the Department for the Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

## 2. Purpose of the instrument

2.1 These regulations clarify the process for appealing against the refusal, modification or withdrawal of a consent, by Natural England, to carry out an operation likely to damage a site of special scientific interest (SSSI), or the conditions of any such consent; the issue of a management notice, by Natural England, to the owner or occupier of an SSSI; or the giving of a stop notice in relation to any such operation.

## 3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

## 4. Legislative Context

4.1 The Countryside and Rights of Way Act 2000 (CROW) amended the Wildlife and Countryside Act 1981 and introduced rights of appeal for owners and occupiers of SSSI land against decisions made by Natural England in relation to applications for consent and the issue of management notices.

4.2 Whilst giving the power to appeal and prescribing some details of the appeals and subsequent decision-making process, the amended primary legislation did not go into any level of detail on documents to be provided, time- limits for providing information etc. Instead, general regulation making powers were provided to cover these procedural matters.

4.3 Since CROW came into force, the relatively limited number of SSSI appeals arising have been processed using provisional administrative procedures. Although a formal consultation was carried out on these procedures at the time, regulations were never finalised. During this period those making appeals have been informally advised of their rights and the procedures at every relevant stage. This has enabled Government to 'road test' the procedures and identify areas meriting improvement.

4.4 Although Government has been operating adequately without formal procedures it is believed that the process could be much improved for all parties. The laying of formal regulations, together with the publication of explanatory guidance will:

- provide more clarity to appellants, Natural England and any interested parties about the appeals process through the published guidance;
- improve administration of appeals and timely decision-making by setting statutory time-limits for the provision and exchange of information, and;

- set time-limits for lodging appeals against management notices.

## 5. Territorial Extent and Application

5.1 This instrument extends to England and Wales but applies to England only.

## 6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## 7. Policy background

- ***What is being done and why***

7.1 SSSIs, in their current form, were established under the Wildlife and Countryside Act 1981. There are 4115 sites notified in England by Natural England which protect our most important biological, geological and geomorphological features.

7.2 In notifying owners or occupiers of land within a site that the site is of special interest, Natural England specifies in its notification a list of operations likely to damage the features for which the site is regarded as special. If an owner or occupier wishes to carry out any of these operations they are required to seek **consent** from Natural England, unless the operation is carried out in accordance with an agreement under s.16 of the National Parks and Access to the Countryside Act 1949 or s.15 of the Countryside Act 1968, or a management scheme.

7.3 Natural England will also seek to ensure that sites are appropriately managed. As a first step Natural England may attempt to enter into a voluntary management agreement with the owner or occupier. If this is unsuccessful Natural England may draw up a management scheme in which they will clearly set out the measures required for positive management of the land. If Natural England has been unable to conclude arrangements for implementing a management scheme, and if the features for which the site were notified are being inadequately conserved, it has the power, under section 28K of the Wildlife and Countryside Act, to issue a **management notice**. The notice requires the owner or occupier to carry out specific works, or do specified things with respect to the land, within a specified time. If the notice is not complied with, section 28K(7) enables Natural England to enter the site and carry out the work itself, and to recover its expenses from the owner or occupier.

7.4 An owner or occupier of land within a site who has been refused consent to any operation, or who is aggrieved by conditions attached to a consent or by the modification or withdrawal of a consent, may appeal against the refusal, modification, withdrawal or conditions. An owner or occupier who is served with a management notice or stop notice may similarly appeal to the Secretary of State for Food, Environment and Rural Affairs against the service of the management notice or stop notice. Natural England make every effort to engage with owners or occupiers as soon as a site is identified as being of interest. In the majority of cases this engagement leads to a voluntary agreement regarding the management of the site. However, in a small number of cases this

engagement fails and appeals are made. This currently averages approximately five appeals per year. Although appeals have been processed since 2000, it has been recognised by all parties involved in the process that improvements could be made. These regulations and the associated guidance aim to provide structure and clarity to the process which will improve what can be quite a stressful experience, particularly for the appellant.

7.5 The Government currently has a Public Service Agreement Target to bring 95% of the SSSI area into target condition by December 2010. Target condition is considered to be in either favourable, i.e. the site is in the optimum condition for the feature for which it was notified, or recovering, i.e. the site is being managed in a positive way so that the condition is improving. The latest estimate (of 28 January 2009) is that 85.4% of SSSI land is in target condition. Natural England together with the vast majority of SSSI owners or occupiers are working hard to achieve the 95% target. However, in some isolated cases where positive management cannot be agreed, Natural England are considering issuing management notices. However, they are reluctant to utilise this power until these regulations are in place to ensure that, if this action provoked an appeal, the subsequent process would be clearly set out and completed within a specified timescale.

## 8. Consultation outcome

8.1 Following the introduction of the right to appeal in 2000, a formal 12 week consultation was carried out on the overall appeals procedure in the summer of 2001. Regulations were subsequently drafted in 2003. However, due to more pressing work priorities these were never finalised. Work was re-started in 2007 and it was agreed with Ministers in April 2008 that a more focused 6-week consultation on the draft regulations and associated guidance would be carried out between 30 June and 11 August 2008. The proposals were well received. Most respondents welcomed the intention to formalise procedures and limited their comments to detailed technical points, the majority of which were taken on board.

## 9. Guidance

9.1 Detailed guidance on the appeals process for consents and management notices separately has been prepared and will be available on the Defra website as soon as the regulations come into force. Copies of this guidance have been placed in the House libraries.

## 10. Impact

10.1 No impact on the private or voluntary sector is foreseen.

10.2 The impact on the public sector is to improve the administrative process of dealing with SSSI related appeals.

## 11. Regulating small business

11.1 The regulations do not regulate small business.

## 12. Monitoring & review

12.1 A recognised improvement of the appeals process by all parties.

## 13. Contact

Helen Hazzledine at the Department for Food, Environment and Rural Affairs Tel: 0117 372 8340 or email: Helen.hazzledine@defra.gsi.gov.uk can answer any queries regarding the instrument.