

Summary Legal Advice

The Biodiversity Officer has referred to the Solent & Dorset Coast Special Protection Area (SPA) and the effect on birds. SPAs are established under the Wild Birds Directive (2009/147/EC), which is concerned with the protection of rare and / or threatened bird species. The Directive has been transposed into UK law (as relevant) by the Conservation of Habitats and Species Regulations 2017 (2017 Regulations)

The 2017 Regulations were amended in 2019 to give effect to the UK's withdrawal from the EU. In line with Government statements at the time, the 2019 amendments sought to ensure that the species protection and standards under the Habitats and Wild Birds Directives were implemented in the same or equivalent way as before.

Reg 63 of the 2017 Regulations requires the assessment of implications for European sites and before deciding to give an authorisation for a 'plan or project' which is likely to have a significant effect on a European site: a competent authority must make an appropriate assessment of its implications for that site in view of its conservation objectives (Reg. 63(1)). The Solent & Dorset Coast SPA is designated as a European Site

We have sought external legal advice and been advised that The Council acting as the Licensing Authority is a competent authority and that the Courts have interpreted what constitutes a 'plan' or 'project' widely.

We are advised that an application for a premises licence within a SPA does come within the term 'plan' or 'project' needing assessment under Regulation 63 of the 2017 Regulations.

The duty on competent authorities, to secure compliance with the requirements of the Directives is set out in Reg 9 of the 2007 Regulations. Reg 9(3) makes it clear that when exercising any of its functions, the competent authority (in this case the Licensing Authority) must have regard to the requirements of the Directives, so far as they may be affected by the exercise of those functions. The determination of a Licensing Act 2003 application is one such function.

The Biodiversity Officer's representation has been accepted as a relevant representation under the public nuisance and prevention of crime and disorder licensing objectives. External legal advice considers that it is arguable that the effect of the operation, potentially engages the licensing objective of public nuisance by reading 'public nuisance' sufficiently widely to encompass the effect on sites protected for their biodiversity, in the public interest.