
STATUTORY INSTRUMENTS

2010 No. 490

The Conservation of Habitats and Species Regulations 2010

PART 6

ASSESSMENT OF PLANS AND PROJECTS

CHAPTER 2

PLANNING

Planning permission

Grant of planning permission

- 68.**—(1) The assessment provisions apply in relation to—
- (a) granting planning permission on an application under Part 3 of the TCPA 1990 (control over development);
 - (b) granting planning permission on an application under section 293A(1) of that Act (urgent Crown development);
 - (c) 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(2) of that Act (right to appeal against planning decisions) in respect of such an application;
 - (d) granting planning permission under—
 - (i) section 141(2)(a) of that Act (action in relation to purchase notice), or
 - (ii) section 177(1)(a)(3) of that Act (grant or modification of planning permission on appeals against enforcement notices);
 - (e) directing under the following provisions that planning permission is deemed to be granted—
 - (i) subsection (1)(4), (2) or (2A)(5) of section 90 of that Act (development with government authorisation),
 - (ii) section 57(2) of the Town and Country Planning (Scotland) Act 1997(6) (deemed grant of planning permission in relation to development for which a consent has been granted under section 36 or 37 of the Electricity Act 1989(7)), or

(1) Section 293A was inserted by the Planning and Compulsory Purchase Act 2004 (c. 5), section 82(1).
(2) Section 78 was amended by the Planning and Compensation Act 1991 (c. 34), section 17(2); the Planning and Compulsory Purchase Act 2004 (c. 5), sections 40(2)(e) and 43(2); and the Planning Act 2008 (c. 29), paragraphs 1 and 3 of Schedule 10 and paragraphs 1 and 2 of Schedule 11.
(3) Section 177(1) (a) was substituted by the Planning and Compensation Act 1991 (c. 34), paragraph 24(1)(a) of Schedule 7.
(4) Section 90(1) was amended by the Environment Act 1995 (c. 25), paragraph 32(4) of Schedule 10.
(5) Subsection (2A) of section 90 was inserted by the Transport and Works Act 1992 (c. 42), section 16(1).
(6) 1997 c. 8.

- (iii) section 5(1) of the Pipe-lines Act 1962(8) (provisions with respect to planning permission concerning pipe-lines);
- (f) making—
 - (i) an order under section 102(9) of the TCPA 1990 (orders requiring discontinuance of use or alteration or removal of buildings or works), including an order made under that section by virtue of section 104 of that Act (powers in relation to section 102 orders) which grants planning permission, or confirming any such order under section 103 of that Act (confirmation of section 102 orders), or
 - (ii) an order under paragraph 1 of Schedule 9(10) to that Act (order requiring discontinuance of mineral working), including an order made under that paragraph by virtue of paragraph 11 of that Schedule to that Act (powers in relation to orders under Schedule 9) which grants planning permission; or
- (g) directing under the following provisions that if an application is made for planning permission it must be granted—
 - (i) section 141(3) of that Act (action in relation to purchase notice), or
 - (ii) section 35(5) of the Planning (Listed Buildings and Conservation Areas) Act 1990(11) (action in relation to listed building purchase notice).

(2) Where the assessment provisions apply, the competent authority may, if they consider that any adverse effects of the plan or project on the integrity of a European site or a European offshore marine 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.

(3) Where the assessment provisions apply, outline planning permission must 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 or a European offshore marine site could be carried out under the permission, whether before or after obtaining approval of any reserved matters.

(4) In paragraph (3), “outline planning permission” and “reserved matters” have the same meanings as in section 92(12) of the TCPA 1990 (outline planning permission).

Planning permission: duty to review

69.—(1) Subject to the following provisions of this regulation, the review provisions apply to any planning permission or deemed planning permission, unless—

- (a) the development to which it related has been completed;
- (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) The review provisions do not apply to planning permission granted or deemed to have been granted—

(7) 1989 c. 29.

(8) 1962 c. 58; section 5(1) was amended by S.I. 1999/742, paragraph 2(3) of the Schedule.

(9) Section 102 was amended by the Planning and Compensation Act 1991 (c. 34), paragraph 6 of Schedule 1 and paragraph 21 of Schedule 7.

(10) Paragraph 1 of Schedule 9 was amended by the Planning and Compensation Act 1991 (c. 34), paragraph 15 of Schedule 1.

(11) 1990 c. 9.

(12) There are amendments to section 92 which are not relevant.

- (a) by a development order (but see regulations 73 to 78);
 - (b) by virtue of the adoption of a simplified planning zone scheme or of alterations to such a scheme (but see regulation 79); or
 - (c) by virtue of the taking effect of an order designating an enterprise zone under paragraph 5 of Schedule 32 to the Local Government, Planning and Land Act 1980⁽¹³⁾ (enterprise zones), or by virtue of the approval of a modified enterprise zone scheme (but see regulation 80).
- (3) Planning permission deemed to be granted by virtue of—
- (a) a direction under section 90(1) of the TCPA 1990 in respect of development for which an authorisation has been granted under section 1⁽¹⁴⁾ of the Pipe-lines Act 1962 (pipe-line construction authorisations),
 - (b) a direction under section 5(1) of the Pipe-lines Act 1962,
 - (c) a direction under section 90(1) of the TCPA 1990 in respect of development for which a consent has been granted under section 36 or 37 of the Electricity Act 1989⁽¹⁵⁾ (consents required in relation to generating stations and overhead lines),
 - (d) a direction under section 90(2) of the TCPA 1990 or section 57(2) of the Town and Country Planning (Scotland) Act 1997 (which relate to development for which a consent has been granted under section 36 or 37 of the Electricity Act 1989), or
 - (e) a direction under section 90(2A) of the TCPA 1990 (which relates to development in pursuance of an order under section 1 or 3 of the Transport and Works Act 1992⁽¹⁶⁾ (orders as to railways, tramways or inland waterways)),

must be reviewed in accordance with Chapter 4 (electricity), Chapter 5 (pipe-lines) or Chapter 6 (transport and works) (as the case may be) 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 TCPA 1990, the local planning authority must—

- (a) identify any such permission which they consider falls to be reviewed under the review provisions, and
- (b) refer the matter to the government department or person which made the direction,

and the department or person must, if in agreement that the planning permission does fall to be so reviewed, review the direction in accordance with the review provisions.

(5) Except as otherwise expressly provided, the review provisions 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 appropriate authority falls to be reviewed under the review provisions—

- (a) it must be reviewed by the local planning authority; and

⁽¹³⁾ 1980 c. 65. Schedule 32 was amended by the New Towns Act 1981 (c. 64), paragraph 28 of Schedule 12; the Local Government (Wales) Act 1994 (c. 19), paragraph 59(9) of Schedule 16 and Schedule 18; and the Planning (Consequential Provisions) Act 1990 (c. 11), Part 1 of Schedule 1 and paragraph 44(14) of Schedule 2.

⁽¹⁴⁾ Section 1 was amended by the Criminal Justice Act 1982 (c. 48), sections 37, 38 and 46; S.I. 1999/742, paragraph 2(2) of the Schedule; S.I. 2007/1519, paragraph 4(1) of the Schedule; and the Planning Act 2008 (c. 29), paragraphs 5 and 6 of Schedule 2.

⁽¹⁵⁾ 1989 c. 29. Section 36 was amended by the Energy Act 2004 (c. 20), section 93(1) and (3); the Planning Act 2008 (c. 29), paragraphs 31 and 32 of Schedule 2; the Marine and Coastal Access Act 2009 (c. 23), section 12(7)(a) and (8); and, in relation to Scotland, by S.I. 2006/1054, paragraph 1(1) and (2) of Schedule 1. Section 37 was amended by the Planning Act 2008, paragraphs 31 and 33 of Schedule 2.

⁽¹⁶⁾ 1992 c. 42; sections 1 and 3 were amended by the Planning Act 2008 (c. 29), paragraphs 51, 52 and 53 of Schedule 2.

- (b) the power conferred by section 97(17) of the TCPA 1990 (power to revoke or modify planning permission) is exercisable by that local planning authority as in relation to planning permission granted on an application under Part 3 of that Act (control over development).

(7) In a non-metropolitan county in England the function of reviewing any such planning permission is to be exercised by the district planning authority unless it relates to a county matter (within the meaning of paragraph 1 of Schedule 1(18) to the TCPA 1990), in which case it is exercisable by the county planning authority.

Planning permission: consideration on review

70.—(1) In reviewing any planning permission or deemed planning permission under the review provisions, the competent authority must—

- (a) consider whether any adverse effects could be overcome by planning obligations under section 106(19) of the TCPA 1990 (planning obligations) being entered into; and
- (b) if they consider that those effects could be so overcome, invite those concerned to enter into such obligations.

(2) So far as the adverse effects are not thus overcome, the authority must make such order as may be required under—

- (a) section 97 of that Act (power to revoke or modify planning permission); or
- (b) section 102(20) of or paragraph 1 of Schedule 9(21) to that Act (orders requiring discontinuance of use etc.).

(3) Where the authority ascertain that the carrying out or, as the case may be, the continuation of the development would adversely affect the integrity of a European site or a European offshore marine site, they nevertheless need not proceed under the review provisions if and so long as they consider that there is no likelihood of the development being carried out or continued.

Planning permission: effect of orders made on review

71.—(1) An order under section 97 of the TCPA 1990 made pursuant to regulation 69 (duty to review) takes effect upon the service of the notices required by section 98(2) of that Act (procedure for section 97 orders) or, where there is more than one such notice and those notices are served at different times, upon the service of the last such notice to be served.

(2) Where the appropriate authority determine not to confirm such an order—

- (a) the order ceases to have effect as from the time of that determination;
- (b) the permission revoked or modified by the order thereafter has effect as if the order had never been made;
- (c) any period specified in the permission for the taking of any action, being a period which had not expired prior to the date upon which the order took effect under paragraph (1), is extended by a period equal to that during which the order had effect; and

(17) Section 97 was amended by the Planning and Compensation Act 1991 (c. 34), paragraph 4 of Schedule 1 and Part 1 of Schedule 19.

(18) Paragraph 1 of Schedule 1 was amended by the Planning and Compensation Act 1991 (c. 34), paragraph 13 of Schedule 1 and Part 1 of Schedule 19.

(19) Section 106 was substituted by the Planning and Compensation Act 1991 (c. 34), section 12(1), and amended by the Greater London Authority Act 2007 (c. 24), section 33.

(20) Section 102 was amended by the Planning and Compensation Act 1991 (c. 34), paragraph 6 of Schedule 1 and paragraph 21 of Schedule 7.

(21) Paragraph 1 of Schedule 9 was amended by the Planning and Compensation Act 1991 (c. 34), paragraph 15 of Schedule 1.

(d) there is substituted for any date specified in the permission as being a date by which any action should be taken (“the specified date”), not being a date falling prior to the date upon which the order took effect under paragraph (1), such later date as postpones the specified date by a period equal to that during which the order had effect.

(3) An order under section 102 of or paragraph 1 of Schedule 9 to the TCPA 1990 made pursuant to regulation 69, in so far as it requires the discontinuance of a use of land or imposes conditions upon the continuance of a use of land, takes effect upon the service of the notices required by section 103(3) (confirmation of section 102 orders) or, where there is more than one such notice and those notices are served at different times, upon the service of the last such notice to be served.

(4) Where the appropriate authority determine not to confirm any such order, the order ceases to have effect as from the time of that determination and the use which by the order was discontinued or upon which conditions were imposed—

(a) may thereafter be continued as if the order had never been made; and

(b) is to be treated for the purposes of the TCPA 1990 as if it had continued without interruption or modification throughout the period during which the order had effect.

(5) An order under section 97 of that Act made in pursuance of regulation 69 does not affect so much of the development authorised by the permission as was carried out prior to the order taking effect.

(6) An order under section 102 of or paragraph 1 of Schedule 9 to that Act made in pursuance of regulation 69 does not affect anything done prior to the site becoming a European site or European offshore marine site.

Planning permission: supplementary provisions as to compensation

72.—(1) Where the appropriate authority determine not to confirm an order under section 97 of the TCPA 1990 which has taken effect under regulation 71(1), any claim for compensation under section 107(22) of that Act (compensation where planning permission revoked or modified) is limited to any loss or damage directly attributable to the permission being suspended or temporarily modified for the duration of the period between the order so taking effect and the appropriate authority’s determination not to confirm the order.

(2) Where the appropriate authority determine not to confirm an order under section 102 of the TCPA 1990 (orders requiring discontinuance of use or alteration or removal of buildings or works) which has taken effect under regulation 71(3), any claim for compensation under section 115 of that Act (compensation in respect of orders under section 102) is limited to any loss or damage directly attributable to any right to continue a use of the land being, by virtue of the order, suspended or subject to conditions for the duration of the period between the order so taking effect and the appropriate authority’s determination not to confirm the order.

(3) Paragraph (4) applies where—

(a) compensation is payable in respect of—

(i) an order under section 97 of the TCPA 1990, or

(ii) any order mentioned in section 115(1) of that Act or to which that section applies by virtue of section 115(5); and

(b) the order has been made pursuant to regulation 63 (review of existing decisions and consents).

(4) Where this paragraph applies, the authority liable to pay the compensation must refer the question as to the amount of the compensation to the Upper Tribunal for its determination, unless

(22) Section 107 was amended by the Planning and Compensation Act 1991 (c. 34), paragraph 8 of Schedule 1 and paragraph 13 of Schedule 6.

and to the extent that in any particular case the appropriate authority have indicated in writing that such a reference and determination may be dispensed with.