
STATUTORY INSTRUMENTS

2010 No. 490

The Conservation of Habitats and Species Regulations 2010

PART 6

ASSESSMENT OF PLANS AND PROJECTS

CHAPTER 1

GENERAL PROVISIONS

Introductory provisions

Interpretation of Part 6

59. In this Part—

- (a) “the assessment provisions” means regulations 61 (assessment of implications for European sites and European offshore marine sites) and 62 (considerations of overriding public interest); ^{F1}...
- (b) “the review provisions” means regulations 63 (review of existing decisions and consents) and 64 (consideration on review).

[^{F2}(c) any reference to—

- (i) the giving or granting of any consent, permission or other authorisation (except in the heading to any regulation or in any reference to any such heading), or
- (ii) directing that planning permission is deemed to be granted,

is to be taken, in relation to any authorisation which is capable of being varied or modified, to include a reference to the variation or modification of such a consent, permission or authorisation; and]

[^{F2}(d) the reference in regulation 61(1) to deciding to undertake a plan or project is to be taken to include a reference to deciding to vary any plan or project undertaken or to be undertaken by the competent authority.]

Textual Amendments

F1 Word in reg. 59(a) omitted (6.4.2011) by virtue of [The Conservation of Habitats and Species \(Amendment\) Regulations 2011 \(S.I. 2011/625\)](#), regs. 1(1), **6(a)**

F2 Reg. 59(c)(d) inserted (6.4.2011) by [The Conservation of Habitats and Species \(Amendment\) Regulations 2011 \(S.I. 2011/625\)](#), regs. 1(1), **6(b)**

Application of provisions of Chapter 1

60.—[^{F3}(1) The requirements of the assessment provisions and the review provisions apply—

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- (a) subject to and in accordance with the provisions of Chapters 2 to 7, in relation to the matters specified in those provisions; and
 - (b) subject to regulation 61(7)(c), in relation to all other plans and projects not relating to matters specified in Chapters 2 to 9.]
- (2) Supplementary provision is made by regulations 65 to 67.

Textual Amendments

F3 Reg. 60(1) substituted (16.8.2012) by [The Conservation of Habitats and Species \(Amendment\) Regulations 2012 \(S.I. 2012/1927\)](#), regs. 1(1), **19**

General provisions for protection of European sites and European offshore marine sites

Assessment of implications for European sites and European offshore marine sites

61.—(1) A competent authority, before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project which—

- (a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects), and
- (b) is not directly connected with or necessary to the management of that site,

must make an appropriate assessment of the implications for that site in view of that site's conservation objectives.

(2) A person applying for any such consent, permission or other authorisation must provide such information as the competent authority may reasonably require for the purposes of the assessment or to enable them to determine whether an appropriate assessment is required.

(3) The competent authority must 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 specify.

(4) They must also, if they consider it appropriate, take the opinion of the general public, and if they do so, they must take such steps for that purpose as they consider appropriate.

(5) In the light of the conclusions of the assessment, and subject to regulation 62 (considerations of overriding public interest), the competent authority may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site or the European offshore marine site (as the case may be).

(6) In considering whether a plan or project will adversely affect the integrity of the site, the authority must 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.

[^{F4}(7) This regulation does not apply in relation to—

- (a) a site which is a European site by reason of regulation 8(1)(c);
- (b) a site which is a European offshore marine site by reason of regulation 15(c) of the 2007 Regulations; or
- (c) a plan or project to which any of the following apply—
 - (i) the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001 (in so far as this regulation is not disapplied by regulation 4 (plans or projects relating to

offshore marine area or offshore marine installations) in relation to plans or projects to which those Regulations apply),

- (ii) the Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006,
- (iii) the Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, or
- (iv) the Merchant Shipping (Ship-to-Ship Transfers) Regulations 2010.]

(8) Where a plan or project requires an appropriate assessment both under this regulation and under the 2007 Regulations, the assessment required by this regulation need not identify those effects of the plan or project that are specifically attributable to that part of it that is to be carried out in [F5the United Kingdom], provided that an assessment made for the purpose of this regulation and the 2007 Regulations assesses the effects of the plan or project as a whole.

Textual Amendments

- F4** Reg. 61(7) substituted (16.8.2012) by [The Conservation of Habitats and Species \(Amendment\) Regulations 2012 \(S.I. 2012/1927\)](#), regs. 1(1), **20(a)**
- F5** Words in reg. 61(8) substituted (16.8.2012) by [The Conservation of Habitats and Species \(Amendment\) Regulations 2012 \(S.I. 2012/1927\)](#), regs. 1(1), **20(b)**

Considerations of overriding public interest

62.—(1) If the competent authority 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), they may agree to the plan or project notwithstanding a negative assessment of the implications for the European site or the European offshore marine site (as the case may be).

(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) any other reasons which the competent authority, having due regard to the opinion of the European Commission, consider to be imperative reasons of overriding public interest.

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

- (a) identifying the matter on which an opinion is sought; and
- (b) accompanied by any documents or information which may be required.

(4) The appropriate authority—

- (a) may seek the opinion of the European Commission concerning the plan or project; and
- (b) where such an opinion is received, must send it to the competent authority.

(5) Where a competent authority other than the Secretary of State or the Welsh Ministers propose to agree to a plan or project under this regulation notwithstanding a negative assessment of the implications for the site concerned—

- (a) they must notify the appropriate authority; and

(b) they must not agree to the plan or project before the end of the period of 21 days beginning with the day notified by the appropriate authority as that on which their notification was received, unless the appropriate authority notify them that they may do so.

(6) Without prejudice to any other power, the appropriate authority may give directions to the competent authority in any such case prohibiting them from agreeing to the plan or project, either indefinitely or during such period as may be specified in the direction.

Review of existing decisions and consents

63.—(1) Where before the date on which a site becomes a European site or a European offshore marine site a competent authority have decided to undertake, or have given any consent, permission or other authorisation for, a plan or project to which regulation 61(1) would apply if it were to be reconsidered as of that date, the authority must, as soon as reasonably practicable—

- (a) review their decision or, as the case may be, the consent, permission or other authorisation; and
- (b) affirm, modify or revoke it.

(2) They must 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 61(2) to (4) apply, with the appropriate modifications, in relation to such a review.

(3) Subject to the provisions of Chapters 2 to 7, any review required by this regulation must be carried out under existing statutory procedures where such procedures exist, and if none exists, the appropriate authority may give directions as to the procedure to be followed.

(4) Nothing in this regulation affects anything done in pursuance of the decision, or the consent, permission or other authorisation, before the date mentioned in paragraph (1).

Consideration on review

64.—(1) The following provisions apply where a decision, or a consent, permission or other authorisation, falls to be reviewed under regulation 63.

(2) Subject as follows, the provisions of regulations 61(5) and (6) and 62 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 competent 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.

(4) Where that object may be attained in a number of ways, the competent authority or authorities concerned must seek to secure that the action taken is the least onerous to those affected.

(5) The appropriate authority may issue guidance to competent 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.

(6) The competent authorities concerned must have regard to any such guidance.

(7) Any modification or revocation of a decision, or a consent, permission or other authorisation, must be carried out under existing statutory procedures where such procedures exist, and if none exists, the appropriate authority may give directions as to the procedure to be followed.

Co-ordination where more than one competent authority involved

65.—(1) This regulation applies 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
- (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 61(1) or 63(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 appropriate authority may issue guidance to competent authorities for the purposes of regulations 61 to 64 as to the circumstances in which a competent 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 a significant effect on a European site or a European offshore marine site; or
- (b) will adversely affect the integrity of a European site or a European offshore marine site.

(4) The competent authorities concerned must have regard to any such guidance.

(5) In determining whether a plan or project should be agreed to under regulation 62 (considerations of overriding public interest), a competent authority other than the Secretary of State or the Welsh Ministers must seek and have regard to the views of the other competent authority or authorities involved.

Compensatory measures

66. Where in accordance with regulation 62 (considerations of overriding public interest)—

- (a) a plan or project is agreed to, notwithstanding a negative assessment of the implications for a European site or a European offshore marine site, or
- (b) a decision, or a consent, permission or other authorisation, is affirmed on review, notwithstanding such an assessment,

the appropriate authority must secure that any necessary compensatory measures are taken to ensure that the overall coherence of Natura 2000 is protected.

Modifications of regulations 61 to 66 in certain cases

67.—(1) Where any provision of regulations 61 to 66 (a “general provision”) applies in relation to a provision specified in paragraph (2), that general provision applies with the following modifications—

- (a) any reference to the Welsh Ministers is omitted; and
- (b) for any reference to the appropriate authority, substitute a reference to the Secretary of State.

(2) The provisions specified for the purposes of paragraph (1) are—

- (a) paragraphs (1)(e)(i) and (2) of regulation 68 (grant of planning permission) in so far as those provisions relate to a direction given by the Secretary of State under section 90^{M1} of the TCPA 1990 (development with government authorisation) that planning permission is deemed to be granted; and
- (b) regulations 81 and 82 (development consent under Planning Act 2008^{M2}).

(3) Where a general provision applies in relation to a provision specified in paragraph (4), that general provision applies with the following modifications—

- (a) any reference to a competent authority is taken to include the Scottish Ministers;

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- (b) for any reference to the Welsh Ministers, substitute a reference to the Scottish Ministers; and
- (c) for any reference to the appropriate authority—
 - (i) in a case where the competent authority for the purposes of a provision specified in paragraph (4) are the Scottish Ministers, substitute a reference to the Scottish Ministers, and
 - (ii) in any other case, substitute a reference to the Secretary of State.
- (4) The provisions specified for the purposes of paragraph (3) are—
 - (a) in regulation 68—
 - (i) paragraph (1)(e)(ii) and (iii) (deemed grant of planning permission under section 57(2) of the Town and Country Planning (Scotland) Act 1997 ^{M3} and section 5(1) of the Pipe-lines Act 1962 ^{M4}), and
 - (ii) paragraph (2) in so far as that paragraph relates to paragraph (1)(e)(ii) and (iii) of that regulation;
 - (b) Chapter 4 (electricity); and
 - (c) Chapter 5 (pipe-lines).
- (5) Where a general provision applies in relation to regulation 100 (marine works), and confers a function on the appropriate authority, that provision applies with the following modifications—
 - (a) in a case to which paragraph (6) applies, for any reference to the appropriate authority, substitute a reference to the Welsh Ministers; and
 - (b) in any other case, for any reference to the appropriate authority, substitute a reference to the Secretary of State.
- (6) This paragraph applies where the function in question is exercisable in relation to—
 - (a) any application to the Welsh Ministers for an authorisation in respect of marine works;
 - (b) any application to any other authority for—
 - (i) an authorisation in respect of marine works, the refusal of which gives rise to a right of appeal to the Welsh Ministers,
 - (ii) an authorisation in respect of marine works in relation to which the Welsh Ministers exercise any power of direction or call-in,
 - ^{F6}(iii) an authorisation of harbour works which are, or are to be, carried out in relation to a fishery harbour in Wales under legislation of a kind mentioned in regulation 100(6)(c);]
 - (c) the grant of any application of a kind mentioned in sub-paragraph (a) or (b)^{F7}; or]
 - ^{F8}(d) harbour works which—
 - (i) are, or are to be, carried out in relation to a fishery harbour in Wales, and
 - (ii) are authorised by, and are, or are to be, carried out in accordance with, any legislation of a kind mentioned in regulation 100(6)(c).]
- (7) In paragraph (6)—
 - (a) “authorisation” means any licence, consent or other approval; and
 - (b) ^{F9}“marine works” and “harbour works” have] the same meaning as in regulation 100.
- ^{F10}(8) Where a general provision applies in relation to a plan or project which does not relate to a matter specified in Chapters 2 to 9, to the extent that that general provision applies in relation to Scotland or Northern Ireland, that provision applies with the following modifications—

- (a) any reference to the Welsh Ministers is omitted; and
- (b) for any reference to the appropriate authority, substitute a reference to the Secretary of State.]

Textual Amendments

- F6** Reg. 67(6)(b)(iii) substituted (6.4.2011) by [The Conservation of Habitats and Species \(Amendment\) Regulations 2011 \(S.I. 2011/625\)](#), regs. 1(1), **7(a)**
- F7** Words in reg. 67(6)(c) substituted (6.4.2011) by [The Conservation of Habitats and Species \(Amendment\) Regulations 2011 \(S.I. 2011/625\)](#), regs. 1(1), **7(b)**
- F8** Reg. 67(6)(d) inserted (6.4.2011) by [The Conservation of Habitats and Species \(Amendment\) Regulations 2011 \(S.I. 2011/625\)](#), regs. 1(1), **7(c)**
- F9** Words in reg. 67(7)(b) substituted (16.8.2012) by [The Conservation of Habitats and Species \(Amendment\) Regulations 2012 \(S.I. 2012/1927\)](#), regs. 1(1), **21(a)**
- F10** Reg. 67(8) added (16.8.2012) by [The Conservation of Habitats and Species \(Amendment\) Regulations 2012 \(S.I. 2012/1927\)](#), regs. 1(1), **21(b)**

Marginal Citations

- M1** Relevant amendments were made to section 90 by the [Environment Act 1995 \(c. 25\)](#), **paragraph 32(4)** of Schedule 10, and the [Transport and Works Act 1992 \(c. 42\)](#), **section 16(1)**.
- M2** [2008 c. 29](#).
- M3** [1997 c. 8](#).
- M4** [1962 c. 58](#); section 5(1) was amended by [S.I. 1999/742](#), **paragraph 2(3)** of the Schedule.

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^{M5} 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^{M6} 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)^{M7} 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)^{M8}, (2) or (2A)^{M9} of section 90 of that Act (development with government authorisation),

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- (ii) section 57(2) of the Town and Country Planning (Scotland) Act 1997 ^{M10} (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 ^{M11}), or
- (iii) section 5(1) of the Pipe-lines Act 1962 ^{M12} (provisions with respect to planning permission concerning pipe-lines);
- (f) making—
 - (i) an order under section 102 ^{M13} 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 ^{M14} 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 ^{M15} (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 ^{M16} of the TCPA 1990 (outline planning permission).

Marginal Citations

- M5** Section 293A was inserted by the [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), [section 82\(1\)](#).
- M6** 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.
- M7** Section 177(1) (a) was substituted by the [Planning and Compensation Act 1991 \(c. 34\)](#), [paragraph 24\(1\)\(a\)](#) of Schedule 7.
- M8** Section 90(1) was amended by the [Environment Act 1995 \(c. 25\)](#), [paragraph 32\(4\)](#) of Schedule 10.
- M9** Subsection (2A) of section 90 was inserted by the [Transport and Works Act 1992 \(c. 42\)](#), [section 16\(1\)](#).
- M10** 1997 c. 8.
- M11** 1989 c. 29.
- M12** 1962 c. 58; section 5(1) was amended by S.I. 1999/742, [paragraph 2\(3\)](#) of the Schedule.

- M13** Section 102 was amended by the [Planning and Compensation Act 1991 \(c. 34\)](#), [paragraph 6](#) of Schedule 1 and paragraph 21 of Schedule 7.
- M14** Paragraph 1 of Schedule 9 was amended by the [Planning and Compensation Act 1991 \(c. 34\)](#), [paragraph 15](#) of Schedule 1.
- M15** [1990 c. 9](#).
- M16** There are amendments to section 92 which are not relevant.

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—

- (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^{M17} (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^{M18} 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^{M19} (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^{M20} (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

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(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
- (b) the power conferred by section 97^{M21} 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^{M22} to the TCPA 1990), in which case it is exercisable by the county planning authority.

Marginal Citations

- M17** 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.
- M18** 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.
- M19** 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.
- M20** 1992 c. 42; sections 1 and 3 were amended by the [Planning Act 2008 \(c. 29\)](#), [paragraphs 51, 52](#) and 53 of Schedule 2.
- M21** Section 97 was amended by the [Planning and Compensation Act 1991 \(c. 34\)](#), [paragraph 4](#) of Schedule 1 and Part 1 of Schedule 19.
- M22** 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.

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^{M23} 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 ^{M24} of or paragraph 1 of Schedule 9 ^{M25} 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.

Marginal Citations

- M23** 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](#).
- M24** Section 102 was amended by the [Planning and Compensation Act 1991 \(c. 34\), paragraph 6](#) of Schedule 1 and paragraph 21 of Schedule 7.
- M25** Paragraph 1 of Schedule 9 was amended by the [Planning and Compensation Act 1991 \(c. 34\), paragraph 15](#) of Schedule 1.

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
 - (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^{M26} 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 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.

Marginal Citations

M26 Section 107 was amended by the [Planning and Compensation Act 1991 \(c. 34\), paragraph 8](#) of Schedule 1 and paragraph 13 of Schedule 6.

General development orders

General development orders

73.—(1) It is a condition of any planning permission granted by a general development order, whether made before or after 1st April 2010, that development which—

- (a) is likely to have a significant effect on a European site or a European offshore marine site (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,

must not be begun until the developer has received written notification of the approval of the local planning authority under regulation 75 (approval of local planning authority).

(2) It is a condition of any planning permission granted by a general development order made before 1st April 2010 that development which—

- (a) is likely to have a significant effect on a European site (either alone or in combination with other plans or projects),
- (b) is not directly connected with or necessary to the management of the site, and
- (c) was begun but not completed before that date,

must not be continued until the developer has received written notification of the approval of the local planning authority under regulation 75.

(3) Nothing in this regulation affects anything done pursuant to any such planning permission before 1st April 2010.

Modifications etc. (not altering text)

- C1** Reg. 73 excluded (1.9.2010) by [The Port of Bristol \(Deep Sea Container Terminal\) Harbour Revision Order 2010 \(S.I. 2010/2020\)](#), art. 1(1), **Sch. 4 para. 2** (with Sch. 4 para. 3)
- C2** Reg. 73 excluded (7.4.2011) by [The Associated British Ports \(Grimsby Riverside Ro-Ro Terminal\) Harbour Revision Order 2011 \(S.I. 2011/950\)](#), arts. 1, **20(1)(2)**
- C3** Reg. 73 excluded (16.8.2012) by [The Hinkley Point Harbour Empowerment Order 2012 \(S.I. 2012/1914\)](#), arts. 1(1), **36** (with arts. 34, 35, 37, 40)
- C4** Reg. 73 excluded (cond.) (3.12.2014) by [The Associated British Ports \(Fisher Fleet Quay\) Harbour Revision Order 2014 \(S.I. 2014/2933\)](#), arts. 1, **16** (with art. 14)
- C5** Reg. 73 excluded (E.W.S.) (10.7.2015) by [The Poole Harbour \(Works\) Revision Order 2015 \(S.I. 2015/1390\)](#), arts. 1(1), **19(1)** (with arts. 16-18, 19(2))

General development orders: opinion of appropriate nature conservation body

74.—(1) Where it is intended to carry out development in reliance on the permission granted by a general development order, application may be made in writing to the appropriate nature conservation body for their opinion as to whether the development is likely to have a relevant effect.

(2) The application must give details of the development which is intended to be carried out.

(3) On receiving such an application, the appropriate nature conservation body must consider whether the development is likely to have such an effect.

(4) Where they consider that they have sufficient information to conclude that the development will, or will not, have such an effect, they must notify the applicant and the local planning authority in writing of their opinion.

(5) If the appropriate nature conservation body consider that they have insufficient information to reach either of those conclusions, they must notify the applicant in writing indicating in what respects they consider the information insufficient, and the applicant may supply further information with a view to enabling them to reach a decision on the application.

(6) The opinion of the appropriate nature conservation body, notified in accordance with paragraph (4), that the development is not likely to have a relevant effect is conclusive of that question for the purpose of reliance on the planning permission granted by a general development order.

(7) In this regulation and in regulation 75 “a relevant effect” means such an effect as is mentioned in regulation 73(1)(a) or (2)(a).

General development orders: approval of local planning authority

75.—(1) An application to the local planning authority for approval, as mentioned in regulation 73 (general development orders), must—

- (a) give details of the development which is intended to be carried out; and
- (b) be accompanied by—
 - (i) a copy of any relevant notification by the appropriate nature conservation body under regulation 74 (opinion of appropriate nature conservation body), and
 - (ii) any fee required to be paid.

(2) For the purposes of their consideration of the application the local planning authority must assume that the development is likely to have a relevant effect.

(3) The authority must send a copy of the application to the appropriate nature conservation body and must take account of any representations made by them.

(4) If in their representations the appropriate nature conservation body state their opinion that the development is not likely to have a relevant effect, the local planning authority must send a copy of the representations to the applicant.

(5) The sending of the copy of the representations to the applicant under paragraph (4) has the same effect as a notification by the appropriate nature conservation body of their opinion under regulation 74(4).

(6) In any other case in which the application has been sent to the appropriate nature conservation body, the local planning authority must, taking account of any representations made by the appropriate nature conservation body, make an appropriate assessment of the implications of the development for the European site or European offshore marine site in view of that site's conservation objectives.

(7) In the light of the conclusions of the assessment the local planning authority may approve the development only after having ascertained that it will not adversely affect the integrity of the site.

General development orders: supplementary

76.—(1) The local planning authority for the purposes of regulations 73 to 75 are the authority to which an application for approval under regulation 75 (approval of local planning authority) would fall to be made if it were an application for planning permission.

- (2) The fee payable in connection with an application for such approval is £30.
- (3) Approval required by regulation 73 (general development orders) is to be treated—
 - (a) for the purposes of the provisions of the TCPA 1990 relating to appeals, as approval required by a condition imposed on a grant of planning permission; and
 - (b) for the purposes of the provisions of any general development order relating to the time within which notice of a decision should be given, as approval required by a condition attached to a grant of planning permission.

*Special development orders***Special development orders**

77.—(1) A special development order may not grant planning permission for development which—

- (a) is likely to have a significant effect on a European site (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.

(2) A special development order made before 1st April 2010 is not to be taken to grant planning permission for development of a kind mentioned in paragraph (1), whether or not the development authorised by the permission has been begun.

(3) Nothing in this regulation affects anything done pursuant to a special development order before 1st April 2010.

(4) A special development order may not grant planning permission for development which is likely to have a significant effect on a European offshore marine site (either alone or in combination with other plans or projects).

Local development orders

Local development orders

78. A local development order may not grant planning permission for development which—

- (a) is likely to have a significant effect on a European site or a European offshore marine site (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.

^{FH}Neighbourhood development orders

Textual Amendments

- F11** Reg. 78A and cross-heading inserted (6.4.2012) by [The Neighbourhood Planning \(General\) Regulations 2012 \(S.I. 2012/637\)](#), reg. 1, [Sch. 2 para. 3](#)

Neighbourhood development orders

78A. A neighbourhood development order may not grant planning permission for development which—

- (a) is likely to have a significant effect on a European site or a European offshore marine site (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.]

Simplified planning zones and enterprise zones

Simplified planning zones

79.—(1) Where a simplified planning zone scheme is adopted or approved, that scheme is not to be taken to grant planning permission for development which—

- (a) is likely to have a significant effect on a European site (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.

(2) A simplified planning zone scheme in force before 1st April 2010 is not to be taken to grant planning permission for development of a kind mentioned in paragraph (1), whether or not the development authorised by the permission has been begun.

Status: Point in time view as at 10/07/2015.

Changes to legislation: There are currently no known outstanding effects for the The Conservation of Habitats and Species Regulations 2010, PART 6. (See end of Document for details)

(3) Where a simplified planning zone scheme is adopted or approved, that scheme is not to be taken to grant planning permission for development which is likely to have a significant effect on a European offshore marine site (either alone or in combination with other plans or projects).

(4) A simplified planning zone scheme adopted or approved on or after 21st August 2007 and before 1st April 2010 is not to be taken to grant planning permission for development of a kind mentioned in paragraph (3).

Enterprise zones

80.—(1) Where an order designating an enterprise zone is made, or where a modified enterprise zone scheme is approved, that order or scheme is not to be taken to grant planning permission for development which—

- (a) is likely to have a significant effect on a European site (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.

(2) Where such an order was made or such a scheme was approved before 1st April 2010, that order or scheme is not to be taken to grant planning permission for development of a kind mentioned in paragraph (1), whether or not the development authorised by the permission has been begun.

(3) Where an order designating an enterprise zone is made, or where a modified enterprise zone scheme is approved, that order or scheme is not to be taken to grant planning permission for development which is likely to have a significant effect on a European offshore marine site (either alone or in combination with other plans or projects).

(4) Where such an order was made or such a scheme was approved on or after 21st August 2007 and before 1st April 2010, that order or scheme is not to be taken to grant planning permission for development of a kind mentioned in paragraph (3).

Development consent under Planning Act 2008

Grant of development consent

81.—(1) The assessment provisions apply in relation to the making of an order granting development consent under the Planning Act 2008 ^{M27}.

(2) Where those 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 order granting development consent included requirements under section 120 of the Planning Act 2008 (what may be included in order granting development consent), make an order subject to those requirements.

Marginal Citations

M27 2008 c. 29.

Development consent: review

82.—(1) The review provisions apply to any order granting development consent under the Planning Act 2008 unless—

- (a) the development to which it related has been completed before the site becomes a European site or a European offshore marine site;

- (b) it included a requirement 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) the development consent was granted for a limited period and that period has expired.

^{F12}(2)

^{F13}(3)

(4) In any such review of an order granting development consent, the competent authority must—

- (a) consider whether any adverse effects could be overcome by imposing requirements under paragraph 5(4)(c), (d) or (e) of Schedule 6 to the Planning Act 2008 (changes to, and revocation of, orders granting development consent); and
- (b) if they consider that those effects could be so overcome, impose those requirements by making such an order under paragraph 3(1) of Schedule 6 to that Act as may be required.

^{F14}(5)

^{F15}(6)

Textual Amendments

F12 Reg. 82(2) omitted (1.4.2012) by virtue of [The Localism Act 2011\(Infrastructure Planning\) \(Consequential Amendments\) Regulations 2012 \(S.I. 2012/635\)](#), regs. 1(2), **9(2)**

F13 Reg. 82(3) omitted (1.4.2012) by virtue of [The Localism Act 2011\(Infrastructure Planning\) \(Consequential Amendments\) Regulations 2012 \(S.I. 2012/635\)](#), regs. 1(2), **9(2)**

F14 Reg. 82(5) omitted (1.4.2012) by virtue of [The Localism Act 2011\(Infrastructure Planning\) \(Consequential Amendments\) Regulations 2012 \(S.I. 2012/635\)](#), regs. 1(2), **9(2)**

F15 Reg. 82(6) omitted (1.4.2012) by virtue of [The Localism Act 2011\(Infrastructure Planning\) \(Consequential Amendments\) Regulations 2012 \(S.I. 2012/635\)](#), regs. 1(2), **9(2)**

Interpretation of Chapter 2

Interpretation of Chapter 2

83.—(1) This Chapter, except regulations 81 and 82, is to be construed as one with the TCPA 1990.

[^{F16}(2) In regulations 81 and 82, the terms “development” and “development consent” have the meanings given by the Planning Act 2008.]

Textual Amendments

F16 Reg. 83(2) substituted (1.4.2012) by [The Localism Act 2011\(Infrastructure Planning\) \(Consequential Amendments\) Regulations 2012 \(S.I. 2012/635\)](#), regs. 1(2), **9(3)**

CHAPTER 3

HIGHWAYS AND ROADS

Construction or improvement of highways or roads

84.—(1) The assessment provisions apply in relation to any plan or project—

Status: Point in time view as at 10/07/2015.

Changes to legislation: There are currently no known outstanding effects for the The Conservation of Habitats and Species Regulations 2010, PART 6. (See end of Document for details)

- (a) by the appropriate authority [^{F17}or a strategic highways company] to construct a new highway or to improve, within the meaning of the Highways Act 1980 ^{M28}, an existing highway; or
 - (b) by a local highway authority to carry out within the boundaries of a road any works required for the improvement of the road.
- (2) The review provisions apply to any such plan or project as is mentioned in paragraph (1) unless—
- (a) the works have been completed before the site became a European site or a European offshore marine site; or
 - (b) the works were completed before 30th October 1994.
- [^{F18}(3) In paragraph (1)(a) “strategic highways company” means a company for the time being appointed under Part 1 of the Infrastructure Act 2015.]

Textual Amendments

- F17** Words in [reg. 84\(1\)\(a\)](#) inserted (1.4.2015) by [The Infrastructure Act 2015 \(Strategic Highways Companies\) \(Consequential, Transitional and Savings Provisions\) Regulations 2015 \(S.I. 2015/377\)](#), [reg. 1\(2\)](#), [Sch. para. 45\(2\)](#)
- F18** [Reg. 84\(3\)](#) inserted (1.4.2015) by [The Infrastructure Act 2015 \(Strategic Highways Companies\) \(Consequential, Transitional and Savings Provisions\) Regulations 2015 \(S.I. 2015/377\)](#), [reg. 1\(2\)](#), [Sch. para. 45\(3\)](#)

Marginal Citations

- M28** [1980 c. 66](#); see definition of “improvement” in [section 329\(1\)](#).

Cycle tracks and other ancillary works

- 85.** Subsection (10) of [section 3](#) of the [Cycle Tracks Act 1984](#) ^{M29} (conversion of footpaths into cycle tracks) is not to be taken to deem planning permission to be granted for development which—
- (a) is likely to have a significant effect on a European site (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,
- whether or not the development authorised by the permission has been begun.

Marginal Citations

- M29** [1984 c. 38](#); [section 3\(10\)](#) was amended by the [Planning \(Consequential Provisions\) Act 1990 \(c. 11\)](#), [paragraph 66](#) of [Schedule 2](#).

CHAPTER 4

ELECTRICITY

Consents under Electricity Act 1989: application of assessment and review provisions

- 86.—**(1) The assessment provisions apply in relation to the granting of—

- (a) consent under section 36 of the Electricity Act 1989 ^{M30} (consent required for construction etc. of generating stations) to construct, extend or operate a generating station in Great Britain; or
 - (b) consent under section 37 ^{M31} of that Act (consent required for overhead lines) to install an electric line above ground.
- (2) Where in such a case the competent authority 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 consent were subject to conditions, the competent authority may grant consent subject to those conditions.
- (3) The review provisions apply to a consent mentioned in paragraph (1) unless—
- (a) the works to which the consent relates—
 - (i) have been completed before the site became a European site or a European offshore marine site (as the case may be), or
 - (ii) were completed before 30th October 1994; or
 - (b) the consent was granted—
 - (i) subject to a condition as to the time within which the works to which it relates were to be begun and that time has expired without those works having been begun, or
 - (ii) for a limited period and that period has expired.
- (4) Where the consent is for, or includes, the operation of a generating station, the works are to be treated as completed when, in reliance on the consent, the generating station is first operated.
- (5) Where on the review of such a consent the competent authority consider that any adverse effects on the integrity of a European site or a European offshore marine site of the carrying out or, as the case may be, the continuation of the plan or project would be avoided by a variation of the consent, the authority may vary the consent accordingly.
- (6) In conjunction with the review of any such consent the competent authority must review any direction deeming planning permission to be granted for the plan or project and may vary or revoke it.

Marginal Citations

M30 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.

M31 Section 37 was amended by the [Planning Act 2008 \(c. 29\)](#), [paragraphs 31](#) and 33 of Schedule 2.

Consents under Electricity Act 1989: procedure on review

87.—(1) Where the competent authority decide in pursuance of regulation 86(3), (5) or (6) to revoke or vary a consent under the Electricity Act 1989 or a direction deeming planning permission to be granted, the authority must serve notice on—

- (a) the person to whom the consent was granted or, as the case may be, in whose favour the direction was made,
- (b) in the case of a consent under section 36 of the Electricity Act 1989, any other person proposing to operate the generating station in question, and
- (c) any other person who in the authority's opinion will be affected by the revocation or variation,

Status: Point in time view as at 10/07/2015.

Changes to legislation: There are currently no known outstanding effects for the The Conservation of Habitats and Species Regulations 2010, PART 6. (See end of Document for details)

informing them of the decision and specifying a period of not less than 28 days within which any person on whom the notice is served may make representations to the authority.

(2) The competent authority must also serve notice on—

- (a) the relevant planning authority within the meaning of paragraph 2(6) of Schedule 8^{M32} to the Electricity Act 1989 (consents under sections 36 and 37 of that Act), and
- (b) the appropriate nature conservation body,

informing them of the decision and inviting their representations within the specified period.

(3) The competent authority must consider whether to proceed with the revocation or variation, and must have regard to any representations made in accordance with paragraph (1) or (2).

(4) If within the specified period a person on whom notice was served under paragraph (1), or the relevant planning authority, so requires, the competent authority must before deciding whether to proceed with the revocation or variation give—

- (a) to that person or the relevant planning authority (as the case may be), and
- (b) to any other person on whom notice under paragraph (1) or (2) was required to be served,

an opportunity of appearing before, and being heard by, a person appointed by the competent authority for the purpose.

Modifications etc. (not altering text)

- C6** Reg. 87 applied (with modifications) by S.I. 2007/1842, reg. 27(8) (as substituted (1.4.2010) by [The Conservation of Habitats and Species Regulations 2010 \(S.I. 2010/490\)](#), reg. 1(2), [Sch. 6 para. 7\(5\)](#) (with reg. 125))

Marginal Citations

- M32** Paragraph 2(6) of Schedule 8 was amended by the [Planning \(Consequential Provisions\) Act 1990 \(c. 11\)](#), [paragraph 83\(1\)](#) of Schedule 2; the [Local Government \(Wales\) Act 1994 \(c. 19\)](#), [paragraph 22](#) of Schedule 6 and Schedule 18; and the [Environment Act 1995 \(c. 25\)](#), [paragraph 30\(1\)](#), (3) and (6) of Schedule 10 and Schedule 24.

Consents under Electricity Act 1989: effect of review

88.—(1) The revocation or variation pursuant to regulation 86(3), (5) or (6) of a consent under the Electricity Act 1989 or a direction deeming planning permission to be granted takes effect upon the service of the notices required by regulation 87(1) 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 competent authority decide not to proceed with the revocation or variation, the consent or direction has effect again as from the time of that decision, and thereafter has effect as if—

- (a) any period specified in the consent or direction for the taking of any action, being a period which had not expired prior to the date mentioned in paragraph (1), were extended by a period equal to that during which the revocation or variation had effect; and
- (b) there were substituted for any date specified in the consent or direction as being a date by which any action should be taken (“the specified date”), not being a date falling prior to the date mentioned in paragraph (1), such later date as postpones the specified date by a period equal to that during which the revocation or variation had effect.

(3) The revocation or variation of a consent or direction as mentioned in paragraph (1) does not affect anything done under the consent or direction prior to the revocation or variation taking effect.

Modifications etc. (not altering text)

- C7** Reg. 88 applied (with modifications) by S.I. 2007/1842, reg. 27(8) (as substituted (1.4.2010) by [The Conservation of Habitats and Species Regulations 2010 \(S.I. 2010/490\)](#), reg. 1(2), [Sch. 6 para. 7\(5\)](#) (with reg. 125))

Consents under Electricity Act 1989: compensation

89.—(1) Where a direction deeming planning permission to be granted is revoked or varied pursuant to regulation 86(6), that permission is to be treated—

- (a) for the purposes of Part 4 of the TCPA 1990 (compensation for effects of certain orders, notices etc.) as having been revoked or modified by order under section 97^{M33} of that Act (power to revoke or modify planning permission); or
- (b) for the purposes of Part 4 of the Town and Country Planning (Scotland) Act 1997^{M34} (compensation for effects of certain orders, notices etc.) as having been revoked or modified by order under section 65^{M35} of that Act (power to revoke or modify planning permission).

(2) Where a consent under the Electricity Act 1989 is revoked or varied pursuant to regulation 86(3) or (5), Part 4 of the TCPA 1990 or Part 4 of the Town and Country Planning (Scotland) Act 1997 (as the case may be) applies as if—

- (a) the consent had been planning permission granted on an application under that Act and had been revoked or modified by order under section 97 of the TCPA 1990 or section 65 of the Town and Country Planning (Scotland) Act 1997; and
- (b) that Part provided that the competent authority was the person liable to pay any compensation provided for by that Part.

(3) Paragraph (2) does not confer any right to compensation for any expenditure, loss or damage for which compensation is payable by virtue of paragraph (1).

(4) Where the competent authority decide not to proceed with the revocation or variation of a consent under the Electricity Act 1989 or a direction deeming planning permission to be granted, any claim for compensation by virtue of this regulation is limited to any loss or damage directly attributable to the consent or direction ceasing to have effect or being varied for the duration of the period between the revocation or variation taking effect under regulation 88(1) and the competent authority's decision not to proceed with it.

(5) Where compensation is payable by virtue of this regulation, the question as to the amount of the compensation must be referred to and determined by the Upper Tribunal, or the Lands Tribunal for Scotland, unless and to the extent that in any particular case the competent authority have indicated in writing that such a reference and determination may be dispensed with.

Marginal Citations

- M33** Section 97 was amended by the [Planning and Compensation Act 1991 \(c. 34\)](#), [paragraph 4](#) of Schedule 1 and Part 1 of Schedule 19.
- M34** [1997 c. 8](#).
- M35** Section 65 was amended by [S.S.I. 2006/243](#).

CHAPTER 5

PIPE-LINES

Authorisations under Pipe-lines Act 1962: application of assessment and review provisions

90.—(1) The assessment provisions apply in relation to the granting of a pipe-line construction authorisation under the Pipe-lines Act 1962 ^{M36}.

(2) Where in such a case the competent authority 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 by granting an authorisation for the execution of works for the placing of the proposed pipe-line along a modified route, the competent authority may, subject to the provisions of Schedule 1 ^{M37} to the Pipe-lines Act 1962 (which relates to applications for pipe-line construction authorisations), grant such an authorisation.

(3) The review provisions apply to an authorisation mentioned in paragraph (1) unless—

(a) the works to which the authorisation relates—

- (i) have been completed before the site became a European site or a European offshore marine site (as the case may be), or
- (ii) were completed before 30th October 1994; or

(b) the authorisation was granted—

- (i) subject to a condition as to the time within which the works to which it relates were to be begun and that time has expired without those works having been begun, or
- (ii) for a limited period and that period has expired.

(4) Where on the review of such an authorisation the competent authority consider that any adverse effects on the integrity of a European site or a European offshore marine site of the carrying out or, as the case may be, the continuation of the plan or project would be avoided by a variation of the authorisation, the authority may vary it accordingly.

(5) In conjunction with the review of any such authorisation the competent authority must review any direction deeming planning permission to be granted for the plan or project and may vary or revoke it.

Marginal Citations

M36 1962 c. 58; see [section 1](#), which relates to pipe-line construction authorisations.

M37 Schedule 1 was amended by the [Petroleum Act 1987 \(c. 12\)](#), [section 25](#), and by [S.I. 1992/449](#) and [1999/742](#).

Authorisations under Pipe-lines Act 1962: procedure on review

91.—(1) Where the competent authority decide in pursuance of regulation 90(3), (4) or (5) to revoke or vary an authorisation under the Pipe-lines Act 1962 or a direction deeming planning permission to be granted, the authority must serve notice on—

- (a) the person to whom the authorisation was granted or, as the case may be, in whose favour the direction was made, and
- (b) any other person who in the authority's opinion will be affected by the revocation or variation,

informing them of the decision and specifying a period of not less than 28 days within which any person on whom the notice is served may make representations to the authority.

- (2) The competent authority must also serve notice on—
- (a) the local planning authority, and
 - (b) the appropriate nature conservation body,
- informing them of the decision and inviting their representations within the specified period.
- (3) The competent authority must consider whether to proceed with the revocation or variation, and must have regard to any representations made in accordance with paragraph (1) or (2).
- (4) If within the specified period a person on whom notice was served under paragraph (1), or the local planning authority, so requires, the competent authority must before deciding whether to proceed with the revocation or variation give—
- (a) to that person or the local planning authority (as the case may be), and
 - (b) to any other person on whom notice under paragraph (1) or (2) was required to be served,
- an opportunity of appearing before, and being heard by, a person appointed by the competent authority for the purpose.

Authorisations under Pipe-lines Act 1962: effect of review

- 92.**—(1) The revocation or variation pursuant to regulation 90(3), (4) or (5) of an authorisation under the Pipe-lines Act 1962 or a direction deeming planning permission to be granted takes effect upon the service of the notices required by regulation 91(1) 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 competent authority decide not to proceed with the revocation or variation, the authorisation or direction has effect again as from the time of that decision, and thereafter has effect as if—
- (a) any period specified in the authorisation or direction for the taking of any action, being a period which had not expired prior to the date mentioned in paragraph (1), were extended by a period equal to that during which the revocation or variation had effect; and
 - (b) there were substituted for any date specified in the authorisation or direction as being a date by which any action should be taken (“the specified date”), not being a date falling prior to the date mentioned in paragraph (1), such later date as postpones the specified date by a period equal to that during which the revocation or variation had effect.
- (3) The revocation or variation of an authorisation or direction as mentioned in paragraph (1) does not affect anything done under the authorisation or direction prior to the revocation or variation taking effect.

Authorisations under Pipe-lines Act 1962: compensation

- 93.**—(1) Where a direction deeming planning permission to be granted is revoked or varied pursuant to regulation 90(5), that permission is to be treated—
- (a) for the purposes of Part 4 of the TCPA 1990 (compensation for effects of certain orders, notices etc.) as having been revoked or modified by order under section 97^{M38} of that Act (power to revoke or modify planning permission); or
 - (b) for the purposes of Part 4 of the Town and Country Planning (Scotland) Act 1997^{M39} (compensation for effects of certain orders, notices etc.) as having been revoked or modified by order under section 65^{M40} of that Act (power to revoke or modify planning permission).

(2) Where an authorisation under the Pipe-lines Act 1962 is revoked or varied pursuant to regulation 90(3) or (4), Part 4 of the TCPA 1990 or Part 4 of the Town and Country Planning (Scotland) Act 1997 (as the case may be) applies as if—

- (a) the authorisation had been planning permission granted on an application under that Act and had been revoked or modified by order under section 97 of the TCPA 1990 or section 65 of the Town and Country Planning (Scotland) Act 1997; and
- (b) that Part provided that the competent authority was the person liable to pay any compensation provided for by that Part.

(3) Paragraph (2) does not confer any right to compensation for any expenditure, loss or damage for which compensation is payable by virtue of paragraph (1).

(4) Where the competent authority decide not to proceed with the revocation or variation of an authorisation under the Pipe-lines Act 1962 or a direction deeming planning permission to be granted, any claim for compensation by virtue of this regulation is limited to any loss or damage directly attributable to the authorisation or direction ceasing to have effect or being varied for the duration of the period between the revocation or variation taking effect under regulation 92(1) and the competent authority's decision not to proceed with it.

(5) Where compensation is payable by virtue of this regulation, the question as to the amount of the compensation must be referred to and determined by the Upper Tribunal, or the Lands Tribunal for Scotland, unless and to the extent that in any particular case the competent authority have indicated in writing that such a reference and determination may be dispensed with.

Marginal Citations

M38 Section 97 was amended by the [Planning and Compensation Act 1991 \(c. 34\)](#), [paragraph 4](#) of Schedule 1 and Part 1 of Schedule 19.

M39 [1997 c. 8](#).

M40 Section 65 was amended by [S.S.I. 2006/243](#).

CHAPTER 6

TRANSPORT AND WORKS

Orders under Transport and Works Act 1992: application of assessment and review provisions

94.—(1) The assessment provisions apply in relation to the making of an order under section 1 (orders as to railways, tramways etc.) or 3 (orders as to inland waterways etc.) of the Transport and Works Act 1992 ^{M41}.

(2) Where in such a case the appropriate authority 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 by making modifications to the proposals, the appropriate authority may make an order subject to those modifications.

(3) The review provisions apply to an order mentioned in paragraph (1) unless the works to which the order relates have been completed before the site became a European site or a European offshore marine site.

(4) Where on the review of such an order the appropriate authority consider that any adverse effects on the integrity of a European site or a European offshore marine site of the carrying out or, as the case may be, the continuation of the plan or project would be avoided by a variation of the order, the appropriate authority may vary it accordingly.

(5) In conjunction with the review of any such order the appropriate authority must review any direction deeming planning permission to be granted for the plan or project and may vary or revoke it.

(6) In relation to an order mentioned in paragraph (1) which has effect or would have effect in both England and Wales, for any reference in this Chapter to the appropriate authority substitute a reference to the Secretary of State.

Marginal Citations

M41 1992 c. 42; sections 1 and 3 were amended by the [Planning Act 2008 \(c. 29\)](#), [paragraphs 51, 52](#) and [53](#) of Schedule 2.

Orders under Transport and Works Act 1992: procedure on review

95.—(1) Where the appropriate authority decide in pursuance of regulation 94(3), (4) or (5) to revoke or vary an order under the Transport and Works Act 1992 or a direction deeming planning permission to be granted, the authority must serve notice on—

- (a) the person (if any) on whose application the order was made or, as the case may be, in whose favour the direction was made, and
- (b) any other person who in the authority's opinion will be affected by the revocation or variation,

informing them of the decision and specifying a period of not less than 28 days within which any person on whom the notice is served may make representations to the appropriate authority.

(2) The appropriate authority must also serve notice on—

- (a) the local planning authority, and
- (b) the appropriate nature conservation body,

informing them of the decision and inviting their representations within the specified period.

(3) The appropriate authority must consider whether to proceed with the revocation or variation, and must have regard to any representations made in accordance with paragraph (1) or (2).

(4) If within the specified period a person on whom notice was served under paragraph (1), or the local planning authority, so requires, the appropriate authority must before deciding whether to proceed with the revocation or variation of the order or direction give—

- (a) to that person or the local planning authority (as the case may be), and
- (b) to any other person on whom notice under paragraph (1) or (2) was required to be served,

an opportunity of appearing before, and being heard by, a person appointed by the appropriate authority for the purpose.

Orders under Transport and Works Act 1992: effect of review

96.—(1) The revocation or variation pursuant to regulation 94(3), (4) or (5) of an order under the Transport and Works Act 1992 or a direction deeming planning permission to be granted takes effect upon the service of the notices required by regulation 95(1) 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 decide not to proceed with the revocation or variation, the order or direction has effect again as from the time of that decision, and thereafter has effect as if—

Status: Point in time view as at 10/07/2015.

Changes to legislation: There are currently no known outstanding effects for the The Conservation of Habitats and Species Regulations 2010, PART 6. (See end of Document for details)

- (a) any period specified in the order or direction for the taking of any action, being a period which had not expired prior to the date mentioned in paragraph (1), were extended by a period equal to that during which the revocation or variation had effect; and
 - (b) there were substituted for any date specified in the order or direction as being a date by which any action should be taken (“the specified date”), not being a date falling prior to the date mentioned in paragraph (1), such later date as postpones the specified date by a period equal to that during which the revocation or variation had effect.
- (3) The revocation or variation of an order or direction as mentioned in paragraph (1) does not affect anything done under the order or direction prior to the revocation or variation taking effect.

Orders under Transport and Works Act 1992: compensation

97.—(1) Where a direction deeming planning permission to be granted is revoked or varied pursuant to regulation 94(5), that permission is to be treated for the purposes of Part 4 of the TCPA 1990 (compensation for effects of certain orders, notices etc.) as having been revoked or modified by order under section 97^{M42} of that Act (power to revoke or modify planning permission).

(2) Where an order under the Transport and Works Act 1992 is revoked or varied pursuant to regulation 94(3) or (4), Part 4 of the TCPA 1990 applies as if—

- (a) the order had been planning permission granted on an application under that Act and had been revoked or modified by order under section 97 of that Act; and
- (b) that Part provided that the appropriate authority was the person liable to pay any compensation provided for by that Part.

(3) Paragraph (2) does not confer any right to compensation for any expenditure, loss or damage for which compensation is payable by virtue of paragraph (1).

(4) Where the appropriate authority decide not to proceed with the revocation or variation of an order under the Transport and Works Act 1992 or a direction deeming planning permission to be granted, any claim for compensation by virtue of this regulation is limited to any loss or damage directly attributable to the order or direction ceasing to have effect or being varied for the duration of the period between the revocation or variation taking effect under regulation 96(1) and the appropriate authority's decision not to proceed with it.

(5) Where compensation is payable by virtue of this regulation, the question as to the amount of the compensation must be referred to and determined by the Upper Tribunal unless 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.

Marginal Citations

M42 Section 97 was amended by the [Planning and Compensation Act 1991 \(c. 34\)](#), [paragraph 4](#) of Schedule 1 and Part 1 of Schedule 19.

CHAPTER 7

ENVIRONMENTAL CONTROLS

Environmental permits

98.—(1) The assessment provisions apply in relation to the granting of an environmental permit under the Environmental Permitting (England and Wales) Regulations [^{F19}2010].

(2) Where in such a case the competent authority 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 permit were subject to conditions, they may grant a permit, or cause a permit to be granted, subject to those conditions.

(3) The review provisions apply to a permit described in paragraph (1).

(4) Where on the review of such a permit the competent authority consider that any adverse effects on the integrity of a European site or a European offshore marine site of the carrying out or, as the case may be, the continuation of activities authorised by it would be avoided by a variation of the permit, they may vary it, or cause it to be varied, accordingly.

(5) Where any question arises as to agreeing to a plan or project, or affirming a permit on review, under regulation 62 (considerations of overriding public interest), the competent authority must refer the matter to the appropriate authority which must determine the matter in accordance with that regulation and give directions to the competent authority accordingly.

Textual Amendments

F19 Word in [reg. 98\(1\)](#) substituted (6.4.2012) by [The Environmental Permitting \(England and Wales\) \(Amendment\) Regulations 2012 \(S.I. 2012/630\)](#), [regs. 1\(b\)](#), [22](#)

Abstraction and works authorised under water legislation

99.—(1) The assessment provisions apply in relation to the granting of an authorisation by virtue of—

- (a) the granting of a licence under Chapter 2 of Part 2 of the WRA ^{M43} (abstraction and impounding);
- (b) the making of an order under section 27A ^{M44} of the WRA (variation of small quantity threshold);
- (c) the making of regulations under section 33A ^{M45} of the WRA (power to provide for further exemptions), where those regulations relate to—
 - (i) a prescribed geographical area,
 - (ii) a prescribed source of supply (in the case of an exemption from the restriction on abstraction or the other restrictions imposed by section 24 ^{M46} of the WRA (restrictions on abstraction)), or
 - (iii) prescribed inland waters (in the case of an exemption from the restriction on impounding works);
- (d) any consent given under paragraph (2);
- (e) the making of an order under section 73 ^{M47} of the WRA (power to make ordinary and emergency drought orders) which has the effect of authorising—
 - (i) an abstraction or additional abstraction, or
 - (ii) a discharge or additional discharge;
- (f) the granting of a permit under section 79A ^{M48} of that Act (drought permits);
- (g) any consent given under section 166 of the WIA ^{M49} (consents for certain discharges under section 165) or section 164 ^{M50} of the WRA (consents for certain discharges under section 163); or
- (h) the making of an order under section 167 ^{M51} of the WIA (compulsory works orders) or section 168 ^{M52} of the WRA (compulsory works orders).

Status: Point in time view as at 10/07/2015.

Changes to legislation: There are currently no known outstanding effects for the The Conservation of Habitats and Species Regulations 2010, PART 6. (See end of Document for details)

(2) An exemption conferred by regulations under section 33A of the WRA, other than regulations referred to in paragraph (1)(c), does not apply in relation to any particular abstraction or impounding works unless the Environment Agency [^{F20}in relation to England or the Natural Resources Body for Wales in relation to Wales] has given consent in writing to the abstraction or impounding works being carried out.

(3) Where, in relation to any plan or project authorised by any means referred to in sub-paragraphs (a) to (h) of paragraph (1), the competent authority 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 authorisation were subject to conditions, they may grant the authorisation, or cause it to be granted, subject to those conditions.

(4) Where, by virtue of paragraph (1)(g), the assessment provisions apply in relation to the granting of an authorisation by virtue of a consent under section 166 of the WIA or section 164 of the WRA, the section in question has effect as if in each case—

- (a) in subsection (3), the words “and, subject to that subsection, where an application for any consent is required to be determined within the period specified in paragraph (a) above and is not so determined, the consent applied for shall be deemed to have been given unconditionally.” were omitted; and
- (b) in paragraph (a) of that subsection, for the words “the period of seven days” there were substituted the words “the period of fourteen days”.

(5) The review provisions apply to any authorisation mentioned in paragraph (1)(a), (b), (c), (d) or (h).

(6) Where on the review of any such authorisation the competent authority consider that any adverse effects on the integrity of a European site or a European offshore marine site of the carrying out or, as the case may be, the continuation of the activities authorised by it would be avoided by a variation of the authorisation, they may vary it, or cause it to be varied, accordingly.

(7) In this regulation—

- (a) “the WIA” means the Water Industry Act 1991 ^{M53}; and
- (b) “the WRA” means the Water Resources Act 1991 ^{M54}.

Textual Amendments

F20 Words in [reg. 99\(2\)](#) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 4 para. 371](#) (with [Sch. 7](#))

Marginal Citations

- M43** [1991 c. 57](#).
- M44** Section 27A was inserted by the [Water Act 2003 \(c. 37\)](#), [section 6\(1\)](#).
- M45** Section 33A was inserted by the [Water Act 2003 \(c. 37\)](#), [section 9](#).
- M46** Section 24 was amended by [S.I. 1996/593](#), [Schedule 2](#); by the [Environment Act 1995 \(c. 25\)](#), [paragraph 128](#) of Schedule 22; and by the [Water Act 2003 \(c. 37\)](#), [section 60\(1\)](#).
- M47** Section 73 was amended by the [Environment Act 1995 \(c. 25\)](#), [paragraphs 128](#) and 139 of Schedule 22.
- M48** Section 79A was inserted by the [Environment Act 1995 \(c. 25\)](#), [paragraph 140](#) of Schedule 22, and amended by the [Water Act 2003 \(c. 37\)](#), [section 64\(3\)](#) and Part 3 of Schedule 9.
- M49** [1991 c. 56](#); section 166 was amended by the [Environment Act 1995 \(c. 25\)](#), [paragraph 118](#) of Schedule 22.
- M50** Section 164 was amended by the [Environment Act 1995 \(c. 25\)](#), [paragraph 128](#) of Schedule 22.
- M51** Section 167 was amended by the [Planning Act 2008 \(c. 29\)](#), [paragraph 50](#) of Schedule 2.
- M52** Section 168 was amended by the [Environment Act 1995 \(c. 25\)](#), [paragraph 128](#) of Schedule 22.

M53 1991 c. 56.

M54 1991 c. 57.

Marine works

100.—(1) The assessment provisions apply in relation to the granting of a licence, consent or other approval for marine works.

(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 licence, consent or other approval were subject to conditions or requirements, grant the licence, consent or other approval subject to those conditions or requirements.

(3) The review provisions apply to any licence, consent or other approval for marine works.

(4) Where on the review of any such licence, consent or other approval the competent authority consider that any adverse effects on the integrity of a European site or a European offshore marine site of the carrying out or, as the case may be, the continuation of activities authorised by it would be avoided by a variation of the licence, consent or other approval, they may vary it accordingly.

[^{F21}(5) In this regulation, “marine works” means—

(a) any activity or proposed activity requiring —

(i) a marine licence under Part 4 of the Marine Act;

(ii) a licence under Part 2 of the Food and Environment Protection Act 1985 (deposits in the sea);

(iii) an authorisation under the Aquatic Animal Health (England and Wales) Regulations 2009; or

(iv) an approval or consent for harbour works under legislation falling within paragraph (6); or

(b) harbour works authorised by, and carried out in accordance with, any legislation falling within paragraph (6).

(6) The legislation referred to in paragraph (5)(a)(iv) and (b) is—

(a) a local Act;

(b) such an Act read together with a notice given and published under section 9 of the Harbours Transfer Act 1862 (power to Admiralty to retain authority over ports, etc. where dockyards, etc. are situate); or

(c) an order made under section 14 (powers, on application of harbour authorities, or others, to make orders for securing harbour efficiency etc.) or 16 (powers, on application of intending undertakers, or others, to make orders conferring powers for improvement, construction, etc., of harbours) of the Harbours Act 1964.

(7) In paragraph (5)(a)(iv) and (b), “harbour works” means—

(a) works involved in the construction of a harbour;

(b) works involving the making of modifications to an existing harbour;

(c) any dredging operation undertaken by or on behalf of a harbour authority within the meaning of the Harbours Act 1964; and

(d) works involving the deposit of spoil from any such dredging operation.]

Status: Point in time view as at 10/07/2015.

Changes to legislation: There are currently no known outstanding effects for the The Conservation of Habitats and Species Regulations 2010, PART 6. (See end of Document for details)

Textual Amendments

F21 Reg. 100(5)-(7) substituted for reg. 100(5)(6) (6.4.2011) by [The Conservation of Habitats and Species \(Amendment\) Regulations 2011 \(S.I. 2011/625\)](#), regs. 1(1), 8

Derogations in relation to nitrate pollution prevention legislation

101.—(1) The assessment provisions apply in relation to the granting of a derogation—

- (a) under Part 3A of the Nitrate Pollution Prevention Regulations 2008 ^{M55}; or
- (b) under Part 3A of the Nitrate Pollution Prevention (Wales) Regulations 2008 ^{M56}.

(2) Where the assessment provisions apply, the competent authority may, if they consider 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 derogation were subject to conditions, grant the derogation, subject to those conditions.

Marginal Citations

M55 [S.I. 2008/2349](#); Part 3A was inserted by [S.I. 2009/3160](#).

M56 [S.I. 2008/3143](#) (W.278); Part 3A was inserted by [S.I. 2010/489](#) (W.55).

CHAPTER 8

LAND USE PLANS

Land use plans

Assessment of implications for European sites and European offshore marine sites

102.—(1) Where a land use plan—

- (a) is likely to have a significant effect on a European site or a European offshore marine site (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,

the plan-making authority for that plan must, before the plan is given effect, make an appropriate assessment of the implications for the site in view of that site's conservation objectives.

(2) The plan-making authority must 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 specify.

(3) They must also, if they consider it appropriate, take the opinion of the general public, and if they do so, they must take such steps for that purpose as they consider appropriate.

(4) In the light of the conclusions of the assessment, and subject to regulation 103 (considerations of overriding public interest), the plan-making authority or, in the case of a regional strategy, the Secretary of State must give effect to the land use plan only after having ascertained that it will not adversely affect the integrity of the European site or the European offshore marine site (as the case may be).

(5) A plan-making authority must provide such information as the appropriate authority may reasonably require for the purposes of the discharge of the obligations of the appropriate authority under this Chapter.

(6) This regulation does not apply in relation to a site which is—

- (a) a European site by reason of regulation 8(1)(c), or
- (b) a European offshore marine site by reason of regulation 15(c) of the 2007 Regulations (site protected in accordance with Article 5(4) of the Habitats Directive).

[^{F22}Assessment of implications for European site: neighbourhood development plans

102A.—(1) A qualifying body which submits a proposal for a neighbourhood development plan must provide such information as the competent authority may reasonably require for the purposes of the assessment under regulation 102 or to enable them to determine whether that assessment is required.

(2) In this regulation, “qualifying body” means a parish council, or an organisation or body designated as a neighbourhood forum, authorised for the purposes of a neighbourhood development plan to act in relation to a neighbourhood area as a result of section 61F of the TCPA 1990, as applied by section 38C of the 2004 Planning Act.

(3) Where the competent authority decide to revoke or modify a neighbourhood development plan after it has been made, they must for that purpose make an appropriate assessment of the implications for any European site likely to be significantly affected in view of that site’s conservation objectives; and regulation 102 and this regulation apply with the appropriate modifications in relation to such a revocation or modification.]

Textual Amendments

F22 Reg. 102A inserted (6.4.2012) by [The Neighbourhood Planning \(General\) Regulations 2012 \(S.I. 2012/637\)](#), reg. 1, **Sch. 2 para. 4**

Considerations of overriding public interest

103.—(1) If the plan-making authority are satisfied that, there being no alternative solutions, the land use plan must be given effect for imperative reasons of overriding public interest (which, subject to paragraph (3), may be of a social or economic nature), they may give effect to the land use plan notwithstanding a negative assessment of the implications for the European site or the European offshore marine site (as the case may be).

(2) In relation to a regional strategy, paragraph (1) applies to the Secretary of State as it applies to a plan-making authority in the case of any other land use.

(3) 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) any other reasons which the plan-making authority, having due regard to the opinion of the European Commission, consider to be imperative reasons of overriding public interest.

(4) Where a plan-making authority other than the Secretary of State or the Welsh Ministers desire to obtain the opinion of the European Commission as to whether reasons are to be considered imperative reasons of overriding public interest, they may submit a written request to the appropriate authority—

- (a) identifying the matter on which an opinion is sought; and
- (b) accompanied by any documents or information which may be required.

(5) The appropriate authority—

- (a) may seek the opinion of the European Commission concerning the plan; and

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Changes to legislation: There are currently no known outstanding effects for the The Conservation of Habitats and Species Regulations 2010, PART 6. (See end of Document for details)

- (b) where such an opinion is received, must send it to the plan-making authority.
- (6) Where a plan-making authority other than the Secretary of State or the Welsh Ministers propose to give effect to a land use plan under this regulation notwithstanding a negative assessment of the implications for the site concerned—
 - (a) they must notify the appropriate authority; and
 - (b) they must not give effect to the land use plan before the end of the period of 21 days beginning with the day notified by the appropriate authority as that on which their notification was received, unless the appropriate authority notify them that they may do so.
- (7) Without prejudice to any other power, the appropriate authority may give directions to the plan-making authority in any such case prohibiting them from giving effect to the land use plan, either indefinitely or during such period as may be specified in the direction.

Co-ordination for land use plan prepared by more than one authority

104.—(1) The following provisions apply where two or more local planning authorities prepare a joint local development document under section 28^{M57} (joint local development documents) or a joint local development plan under section 72 (joint local development plans) of the 2004 Planning Act.

(2) Nothing in paragraph (1) of regulation 102 (assessment of implications for European sites and European offshore marine sites) requires a local planning authority to assess any implications of a joint local development document or plan which would be more appropriately assessed under that provision by another local planning authority.

(3) The appropriate authority may issue guidance to local planning authorities for the purposes of regulation 102(1) as to the circumstances in which a local planning authority may or should adopt the reasoning or conclusions of another local planning authority as to whether a joint local planning document or plan—

- (a) is likely to have a significant effect on a European site or a European offshore marine site; or
- (b) will adversely affect the integrity of a European site or a European offshore marine site.

(4) The local planning authorities concerned must have regard to any such guidance.

(5) In determining whether a joint local development document or plan should be adopted under regulation 103 (considerations of overriding public interest), a local planning authority must seek and have regard to the views of the other local planning authorities concerned.

Marginal Citations

M57 Section 28 was amended by the [Local Democracy, Economic Development and Construction Act 2009](#) (c. 20), [paragraphs 12](#) and 16 of Schedule 5.

Compensatory measures

105. Where in accordance with regulation 103 (considerations of overriding public interest) a land use plan is given effect notwithstanding a negative assessment of the implications for a European site or a European offshore marine site, the appropriate authority must secure that any necessary compensatory measures are taken to ensure that the overall coherence of Natura 2000 is protected.

Planning Act 2008

National policy statements

106.—(1) This Chapter applies—

- (a) in relation to a national policy statement under Part 2 (national policy statements) of the Planning Act 2008^{M58} as it applies in relation to a land use plan, and
- (b) in relation to the Secretary of State when exercising powers under Part 2 of that Act as it applies in relation to a plan-making authority,

with the modifications specified in paragraphs (2) and (3).

(2) Any reference in this Chapter to giving effect to a land use plan, in relation to a national policy statement, is to be taken to be a reference to the designation of a statement as a national policy statement or an amendment of a national policy statement under Part 2 of the Planning Act 2008.

(3) Where this Chapter applies by virtue of paragraph (1)—

- (a) regulations 102(5), 103(4) to (7) and 104 do not apply; and
- (b) in regulation 105, for the reference to the appropriate authority substitute a reference to the Secretary of State.

Marginal Citations

M58 2008 c. 29.

Interpretation of Chapter 8

Interpretation of Chapter 8

107.—(1) In this Chapter—

- “the 1999 Act” means the Greater London Authority Act 1999^{M59};
- “the 2004 Planning Act” means the Planning and Compulsory Purchase Act 2004^{M60};
- “the 2005 Order” means the Planning and Compulsory Purchase Act 2004 (Commencement No. 3 and Consequential and Transitional Provisions) (Wales) Order 2005^{M61};
- “the 2009 Act” means the Local Democracy, Economic Development and Construction Act 2009^{M62};
- “land use plan” means—
 - (a) the regional strategy under Part 5 (regional strategy) of the 2009 Act;
 - (b) the spatial development strategy under section 334 (the spatial development strategy) of the 1999 Act;
 - (c) a local development document as provided for in Part 2 (local development) of the 2004 Planning Act other than a statement of community involvement under section 18^{M63} (statement of community involvement) of that Act;
 - (d) a local development plan as provided for in Part 6 (Wales) of the 2004 Planning Act;
 - (e) the Wales Spatial Plan under section 60^{M64} (Wales Spatial Plan) of the 2004 Planning Act;
 - (f) an alteration or replacement of a structure plan, unitary development plan, local plan, minerals local plan, or waste local plan under Part 2^{M65} (development plans) of the TCPA

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1990 to the extent permitted by Schedule 8 (transitional provisions) to the 2004 Planning Act;^{F23} ...

- (g) a unitary development plan as provided for in Part 2 of the TCPA 1990 to the extent permitted by article 4 (transitional provisions) of the 2005 Order^{M66}; [^{F24}or]
- (h) [^{F24}a neighbourhood development plan as defined in section 38A (neighbourhood development plans) of the 2004 Planning Act;]

“plan-making authority” means—

- (a) responsible regional authorities as defined in section 72 (responsible regional authorities) of the 2009 Act;
- (b) the Mayor of London when exercising powers under subsection (1) or (2) of section 341 (alteration or replacement) of the 1999 Act;
- (c) an authority which, by virtue of Part 1 (planning authorities) of the TCPA 1990 or an order under subsection (2) of section 29 (joint committees) of the 2004 Planning Act, is a local planning authority;
- (d) the Secretary of State when exercising powers under—
 - (i) section 21 (intervention by Secretary of State) or section 27 (Secretary of State's default power) of the 2004 Planning Act, or
 - (ii) section 19 (approval of a unitary development plan), subsection (4) of section 35A^{M67} (calling in of proposal for approval by the Secretary of State) or section 45 (approval of proposals by the Secretary of State) of the TCPA 1990 to the extent permitted by Schedule 8 to the 2004 Planning Act;^{F25} ...
- (e) the Welsh Ministers when exercising powers under—
 - (i) section 60(3), section 65 (intervention by Assembly) or subsection (4) of section 71 (Assembly's default power) of the 2004 Planning Act, or
 - (ii) section 19 of the TCPA 1990 to the extent permitted by article 4 of the 2005 Order; [^{F26}or]
- (f) [^{F27}the local planning authority when exercising powers under Schedule 4B to the TCPA 1990 (as applied by section 38A(3) of the 2004 Planning Act); and]

“regional strategy” has the same meaning as in section 70 (regional strategy) of the 2009 Act.

- (2) References in this Chapter to giving effect to a land use plan are to—
- (a) the publication, under subsection (5) of section 78 (approval of revision by Secretary of State) of the 2009 Act, of a revision of a regional strategy;
 - (b) the approval, under section 21(9) or 27(4) of the 2004 Planning Act, of a local development document;
 - (c) the adoption, under section 23 (adoption of local development documents) of the 2004 Planning Act, of a local development document other than a statement of community involvement under section 18 of that Act;
 - (d) the publication, under section 341 of the 1999 Act, of alterations of the spatial development strategy or a new spatial development strategy to replace it;
 - (e) the publication, under section 60 of the 2004 Planning Act, of a revision of the Wales Spatial Plan;
 - (f) the adoption, under section 67 (adoption of local development plan) of the 2004 Planning Act, of a local development plan;
 - (g) the approval, under section 65(9) or 71(4) of the 2004 Planning Act, of a local development plan;

- (h) the adoption, under section 35(1) (adoption of proposals), or approval under section 35A(4) of the TCPA 1990, of an alteration or replacement of a structure plan to the extent permitted by paragraph 2(2) of Schedule 8 to the 2004 Planning Act;
- (i) the adoption, under section 15 ^{M68} (adoption of unitary development plans by local planning authority) and that provision as applied by subsection (2) of section 21 ^{M69} (alteration or replacement of unitary development plans) of the TCPA 1990, of an alteration or replacement of a unitary development plan to the extent permitted by paragraph 4 of Schedule 8 to the 2004 Planning Act;
- (j) the approval, under section 19 and that provision as applied by section 21(2) of the TCPA 1990, of an alteration or replacement of a unitary development plan to the extent permitted by paragraph 4 of Schedule 8 to the 2004 Planning Act;
- (k) the adoption, under section 43 ^{M70} (adoption of proposals) or approval under section 45 of the TCPA 1990, of an alteration or replacement of a local plan, minerals local plan or waste local plan to the extent permitted by paragraph 9, 10 or 14 of Schedule 8 to the 2004 Planning Act;
- (l) the adoption, under section 15 of the TCPA 1990, of a unitary development plan to the extent permitted by article 4 of the 2005 Order; ^{F28}...
- (m) the approval, under section 19 of the TCPA 1990, of a unitary development plan to the extent permitted by article 4 of the 2005 Order^{F29}; or]
- ^{F29}(n) the holding of a referendum in accordance with paragraph 12(4) of Schedule 4B to the TCPA 1990 (as applied by section 38A(3) of the 2004 Planning Act).]

Textual Amendments

- F23** Word in reg. 107(1) deleted (6.4.2012) by [The Neighbourhood Planning \(General\) Regulations 2012 \(S.I. 2012/637\)](#), reg. 1, **Sch. 2 para. 5(a)(i)**
- F24** Words in reg. 107(1) inserted (6.4.2012) by [The Neighbourhood Planning \(General\) Regulations 2012 \(S.I. 2012/637\)](#), reg. 1, **Sch. 2 para. 5(a)(i)**
- F25** Word in reg. 107(1) deleted (6.4.2012) by [The Neighbourhood Planning \(General\) Regulations 2012 \(S.I. 2012/637\)](#), reg. 1, **Sch. 2 para. 5(a)(ii)**
- F26** Word in reg. 107(1) substituted (6.4.2012) by [The Neighbourhood Planning \(General\) Regulations 2012 \(S.I. 2012/637\)](#), reg. 1, **Sch. 2 para. 5(a)(ii)**
- F27** Words in reg. 107(1) added (6.4.2012) by [The Neighbourhood Planning \(General\) Regulations 2012 \(S.I. 2012/637\)](#), reg. 1, **Sch. 2 para. 5(a)(ii)**
- F28** Word in reg. 107(2)(l) deleted (6.4.2012) by [The Neighbourhood Planning \(General\) Regulations 2012 \(S.I. 2012/637\)](#), reg. 1, **Sch. 2 para. 5(b)**
- F29** Reg. 107(2)(n) and word inserted (6.4.2012) by [The Neighbourhood Planning \(General\) Regulations 2012 \(S.I. 2012/637\)](#), reg. 1, **Sch. 2 para. 5(b)**

Marginal Citations

- M59** 1999 c. 29.
- M60** 2004 c. 5.
- M61** [S.I. 2005/1229 \(W.87\) \(C.56\)](#), amended by [S.I. 2005/2722 \(W.193\) \(C.110\)](#).
- M62** 2009 c. 20.
- M63** Section 18 was amended by the [Planning Act 2008 \(c. 29\)](#), **section 180(1)** and (4) and Schedule 13.
- M64** Section 60 was amended by the [Government of Wales Act 2006 \(c. 32\)](#), **paragraph 66** of Schedule 10 and Schedule 12.
- M65** Sections 32 to 40 in Part 2 of the TCPA 1990 were substituted by the [Planning and Compensation Act 1991 \(c. 34\)](#), **paragraph 17** of Schedule 4; Part 2 of the TCPA 1990 was repealed by the 2004 Planning Act, Schedule 9, subject to transitional provisions contained in Schedule 8 to that Act.

Status: Point in time view as at 10/07/2015.

Changes to legislation: There are currently no known outstanding effects for the The Conservation of Habitats and Species Regulations 2010, PART 6. (See end of Document for details)

- M66** Article 4 contains transitional provisions; it was revoked by [S.I. 2005/2722](#) (W.193) (C.110), but that S.I. was amended by [S.I. 2006/842](#) (W.77) with the effect that the transitional provisions in Article 4 of the 2005 Order continue to apply in relation to the local planning authorities in Wales listed in the Schedule to [S.I. 2005/2722](#).
- M67** Section 35A was inserted by the [Planning and Compensation Act 1991](#) (c. 34), [paragraph 17](#) of Schedule 4.
- M68** Section 15(1) was substituted by the [Planning and Compensation Act 1991](#) (c. 34), [paragraph 6](#) of Schedule 4.
- M69** Section 21 was amended by the [Planning and Compensation Act 1991](#) (c. 34), [paragraph 12\(2\)](#) of Schedule 4 and Schedule 19.
- M70** Section 43 was amended by the [Planning and Compensation Act 1991](#) (c. 34), [paragraph 19\(1\)](#) of Schedule 4.

[^{F30}CHAPTER 9

Marine policy statement and marine plans

Textual Amendments

- F30** Regs. 107A, 107B and Part heading inserted (6.4.2011) by [The Conservation of Habitats and Species \(Amendment\) Regulations 2011](#) (S.I. 2011/625), regs. 1(1), **9**

Marine policy statement

107A.—(1) Chapter 8 applies—

- (a) in relation to a marine policy statement under Chapter 1 of Part 3 (marine planning) of the Marine Act as it applies in relation to a land use plan, and
- (b) in relation to a policy authority when exercising powers under Part 3 of that Act as it applies in relation to a plan-making authority,

with the modifications specified in paragraphs (2) and (3).

(2) Any reference in Chapter 8 to giving effect to a land use plan, in relation to a marine policy statement, is to be taken to be a reference to the adoption and publication of a marine policy statement in accordance with Schedule 5 to the Marine Act or any amendment of a marine policy statement under section 47 of that Act.

(3) Where Chapter 8 applies by virtue of paragraph (1)—

- (a) in regulation 102(2), after “the appropriate nature conservation body” insert “and the Joint Nature Conservation Committee”;
- (b) regulations 102(5), 103(4) to (7) and 104 do not apply; and
- (c) in regulation 105, for the reference to the appropriate authority substitute a reference to the policy authority.

(4) In this regulation “policy authority” means the Secretary of State or the Welsh Ministers.

Marine plan

107B.—(1) Chapter 8 applies—

- (a) in relation to a marine plan as it applies in relation to a land use plan, and
- (b) in relation to a marine plan authority when exercising powers under Part 3 of the Marine Act as it applies in relation to a plan-making authority,

with the modifications specified in paragraphs (2) and (3).

(2) Any reference in Chapter 8 to giving effect to a land use plan, in relation to a marine plan, is to be taken to be a reference to the adoption and publication of a marine plan in accordance with Schedule 6 to the Marine Act or any amendment of a marine plan under section 52 of that Act.

(3) Where Chapter 8 applies by virtue of paragraph (1), regulations 102(5), 103(4) to (7) and 104 do not apply.

(4) In this regulation—

- (a) “marine plan” means a marine plan under Chapter 2 of Part 3 of the Marine Act; and
- (b) “marine plan authority” has the meaning given by Part 3 of the Marine Act.]

Status:

Point in time view as at 10/07/2015.

Changes to legislation:

There are currently no known outstanding effects for the The Conservation of Habitats and Species Regulations 2010, PART 6.