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## STATUTORY INSTRUMENTS

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# 2017 No. 1012

## The Conservation of Habitats and Species Regulations 2017

### PART 6

#### Assessment of plans and projects

##### CHAPTER 2

##### Planning

##### *Planning permission*

#### **Grant of planning permission**

**70.**—(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 of that Act (urgent Crown development) <sup>M1</sup>;
- (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 of that Act (right to appeal against planning decisions) <sup>M2</sup> 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) of that Act (grant or modification of planning permission on appeals against enforcement notices) <sup>M3</sup>;
- (e) directing under the following provisions that planning permission is deemed to be granted—
  - (i) section 90(1), (2) or (2A) of that Act (development with government authorisation);
  - (ii) section 57(2) or (2A) of the Town and Country Planning (Scotland) Act 1997 (development with government authorisation) <sup>M4</sup>; or
  - (iii) section 5(1) of the Pipe-lines Act 1962 (provisions with respect to planning permission concerning pipe-lines) <sup>M5</sup>;
- (f) directing under section 90(2ZA)(a) or (b) of the TCPA 1990 <sup>M6</sup> or section 57(2ZA)(a) or (b) of the Town and Country Planning (Scotland) Act 1997 <sup>M7</sup>, in respect of a planning permission which is deemed to be granted under section 90(2) or section 57(2) (respectively) on varying a consent under section 36 or 37 of the Electricity Act 1989 <sup>M8</sup>, that that permission, or any conditions subject to which it was granted, be varied;
- (g) making—

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- (i) an order under section 102 of the TCPA 1990 (orders requiring discontinuance of use or alteration or removal of buildings or works)<sup>M9</sup>, 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 to that Act (order requiring discontinuance of mineral working)<sup>M10</sup>, including an order made under that paragraph by virtue of paragraph 11 of that Schedule (powers in relation to orders under Schedule 9) which grants planning permission; or
- (h) directing under the following provisions that, if an application is made for planning permission, it must be granted—
- (i) section 141(3) of the TCPA 1990 (action in relation to purchase notice); or
  - (ii) section 35(5) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (action in relation to listed building purchase notice)<sup>M11</sup>.

[<sup>F1</sup>(1A) Subject to paragraph (1B), the assessment provisions apply to granting permission in principle under section 59A of the TCPA 1990 (Development orders: permission in principle).

(1B) Regulation 64 (Considerations of overriding public interest) does not apply to granting permission in principle under section 59A of the TCPA 1990.]

(2) Where the assessment provisions apply, the competent authority may, if it considers 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 is 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 of the TCPA 1990 (outline planning permission)<sup>M12</sup>.

[<sup>F2</sup>(5) See regulation 85A for the assumptions about nutrient pollution standards to be made in certain circumstances.]

#### Textual Amendments

- F1** Reg. 70(1A)(1B) inserted (28.12.2018) by [The Conservation of Habitats and Species and Planning \(Various Amendments\) \(England and Wales\) Regulations 2018 \(S.I. 2018/1307\)](#), regs. 1(1), **2(2)**
- F2** Reg. 70(5) inserted (26.12.2023) by [Levelling-up and Regeneration Act 2023 \(c. 55\)](#), s. 255(6), **Sch. 15 para. 3** (with s. 247)

#### Marginal Citations

- M1** Section 293A was inserted by the [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), section 82(1), and amended by the [Planning \(Wales\) Act 2015 \(anaw 4\)](#), **Schedule 2**, paragraphs 8 and 9, and [Schedule 4](#), paragraphs 1 and 17; and the [Housing and Planning Act 2016 \(c. 22\)](#), **Schedule 12**, paragraph 34.
- M2** Section 78 was amended by the [Planning and Compensation Act 1991 \(c. 34\)](#), **section 17(2)**; the [Planning and Compulsory Purchase Act 2004](#), sections 40(2)(e) and 43(2); the [Planning Act 2008 \(c. 29\)](#), **Schedule 10**, paragraphs 1 and 3 and [Schedule 11](#), paragraphs 1 and 2; the [Localism Act 2011](#)

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- (c. 20), **section 123(1)** and (3), and Schedule 12, paragraphs 1 and 11; the **Growth and Infrastructure Act 2013 (c. 27), Schedule 1**, paragraphs 1 and 8; the **Infrastructure Act 2015 (c. 7), Schedule 4, Part 2**, paragraphs 2 and 12; the Planning (Wales) Act 2015, sections 45 and 47, and Schedule 7, paragraph 7; the Housing and Planning Act 2016, Schedule 12, paragraphs 1 and 21; and by **S.I. 2014/2773**.
- M3** Section 177(1)(a) was substituted by the Planning and Compensation Act 1991, Schedule 7, paragraph 24(1)(a).
- M4** 1997 c. 8. Section 57(2) was substituted by the **Growth and Infrastructure Act 2013 (c. 27), section 21(5)**.
- M5** 1962 c. 58. Section 5(1) was amended by **S.I. 1999/742**.
- M6** Section 90(2ZA) was inserted by the **Environment Act 1995 (c. 25), Schedule 10**.
- M7** Section 57(2ZA) was inserted by the **Growth and Infrastructure Act 2013 (c. 27), section 21(5)**.
- M8** 1989 c. 29. Section 36 was amended by the **Energy Act 2004 (c. 20), section 93**; by the Planning Act 2008, Schedule 2, paragraphs 31 and 32; by the Marine Act, section 12(7)(a) and (8); by the Energy Act 2016 (c. 20), section 78; and by **S.I. 2006/1054**; and is prospectively amended by the **Wales Act 2017 (c. 4), section 39(7) to (11)**, and Schedule 6, Part 3, paragraph 47, from a date to be appointed. Section 36C of the Act, inserted by the **Growth and Infrastructure Act 2013 (c. 27), section 20**, provides for the variation of consents granted under section 36. Section 37 was amended by the Planning Act 2008, Schedule 2, paragraphs 31 and 33; and is prospectively amended by the Wales Act 2017, section 42 from a date to be appointed.
- M9** Section 102 was amended by the **Planning and Compensation Act 1991 (c. 34), Schedule 1, paragraph 6**, and Schedule 7, paragraph 21; and the Planning (Wales) Act 2015 (anaw 4), **section 33(1)** and (4).
- M10** Paragraph 1 of Schedule 9 was amended by the Planning and Compensation Act 1991, Schedule 1, paragraph 15.
- M11** 1990 c. 9.
- M12** Section 92 was amended by the **Planning (Wales) Act 2015 (anaw 4), section 36(1) to (6)**, and Schedule 4, paragraphs 1 and 10.

### Planning permission: duty to review

71.—(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, local development order or neighbourhood development order (but see regulations 75 to 81);
- (b) by virtue of the adoption of a simplified planning zone scheme or of alterations to such a scheme (but see regulation 82); 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 (enterprise zones)<sup>M13</sup>, or by virtue of the approval of a modified enterprise zone scheme (but see regulation 83).

(3) Planning permission deemed to be granted by virtue of a direction of a kind specified in paragraph (4) must be reviewed in accordance with Chapter 4, Chapter 5 or Chapter 6 (as the case may be) in conjunction with the review of the underlying authorisation, consent or order.

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- (4) Directions of a kind referred to in paragraph (3) are—
- (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 of the Pipe-lines Act 1962 (pipe-line construction authorisations) <sup>M14</sup>;
  - (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 (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);
  - (e) a direction under section 90(2ZA)(a) or (b) of the TCPA 1990 or section 57(2ZA)(a) or (b) of the Town and Country Planning (Scotland) Act 1997 (which relate to the variation of a 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 and to the variation of conditions of any such deemed grant of planning permission); or
  - (f) 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 (orders as to railways, tramways or inland waterways) <sup>M15</sup>).
- (5) 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 it considers falls to be reviewed under the review provisions; and
  - (b) refer the matter to the government department or person which made the direction.
- (6) The department or person to whom a reference is made under paragraph (5)(b) must, if in agreement that the planning permission does fall to be so reviewed, review the direction in accordance with the review provisions.
- (7) 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.
- (8) Subject to paragraphs (3) to (6), 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 of the TCPA 1990 (power to revoke or modify planning permission) <sup>M16</sup> 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).
- (9) 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 to the TCPA 1990 <sup>M17</sup>), in which case it is exercisable by the county planning authority.
- [<sup>F3</sup>(10) See regulation 85A for the assumptions about nutrient pollution standards to be made in certain circumstances.]

#### Textual Amendments

- F3** Reg. 71(10) inserted (26.12.2023) by [Levelling-up and Regeneration Act 2023 \(c. 55\), s. 255\(6\), Sch. 15 para. 4](#) (with s. 247)

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#### Marginal Citations

- M13** 1980 c. 65. Paragraph 5 of Schedule 32 was amended by the [Planning \(Consequential Provisions\) Act 1990 \(c. 11\)](#), [Schedule 1, Part 1](#).
- M14** 1962 c. 58. Section 1 was amended by the [Criminal Justice Act 1982 \(c. 48\)](#), [sections 37, 38 and 46](#); by the [Planning Act 2008 c. 29](#), [Schedule 2, paragraphs 5 and 6](#); and by [S.I. 1999/742](#) and [2007/1519](#).
- M15** 1992 c. 42. Sections 1 and 3 were amended by the [Planning Act 2008](#), [Schedule 2, paragraphs 51, 52 and 53](#).
- M16** [Section 97](#) was amended by the [Planning and Compensation Act 1991 \(c. 34\)](#), [Schedule 1, paragraph 4](#); and by the [Housing and Planning Act 2016 \(c. 22\)](#), [Schedule 12, paragraphs 1 and 25](#).
- M17** Paragraph 1 of Schedule 1 was amended by the [Planning and Compensation Act 1991](#), [Schedule 1, paragraph 13](#).

#### Planning permission: consideration on review

**72.**—(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 of the TCPA 1990 (planning obligations) <sup>M18</sup> being entered into; and
- (b) if it considers 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 the TCPA 1990 Act (power to revoke or modify planning permission); or
- (b) section 102 of, or paragraph 1 of Schedule 9 to, that Act (orders requiring discontinuance of use etc.).

(3) Where the authority ascertains 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, it nevertheless need not proceed under the review provisions if and so long as it considers that there is no likelihood of the development being carried out or continued.

#### Marginal Citations

- M18** [Section 106](#) was substituted by the [Planning and Compensation Act 1991](#), [section 12\(1\)](#), and amended by the [Greater London Authority Act 2007 \(c. 24\)](#), [section 33](#); the [Planning Act 2008 \(c. 29\)](#), [section 174\(1\)](#) and (2); the [Growth and Infrastructure Act 2013 \(c. 27\)](#), [Schedule 2, paragraphs 1 and 3](#). It is prospectively amended by the [Housing and Planning 2016](#), [section 158\(3\)](#), and is prospectively repealed by the [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), [Schedule 6, paragraphs 1 and 5](#), from a date or dates to be appointed.

#### Planning permission: effect of orders made on review

**73.**—(1) An order under section 97 of the TCPA 1990 made pursuant to paragraph (2) of regulation 72 (planning permission: consideration on 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 determines not to confirm such an order—

- (a) the order ceases to have effect as from the time of that determination;

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- (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) 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 before the date upon which the order took effect under paragraph (1), there is substituted 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 72(2), 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) of that Act (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 determines 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 72(2) does not affect so much of the development authorised by the permission as was carried out before the order took effect.
- (6) An order under section 102 of or paragraph 1 of Schedule 9 to that Act made in pursuance of regulation 72(2) does not affect anything done before the site became a European site or European offshore marine site.

### **Planning permission: compensation**

74.—(1) Where the appropriate authority determines not to confirm an order under section 97 of the TCPA 1990 which has taken effect under regulation 73(1), any claim for compensation under section 107 of that Act (compensation where planning permission revoked or modified)<sup>M19</sup> 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 determines 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 73(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 the effect of the order in suspending or imposing conditions on any right to continue a use of the land 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

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(b) the order has been made pursuant to regulation 65 (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 has indicated in writing that such a reference and determination may be dispensed with.

#### Marginal Citations

**M19** Section 107 was amended by the [Planning and Compensation Act 1991 \(c. 34\)](#), [Schedule 1](#), paragraph 8 and [Schedule 6](#), paragraph 13; and by the [Housing and Planning Act 2016 \(c. 22\)](#), [Schedule 12](#), paragraphs 1 and 28.

### *General development orders*

#### **General development orders**

**75.** It is a condition of any planning permission granted by a general development order made on or after 30th November 2017, 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 77 (approval of local planning authority).

#### **General development orders: opinion of appropriate nature conservation body**

**76.—(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 its 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 it considers that it has sufficient information to conclude that the development will, or will not, have such an effect, it must notify the applicant and the local planning authority in writing of its opinion.

(5) If the appropriate nature conservation body considers that it has insufficient information to reach either of those conclusions, it must notify the applicant in writing indicating in what respects it considers the information insufficient, and the applicant may supply further information with a view to enabling it 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 77, “a relevant effect” means an effect of a kind mentioned in regulation 75(a).

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### General development orders: approval of local planning authority

77.—(1) An application to the local planning authority for approval, as mentioned in regulation 75, 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 76; and
  - (ii) any fee required to be paid.

(2) For the purposes of its 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 it.

(4) If in its representations the appropriate nature conservation body states its 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 its opinion under regulation 76(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.

[<sup>F4</sup>(8) See regulation 85B for the assumptions about nutrient pollution standards to be made in certain circumstances.]

#### Textual Amendments

F4 Reg. 77(8) inserted (26.12.2023) by [Levelling-up and Regeneration Act 2023 \(c. 55\), s. 255\(6\), Sch. 15 para. 5](#) (with s. 247)

### General development orders: supplementary

78.—(1) The local planning authority for the purposes of regulations 75 to 77 is the authority to which an application for approval under regulation 77 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 75 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.



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### *Special development orders*

#### [<sup>F5</sup>Special development orders

**79.**—(1) Subject to paragraphs (2) and (3), the assessment provisions apply to the making of a special development order.

(2) Regulation 64 (Considerations of overriding public interest) does not apply to the making of a special development order.

(3) Paragraph (1) does not apply to a special development order made before 28th December 2018.

(4) Subject to paragraph (5) the review provisions apply to a special development order unless—

- (a) the development permitted by that order was completed before 28th December 2018; or
- (b) the development permitted by that order has been completed before the site became a European site or a European offshore marine site.

(5) The reference to regulation 64 in the review provisions does not apply to a special development order.

[<sup>F6</sup>(6) See regulation 85A for the assumptions about nutrient pollution standards to be made in certain circumstances.]]

#### **Textual Amendments**

- F5** Reg. 79 substituted (28.12.2018) by [The Conservation of Habitats and Species and Planning \(Various Amendments\) \(England and Wales\) Regulations 2018 \(S.I. 2018/1307\)](#), regs. 1(1), **2(3)**
- F6** Reg. 79(6) inserted (26.12.2023) by [Levelling-up and Regeneration Act 2023 \(c. 55\)](#), s. 255(6), [Sch. 15 para. 6](#) (with s. 247)

### *Local development orders*

#### [<sup>F7</sup>Local development orders

**80.**—(1) Subject to paragraphs (2) and (3), the assessment provisions apply to the making of a local development order.

(2) Regulation 64 (Considerations of overriding public interest) does not apply to the making of a local development order.

(3) Paragraph (1) does not apply to a local development order made before 28th December 2018.

(4) Subject to paragraph (5) the review provisions apply to a local development order unless—

- (a) the development permitted by that order was completed before 28th December 2018; or
- (b) the development permitted by that order has been completed before the site became a European site or a European offshore marine site.

(5) The reference to regulation 64 in the review provisions does not apply to a local development order.

[<sup>F8</sup>(6) See regulation 85A for the assumptions about nutrient pollution standards to be made in certain circumstances.]]

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#### Textual Amendments

- F7** Reg. 80 substituted (28.12.2018) by [The Conservation of Habitats and Species and Planning \(Various Amendments\) \(England and Wales\) Regulations 2018 \(S.I. 2018/1307\)](#), regs. 1(1), **2(4)**
- F8** Reg. 80(6) inserted (26.12.2023) by [Levelling-up and Regeneration Act 2023 \(c. 55\)](#), s. 255(6), **Sch. 15 para. 7** (with s. 247)

### *Neighbourhood development orders*

#### [<sup>F9</sup>Neighbourhood development orders

**81.**—(1) Subject to paragraphs (2) and (3), the assessment provisions apply to the making of a neighbourhood development order.

(2) Regulation 64 (Considerations of overriding public interest) does not apply to the making of a neighbourhood development order.

(3) Paragraph (1) does not apply to a neighbourhood development order made before 28th December 2018.

(4) Subject to paragraph (5) the review provisions apply to a neighbourhood development order unless—

- (a) the development permitted by that order was completed before 28th December 2018; or
- (b) the development permitted by that order has been completed before the site became a European site or a European offshore marine site.

(5) The reference to regulation 64 in the review provisions does not apply to a neighbourhood development order.

[<sup>F10</sup>(5A) See regulation 85A for the assumptions about nutrient pollution standards to be made in certain circumstances.]

(6) This regulation applies in relation to England only.]

#### Textual Amendments

- F9** Reg. 81 substituted (28.12.2018) by [The Conservation of Habitats and Species and Planning \(Various Amendments\) \(England and Wales\) Regulations 2018 \(S.I. 2018/1307\)](#), regs. 1(1), **2(5)**
- F10** Reg. 81(5A) inserted (26.12.2023) by [Levelling-up and Regeneration Act 2023 \(c. 55\)](#), s. 255(6), **Sch. 15 para. 8** (with s. 247)

### *Simplified planning zones and enterprise zones*

#### [<sup>F11</sup>Simplified planning zones

**82.**—(1) Subject to paragraphs (3) and (4), the assessment provisions apply where a simplified planning zone scheme is adopted or approved.

(2) Subject to paragraph (4), where a simplified planning zone scheme is adopted or approved, that scheme is not to be taken to grant planning permission for development which (either alone or in combination with other plans or projects) is likely to have a significant effect on a European offshore marine site or (where the development is not directly connected with or necessary to the management of the site) on a European site, unless adopted or approved in accordance with the assessment provisions.

**Changes to legislation:** The Conservation of Habitats and Species Regulations 2017, CHAPTER 2 is up to date with all changes known to be in force on or before 25 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

(3) Regulation 64 (Considerations of overriding public interest) does not apply to the adoption or approval of a simplified planning zone scheme.

(4) Paragraphs (1) and (2) do not apply to a simplified planning zone scheme adopted or approved before 28th December 2018.

(5) Subject to paragraph (6) the review provisions apply to a simplified planning zone scheme unless—

- (a) the development permitted by that scheme was completed before 28th December 2018; or
- (b) the development permitted by that scheme has been completed before the site became a European site or a European offshore marine site.

(6) The reference to regulation 64 in the review provisions does not apply to a simplified planning zone scheme.

[<sup>F12</sup>(7) See regulation 85A for the assumptions about nutrient pollution standards to be made in certain circumstances.]]

#### Textual Amendments

- F11** Reg. 82 substituted (28.12.2018) by [The Conservation of Habitats and Species and Planning \(Various Amendments\) \(England and Wales\) Regulations 2018 \(S.I. 2018/1307\)](#), regs. 1(1), **2(6)**
- F12** Reg. 82(7) inserted (26.12.2023) by [Levelling-up and Regeneration Act 2023 \(c. 55\)](#), s. 255(6), **Sch. 15 para. 9** (with s. 247)

#### [<sup>F13</sup>E] Enterprise zones

**83.**—(1) Subject to paragraphs (3) and (4), the assessment provisions apply where an order designating an enterprise zone is made, or where a modified enterprise zone scheme is approved.

(2) 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 (either alone or in combination with other plans or projects) is likely to have a significant effect on a European offshore marine site or (where the development is not directly connected with or necessary to the management of the site) on a European site, unless made or approved in accordance with the assessment provisions.

(3) Regulation 64 (Considerations of overriding public interest) does not apply to the making of an order designating an enterprise zone or the approval of a modified enterprise zone scheme.

(4) Paragraphs (1) and (2) do not apply to an order designating an enterprise zone made, or a modified enterprise zone scheme approved before 28th December 2018.

(5) Subject to paragraph (6) the review provisions apply to an enterprise zone or modified enterprise zone scheme unless—

- (a) the development permitted by that zone or zone scheme was completed before 28th December 2018; or
- (b) the development permitted by that zone or zone scheme has been completed before the site became a European site or a European offshore marine site.

(6) The reference to regulation 64 in the review provisions does not apply to an enterprise zone or modified enterprise zone scheme.

[<sup>F14</sup>(7) See regulation 85A for the assumptions about nutrient pollution standards to be made in certain circumstances.]]

**Status:** Point in time view as at 26/12/2023.

**Changes to legislation:** The Conservation of Habitats and Species Regulations 2017, CHAPTER 2 is up to date with all changes known to be in force on or before 25 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

### Textual Amendments

- F13** Reg. 83 substituted (28.12.2018) by [The Conservation of Habitats and Species and Planning \(Various Amendments\) \(England and Wales\) Regulations 2018 \(S.I. 2018/1307\)](#), regs. 1(1), **2(7)**
- F14** Reg. 83(7) inserted (26.12.2023) by [Levelling-up and Regeneration Act 2023 \(c. 55\)](#), s. 255(6), **Sch. 15 para. 10** (with s. 247)

## Development consent under Planning Act 2008

### Grant of development consent

**84.—(1)** The assessment provisions apply in relation to the making of an order granting development consent under the Planning Act 2008 <sup>M20</sup>.

(2) Where those provisions apply, the competent authority may, if it considers 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) <sup>M21</sup>, make an order subject to those requirements.

### Marginal Citations

- M20** 2008 c. 29.
- M21** Section 120 was amended by the [Localism Act 2011 \(c. 20\)](#), **section 140** and Schedule 13, paragraphs 1 and 60.

### Development consent: review

**85.—(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.
- (2) 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 it considers 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 <sup>M22</sup> as may be required.

### Marginal Citations

- M22** [Paragraph 3\(1\)](#) of Schedule 6 was amended by the [Localism Act 2011](#), Schedule 13, paragraphs 1 and 72.

*Changes to legislation: The Conservation of Habitats and Species Regulations 2017, CHAPTER 2 is up to date with all changes known to be in force on or before 25 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## [F15] Assumptions to be made about nutrient pollution standards: general

**85A.**—(1) Paragraph (2) applies where—

- (a) a competent authority makes a relevant decision,
- (b) the potential development includes development in England,
- (c) the competent authority is required to make a relevant assessment before the decision is made,
- (d) waste water from any potential development would be dealt with by a plant in England that, at the time of the decision, is—
  - (i) a nitrogen significant plant, or
  - (ii) a phosphorus significant plant, and
- (e) the decision is made—
  - (i) where the plant is a non-catchment permitting area plant, before the upgrade date, or
  - (ii) where the plant is a catchment permitting area plant, before the applicable date.

(2) In making the relevant assessment, the competent authority must assume—

- (a) in a case within paragraph (1)(d)(i) and (e)(i), that the plant will meet the nitrogen nutrient pollution standard on and after the upgrade date;
- (b) in a case within paragraph (1)(d)(ii) and (e)(i), that the plant will meet the phosphorus nutrient pollution standard on and after the upgrade date;
- (c) in a case within paragraph (1)(d)(i) and (e)(ii), that the plant will meet the nitrogen nutrient pollution standard on and after the applicable date;
- (d) in a case within paragraph (1)(d)(ii) and (e)(ii), that the plant will meet the phosphorus nutrient pollution standard on and after the applicable date.

(3) Paragraph (2)—

- (a) is subject to regulation 85C (direction that assumptions are not to apply), and
- (b) does not prevent the competent authority, in making a relevant assessment, from having regard to outperformance, or expected outperformance, by a plant that is a non-catchment permitting area plant.

(4) In paragraph (1) “relevant decision” means—

- (a) where any of the following provides that the assessment provisions apply in relation to doing a thing, the decision whether or not to do it—
  - (i) regulation 70 (grant of planning permission),
  - (ii) regulation 79 (special development orders),
  - (iii) regulation 80 (local development orders),
  - (iv) regulation 81 (neighbourhood development orders),
  - (v) regulation 82 (simplified planning zones), or
  - (vi) regulation 83 (enterprise zones), or
- (b) where any of the following provides that the review provisions apply in relation to a matter, a decision under regulation 65(1)(b) on a review of the matter—
  - (i) regulation 71 (planning permission: duty to review),
  - (ii) regulation 79 (special development orders),
  - (iii) regulation 80 (local development orders),
  - (iv) regulation 81 (neighbourhood development orders),

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- (v) regulation 82 (simplified planning zones), or
- (vi) regulation 83 (enterprise zones);

but this does not apply to a matter mentioned in regulation 71(4) (any review of which would be conducted in accordance with another Chapter).

(5) In paragraph (1) “potential development”, in relation to a relevant decision, means development—

- (a) that could be carried out by virtue of the planning permission, development order or scheme to which the decision relates, or
- (b) to which the decision otherwise relates.

(6) In this regulation “relevant assessment” means—

- (a) where the assessment provisions apply and an appropriate assessment of the implications of the plan or project for a site is required by regulation 63(1), that assessment;
- (b) where the review provisions apply and an appropriate assessment is required by regulation 65(2), that assessment.

#### Textual Amendments

**F15** Regs. 85A-85D inserted (26.12.2023) by Levelling-up and Regeneration Act 2023 (c. 55), s. 255(6), Sch. 15 para. 11 (with s. 247)

#### Assumptions to be made about nutrient pollution standards: general development orders

**85B.**—(1) This regulation applies where—

- (a) a local planning authority (within the meaning given by regulation 78(1)) makes a decision on an application under regulation 77 (general development orders: approval of local planning authority) for approval as mentioned in regulation 75 relating to proposed development in England,
- (b) the authority is required by regulation 77(6) to make an appropriate assessment of the implications of the proposed development,
- (c) any waste water from the proposed development would be dealt with by a plant in England that, at the time of the decision, is—
  - (i) a nitrogen significant plant, or
  - (ii) a phosphorus significant plant, and
- (d) the decision is made—
  - (i) where the plant is a non-catchment permitting area plant, before the upgrade date, or
  - (ii) where the plant is a catchment permitting area plant, before the applicable date.

(2) In making the relevant assessment the local planning authority must assume—

- (a) in a case within paragraph (1)(c)(i) and (d)(i), that the plant will meet the nitrogen nutrient pollution standard on and after the upgrade date;
- (b) in a case within paragraph (1)(c)(ii) and (d)(i), that the plant will meet the phosphorus nutrient pollution standard on and after the upgrade date;
- (c) in a case within paragraph (1)(c)(i) and (d)(ii), that the plant will meet the nitrogen nutrient pollution standard on and after the applicable date;
- (d) in a case within paragraph (1)(c)(ii) and (d)(ii), that the plant will meet the phosphorus nutrient pollution standard on and after the applicable date.

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(3) Paragraph (2)—

- (a) is subject to regulation 85C (direction that assumptions are not to apply), and
- (b) does not prevent the local planning authority, in making a relevant assessment, from having regard to any outperformance, or expected outperformance, by a plant that is a non-catchment permitting area plant.

**Textual Amendments**

**F15** Regs. 85A-85D inserted (26.12.2023) by Levelling-up and Regeneration Act 2023 (c. 55), s. 255(6), Sch. 15 para. 11 (with s. 247)

**Direction that assumptions are not to apply**

**85C.**—(1) The assumptions in regulations 85A(2) and 85B(2) do not apply in relation to a particular plant and a particular nutrient pollution standard if the Secretary of State so directs.

(2) A direction under this regulation may be made in relation to a plant and a standard only if the Secretary of State is satisfied—

- (a) where the plant is a non-catchment permitting area plant, that the plant will not be able to meet the standard by the upgrade date;
- (b) where the plant is a catchment permitting area plant—
  - (i) that the plant will not be able to meet the standard by the applicable date, or
  - (ii) that the first effect described in paragraph (4) will, on the applicable date, be more significant than the second effect described in that paragraph.

(3) The Secretary of State may revoke a direction under this regulation if satisfied—

- (a) where the plant is a non-catchment permitting area plant, that the plant will meet the standard by the upgrade date;
- (b) where the plant is a catchment permitting area plant—
  - (i) that the plant will meet the standard by the applicable date, or
  - (ii) that the first effect described in paragraph (4) will, on the applicable date, be the same or less significant than the second effect described in that paragraph.

(4) For the purposes of paragraphs (2)(b) and (3)(b)—

- (a) the “first effect” is the overall effect on the habitats site associated with the catchment permitting area of nutrients in treated effluent discharged by all plants that discharge into the area;
- (b) the “second effect” is the overall effect on the site of nutrients in treated effluent that would be discharged by all plants that discharge into the area if—
  - (i) the upgrade date that applied to nutrient significant plants that discharge into the area was the same as the applicable date,
  - (ii) the standard concentration (of nutrients) applied to those nutrient significant plants, and
  - (iii) those nutrient significant plants were (on that basis) meeting the nutrient pollution standard on the applicable date.

(5) In deciding whether to make a direction under this regulation in relation to a plant and a standard, the Secretary of State may, in particular, have regard—

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- (a) where the plant is a non-catchment permitting area plant, to when the plant can be expected to meet the standard;
- (b) where the plant is a catchment permitting area plant, to when—
  - (i) the plant can be expected to meet the standard, and
  - (ii) the sewerage undertaker for the plant can be expected to be in compliance with conditions in the environmental permit for the plant imposed in pursuance of section 96G(3)(b) of the Water Industry Act 1991.
- (6) Before making or revoking a direction under this regulation, the Secretary of State must consult—
  - (a) the Environment Agency,
  - (b) Natural England,
  - (c) the Water Services Regulation Authority,
  - (d) any local planning authority who it appears to the Secretary of State would be affected by the direction or revocation,
  - (e) the sewerage undertaker whose sewerage system includes the plant, and
  - (f) any other persons that the Secretary of State considers appropriate.
- (7) A direction or revocation under this regulation—
  - (a) is to be made in writing, and
  - (b) takes effect—
    - (i) on the day specified in the direction or revocation, or
    - (ii) if none is specified, on the day on which it is made.
- (8) As soon as practicable after making or revoking a direction under this regulation, the Secretary of State must—
  - (a) notify—
    - (i) the Environment Agency,
    - (ii) Natural England,
    - (iii) every local planning authority who appears to the Secretary of State to be affected by the direction or revocation, and
    - (iv) any other persons that the Secretary of State considers appropriate, and
  - (b) publish the direction or revocation.

#### Textual Amendments

**F15** Regs. 85A-85D inserted (26.12.2023) by [Levelling-up and Regeneration Act 2023 \(c. 55\)](#), s. 255(6), [Sch. 15 para. 11](#) (with s. 247)

#### Regulations 85A to 85C: interpretation

**85D.**—(1) In regulations 85A to 85C and this regulation, the following terms have the meanings given by section 96L of the Water Industry Act 1991—

- “catchment permitting area”;
- “environmental permit”;
- “habitats site”;



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“nitrogen significant plant”;  
 “nitrogen nutrient pollution standard”;  
 “nutrient pollution standard”;  
 “nutrient significant plant”;  
 “phosphorus significant plant”;  
 “phosphorus nutrient pollution standard”;  
 “plant”;  
 “sensitive catchment area”;  
 “sewerage system”, in relation to a sewerage undertaker;  
 “standard concentration”;  
 “treated effluent”;  
 “upgrade date”.

(2) In regulations 85A to 85C and this regulation—

“catchment permitting area plant” means a nutrient significant plant that discharges (or will discharge) treated effluent into a catchment permitting area;

“non-catchment permitting area plant” means a nutrient significant plant that discharges (or will discharge) treated effluent into a sensitive catchment area other than a catchment permitting area.

(3) For the purposes of regulations 85A and 85B, “outperformance” by a plant, which is a non-catchment permitting area plant and in relation to a nutrient pollution standard, occurs where—

- (a) the plant meets the standard before the upgrade date, or
- (b) the total nitrogen concentration (in the case of a nitrogen significant plant), or total phosphorus concentration (in the case of a phosphorus significant plant), in treated effluent that it discharges is less than the concentration specified in section 96F(1)(a)(i) or (2)(a)(i), under section 96C(4)(e) or 96D(5) or by virtue of regulations made under section 96D(11) (as the case may be) of the Water Industry Act 1991 that applies to the plant.

(4) For the purposes of regulations 85A and 85B, the “applicable date”, in relation to a catchment permitting area, is to be determined in accordance with section 96G(6)(a) of the Water Industry Act 1991.

(5) For the purposes of regulation 85C(4)—

- (a) a habitats site is “associated” with a catchment permitting area if water released into the area would drain into the site;
- (b) “nutrients”—
  - (i) in relation to an area designated under section 96C(1) of the Water Industry Act 1991, means nutrients comprising nitrogen or compounds of nitrogen;
  - (ii) in relation to an area designated under section 96C(2) of that Act, means nutrients comprising phosphorus or compounds of phosphorus.]

#### Textual Amendments

**F15** Regs. 85A-85D inserted (26.12.2023) by Levelling-up and Regeneration Act 2023 (c. 55), s. 255(6), Sch. 15 para. 11 (with s. 247)

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## *Interpretation of Chapter 2*

### **Interpretation of Chapter 2**

**86.**—(1) This Chapter, except regulations 84 and 85, is to be construed as one with the TCPA 1990.

(2) In regulations 84 and 85, the terms “development” and “development consent” have the meanings given by the Planning Act 2008 <sup>M23</sup>.

#### **Marginal Citations**

**M23** See sections 31 and 32 for the definition of “development consent” and “development” respectively.

**Status:**

Point in time view as at 26/12/2023.

**Changes to legislation:**

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