
STATUTORY INSTRUMENTS

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) ^{M1};
 - (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) ^{M2} 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) ^{M3};
 - (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) ^{M4}; or
 - (iii) section 5(1) of the Pipe-lines Act 1962 (provisions with respect to planning permission concerning pipe-lines) ^{M5};
 - (f) directing under section 90(2ZA)(a) or (b) of the TCPA 1990 ^{M6} or section 57(2ZA)(a) or (b) of the Town and Country Planning (Scotland) Act 1997 ^{M7}, 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 ^{M8}, that that permission, or any conditions subject to which it was granted, be varied;
 - (g) making—

Status: Point in time view as at 28/12/2018.

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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)^{M9}, 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)^{M10}, 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)^{M11}.

[^{F1}(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)^{M12}.

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)**

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 \(c. 20\)](#), **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](#).

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- 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)^{M13}, 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.

(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)^{M14};

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- (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)^{M15}).
- (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)^{M16} 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^{M17}), in which case it is exercisable by the county planning authority.

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) ^{M18} 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 Act 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;
- (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.

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(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)^{M19} 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

(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.

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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.

Status:

Point in time view as at 28/12/2018.

Changes to legislation:

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