
STATUTORY INSTRUMENTS

2017 No. 1012

The Conservation of Habitats and Species Regulations 2017

PART 6

Assessment of plans and projects

CHAPTER 4

Electricity

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

89.—(1) The assessment provisions apply in relation to the granting of—

- (a) consent under section 36 of the Electricity Act 1989 (consent required for construction etc. of generating stations)⁽¹⁾ to construct, extend or operate a generating station in Great Britain; or
- (b) consent under section 37 of that Act (consent required for overhead lines)⁽²⁾ for an electric line to be installed or kept installed above ground.

(2) Where in such a case the competent authority 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 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) in the case of a consent to construct or extend (whether or not also to operate) a generating station or a consent of a kind mentioned in paragraph (1)(b)—
 - (i) the works to which the consent relates were completed before the relevant date; or
 - (ii) the consent was granted 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;
- (b) in the case of a consent to operate (but not also to construct or extend) a generating station, the operation began before the relevant date; or
- (c) in any case, the consent was for a limited period and that period has expired.

(4) Where the consent is to construct or extend, but also to operate, a generating station, the works, if not already completed when the generating station is first operated in reliance on the consent, are to be treated as completed at that date.

(1) 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.

(2) 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.

(5) In the case of a consent of a kind mentioned in paragraph (1)(b) for an electric line to be kept installed, the works to which the consent relates are to be treated for the purposes of paragraph (3) (a) as the works to which any consent for the installation of that line relates.

(6) Where on the review of such a consent, the competent authority considers 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.

(7) 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.

(8) In this regulation, “the relevant date” means the date on which the site became a European site or a European offshore marine site (as the case may be) or (if later) 30th October 1994.

Consents under Electricity Act 1989: procedure on review

90.—(1) Where the competent authority decides in pursuance of regulation 89(3), (6) or (7) 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 the persons specified in paragraph (2), 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 persons referred to in paragraph (1) are—

- (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.

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

- (a) the relevant planning authority within the meaning of paragraph 2(6) of Schedule 8 to the Electricity Act 1989 (consents under sections 36 and 37 of that Act)(3), and
- (b) the appropriate nature conservation body,

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

(4) 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 (3).

(5) 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 (3) was required to be served,

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

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

Consents under Electricity Act 1989: effect of review

91.—(1) The revocation or variation pursuant to regulation 89(3), (6) or (7) 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 90(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 decides 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 before the date on which the revocation or variation took effect, 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 before the date on which the revocation or variation took effect, 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 pursuant to regulation 89(3), (6) or (7) does not affect anything done under the consent or direction before the revocation or variation takes effect.

Consents under Electricity Act 1989: compensation

92.—(1) Where a direction deeming planning permission to be granted is revoked or varied pursuant to regulation 89(7), 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 of that Act (power to revoke or modify planning permission)⁽⁴⁾; or
- (b) for the purposes of Part 4 of the Town and Country Planning (Scotland) Act 1997⁽⁵⁾ (compensation for effects of certain orders, notices etc.), as having been revoked or modified by order under section 65 of that Act (power to revoke or modify planning permission)⁽⁶⁾.

(2) Where a consent under the Electricity Act 1989 is revoked or varied pursuant to regulation 89(3) or (6), 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 decides 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

(4) Section 97 was amended by the Planning and Compensation Act 1991 (c. 34), Schedule 1, paragraph 4 and Schedule 19, Part 1; and by the Housing and Planning Act 2016 (c. 22), Schedule 12, paragraphs 1 and 25(1) to (5).

(5) 1997 c. 8.

(6) Section 65 was amended by S.S.I. 2006/243.

period between the revocation or variation taking effect under regulation 91(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 has indicated in writing that such a reference and determination may be dispensed with.