

**2018 No. 1307**

**WILDLIFE, ENGLAND AND WALES**

**COUNTRYSIDE, ENGLAND AND WALES**

**TOWN AND COUNTRY PLANNING, ENGLAND**

**The Conservation of Habitats and Species and Planning (Various Amendments) (England and Wales) Regulations 2018**

*Made* - - - - - *5th December 2018*

*Laid before Parliament* *7th December 2018*

*Coming into force* - - - *28th December 2018*

The Secretary of State is designated<sup>(a)</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>(b)</sup> in relation to the environment.

The Secretary of State makes these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972.

**Title, commencement and extent**

**1.**—(1) These Regulations may be cited as the Conservation of Habitats and Species and Planning (Various Amendments) (England and Wales) Regulations 2018 and come into force on 28th December 2018.

(2) These Regulations have the same extent as the provisions they are amending.

**Amendment to the Conservation of Habitats and Species Regulations 2017**

**2.**—(1) The Conservation of Habitats and Species Regulations 2017<sup>(c)</sup> are amended as follows.

(2) In regulation 70 (Grant of planning permission), after paragraph (1), insert—

“(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.”.

(3) For regulation 79 (Special development orders), substitute—

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(a) The Secretary of State is so designated by S.I. 2008/301.

(b) 1972 c. 68. Section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c. 51), section 27(1); and the European Union (Amendment) Act 2008 (c. 7), Part 1 of the Schedule.

(c) S.I. 2017/1012.

### **“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.”.

(4) For regulation 80 (Local development orders), substitute—

### **“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.”.

(5) For regulation 81 (Neighbourhood development orders), substitute—

### **“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.

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

(6) For regulation 82 (Simplified planning zones), substitute—

#### **“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.

(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.”.

(7) For regulation 83 (Enterprise zones), substitute—

#### **“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.”.

(8) For regulation 88 (Cycle tracks and other ancillary works), substitute—

**“Cycle tracks and other ancillary works**

**88.**—(1) Subject to paragraph (2), the assessment provisions apply to section 3(10) of the Cycle Tracks Act 1984(a).

(2) Regulation 64 (Considerations of overriding public interest) does not apply to section 3(10) of that Act.

(3) Section 3(10) of that Act 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, unless the competent authority has agreed to the plan or project in accordance with the assessment provisions.”.

**Amendment to the Neighbourhood Planning (General) Regulations 2012**

**3.**—(1) The Neighbourhood Planning (General) Regulations 2012(b) are amended as follows.

(2) In Schedule 2 (Habitats), for paragraph 1 substitute:

**“Neighbourhood development plans**

**1.** In relation to the examination of neighbourhood development plans the following basic condition is prescribed for the purpose of paragraph 8(2)(g) of Schedule 4B to the 1990 Act(c)—

The making of the neighbourhood development plan does not breach the requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017(d).”

**Amendment to the Town and Country Planning (Permission in Principle) Order 2017**

**4.**—(1) The Town and Country Planning (Permission in Principle) Order 2017(e) is amended as follows.

(2) In Article 5B(5) (Exemption of certain developments)—

(a) in the appropriate place insert—

““competent authority” has the meaning given by regulation 7 of the Conservation of Habitats and Species Regulations 2017;”;

(b) for the definition of “habitats development” substitute—

““habitats development” means development—

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(a) 1984 c. 38. Section 3(10) was amended by the Planning (Consequential Provisions) Act 1990 (c. 11), Schedule 2, paragraph 66.

(b) S.I. 2012/637, amended by S.I. 2017/1012 and 2017/1013.

(c) Schedule 4B was inserted by section 116 of, and Schedule 10 to, the Localism Act 2011 (c.20). Paragraph 8 of Schedule 4B applies to neighbourhood development plans by virtue of section 38A(3) of the Planning and Compulsory Purchase Act 2004 (c.5) (Section 38A was inserted by paragraph 7 of Schedule 9 to the Localism Act 2011).

(d) S.I. 2017/1012.

(e) S.I. 2017/402, amended by S.I. 2017/1309; there are other amending instruments but none is relevant.

- (a) which 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 is not directly connected with or necessary to the management of the site; and
- (b) for which the competent authority has not given consent, permission, or other authorisation in accordance with regulation 63 of the Conservation of Habitats and Species Regulations 2017 (Assessment of implications for European sites and European offshore marine sites).”.

## **Amendment to the Town and Country Planning (Brownfield Land Register) Regulations 2017**

**5.**—(1) The Town and Country Planning (Brownfield Land Register) Regulations 2017(a) are amended as follows.

(2) In regulation 14(5) (Exemptions for certain types of land)—

- (a) omit the definitions of “habitats development” and “qualifying European site”; and
- (b) in the appropriate places insert—

““competent authority” has the meaning given by regulation 7 of the Conservation of Habitats and Species Regulations 2017(b);”;

““European offshore marine site” has the meaning given by regulation 18 of the Conservation of Offshore Marine Habitats and Species Regulations 2017(c);”;

““European site” has the meaning given by regulation 8 of the Conservation of Habitats and Species Regulations 2017;”;

““habitats development” means development—

- (a) which 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 is not directly connected with or necessary to the management of the site; and
- (b) for which the competent authority has not given consent, permission, or other authorisation in accordance with regulation 63 of the Conservation of Habitats and Species Regulations 2017 (Assessment of implications for European sites and European offshore marine sites).”.

*Kit Malthouse*  
Minister of State

5th December 2018

Ministry of Housing, Communities and Local Government

### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations are made under the European Communities Act 1972 and amend the Conservation of Habitats and Species Regulations 2017, the Neighbourhood Planning (General) Regulations 2012, the Town and Country Planning (Permission in Principle) Order 2017 and the Town and Country Planning (Brownfield Land Register) Regulations 2017. These Regulations transpose Article 6(3) of Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (OJ No. L 206, 22.7.1992, p.7) (“the Habitats Directive”).

Regulation 2 amends the Conservation of Habitats and Species Regulations 2017 (“the Habitats Regulations”) applicable to special development orders, local development orders, neighbourhood development orders, simplified planning zones, enterprise zones and the conversion of footpaths into cycle tracks to incorporate the habitats assessments provisions in regulation 63 of the Habitats

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(a) S.I. 2017/403, amended by S.I. 2017/1012, S.I. 2017/1013 and S.I. 2018/695.  
 (b) S.I. 2017/1012.  
 (c) S.I. 2017/1013.

Regulations. With the exception of the conversion of footpaths into cycle tracks, this regulation also incorporates regulations 65 and 66 for the review of existing decisions and consents.

Regulation 2 also amends the Habitats Regulations to allow for the application of regulation 63 to applications for permission in principle.

Regulation 3 amends the Neighbourhood Planning (General) Regulations 2012 to change the prescribed condition relating to habitats for the purpose of examination of neighbourhood development plans to require that a neighbourhood development plan complies with the provisions applicable to land use plans in Chapter 8 of Part 6 of the Habitats Regulations.

Regulation 4 amends the Town and Country Planning (Permission in Principle) Order 2017 to change the definition of habitats development (for which a local planning authority may not grant permission in principle) to incorporate the habitats assessment process under regulation 63 of the Habitats Regulations.

Regulation 5 amends the Town and Country Planning (Brownfield Land Register) Regulations 2017 to change the definition of habitats development (which a local planning authority may not enter onto Part 2 of the Brownfield Land Register) to incorporate the habitats assessment process under regulation 63 of the Habitats Regulations.

An impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen. The Explanatory Memorandum is published alongside the Regulations on [www.legislation.gov.uk](http://www.legislation.gov.uk).

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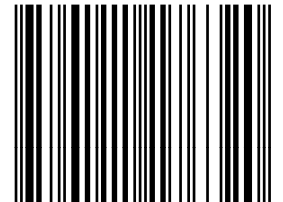


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