
STATUTORY INSTRUMENTS

2017 No. 1012

The Conservation of Habitats and Species Regulations 2017

PART 6

Assessment of plans and projects

CHAPTER 7

Environmental Controls

Environmental permits

101.—(1) The assessment provisions apply in relation to the granting of an environmental permit under the Environmental Permitting (England and Wales) Regulations 2016 ^{M1}.

(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 permit were subject to conditions, it may grant a permit, or cause a permit to be granted, subject to those conditions.

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

(4) Where, on the review of such a permit, the competent authority 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 activities authorised by it would be avoided by a variation of the permit, it may vary it, or cause it to be varied, accordingly.

(5) Where any question arises as to agreeing to a plan or project, or affirming a permit on review, under regulation 64 (considerations of overriding public interest), the competent authority must refer the matter to the appropriate authority which must determine the matter in accordance with that regulation and give directions to the competent authority accordingly.

Marginal Citations

M1 [S.I. 2016/1154](#).

Abstraction and works authorised under water legislation

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

- (a) the granting of a licence under Chapter 2 of Part 2 of the WRA (abstraction and impounding) ^{M2};
- (b) the making of an order under section 27A of the WRA (variation of small quantity threshold) ^{M3};
- (c) the making of regulations under section 33A of the WRA (power to provide for further exemptions) ^{M4}, where those regulations relate to—

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- (i) a prescribed geographical area;
 - (ii) a prescribed source of supply (in the case of an exemption from the restriction on abstraction or the other restrictions imposed by section 24 of the WRA (restrictions on abstraction) ^{M5}); or
 - (iii) prescribed inland waters (in the case of an exemption from the restriction on impounding works);
 - (d) any consent given under paragraph (2);
 - (e) the making of an order under section 73 of the WRA (power to make ordinary and emergency drought orders) ^{M6} which has the effect of authorising—
 - (i) an abstraction or additional abstraction; or
 - (ii) a discharge or additional discharge;
 - (f) the granting of a permit under section 79A of that Act (drought permits) ^{M7};
 - (g) any consent given under section 166 of the WIA (consents for certain discharges under section 165) ^{M8} or section 164 of the WRA (consents for certain discharges under section 163) ^{M9}; or
 - (h) the making of an order under section 167 of the WIA (compulsory works orders) ^{M10} or section 168 of the WRA (compulsory works orders) ^{M11}.
- (2) An exemption conferred by regulations under section 33A of the WRA, other than regulations referred to in paragraph (1)(c), does not apply in relation to any particular abstraction or impounding works unless the Environment Agency in relation to England or the Natural Resources Body for Wales in relation to Wales has given consent in writing to the abstraction or impounding works being carried out.
- (3) Where, in relation to any plan or project authorised by any means referred to in paragraph (1) (a) to (h), 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 authorisation were subject to conditions, it may grant the authorisation, or cause it to be granted, subject to those conditions.
- (4) Where, by virtue of paragraph (1)(g), the assessment provisions apply in relation to the granting of an authorisation by virtue of a consent under section 166 of the WIA or section 164 of the WRA, the section in question has effect as if in each case in subsection (3)—
- (a) in paragraph (a), for “seven” there were substituted “fourteen”; and
 - (b) the words from “and, subject to” to the end were omitted.
- (5) The review provisions apply to any authorisation mentioned in paragraph (1)(a), (b), (c), (d) or (h).
- (6) Where, on the review of any such authorisation, the competent authority 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 activities authorised by it would be avoided by a variation of the authorisation, it may vary it, or cause it to be varied, accordingly.
- (7) In this regulation—
- “the WIA” means the Water Industry Act 1991 ^{M12};
 - “the WRA” means the Water Resources Act 1991 ^{M13}.

Marginal Citations

M2 1991 c. 57.

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- M3** Section 27A was inserted by the Water Act 2003 (c. 37), section 6(1); and amended by S.I. 2013/755.
- M4** Section 33A was inserted by the Water Act 2003 (c. 37), section 9; and amended by S.I. 2013/755.
- M5** Section 24 was amended by the Environment Act 1995 (c. 25), Schedule 22, paragraph 128; and by S.I. 1996/593, 2013/755 and 2015/664.
- M6** Section 73 was amended by the Environment Act 1995 (c. 25), Schedule 22, paragraphs 128 and 139; and by S.I. 2013/755.
- M7** Section 79A was inserted by the Environment Act 1995 (c. 25), Schedule 22, paragraph 140, and amended by the Water Act 2003 (c. 37), section 64(3) and Schedule 9, Part 3; and by S.I. 2013/755.
- M8** 1991 c. 56; section 166 was amended by the Environment Act 1995 (c. 25), Schedule 22, paragraph 118; and by S.I. 2013/755.
- M9** Section 164 was amended by the Environment Act 1995 (c. 25), Schedule 22, paragraph 128; and by S.I. 2013/755.
- M10** Section 167 was amended by the Planning Act 2008 (c. 29), Schedule 2, paragraph 50; and the Flood and Water Management Act 2010 (c. 29), section 41(1) and (2).
- M11** Section 168 was amended by the Environment Act 1995 (c. 25), Schedule 22, paragraph 128.
- M12** 1991 c. 56.
- M13** 1991 c. 57.

Marine works

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

(2) Where the assessment provisions apply, the competent authority may, if 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 licence, consent or other approval were subject to conditions or requirements, grant the licence, consent or other approval subject to those conditions or requirements.

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

(4) Where, on the review of any such licence, consent or other approval the competent authority 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 activities authorised by it would be avoided by a variation of the licence, consent or other approval, it may vary it accordingly.

(5) In this regulation, “marine works” means—

(a) any activity or proposed activity requiring—

- (i) a marine licence under Part 4 of the Marine Act;
- (ii) a licence under Part 2 of the Food and Environment Protection Act 1985 (deposits in the sea) ^{M14};
- (iii) an authorisation under the Aquatic Animal Health (England and Wales) Regulations 2009 ^{M15};
- (iv) an approval or consent for harbour works under legislation falling within paragraph (6); or

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

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

- (a) a local Act;
- (b) such an Act read together with a notice given and published under section 9 of the Harbours Transfer Act 1862 ^{M16} (power to Admiralty to retain authority over ports, etc. where dockyards, etc. are situate); or

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- (c) an order made under section 14 (powers, on application of harbour authorities, or others, to make orders for securing harbour efficiency etc.) or 16 (powers, on application of intending undertakers, or others, to make orders conferring powers for improvement, construction, etc., of harbours) of the Harbours Act 1964 ^{M17}.
- (7) In paragraph (5)(a)(iv) and (b), “harbour works” means—
- (a) works involved in the construction of a harbour;
 - (b) works involving the making of modifications to an existing harbour;
 - (c) any dredging operation undertaken by or on behalf of a harbour authority within the meaning of the Harbours Act 1964 ^{M18}; and
 - (d) works involving the deposit of spoil from any such dredging operation.

Marginal Citations

- M14** 1985 c. 48. Part 2 was amended by the [Environmental Protection Act 1990 \(c. 43\)](#), [sections 146](#) and [162](#) and [Schedule 16, Part 8](#); and by the [Marine Act 2009](#), [section 112\(1\)](#) and [Schedule 8, paragraphs 2, 5 and 6](#). By virtue of these amendments, Part 2 of the [Food and Environment Protection Act 1985](#) only applies to the Scottish inshore region. See [section 322\(1\)](#) for the definition of the “Scottish inshore region”.
- M15** [S.I. 2009/463](#).
- M16** 1862 c. 69. Section 9 was amended by [SR & O 1921/1804](#).
- M17** 1964 c. 40; [sections 14](#) and [16](#) were amended by the [Transport Act 1981 \(c. 56\)](#), [Schedule 6](#), [paragraphs 3](#) and [14](#) and [Schedule 12](#); the [Criminal Justice Act 1982 \(c. 48\)](#), [sections 37](#) and [46](#); the [Transport and Works Act 1992 \(c. 42\)](#), [Schedule 3](#), [paragraphs 1](#) and [2](#); the [Planning Act 2008 \(c. 29\)](#), [Schedule 2](#), [paragraphs 8, 9](#) and [10](#); and [S.I. 2006/1177](#). Section 14 was additionally amended by [S.I. 2009/1941](#). Section 16 was additionally amended by the [Marine Act 2009](#), [Schedule 21](#), [paragraphs 1](#) and [2](#).
- M18** See the definition of “harbour authority” in [section 57\(1\)](#).

Derogations in relation to nitrate pollution prevention legislation

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

- (a) Part 8 of the [Nitrate Pollution Prevention Regulations 2015](#) ^{M19}; ^{F1}...

^{F1}(b)

(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 derogation were subject to conditions, grant the derogation, subject to those conditions.

Textual Amendments

- F1** Reg. 104(1)(b) and word omitted (W.) (1.4.2021) by virtue of [The Water Resources \(Control of Agricultural Pollution\) \(Wales\) Regulations 2021 \(S.I. 2021/77\)](#), [regs. 1\(3\)](#), [49\(3\)](#)

Marginal Citations

- M19** [S.I. 2015/668](#). Part 8 was amended by [S.I. 2016/1190](#).

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Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- reg. 41(2)(aa) inserted by [2023 c. 55 Sch. 8 para. 38\(5\)](#)
- reg. 108(6) inserted by [2023 c. 55 Sch. 8 para. 39\(6\)](#)
- reg. 111(2)(aa)(ab) substituted for reg. 111(2)(a)(b) by [2023 c. 55 Sch. 8 para. 40\(3\)\(a\)](#)