
STATUTORY INSTRUMENTS

2017 No. 1012

The Conservation of Habitats and Species Regulations 2017

PART 6

Assessment of plans and projects

Modifications etc. (not altering text)

- C1** Pt. 6: power to amend conferred (24.1.2022) by [Environment Act 2021 \(c. 30\)](#), **ss. 113**, 147(3) (with s. 144); [S.I. 2022/48](#), reg. 2(p)
- C2** Pt. 6 power to disapply or modify conferred (26.12.2023) by [Energy Act 2023 \(c. 52\)](#), **ss. 293(4)(5)**, 334(3)(j) (with s. 293(6))

CHAPTER 1

General provisions

Introductory provisions

Interpretation of Part 6

61.—(1) In this Part—

“the assessment provisions” means regulations 63 and 64;

“the review provisions” means regulations 65 and 66.

(2) In this Part, any reference to—

(a) the giving or granting of any consent, permission or other authorisation (except in the heading to any regulation or in any reference to any such heading), or

(b) directing that planning permission is deemed to be granted,

is to be taken, in relation to any consent, permission or authorisation which is capable of being varied or modified, to include a reference to its variation or modification.

Application of provisions of Chapter 1

62.—(1) The requirements of the assessment provisions and the review provisions apply—

(a) subject to and in accordance with the provisions of Chapters 2 to 7, in relation to the matters specified in those provisions; and

(b) subject to regulation 63(7)(c), in relation to all other plans and projects not relating to matters specified in Chapters 2 to 9.

(2) Supplementary provision is made by regulations 67 to 69.

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General provisions for protection of European sites and European offshore marine sites

Assessment of implications for European sites and European offshore marine sites

63.—(1) A competent authority, before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project 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 that site,

must make an appropriate assessment of the implications of the plan or project for that site in view of that site's conservation objectives.

(2) A person applying for any such consent, permission or other authorisation must provide such information as the competent authority may reasonably require for the purposes of the assessment or to enable it to determine whether an appropriate assessment is required.

(3) The competent authority must for the purposes of the assessment consult the appropriate nature conservation body and have regard to any representations made by that body within such reasonable time as the authority specifies.

(4) It must also, if it considers it appropriate, take the opinion of the general public, and if it does so, it must take such steps for that purpose as it considers appropriate.

(5) In the light of the conclusions of the assessment, and subject to regulation 64, the competent authority may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site or the European offshore marine site (as the case may be).

(6) In considering whether a plan or project will adversely affect the integrity of the site, the competent authority must have regard to the manner in which it is proposed to be carried out or to any conditions or restrictions subject to which it proposes that the consent, permission or other authorisation should be given.

(7) This regulation does not apply in relation to—

- ^{F1}(a)
- ^{F1}(b)

(c) a plan or project to which any of the following apply—

- (i) the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001 ^{M1} (in so far as this regulation is not disapplied by regulation 4 (plans or projects relating to offshore marine area or offshore marine installations) in relation to plans or projects to which those Regulations apply);
- (ii) the Environmental Impact Assessment (Agriculture) (England) (No. 2) Regulations 2006 ^{M2};
- (iii) the Environmental Impact Assessment (Agriculture) (Wales) Regulations 2017 ^{M3}; or
- (iv) [^{F2}the Merchant Shipping (Ship-to-Ship Transfers) Regulations 2020].

(8) Where a plan or project requires an appropriate assessment both under this regulation and under the Offshore Marine Conservation Regulations, the assessment required by this regulation need not identify those effects of the plan or project that are specifically attributable to that part of it that is to be carried out in the United Kingdom, provided that an assessment made for the purpose of this regulation and the Offshore Marine Conservation Regulations assesses the effects of the plan or project as a whole.

(9) In paragraph (1) the reference to the competent authority deciding to undertake a plan or project includes the competent authority deciding to vary any plan or project undertaken or to be undertaken.

Textual Amendments

- F1** Reg. 63(7)(a)(b) omitted (31.12.2020) by virtue of [The Conservation of Habitats and Species \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/579\)](#), regs. 1, **24**; 2020 c. 1, Sch. 5 para. 1(1)
- F2** Words in reg. 63(7)(c)(iv) substituted (26.2.2020) by [The Merchant Shipping \(Ship-to-Ship Transfers\) Regulations 2020 \(S.I. 2020/94\)](#), regs. 1, **13**

Marginal Citations

- M1** [S.I. 2001/1754](#), amended by [S.I. 2007/77](#), 1842, 2010/1513, 2015/1431, 2016/529, 912, 1042 and 2017/582.
- M2** [S.I. 2006/2522](#), amended by [S.I. 2009/1307](#), 3264, 2010/1159, 2011/1043, 1824 and 2017/593.
- M3** [S.I. 2017/565](#) (W. 134).

Considerations of overriding public interest

64.—(1) If the competent authority is satisfied that, there being no alternative solutions, the plan or project must be carried out for imperative reasons of overriding public interest (which, subject to paragraph (2), may be of a social or economic nature), it may agree to the plan or project notwithstanding a negative assessment of the implications for the European site or the European offshore marine site (as the case may be).

(2) Where the site concerned hosts a priority natural habitat type or a priority species, the reasons referred to in paragraph (1) must be either—

- (a) reasons relating to human health, public safety or beneficial consequences of primary importance to the environment; or
- (b) any other reasons which the competent authority, having due regard to the opinion of the [^{F3}appropriate authority], considers to be imperative reasons of overriding public interest.

(3) Where a competent authority other than the Secretary of State or the Welsh Ministers desires to obtain the opinion of the [^{F4}appropriate authority] as to whether reasons are to be considered imperative reasons of overriding public interest, it may submit a written request to the appropriate authority—

- (a) identifying the matter on which an opinion is sought; and
- (b) accompanied by any documents or information which may be required.

[^{F5}(4) In giving its opinion as to whether the reasons are imperative reasons of overriding public interest, the appropriate authority must have regard to the national interest, and provide its opinion to the competent authority.]

[^{F6}(4A) Before giving its opinion as to whether the reasons are imperative reasons of overriding public interest, the appropriate authority must consult the following, and have regard to their opinion—

- (a) the Joint Nature Conservation Committee;
- (b) where the appropriate authority is the Secretary of State, the devolved administrations;
- (c) where the appropriate authority is the Welsh Ministers, the Secretary of State, and the other devolved administrations; and
- (d) any other person the appropriate authority considers appropriate.]

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(5) Where a competent authority other than the Secretary of State or the Welsh Ministers proposes to agree to a plan or project under this regulation notwithstanding a negative assessment of the implications for the site concerned—

- (a) it must notify the appropriate authority; and
- (b) it must not agree to the plan or project before the end of the period of 21 days beginning with the day notified by the appropriate authority as that on which its notification was received, unless the appropriate authority notifies it that it may do so.

(6) Without prejudice to any other power, the appropriate authority may give directions to the competent authority in any such case prohibiting it from agreeing to the plan or project, either indefinitely or during such period as may be specified in the direction.

Textual Amendments

- F3** Words in [reg. 64\(2\)\(b\)](#) substituted (31.12.2020) by [The Conservation of Habitats and Species \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/579\)](#), regs. 1, [25\(2\)](#); 2020 c. 1, Sch. 5 para. 1(1)
- F4** Words in [reg. 64\(3\)](#) substituted (31.12.2020) by [The Conservation of Habitats and Species \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/579\)](#), regs. 1, [25\(2\)](#); 2020 c. 1, Sch. 5 para. 1(1)
- F5** [Reg. 64\(4\)](#) substituted (31.12.2020) by [The Conservation of Habitats and Species \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/579\)](#), regs. 1, [25\(3\)](#); 2020 c. 1, Sch. 5 para. 1(1)
- F6** [Reg. 64\(4A\)](#) inserted (31.12.2020) by [The Conservation of Habitats and Species \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/579\)](#), regs. 1, [25\(4\)](#); 2020 c. 1, Sch. 5 para. 1(1)

Review of existing decisions and consents

65.—(1) Where before the date on which a site becomes a European site or a European offshore marine site a competent authority has decided to undertake, or has given any consent, permission or other authorisation for, a plan or project to which regulation 63(1) would apply if it were to be reconsidered as of that date, the authority must, as soon as reasonably practicable—

- (a) review its decision or, as the case may be, the consent, permission or other authorisation; and
- (b) affirm, modify or revoke it.

(2) The authority must for that purpose make an appropriate assessment of the implications for the site in view of that site's conservation objectives; and the provisions of regulation 63(2) to (4) and (8) apply, with the appropriate modifications, in relation to such a review.

(3) Subject to the provisions of Chapters 2 to 7, any review required by this regulation must be carried out under existing statutory procedures where such procedures exist, and if none exists, the appropriate authority may give directions as to the procedure to be followed.

(4) Nothing in this regulation affects anything done in pursuance of the decision, or the consent, permission or other authorisation, before the date mentioned in paragraph (1).

Consideration on review

66.—(1) The following provisions apply where a decision, or a consent, permission or other authorisation, falls to be reviewed under regulation 65.

(2) Subject as follows, the provisions of regulations 63(5) and (6) and 64 apply, with the appropriate modifications, in relation to the decision on the review.

(3) The decision, or the consent, permission or other authorisation, may be affirmed if it appears to the competent authority reviewing it that other action taken or to be taken by it, or by another authority, will secure that the plan or project does not adversely affect the integrity of the site.

(4) Where that object may be attained in a number of ways, the competent authority or authorities concerned must seek to secure that the action taken is the least onerous to those affected.

(5) The appropriate authority may issue guidance to competent authorities for the purposes of paragraph (3) as to the manner of determining which of different ways should be adopted for securing that the plan or project does not have any such effect, and in particular—

- (a) the order of application of different controls; and
- (b) the extent to which account should be taken of the possible exercise of other powers.

(6) The competent authorities concerned must have regard to any such guidance.

(7) Any modification or revocation of a decision, or a consent, permission or other authorisation, must be carried out under existing statutory procedures where such procedures exist, and if none exists, the appropriate authority may give directions as to the procedure to be followed.

Co-ordination where more than one competent authority involved

67.—(1) This regulation applies where a plan or project—

- (a) is undertaken by more than one competent authority;
- (b) requires the consent, permission or other authorisation of more than one competent authority; or
- (c) is undertaken by one or more competent authorities and requires the consent, permission or other authorisation of one or more other competent authorities.

(2) Nothing in regulation 63(1) or 65(2) requires a competent authority to assess any implications of a plan or project which would be more appropriately assessed under that provision by another competent authority.

(3) The appropriate authority may issue guidance to competent authorities for the purposes of regulations 63 to 66 as to the circumstances in which a competent authority may or should adopt the reasoning or conclusions of another competent authority as to whether a plan or project—

- (a) is likely to have a significant effect on a European site or a European offshore marine site; or
- (b) will adversely affect the integrity of a European site or a European offshore marine site.

(4) The competent authorities concerned must have regard to any such guidance.

(5) In determining whether a plan or project should be agreed to under regulation 64, a competent authority other than the Secretary of State or the Welsh Ministers must seek and have regard to the views of the other competent authority or authorities involved.

Compensatory measures

68. Where in accordance with regulation 64—

- (a) a plan or project is agreed to, notwithstanding a negative assessment of the implications for a European site or a European offshore marine site, or
- (b) a decision, or a consent, permission or other authorisation, is affirmed on review, notwithstanding such an assessment,

the appropriate authority must secure that any necessary compensatory measures are taken to ensure that the overall coherence of Natura 2000 is protected.

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Modifications of regulations 63 to 68 in certain cases

69.—(1) Where any provision of regulations 63 to 68 (a “general provision”) applies in relation to a provision specified in paragraph (2), that general provision applies with the following modifications—

- (a) any reference to the Welsh Ministers is omitted; and
- (b) for any reference to the appropriate authority, substitute a reference to the Secretary of State.

(2) The provisions specified for the purposes of paragraph (1) are—

- (a) regulation 70(1)(e)(i) and (2) (grant of planning permission) in so far as those provisions relate to a direction given by the Secretary of State under section 90 of the TCPA 1990 (development with government authorisation) ^{M4} that planning permission is deemed to be granted; and
- (b) regulations 84 and 85 (development consent under Planning Act 2008 ^{M5}).

(3) Where a general provision applies in relation to a provision specified in paragraph (4), that general provision applies with the following modifications—

- (a) any reference to a competent authority is taken to include the Scottish Ministers;
- (b) for any reference to the Welsh Ministers, substitute a reference to the Scottish Ministers; and
- (c) for any reference to the appropriate authority—
 - (i) in a case where the competent authority for the purposes of a provision specified in paragraph (4) is the Scottish Ministers, substitute a reference to the Scottish Ministers; and
 - (ii) in any other case, substitute a reference to the Secretary of State.

(4) The provisions specified for the purposes of paragraph (3) are—

- (a) in regulation 70—
 - (i) paragraph (1)(e)(ii) and (iii);
 - (ii) paragraph (1)(f), in so far as that paragraph relates to a direction under section 57(2ZA) of the Town and Country Planning (Scotland) Act 1997 (development with government authorisation) ^{M6}; and
 - (iii) paragraph (2) in so far as that paragraph relates to paragraph (1)(e)(ii) and (iii), and (1)(f) of that regulation;
- (b) Chapter 4 (electricity); and
- (c) Chapter 5 (pipe-lines).

(5) Where a general provision applies in relation to regulation 103 (marine works), and confers a function on the appropriate authority, that provision applies with the following modifications—

- (a) in a case to which paragraph (6) applies, for any reference to the appropriate authority, substitute a reference to the Welsh Ministers; and
- (b) in any other case, for any reference to the appropriate authority, substitute a reference to the Secretary of State.

(6) This paragraph applies where the function in question is exercisable in relation to—

- (a) any application to the Welsh Ministers for an authorisation in respect of marine works;
- (b) any application to any other authority for—
 - (i) an authorisation in respect of marine works, the refusal of which gives rise to a right of appeal to the Welsh Ministers;

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- (ii) an authorisation in respect of marine works in relation to which the Welsh Ministers exercise any power of direction or call-in; or
 - (iii) an authorisation of harbour works which are, or are to be, carried out in relation to a fishery harbour in Wales under legislation of a kind mentioned in regulation 103(6)(c);
 - (c) the grant of any application of a kind mentioned in sub-paragraph (a) or (b); or
 - (d) harbour works which—
 - (i) are, or are to be, carried out in relation to a fishery harbour in Wales; and
 - (ii) are authorised by, and are, or are to be, carried out in accordance with, any legislation of a kind mentioned in regulation 103(6)(c).
- (7) In paragraph (6)—
- “authorisation” means any licence, consent or other approval;
- “marine works” and “harbour works” have the meanings given by regulation 103(5) and (7) respectively.
- (8) Where a general provision applies in relation to a plan or project which does not relate to a matter specified in Chapters 2 to 9, to the extent that that general provision applies in relation to Scotland or Northern Ireland, that provision applies with the following modifications—
- (a) any reference to the Welsh Ministers is omitted; and
 - (b) for any reference to the appropriate authority, substitute a reference to the Secretary of State.

Marginal Citations

- M4** Section 90 was amended by the [Planning and Compensation Act 1991 \(c. 34\)](#), [Schedule 6](#), paragraph 12; the [Environment Act 1995 \(c. 25\)](#), [Schedule 10](#), paragraph 32(4); the [Transport and Works Act 1992 \(c. 42\)](#), [section 16\(1\)](#); the [Growth and Infrastructure Act 2013 \(c. 27\)](#), [section 21\(1\) to \(3\)](#); and the [Planning \(Wales\) Act 2015 \(anaw 4\)](#), [section 33\(1\)](#) and (3). It is prospectively amended by the [Wales Act 2017 \(c. 4\)](#), [section 39\(13\)](#), and the [Neighbourhood Planning Act 2017 \(c. 20\)](#), [Schedule 3](#), paragraph 5, from a date or dates to be appointed.
- M5** 2008 c. 29.
- M6** 1997 c. 8. Section 57(2ZA) was inserted by the [Growth and Infrastructure Act 2013](#), section 21(5).

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)^{M7};
 - (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

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- those imposed by the local planning authority), on determining an appeal under section 78 of that Act (right to appeal against planning decisions)^{M8} 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)^{M9};
- (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)^{M10}; or
 - (iii) section 5(1) of the Pipe-lines Act 1962 (provisions with respect to planning permission concerning pipe-lines)^{M11};
- (f) directing under section 90(2ZA)(a) or (b) of the TCPA 1990^{M12} or section 57(2ZA)(a) or (b) of the Town and Country Planning (Scotland) Act 1997^{M13}, 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^{M14}, that that permission, or any conditions subject to which it was granted, be varied;
- (g) making—
- (i) an order under section 102 of the TCPA 1990 (orders requiring discontinuance of use or alteration or removal of buildings or works)^{M15}, 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)^{M16}, 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)^{M17}.

[^{F7}(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

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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)^{M18}.

[^{F8}(5) See regulation 85A for the assumptions about nutrient pollution standards to be made in certain circumstances.]

Textual Amendments

- F7** 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)**
- F8** 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

- M7** 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.
- M8** 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](#).
- M9** Section 177(1)(a) was substituted by the [Planning and Compensation Act 1991](#), Schedule 7, paragraph 24(1)(a).
- M10** [1997 c. 8](#). Section 57(2) was substituted by the [Growth and Infrastructure Act 2013 \(c. 27\)](#), **section 21(5)**.
- M11** [1962 c. 58](#). Section 5(1) was amended by [S.I. 1999/742](#).
- M12** Section 90(2ZA) was inserted by the [Environment Act 1995 \(c. 25\)](#), **Schedule 10**.
- M13** Section 57(2ZA) was inserted by the [Growth and Infrastructure Act 2013 \(c. 27\)](#), **section 21(5)**.
- M14** [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.
- M15** 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).
- M16** Paragraph 1 of Schedule 9 was amended by the [Planning and Compensation Act 1991](#), Schedule 1, paragraph 15.
- M17** [1990 c. 9](#).
- M18** Section 92 was amended by the [Planning \(Wales\) Act 2015 \(anaw 4\)](#), **section 36(1) to (6)**, and Schedule 4, paragraphs 1 and 10.

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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) ^{M19}, 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) ^{M20};
- (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) ^{M21}).

(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.

Changes to legislation: The Conservation of Habitats and Species Regulations 2017, PART 6 is up to date with all changes known to be in force on or before 17 April 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) View outstanding changes

(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) ^{M22} 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 ^{M23}), in which case it is exercisable by the county planning authority.

[^{F9}(10) See regulation 85A for the assumptions about nutrient pollution standards to be made in certain circumstances.]

Textual Amendments

F9 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)

Marginal Citations

M19 1980 c. 65. Paragraph 5 of Schedule 32 was amended by the [Planning \(Consequential Provisions\) Act 1990 \(c. 11\)](#), **Schedule 1, Part 1**.

M20 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.

M21 1992 c. 42. Sections 1 and 3 were amended by the [Planning Act 2008](#), Schedule 2, paragraphs 51, 52 and 53.

M22 [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.

M23 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) ^{M24} 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.).

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(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

M24 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;
- (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)^{M25} 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.

Marginal Citations

M25 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).

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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).

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.

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[^{F10}(8) See regulation 85B for the assumptions about nutrient pollution standards to be made in certain circumstances.]

Textual Amendments

F10 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.

Special development orders

[^{F11}**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.

[^{F12}(6) See regulation 85A for the assumptions about nutrient pollution standards to be made in certain circumstances.]]

Textual Amendments

F11 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\(3\)](#)

F12 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)

Changes to legislation: The Conservation of Habitats and Species Regulations 2017, PART 6 is up to date with all changes known to be in force on or before 17 April 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) View outstanding changes

Local development orders

[^{F13}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.

[^{F14}(6) See regulation 85A for the assumptions about nutrient pollution standards to be made in certain circumstances.]]

Textual Amendments

F13 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)**

F14 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

[^{F15}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.

[^{F16}(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.]

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Textual Amendments

- F15** 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)**
- F16** 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

[^{F17}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.

[^{F18}(7) See regulation 85A for the assumptions about nutrient pollution standards to be made in certain circumstances.]]

Textual Amendments

- F17** 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)**
- F18** 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)

[^{F19}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

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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.

[^{F20}(7) See regulation 85A for the assumptions about nutrient pollution standards to be made in certain circumstances.]]

Textual Amendments

- F19** 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)**
- F20** 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 ^{M26}.

(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) ^{M27}, make an order subject to those requirements.

Marginal Citations

- M26** 2008 c. 29.
- M27** 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—

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- (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 ^{M28} as may be required.

Marginal Citations

M28 Paragraph 3(1) of Schedule 6 was amended by the Localism Act 2011, Schedule 13, paragraphs 1 and 72.

[^{F21} 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

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- (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),
 - (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

F21 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

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- 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.
- (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

F21 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—

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- (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—
- (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

F21 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”;
- “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

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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

F21 [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)

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 ^{M29}.

Marginal Citations

M29 See sections [31](#) and [32](#) for the definition of “development consent” and “development” respectively.

CHAPTER 3

Highways and roads

Construction or improvement of highways or roads

87.—(1) The assessment provisions apply in relation to any plan or project—

- (a) by the appropriate authority or a strategic highways company to construct a new highway or to improve, within the meaning of the Highways Act 1980 ^{M30}, an existing highway; or
- (b) by a local highway authority to carry out within the boundaries of a road any works required for the improvement of the road.

(2) The review provisions apply to any such plan or project as is mentioned in paragraph (1) unless—

- (a) the works were completed before 30th October 1994; or

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(b) the works have been completed before the site became a European site or a European offshore marine site.

(3) In paragraph (1)(a) “strategic highways company” means a company for the time being appointed under Part 1 of the Infrastructure Act 2015 ^{M31}.

Marginal Citations

M30 1980 c. 66. See the definition of “improvement” in section 329(1).

M31 2015 c. 7.

[^{F22}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.

(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.]

Textual Amendments

F22 Reg. 88 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(8)**

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) ^{M32} 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) ^{M33} 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)—

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- (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.
- (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.

Marginal Citations

- M32** 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.
- M33** [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.

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—

[^{F23}(za) in a case where the Welsh Ministers are the competent authority, the relevant planning authority within the meaning of regulation 2(1) of the Electricity (Offshore Generating Stations) (Applications for Consent) (Wales) Regulations 2019 (interpretation),]

(a) [^{F24}in any other case,] 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) ^{M34}, 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.

Textual Amendments

F23 Reg. 90(3)(za) inserted (E.W.) (1.4.2019) by The Electricity (Offshore Generating Stations) (Applications for Consent) (Wales) Regulations 2019 (S.I. 2019/295), regs. 1, 13(2)

F24 Words in reg. 90(3)(a) inserted (E.W.) (1.4.2019) by The Electricity (Offshore Generating Stations) (Applications for Consent) (Wales) Regulations 2019 (S.I. 2019/295), regs. 1, 13(3)

Modifications etc. (not altering text)

C3 Reg. 90 applied (with modifications) (30.11.2017) by The Conservation of Offshore Marine Habitats and Species Regulations 2017 (S.I. 2017/1013), regs. 1, 33(10)(11) (with regs. 3, 4(2))

Marginal Citations

M34 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

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- (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.

Modifications etc. (not altering text)

- C4** [Reg. 91](#) applied (with modifications) (30.11.2017) by [The Conservation of Offshore Marine Habitats and Species Regulations 2017 \(S.I. 2017/1013\)](#), regs. 1, **33(10)(12)** (with regs. 3, 4(2))

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)^{M35}; or
- (b) for the purposes of Part 4 of the Town and Country Planning (Scotland) Act 1997^{M36} (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)^{M37}.

(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 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.

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Marginal Citations

- M35** 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).
- M36** 1997 c. 8.
- M37** Section 65 was amended by S.S.I. 2006/243.

CHAPTER 5

Pipe-lines

Authorisations under Pipe-lines Act 1962: application of assessment and review provisions

93.—(1) The assessment provisions apply in relation to the granting of a pipe-line construction authorisation under the Pipe-lines Act 1962^{M38}.

(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 by granting an authorisation for the execution of works for the placing of the proposed pipe-line along a modified route, the competent authority may, subject to the provisions of Schedule 1 to the Pipe-lines Act 1962 (applications for pipe-line construction authorisations)^{M39}, grant such an authorisation.

(3) The review provisions apply to an authorisation mentioned in paragraph (1) unless—

- (a) the works to which the authorisation relates—
- (i) were completed before 30th October 1994; or
 - (ii) have been completed before the site became a European site or a European offshore marine site (as the case may be); or
- (b) the authorisation was granted—
- (i) 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; or
 - (ii) for a limited period and that period has expired.

(4) Where, on the review of such an 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 plan or project would be avoided by a variation of the authorisation, the authority may vary it accordingly.

(5) In conjunction with the review of any such authorisation the competent authority must review any direction deeming planning permission to be granted for the plan or project and may vary or revoke it.

Marginal Citations

- M38** 1962 c. 58; see **section 1**, which relates to pipe-line construction authorisations. Section 1 was amended by the Planning Act 2008 (c. 29), **Schedule 2**, paragraph 6; S.I 1999/742; and 2007/1519. It was also amended, in relation to England and Wales, by the Criminal Justice Act 1982 (c. 48), **sections 38** and 46 and, in relation to Scotland, by the Criminal Procedure (Scotland) Act 1975 (c. 21), **sections 289F** and 289G.
- M39** **Schedule 1** was amended by the Petroleum Act 1987 (c. 12), **section 25**, and by S.I. 1992/449 and 1999/742.

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Authorisations under Pipe-lines Act 1962: procedure on review

94.—(1) Where the competent authority decides in pursuance of regulation 93(3), (4) or (5) to revoke or vary an authorisation under the Pipe-lines Act 1962 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 authorisation was granted or, as the case may be, in whose favour the direction was made; and
- (b) 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 local planning authority, 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 local 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 local 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.

Authorisations under Pipe-lines Act 1962: effect of review

95.—(1) The revocation or variation pursuant to regulation 93(3), (4) or (5) of an authorisation under the Pipe-lines Act 1962 or a direction deeming planning permission to be granted takes effect upon the service of the notices required by regulation 94(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 authorisation or direction has effect again as from the time of that decision, and thereafter has effect as if—

- (a) any period specified in the authorisation 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 authorisation 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 an authorisation or direction pursuant to regulation 93(3), (4) or (5) does not affect anything done under the authorisation or direction before the revocation or variation takes effect.

Authorisations under Pipe-lines Act 1962: compensation

96.—(1) Where a direction deeming planning permission to be granted is revoked or varied pursuant to regulation 93(5), 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); or
- (b) for the purposes of Part 4 of the Town and Country Planning (Scotland) Act 1997 (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).

(2) Where an authorisation under the Pipe-lines Act 1962 is revoked or varied pursuant to regulation 93(3) or (4), 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 authorisation 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 an authorisation under the Pipe-lines Act 1962 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 authorisation or direction ceasing to have effect or being varied for the duration of the period between the revocation or variation taking effect under regulation 95(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.

CHAPTER 6

Transport and Works

Orders under Transport and Works Act 1992: application of assessment and review provisions

97.—(1) The assessment provisions apply in relation to the making of an order under section 1 (orders as to railways, tramways etc.) or 3 (orders as to inland waterways etc.) of the Transport and Works Act 1992^{M40}.

(2) Where in such a case the appropriate 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 by making modifications to the proposals, the appropriate authority may make an order subject to those modifications.

(3) The review provisions apply to an order mentioned in paragraph (1) unless the works to which the order relates have been completed before the site became a European site or a European offshore marine site.

(4) Where, on the review of such an order, the appropriate authority considers that any adverse effects on the integrity of a European site or a European offshore marine site of the carrying out or,

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as the case may be, the continuation of the plan or project would be avoided by a variation of the order, the appropriate authority may vary it accordingly.

(5) In conjunction with the review of any such order the appropriate authority must review any direction deeming planning permission to be granted for the plan or project and may vary or revoke it.

(6) In relation to an order mentioned in paragraph (1) which has effect or would have effect in both England and Wales, any reference in this Chapter to the appropriate authority is taken to be a reference to the Secretary of State.

Marginal Citations

M40 1992 c. 42; sections 1 and 3 were amended by the [Planning Act 2008 \(c. 29\)](#), [Schedule 2](#), paragraphs 51, 52 and 53.

Orders under Transport and Works Act 1992: procedure on review

98.—(1) Where the appropriate authority decides in pursuance of regulation 97(3), (4) or (5) to revoke or vary an order under the Transport and Works Act 1992 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 appropriate authority.

(2) The persons referred to in paragraph (1) are—

- (a) the person (if any) on whose application the order was made or, as the case may be, in whose favour the direction was made; and
- (b) any other person who in the authority's opinion will be affected by the revocation or variation.

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

- (a) the local planning authority, and
- (b) the appropriate nature conservation body,

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

(4) The appropriate 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 local planning authority, so requires, the appropriate authority must, before deciding whether to proceed with the revocation or variation of the order or direction, give—

- (a) to that person or the local 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 appropriate authority for the purpose.

Orders under Transport and Works Act 1992: effect of review

99.—(1) The revocation or variation pursuant to regulation 97(3), (4) or (5) of an order under the Transport and Works Act 1992 or a direction deeming planning permission to be granted takes effect upon the service of the notices required by regulation 98(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.

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(2) Where the appropriate authority decides not to proceed with the revocation or variation, the order or direction has effect again as from the time of that decision, and thereafter has effect as if—

- (a) any period specified in the order 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 order 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 an order or direction pursuant to regulation 97(3), (4) or (5) does not affect anything done under the order or direction before the revocation or variation takes effect.

Orders under Transport and Works Act 1992: compensation

100.—(1) Where a direction deeming planning permission to be granted is revoked or varied pursuant to regulation 97(5), that permission is to be treated 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).

(2) Where an order under the Transport and Works Act 1992 is revoked or varied pursuant to regulation 97(3) or (4), Part 4 of the TCPA 1990 applies as if—

- (a) the order had been planning permission granted on an application under that Act and had been revoked or modified by order under section 97 of that Act; and
- (b) that Part provided that the appropriate 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 appropriate authority decides not to proceed with the revocation or variation of an order under the Transport and Works Act 1992 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 order or direction ceasing to have effect or being varied for the duration of the period between the revocation or variation taking effect under regulation 99(1) and the appropriate 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 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.

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 ^{M41}.

(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.

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(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

M41 [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) ^{M42};
- (b) the making of an order under section 27A of the WRA (variation of small quantity threshold) ^{M43};
- (c) the making of regulations under section 33A of the WRA (power to provide for further exemptions) ^{M44}, where those regulations relate to—
 - (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) ^{M45}); 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) ^{M46} 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) ^{M47};
- (g) any consent given under section 166 of the WIA (consents for certain discharges under section 165) ^{M48} or section 164 of the WRA (consents for certain discharges under section 163) ^{M49}; or
- (h) the making of an order under section 167 of the WIA (compulsory works orders) ^{M50} or section 168 of the WRA (compulsory works orders) ^{M51}.

(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

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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 ^{M52};

“the WRA” means the Water Resources Act 1991 ^{M53}.

Marginal Citations

M42 1991 c. 57.

M43 Section 27A was inserted by the [Water Act 2003 \(c. 37\)](#), [section 6\(1\)](#); and amended by [S.I. 2013/755](#).

M44 Section 33A was inserted by the [Water Act 2003 \(c. 37\)](#), section 9; and amended by [S.I. 2013/755](#).

M45 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](#).

M46 Section 73 was amended by the [Environment Act 1995 \(c. 25\)](#), [Schedule 22](#), paragraphs 128 and 139; and by [S.I. 2013/755](#).

M47 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](#).

M48 1991 c. 56; section 166 was amended by the [Environment Act 1995 \(c. 25\)](#), [Schedule 22](#), paragraph 118; and by [S.I. 2013/755](#).

M49 Section 164 was amended by the [Environment Act 1995 \(c. 25\)](#), [Schedule 22](#), paragraph 128; and by [S.I. 2013/755](#).

M50 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).

M51 Section 168 was amended by the [Environment Act 1995 \(c. 25\)](#), [Schedule 22](#), paragraph 128.

M52 1991 c. 56.

M53 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

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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) ^{M54};
- (iii) an authorisation under the Aquatic Animal Health (England and Wales) Regulations 2009 ^{M55};
- (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 ^{M56} (power to Admiralty to retain authority over ports, etc. where dockyards, etc. are situate); or
- (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 ^{M57}.

(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 ^{M58}; and
- (d) works involving the deposit of spoil from any such dredging operation.

Marginal Citations

M54 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”.

M55 S.I. 2009/463.

M56 1862 c. 69. Section 9 was amended by SR & O 1921/1804.

M57 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

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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.

M58 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 ^{M59}, ^{F25} ...

^{F25}(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

F25 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

M59 S.I. 2015/668. Part 8 was amended by S.I. 2016/1190.

CHAPTER 8

Land Use Plans

Land use plans

Assessment of implications for European sites and European offshore marine sites

105.—(1) Where a land use plan—

(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,

the plan-making authority for that plan must, before the plan is given effect, make an appropriate assessment of the implications for the site in view of that site's conservation objectives.

(2) The plan-making authority must for the purposes of the assessment consult the appropriate nature conservation body and have regard to any representations made by that body within such reasonable time as the authority specifies.

(3) The plan-making authority must also, if it considers it appropriate, take the opinion of the general public, and if it does so, it must take such steps for that purpose as it considers appropriate.

(4) In the light of the conclusions of the assessment, and subject to regulation 107, the plan-making authority must give effect to the land use plan only after having ascertained that it will not adversely affect the integrity of the European site or the European offshore marine site (as the case may be).

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(5) A plan-making authority must provide such information as the appropriate authority may reasonably require for the purposes of the discharge by the appropriate authority of its obligations under this Chapter.

(6) This regulation does not apply in relation to a site which is—

- (a) a European site by reason of regulation 8(1)(c), or
- (b) a European offshore marine site by reason of regulation 18(c) of the Offshore Marine Conservation Regulations (site protected in accordance with Article 5(4) of the Habitats Directive).

[^{F26}(7) See regulation 110A for the assumptions about nutrient pollution standards to be made in certain circumstances.]

Textual Amendments

F26 Reg. 105(7) inserted (26.12.2023) by [Levelling-up and Regeneration Act 2023 \(c. 55\)](#), s. 255(6), [Sch. 15 para. 13](#) (with s. 247)

Assessment of implications for European site: neighbourhood development plans

106.—(1) A qualifying body which submits a proposal for a neighbourhood development plan must provide such information as the competent authority may reasonably require for the purposes of the assessment under regulation 105 or to enable it to determine whether that assessment is required.

(2) In this regulation, “qualifying body” means a parish council, or an organisation or body designated as a neighbourhood forum, authorised for the purposes of a neighbourhood development plan to act in relation to a neighbourhood area as a result of section 61F of the TCPA 1990 (authorisation to act in relation to neighbourhood areas)^{M60}, as applied by section 38C of the 2004 Planning Act (supplementary provisions)^{M61}.

(3) Where the competent authority decides to revoke or modify a neighbourhood development plan after it has been made, it must for that purpose make an appropriate assessment of the implications for any European site likely to be significantly affected in view of that site's conservation objectives; and regulation 105 and paragraph (1) apply with the appropriate modifications in relation to such a revocation or modification.

[^{F27}(3A) See regulation 110A for the assumptions about nutrient pollution standards to be made in certain circumstances.]

(4) This regulation applies in relation to England only.

Textual Amendments

F27 Reg. 106(3A) inserted (26.12.2023) by [Levelling-up and Regeneration Act 2023 \(c. 55\)](#), s. 255(6), [Sch. 15 para. 14](#) (with s. 247)

Marginal Citations

M60 Section 61F was inserted by the [Localism Act 2011 \(c. 20\)](#), [Schedule 9](#), paragraphs 1 and 2. It is prospectively amended by the [Neighbourhood Planning Act 2017 \(c. 20\)](#), [section 5](#), from a date to be appointed.

M61 Section 38C was inserted the [Localism Act 2011 \(c. 20\)](#), [Schedule 9](#), paragraphs 5 and 7.

Considerations of overriding public interest

107.—(1) If the plan-making authority is satisfied that, there being no alternative solutions, the land use plan must be given effect for imperative reasons of overriding public interest (which, subject to paragraph (2), may be of a social or economic nature), it may give effect to the land use plan notwithstanding a negative assessment of the implications for the European site or the European offshore marine site (as the case may be).

(2) Where the site concerned hosts a priority natural habitat type or a priority species, the reasons referred to in paragraph (1) must be either—

- (a) reasons relating to human health, public safety or beneficial consequences of primary importance to the environment; or
- (b) any other reasons which the plan-making authority, having due regard to the opinion of the [^{F28}appropriate authority], considers to be imperative reasons of overriding public interest.

(3) Where a plan-making authority other than the Secretary of State or the Welsh Ministers desire to obtain the opinion of the [^{F29}appropriate authority] as to whether reasons are to be considered imperative reasons of overriding public interest, it may submit a written request to the appropriate authority—

- (a) identifying the matter on which an opinion is sought; and
- (b) accompanied by any documents or information which may be required.

[^{F30}(4) In giving its opinion as to whether the reasons are imperative reasons of overriding public interest, the appropriate authority must have regard to the national interest, and provide its opinion to the competent authority.]

[^{F31}(4A) Before giving its opinion as to whether the reasons are imperative reasons of overriding public interest, the appropriate authority must consult the following, and have regard to their opinion—

- (a) the Joint Nature Conservation Committee;
- (b) where the appropriate authority is the Secretary of State, the devolved administrations;
- (c) where the appropriate authority is the Welsh Ministers, the Secretary of State and the other devolved administrations; and
- (d) any other person the appropriate authority considers appropriate.]

(5) Where a plan-making authority other than the Secretary of State or the Welsh Ministers propose to give effect to a land use plan under this regulation notwithstanding a negative assessment of the implications for the site concerned it must—

- (a) notify the appropriate authority; and
- (b) not give effect to the land use plan before the end of the period of 21 days beginning with the day notified by the appropriate authority as that on which its notification was received, unless the appropriate authority notify it that it may do so.

(6) Without prejudice to any other power, the appropriate authority may give directions to the plan-making authority in any such case prohibiting it from giving effect to the land use plan, either indefinitely or during such period as may be specified in the direction.

Textual Amendments

F28 Words in [reg. 107\(2\)\(b\)](#) substituted (31.12.2020) by [The Conservation of Habitats and Species \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/579\)](#), regs. 1, **26(2)**; 2020 c. 1, Sch. 5 para. 1(1)

F29 Words in [reg. 107\(3\)](#) substituted (31.12.2020) by [The Conservation of Habitats and Species \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/579\)](#), regs. 1, **26(2)**; 2020 c. 1, Sch. 5 para. 1(1)

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- F30** Reg. 107(4) substituted (31.12.2020) by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, 26(3); 2020 c. 1, Sch. 5 para. 1(1)
- F31** Reg. 107(4A) inserted (31.12.2020) by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, 26(4); 2020 c. 1, Sch. 5 para. 1(1)

Co-ordination for land use plan prepared by more than one authority

108.—(1) The following provisions apply where two or more local planning authorities prepare a joint local development document under section 28 (joint local development documents) or a joint local development plan under section 72 (joint local development plans) of the 2004 Planning Act ^{M62}.

(2) Nothing in paragraph (1) of regulation 105 requires a local planning authority to assess any implications of a joint local development document or plan which would be more appropriately assessed under that provision by another local planning authority.

(3) The appropriate authority may issue guidance to local planning authorities for the purposes of regulation 105(1) as to the circumstances in which a local planning authority may or should adopt the reasoning or conclusions of another local planning authority as to whether a joint local planning document or plan—

- (a) is likely to have a significant effect on a European site or a European offshore marine site; or
- (b) will adversely affect the integrity of a European site or a European offshore marine site.

(4) The local planning authorities concerned must have regard to any such guidance.

(5) In determining whether a joint local development document or plan should be adopted under regulation 107, a local planning authority must seek and have regard to the views of the other local planning authorities concerned.

Marginal Citations

M62 Section 28 was amended by the [Local Democracy, Economic Development and Construction Act 2009 \(c. 20\)](#), [Schedule 5](#), paragraphs 12 and 16; and the [Neighbourhood Planning Act 2017 \(c. 20\)](#), [section 9\(1\)](#) and (5) to (7). It is prospectively amended by the [Localism Act 2011 \(c. 20\)](#), [Schedule 8](#), paragraphs 7 and 11, and Schedule 25, Part 16, from a date to be appointed.

Compensatory measures

109. Where in accordance with regulation 107 a land use plan is given effect notwithstanding a negative assessment of the implications for a European site or a European offshore marine site, the appropriate authority must secure that any necessary compensatory measures are taken to ensure that the overall coherence of Natura 2000 is protected.

Planning Act 2008

National policy statements

110.—(1) This Chapter applies—

- (a) in relation to a national policy statement under Part 2 of the Planning Act 2008 (national policy statements) ^{M63} as it applies in relation to a land use plan, and

(b) in relation to the Secretary of State when exercising powers under Part 2 of that Act as it applies in relation to a plan-making authority,
with the modifications specified in paragraphs (2) and (3).

(2) Any reference in this Chapter to giving effect to a land use plan, in relation to a national policy statement, is to be taken to be a reference to the designation of a statement as a national policy statement or an amendment of a national policy statement under Part 2 of the Planning Act 2008.

(3) Where this Chapter applies by virtue of paragraph (1)—

- (a) regulations 105(5), 107(3) to (6) ^[F32], 108 and 110A] do not apply; and
- (b) in regulation 109, the reference to the appropriate authority is taken to be a reference to the Secretary of State.

Textual Amendments

F32 Words in reg. 110(3)(a) substituted (26.12.2023) by [Levelling-up and Regeneration Act 2023 \(c. 55\)](#), s. 255(6), [Sch. 15 para. 15](#) (with s. 247)

Marginal Citations

M63 2008 c. 29.

^[F33] Assessments under this Chapter: required assumptions

110A.—(1) This regulation applies where—

- (a) a plan-making authority makes a relevant decision in relation to a land use plan relating to an area in England,
 - (b) the authority is required to make a relevant assessment before the decision is made,
 - (c) waste water from the area to which the plan relates could 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 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.
- (3) Paragraph (2)—
- (a) is subject to regulation [110B](#) (direction that assumptions are not to apply), and

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- (b) does not prevent the 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.
- (4) In paragraph (1) “relevant decision” means—
 - (a) a decision whether to give effect to a land use plan, or
 - (b) a decision whether to modify or revoke a neighbourhood development plan.
- (5) In this regulation “relevant assessment”, in relation to a land use plan, means—
 - (a) in relation to a decision within paragraph (4)(a), where an appropriate assessment of the implications for a site of the land use plan is required by regulation 105(1), that assessment;
 - (b) in relation to a decision within paragraph (4)(b), where such an assessment is required by regulation 105(1) as applied by regulation 106(3), that assessment.

Textual Amendments

F33 Regs. 110A-110C inserted (26.12.2023) by [Levelling-up and Regeneration Act 2023 \(c. 55\), s. 255\(6\), Sch. 15 para. 16](#) (with s. 247)

Direction that assumptions are not to apply

110B.—(1) The assumptions in regulation [110A\(2\)](#) 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,

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- (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—
- (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 plan-making 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 plan-making 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

F33 Regs. 110A-110C inserted (26.12.2023) by [Levelling-up and Regeneration Act 2023 \(c. 55\)](#), s. 255(6), [Sch. 15 para. 16](#) (with s. 247)

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Regulations 110A and 110B: interpretation

110C.—(1) In regulations 110A and 110B 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”;
- “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 110A and 110B 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 regulation 110A, “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(6)(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 110A and 110B, 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 110B(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(2) of the Water Industry Act 1991, means nutrients comprising nitrogen or compounds of nitrogen;
 - (ii) in relation to an area designated under section 96C(3) of that Act, means nutrients comprising phosphorus or compounds of phosphorus.]

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Interpretation of Chapter 8

Interpretation of Chapter 8

111.—(1) In this Chapter—

“the 1999 Act” means the Greater London Authority Act 1999 ^{M64};

“the 2004 Planning Act” means the Planning and Compulsory Purchase Act 2004 ^{M65};

“the 2005 Order” means the Planning and Compulsory Purchase Act 2004 (Commencement No. 3 and Consequential and Transitional Provisions) (Wales) Order 2005 ^{M66};

“land use plan” means—

- (a) the spatial development strategy under section 334 of the 1999 Act (the spatial development strategy);
- (b) a local development document as provided for in Part 2 of the 2004 Planning Act (local development) other than a statement of community involvement under section 18 of that Act (statement of community involvement) ^{M67};
- (c) a local development plan as provided for in Part 6 of the 2004 Planning Act (Wales);
- (d) the Wales Spatial Plan under section 60 of the 2004 Planning Act (national development framework for Wales) ^{M68};
- (e) an alteration or replacement of a structure plan, unitary development plan, local plan, minerals local plan, or waste local plan under Part 2 of the TCPA 1990 (development plans) ^{M69} to the extent permitted by Schedule 8 to the 2004 Planning Act (transitional provisions); or
- (f) (in England) a neighbourhood development plan as defined in section 38A of the 2004 Planning Act (neighbourhood development plans) ^{M70}.

“plan-making authority” means—

- (a) the Mayor of London when exercising powers under section 341(1) or (2) of the 1999 Act (alteration or replacement);
- (b) an authority which, by virtue of Part 1 of the TCPA 1990 (planning authorities) or an order under section 29(2) of the 2004 Planning Act (joint committees), is a local planning authority;
- (c) the Secretary of State when exercising powers under—
 - (i) section 21 or section 27 of the 2004 Planning Act (intervention by the Secretary of State, Secretary of State's default power, respectively); or
 - (ii) section 19, section 35A(4) or section 45 of the TCPA 1990 (approval of a unitary development plan, calling in of proposal for approval by the Secretary of State, approval of proposals by the Secretary of State, respectively) ^{M71} to the extent permitted by Schedule 8 to the 2004 Planning Act;
- (d) the Welsh Ministers when exercising powers under—

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- (i) section 60(3), section 65 or section 71(4) of the 2004 Planning Act (national development framework for Wales, intervention by Assembly, Assembly's default power, respectively); or
 - (ii) section 19 of the TCPA 1990 to the extent permitted by article 4 of the 2005 Order; or
 - (e) (in England) the local planning authority when exercising powers under Schedule 4B to the TCPA 1990 (as applied by section 38A(3) of the 2004 Planning Act).
- (2) References in this Chapter to giving effect to a land use plan are to—
- (a) the approval, under section 21(9) or 27(4) of the 2004 Planning Act, of a local development document;
 - (b) the adoption, under section 23 of the 2004 Planning Act (adoption of local development documents), of a local development document other than a statement of community involvement under section 18 of that Act;
 - (c) the publication, under section 341 of the 1999 Act, of alterations of the spatial development strategy or a new spatial development strategy to replace it;
 - (d) the publication, under section 60 of the 2004 Planning Act, of a revision of the Wales Spatial Plan;
 - (e) the adoption, under section 67 of the 2004 Planning Act (adoption of local development plan), of a local development plan;
 - (f) the approval, under section 65(9) or 71(4) of the 2004 Planning Act, of a local development plan;
 - (g) the adoption, under section 35(1) (adoption of proposals), or approval under section 35A(4) of the TCPA 1990, of an alteration or replacement of a structure plan to the extent permitted by paragraph 2(2) of Schedule 8 to the 2004 Planning Act;
 - (h) the adoption, under section 15 (adoption of unitary development plans by local planning authority) ^{M72} and that provision as applied by section 21(2) (alteration or replacement of unitary development plans) ^{M73} of the TCPA 1990, of an alteration or replacement of a unitary development plan to the extent permitted by paragraph 4 of Schedule 8 to the 2004 Planning Act;
 - (i) the approval, under section 19 and that provision as applied by section 21(2) of the TCPA 1990, of an alteration or replacement of a unitary development plan to the extent permitted by paragraph 4 of Schedule 8 to the 2004 Planning Act;
 - (j) the adoption, under section 43 (adoption of proposals) ^{M74} or approval under section 45 of the TCPA 1990, of an alteration or replacement of a local plan, minerals local plan or waste local plan to the extent permitted by paragraph 9, 10 or 14 of Schedule 8 to the 2004 Planning Act;
 - (k) the adoption, under section 15 of the TCPA 1990, of a unitary development plan to the extent permitted by article 4 of the 2005 Order;
 - (l) the approval, under section 19 of the TCPA 1990, of a unitary development plan to the extent permitted by article 4 of the 2005 Order; or
 - (m) (in England) the holding of a referendum in accordance with paragraph 12(4) of Schedule 4B to the TCPA 1990 (as applied by section 38A(3) of the 2004 Planning Act).

Marginal Citations

M64 1999 c. 29.

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- M65** 2004 c. 5.
- M66** S.I. 2005/1229 (W.87) (C.56), amended by S.I. 2005/2722 (W.193) (C.110).
- M67** Section 18 was amended by the Planning Act 2008 (c. 29), section 180(1) and (4) and Schedule 13; the Localism Act 2011 (c. 20), Schedule 12, paragraphs 27 and 28; and the Neighbourhood Planning Act 2017 (c. 20), sections 6(1) to (3) and 13(1) and (2).
- M68** Section 60 was substituted by the Planning (Wales) Act 2015 (anaw 4), section 3; and amended by the Environment (Wales) Act 2016 (anaw 3), Schedule 2, Part 1, paragraph 8(1) and (2).
- M69** Sections 32 to 40 in Part 2 of the TCPA 1990 were substituted by the Planning and Compensation Act 1991 (c. 34), Schedule 4, paragraph; Part 2 of the TCPA 1990 was repealed by the 2004 Planning Act, Schedule 9, subject to transitional provisions contained in Schedule 8 to that Act.
- M70** Section 38A was inserted by the Localism Act 2011 (c. 20), Schedule 9, paragraphs 5 and 7.
- M71** Section 35A was inserted by the Planning and Compensation Act 1991 (c. 34), Schedule 4, paragraph 17; and repealed by the 2004 Planning Act, Schedule 9, subject to transitional provisions contained in Schedule 8 to that Act.
- M72** Section 15(1) was substituted by the Planning and Compensation Act 1991, Schedule 4, paragraph 6; and repealed by the 2004 Planning Act, Schedule 9, subject to transitional provisions contained in Schedule 8 to that Act.
- M73** Section 21 was amended by the Planning and Compensation Act 1991, Schedule 4, paragraph 12 and Schedule 19; and repealed by the 2004 Planning Act, Schedule 9, subject to transitional provisions contained in Schedule 8 to that Act.
- M74** Section 43 was amended by the Planning and Compensation Act 1991, Schedule 4, paragraph 19(1); and repealed by the 2004 Planning Act, Schedule 9, subject to transitional provisions contained in Schedule 8 to that Act.

CHAPTER 9

MARINE POLICY STATEMENTS AND MARINE PLANS

Marine policy statement

- 112.**—(1) Chapter 8 applies (with the modifications specified in paragraphs (2) and (3))—
- in relation to a marine policy statement under Chapter 1 of Part 3 (marine planning) of the Marine Act as it applies in relation to a land use plan; and
 - in relation to a policy authority when exercising powers under Part 3 of that Act as it applies in relation to a plan-making authority.
- (2) Any reference in Chapter 8 to giving effect to a land use plan, in relation to a marine policy statement, is to be taken to be a reference to the adoption and publication of a marine policy statement in accordance with Schedule 5 to the Marine Act or any amendment of a marine policy statement under section 47 of that Act.
- (3) Where Chapter 8 applies by virtue of paragraph (1)—
- in regulation 105(2), after “the appropriate nature conservation body” insert “and the Joint Nature Conservation Committee”;
 - regulations 105(5), 107(3) to (6) and 108 do not apply; and
 - in regulation 109, for the reference to the appropriate authority substitute a reference to the policy authority.
- (4) In this regulation “policy authority” means the Secretary of State or the Welsh Ministers.

Marine plan

- 113.**—(1) Chapter 8 applies (with the modifications specified in paragraphs (2) and (3))—

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- (a) in relation to a marine plan as it applies in relation to a land use plan; and
 - (b) in relation to a marine plan authority when exercising powers under Part 3 of the Marine Act as it applies in relation to a plan-making authority.
- (2) Any reference in Chapter 8 to giving effect to a land use plan, in relation to a marine plan, is to be taken to be a reference to the adoption and publication of a marine plan in accordance with Schedule 6 to the Marine Act or any amendment of a marine plan under section 52 of that Act.
- (3) Where Chapter 8 applies by virtue of paragraph (1), regulations 105(5), 107(3) to (6) and 108 do not apply.
- (4) In this regulation—
- “marine plan” means a marine plan under Chapter 2 of Part 3 of the Marine Act;
 - “marine plan authority” has the meaning given by Part 3 of the Marine Act.

Changes to legislation:

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Changes and effects yet to be applied to :

- reg. 75 heading words inserted by [2023 c. 55 Sch. 9 para. 4\(2\)\(a\)](#)
- reg. 76 heading words inserted by [2023 c. 55 Sch. 9 para. 4\(3\)\(a\)](#)
- reg. 77 heading words inserted by [2023 c. 55 Sch. 9 para. 4\(4\)](#)
- reg. 78 heading words inserted by [2023 c. 55 Sch. 9 para. 4\(5\)\(a\)](#)
- reg. 85B heading words inserted by [2023 c. 55 Sch. 9 para. 4\(6\)\(a\)](#)

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\(3\)\(a\)](#)