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STATUTORY INSTRUMENTS

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**2010 No. 490**

**The Conservation of Habitats and Species Regulations 2010**

**PART 6**

**ASSESSMENT OF PLANS AND PROJECTS**

**CHAPTER 2**

**PLANNING**

*Planning permission*

**Grant of planning permission**

- 68.**—(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(1) of that Act (urgent Crown development);
  - (c) granting planning permission, or upholding a decision of the local planning authority to grant planning permission (whether or not subject to the same conditions and limitations as those imposed by the local planning authority), on determining an appeal under section 78(2) of that Act (right to appeal against planning decisions) 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)(3) of that Act (grant or modification of planning permission on appeals against enforcement notices);
  - (e) directing under the following provisions that planning permission is deemed to be granted—
    - (i) subsection (1)(4), (2) or (2A)(5) of section 90 of that Act (development with government authorisation),
    - (ii) section 57(2) of the Town and Country Planning (Scotland) Act 1997(6) (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(7)), or

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(1) Section 293A was inserted by the Planning and Compulsory Purchase Act 2004 (c. 5), section 82(1).  
(2) Section 78 was amended by the Planning and Compensation Act 1991 (c. 34), section 17(2); the Planning and Compulsory Purchase Act 2004 (c. 5), sections 40(2)(e) and 43(2); and the Planning Act 2008 (c. 29), paragraphs 1 and 3 of Schedule 10 and paragraphs 1 and 2 of Schedule 11.  
(3) Section 177(1) (a) was substituted by the Planning and Compensation Act 1991 (c. 34), paragraph 24(1)(a) of Schedule 7.  
(4) Section 90(1) was amended by the Environment Act 1995 (c. 25), paragraph 32(4) of Schedule 10.  
(5) Subsection (2A) of section 90 was inserted by the Transport and Works Act 1992 (c. 42), section 16(1).  
(6) 1997 c. 8.

- (iii) section 5(1) of the Pipe-lines Act 1962<sup>(8)</sup> (provisions with respect to planning permission concerning pipe-lines);
- (f) making—
  - (i) an order under section 102<sup>(9)</sup> of the TCPA 1990 (orders requiring discontinuance of use or alteration or removal of buildings or works), 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<sup>(10)</sup> to that Act (order requiring discontinuance of mineral working), including an order made under that paragraph by virtue of paragraph 11 of that Schedule to that Act (powers in relation to orders under Schedule 9) which grants planning permission; or
- (g) directing under the following provisions that if an application is made for planning permission it must be granted—
  - (i) section 141(3) of that Act (action in relation to purchase notice), or
  - (ii) section 35(5) of the Planning (Listed Buildings and Conservation Areas) Act 1990<sup>(11)</sup> (action in relation to listed building purchase notice).

(2) Where the assessment provisions apply, the competent authority may, if they consider 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 are satisfied (whether by reason of the conditions and limitations to which the outline planning permission is to be made subject, or otherwise) that no development likely adversely to affect the integrity of a European site or a European offshore marine site could be carried out under the permission, whether before or after obtaining approval of any reserved matters.

(4) In paragraph (3), “outline planning permission” and “reserved matters” have the same meanings as in section 92<sup>(12)</sup> of the TCPA 1990 (outline planning permission).

### **Planning permission: duty to review**

**69.**—(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—

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(7) 1989 c. 29.

(8) 1962 c. 58; section 5(1) was amended by S.I. 1999/742, paragraph 2(3) of the Schedule.

(9) Section 102 was amended by the Planning and Compensation Act 1991 (c. 34), paragraph 6 of Schedule 1 and paragraph 21 of Schedule 7.

(10) Paragraph 1 of Schedule 9 was amended by the Planning and Compensation Act 1991 (c. 34), paragraph 15 of Schedule 1.

(11) 1990 c. 9.

(12) There are amendments to section 92 which are not relevant.

- (a) by a development order (but see regulations 73 to 78);
  - (b) by virtue of the adoption of a simplified planning zone scheme or of alterations to such a scheme (but see regulation 79); 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(13) (enterprise zones), or by virtue of the approval of a modified enterprise zone scheme (but see regulation 80).
- (3) Planning permission deemed to be granted by virtue of—
- (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(14) of the Pipe-lines Act 1962 (pipe-line construction authorisations),
  - (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(15) (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), or
  - (e) 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(16) (orders as to railways, tramways or inland waterways)),

must be reviewed in accordance with Chapter 4 (electricity), Chapter 5 (pipe-lines) or Chapter 6 (transport and works) (as the case may be) in conjunction with the review of the underlying authorisation, consent or order.

(4) 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 they consider falls to be reviewed under the review provisions, and
- (b) refer the matter to the government department or person which made the direction,

and the department or person must, if in agreement that the planning permission does fall to be so reviewed, review the direction in accordance with the review provisions.

(5) 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.

(6) Subject to paragraphs (3) and (4), 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

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(13) 1980 c. 65. Schedule 32 was amended by the New Towns Act 1981 (c. 64), paragraph 28 of Schedule 12; the Local Government (Wales) Act 1994 (c. 19), paragraph 59(9) of Schedule 16 and Schedule 18; and the Planning (Consequential Provisions) Act 1990 (c. 11), Part 1 of Schedule 1 and paragraph 44(14) of Schedule 2.

(14) Section 1 was amended by the Criminal Justice Act 1982 (c. 48), sections 37, 38 and 46; S.I. 1999/742, paragraph 2(2) of the Schedule; S.I. 2007/1519, paragraph 4(1) of the Schedule; and the Planning Act 2008 (c. 29), paragraphs 5 and 6 of Schedule 2.

(15) 1989 c. 29. Section 36 was amended by the Energy Act 2004 (c. 20), section 93(1) and (3); the Planning Act 2008 (c. 29), paragraphs 31 and 32 of Schedule 2; the Marine and Coastal Access Act 2009 (c. 23), section 12(7)(a) and (8); and, in relation to Scotland, by S.I. 2006/1054, paragraph 1(1) and (2) of Schedule 1. Section 37 was amended by the Planning Act 2008, paragraphs 31 and 33 of Schedule 2.

(16) 1992 c. 42; sections 1 and 3 were amended by the Planning Act 2008 (c. 29), paragraphs 51, 52 and 53 of Schedule 2.

- (b) the power conferred by section 97(17) of the TCPA 1990 (power to revoke or modify planning permission) 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).

(7) 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(18) to the TCPA 1990), in which case it is exercisable by the county planning authority.

### **Planning permission: consideration on review**

**70.**—(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(19) of the TCPA 1990 (planning obligations) being entered into; and
- (b) if they consider 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 that Act (power to revoke or modify planning permission); or
- (b) section 102(20) of or paragraph 1 of Schedule 9(21) to that Act (orders requiring discontinuance of use etc.).

(3) Where the authority ascertain 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, they nevertheless need not proceed under the review provisions if and so long as they consider that there is no likelihood of the development being carried out or continued.

### **Planning permission: effect of orders made on review**

**71.**—(1) An order under section 97 of the TCPA 1990 made pursuant to regulation 69 (duty to 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 determine 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

(17) Section 97 was amended by the Planning and Compensation Act 1991 (c. 34), paragraph 4 of Schedule 1 and Part 1 of Schedule 19.

(18) Paragraph 1 of Schedule 1 was amended by the Planning and Compensation Act 1991 (c. 34), paragraph 13 of Schedule 1 and Part 1 of Schedule 19.

(19) Section 106 was substituted by the Planning and Compensation Act 1991 (c. 34), section 12(1), and amended by the Greater London Authority Act 2007 (c. 24), section 33.

(20) Section 102 was amended by the Planning and Compensation Act 1991 (c. 34), paragraph 6 of Schedule 1 and paragraph 21 of Schedule 7.

(21) Paragraph 1 of Schedule 9 was amended by the Planning and Compensation Act 1991 (c. 34), paragraph 15 of Schedule 1.

(d) there is substituted 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 prior to the date upon which the order took effect under paragraph (1), 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 69, 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) (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 determine 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 69 does not affect so much of the development authorised by the permission as was carried out prior to the order taking effect.

(6) An order under section 102 of or paragraph 1 of Schedule 9 to that Act made in pursuance of regulation 69 does not affect anything done prior to the site becoming a European site or European offshore marine site.

### **Planning permission: supplementary provisions as to compensation**

**72.**—(1) Where the appropriate authority determine not to confirm an order under section 97 of the TCPA 1990 which has taken effect under regulation 71(1), any claim for compensation under section 107(22) of that Act (compensation where planning permission revoked or modified) 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 determine 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 71(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 any right to continue a use of the land being, by virtue of the order, suspended or subject to conditions 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 63 (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

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(22) Section 107 was amended by the Planning and Compensation Act 1991 (c. 34), paragraph 8 of Schedule 1 and paragraph 13 of Schedule 6.

and to the extent that in any particular case the appropriate authority have indicated in writing that such a reference and determination may be dispensed with.

### *General development orders*

#### **General development orders**

**73.—**(1) It is a condition of any planning permission granted by a general development order, whether made before or after 1st April 2010, 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 75 (approval of local planning authority).

(2) It is a condition of any planning permission granted by a general development order made before 1st April 2010 that development which—

- (a) is likely to have a significant effect on a European site (either alone or in combination with other plans or projects),
- (b) is not directly connected with or necessary to the management of the site, and
- (c) was begun but not completed before that date,

must not be continued until the developer has received written notification of the approval of the local planning authority under regulation 75.

(3) Nothing in this regulation affects anything done pursuant to any such planning permission before 1st April 2010.

#### **General development orders: opinion of appropriate nature conservation body**

**74.—**(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 their 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 they consider that they have sufficient information to conclude that the development will, or will not, have such an effect, they must notify the applicant and the local planning authority in writing of their opinion.

(5) If the appropriate nature conservation body consider that they have insufficient information to reach either of those conclusions, they must notify the applicant in writing indicating in what respects they consider the information insufficient, and the applicant may supply further information with a view to enabling them 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 75 “a relevant effect” means such an effect as is mentioned in regulation 73(1)(a) or (2)(a).

### **General development orders: approval of local planning authority**

**75.**—(1) An application to the local planning authority for approval, as mentioned in regulation 73 (general development orders), 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 74 (opinion of appropriate nature conservation body), and
  - (ii) any fee required to be paid.

(2) For the purposes of their 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 them.

(4) If in their representations the appropriate nature conservation body state their 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 their opinion under regulation 74(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.

### **General development orders: supplementary**

**76.**—(1) The local planning authority for the purposes of regulations 73 to 75 are the authority to which an application for approval under regulation 75 (approval of local planning authority) 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 73 (general development orders) 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*

### **Special development orders**

**77.**—(1) A special development order may not grant planning permission 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.

(2) A special development order made before 1st April 2010 is not to be taken to grant planning permission for development of a kind mentioned in paragraph (1), whether or not the development authorised by the permission has been begun.

(3) Nothing in this regulation affects anything done pursuant to a special development order before 1st April 2010.

(4) A special development order may not grant planning permission for development which is likely to have a significant effect on a European offshore marine site (either alone or in combination with other plans or projects).

#### *Local development orders*

#### **Local development orders**

**78.** A local development order may not grant planning permission for 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.

#### *Simplified planning zones and enterprise zones*

#### **Simplified planning zones**

**79.**—(1) Where a simplified planning zone scheme is adopted or approved, that scheme is not to be taken to grant planning permission 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.

(2) A simplified planning zone scheme in force before 1st April 2010 is not to be taken to grant planning permission for development of a kind mentioned in paragraph (1), whether or not the development authorised by the permission has been begun.

(3) Where a simplified planning zone scheme is adopted or approved, that scheme is not to be taken to grant planning permission for development which is likely to have a significant effect on a European offshore marine site (either alone or in combination with other plans or projects).

(4) A simplified planning zone scheme adopted or approved on or after 21st August 2007 and before 1st April 2010 is not to be taken to grant planning permission for development of a kind mentioned in paragraph (3).

#### **Enterprise zones**

**80.**—(1) 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—

- (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.



(2) Where such an order was made or such a scheme was approved before 1st April 2010, that order or scheme is not to be taken to grant planning permission for development of a kind mentioned in paragraph (1), whether or not the development authorised by the permission has been begun.

(3) 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 is likely to have a significant effect on a European offshore marine site (either alone or in combination with other plans or projects).

(4) Where such an order was made or such a scheme was approved on or after 21st August 2007 and before 1st April 2010, that order or scheme is not to be taken to grant planning permission for development of a kind mentioned in paragraph (3).

### *Development consent under Planning Act 2008*

#### **Grant of development consent**

**81.**—(1) The assessment provisions apply in relation to the making of an order granting development consent under the Planning Act 2008(23).

(2) Where those provisions apply, the competent authority may, if they consider 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), make an order subject to those requirements.

#### **Development consent: review**

**82.**—(1) The review provisions apply to any order granting development consent under the Planning Act 2008 unless—

- (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) For the purpose of this regulation, in a case where the Panel or the Council made the order granting development consent, the Commission must carry out any review.

(3) The Commission must consult the Secretary of State for the purpose of any review under the review provisions.

(4) 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 they consider 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 as may be required.

(5) Any order made by the Commission under paragraph 3(1) of Schedule 6 to that Act, if not made on the application of the Secretary of State under paragraph 3(6) of that Schedule, is to be treated as so made.

(6) Paragraph (5) has effect only where the Secretary of State has agreed to the making of such an order by the Commission.

*Interpretation of Chapter 2*

**Interpretation of Chapter 2**

**83.**—(1) This Chapter, except regulations 81 and 82, is to be construed as one with the TCPA 1990.

(2) In regulations 81 and 82, the terms “the Commission”, “the Council”, “development”, “development consent” and “the Panel” have the meanings given by the Planning Act 2008(**24**).

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(24) See sections 64(2) and 235.