

## STATUTORY INSTRUMENTS

# 1994 No. 2716

## The Conservation (Natural Habitats, &c.) Regulations 1994

### [<sup>F1</sup>PART IV

#### ADAPTATION OF PLANNING AND OTHER CONTROLS

**F1** Regulations revoked (E.W.) (1.4.2010 except so far as relating to the revocation in relation to W. of reg. 36 and specified words in reg. 3(3), 12.12.2014 in so far as not already in force) by [The Conservation of Habitats and Species Regulations 2010 \(S.I. 2010/490\)](#), regs. 1(2)(4)(b), **133(3)** (with regs. 125, 134)

**Modifications etc. (not altering text)**

**C1** [Pt. 4](#) 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))

#### *Introductory*

#### **Application of provisions of this Part**

**47.—(1)** The requirements of ... regulations 48 [<sup>F2</sup>, 48A] and 49 (requirement to consider effect on European sites [<sup>F3</sup>in Great Britain and European offshore marine sites]), and ... regulations 50 and 51 (requirement to review certain existing decisions and consents, [<sup>F4</sup>&c.) apply—]

[<sup>F5</sup>(a)] subject to and in accordance with the provisions of regulations [<sup>F6</sup>53A] to 85, in relation to the matters specified in those provisions [<sup>F7</sup>, and

(b) in relation to all other plans and projects.]

(2) Supplementary provision is made by—

(a) regulation 52 (co-ordination where more than one competent authority involved), and

(b) regulation 53 (compensatory measures where plan or project is agreed to notwithstanding a negative assessment of the implications for a European site [<sup>F8</sup>in Great Britain or European offshore marine site]).

[<sup>F9</sup>(3) Nothing in these Regulations requires an appropriate assessment of any plan or project to be carried out on or in any part of the waters or on or in any part of the seabed or subsoil comprising the offshore marine area, or on or in relation to an offshore marine installation.]

[<sup>F10</sup>(3A) This Part does not apply to any plan or project to which the Environmental Impact Assessment and Natural Habitats (Extraction of Minerals by Marine Dredging) (Scotland) Regulations 2007 apply.]

**F2** Word in [reg. 47\(1\)](#) inserted (29.6.2007) by [The Conservation \(Natural Habitats, &c.\) Amendment \(No. 2\) \(Scotland\) Regulations 2007 \(S.S.I. 2007/349\)](#), regs. 1(1), **2(2)(b)**

- F3** Words in reg. 47(1)(a) inserted (21.8.2007) by The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007 (S.I. 2007/1843), regs. 2(1), **5(22)(a)** (with reg. 9)
- F4** Words in reg. 47(1) substituted (29.6.2007) by The Conservation (Natural Habitats, &c.) Amendment (No. 2) (Scotland) Regulations 2007 (S.S.I. 2007/349), regs. 1(1), **2(2)(d)**
- F5** Word in reg. 47(1) inserted (29.6.2007) by The Conservation (Natural Habitats, &c.) Amendment (No. 2) (Scotland) Regulations 2007 (S.S.I. 2007/349), regs. 1(1), **2(2)(e)**
- F6** Word in reg. 47(1) substituted (29.11.2004) by The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2004 (S.S.I. 2004/475), regs. 1(1), **16(a)** (with regs. 20, 21)
- F7** Reg. 47(1)(b) and word inserted (29.6.2007) by The Conservation (Natural Habitats, &c.) Amendment (No. 2) (Scotland) Regulations 2007 (S.S.I. 2007/349), regs. 1(1), **2(2)(f)**
- F8** Words in reg. 47(2)(b) inserted (21.8.2007) by The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007 (S.I. 2007/1843), regs. 2(1), **5(22)(b)** (with reg. 9)
- F9** Reg. 47(3) inserted (21.8.2007) by The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007 (S.I. 2007/1843), regs. 2(1), **5(22)(c)** (with reg. 9)
- F10** Reg. 47(3A) inserted (23.11.2007) by The Environmental Impact Assessment and Natural Habitats (Extraction of Minerals by Marine Dredging) (Scotland) Regulations 2007 (S.S.I. 2007/485), regs. 1(1), **24(1)** (with reg. 3)

**Commencement Information**

- I1** Reg. 47 in force at 30.10.1994, see **reg. 1(2)**

*General provisions for protection of European sites*

**Assessment of implications for European site**

**48.**—(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 in Great Britain [<sup>F11</sup>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,

shall make an appropriate assessment of the implications for the site in view of that site’s conservation objectives.

(2) A person applying for any such consent, permission or other authorisation shall provide such information as the competent authority may reasonably require for the purposes of the assessment [<sup>F12</sup>or to enable the competent authority to determine whether an appropriate assessment is required].

(3) The competent authority shall 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 may specify.

(4) They shall also, if they consider it appropriate, take the opinion of the general public; and if they do so, they shall take such steps for that purpose as they consider appropriate.

(5) In the light of the conclusions of the assessment, and subject to regulation 49, the authority shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site [<sup>F13</sup>or 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 authority shall have regard to the manner in which it is proposed to be carried out or to any conditions or restrictions subject to which they propose that the consent, permission or other authorisation should be given.

<sup>F14</sup>(7) .....

- F11** Words in reg. 48(1)(a) inserted (21.8.2007) by The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007 (S.I. 2007/1843), regs. 2(1), **5(23)(a)** (with reg. 9)
- F12** Words in reg. 48(2) inserted (S.) (15.2.2007) by The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2007 (S.S.I. 2007/80), regs. 2, **18**
- F13** Words in reg. 48(5) inserted (21.8.2007) by The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007 (S.I. 2007/1843), regs. 2(1), **5(23)(c)** (with reg. 9)
- F14** Reg. 48(7) omitted (31.12.2020) by virtue of The Conservation (Natural Habitats, &c.) (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/113), regs. 1, **20**; 2020 c. 1, Sch. 5 para. 1(1)

#### Commencement Information

- I2** Reg. 48 in force at 30.10.1994, see **reg. 1(2)**

### [<sup>F15</sup>Directions as regards plans and projects

**48A.**—(1) The Scottish Ministers may at any time direct a competent authority (other than the Scottish Ministers or the Secretary of State) to send to them a copy of a plan or project—

- (a) which is being prepared by the competent authority, or which is to be or has been undertaken by the competent authority; or
- (b) which is to be or has been consented to, permitted or otherwise authorised by the competent authority,

and which in the opinion of the Scottish Ministers may have a significant effect on a European site in Great Britain.

(2) The Scottish Ministers shall consider any plan or project in respect of which they have issued a direction under paragraph (1), together with such information in relation to it as they may reasonably require the competent authority to provide.

(3) Where the Scottish Ministers are satisfied that—

- (a) the plan or project falls within regulation 48(1) and no appropriate assessment has been carried out; or
- (b) an appropriate assessment has been carried out which does not comply with the Habitats Directive and these Regulations,

they may direct the competent authority to carry out an appropriate assessment in accordance with the Habitats Directive and these Regulations.

(4) A direction under paragraph (3) shall be issued as soon as reasonably practicable, and may, in particular, specify—

- (a) the manner in which an appropriate assessment must be carried out; and
- (b) the matters to be covered by the appropriate assessment.

(5) Where a direction is issued under paragraph (3), the plan or project and any operation or activity carried out under it is suspended until such time as the Scottish Ministers direct that they are satisfied that an appropriate assessment has been carried out in accordance with the Habitats Directive and these Regulations.

(6) The Scottish Ministers shall issue a direction under paragraph (5) as soon as reasonably practicable after they are satisfied that an appropriate assessment has been carried out in accordance with the Habitats Directive and these Regulations.

(7) The Scottish Ministers shall consult with the appropriate nature conservation body as to the exercise of the Scottish Ministers' functions under paragraphs (1) to (6) of this regulation.

(8) Where a direction is issued under paragraph (3), the Scottish Ministers shall send to the competent authority a summary in writing of their reasons.

(9) A competent authority shall comply with any direction given to it under paragraph (1) or (3).]

**F15** Reg. 48A inserted (S.) (29.6.2007) by [The Conservation \(Natural Habitats, &c.\) Amendment \(No. 2\) \(Scotland\) Regulations 2007 \(S.S.I. 2007/349\)](#), regs. 1(1), **2(3)**

### Considerations of overriding public interest

**49.**—(1) If they are 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), the competent authority may agree [<sup>F16</sup>, subject to paragraph (1A)], to the plan or project notwithstanding a negative assessment of the implications for the site.

[<sup>F17</sup>(1A) A competent authority other than the Scottish Ministers or the Secretary of State shall consult the Scottish Ministers for the purpose of satisfying itself under paragraph (1), and shall have regard to the opinion of the Scottish Ministers.]

(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
- [<sup>F18</sup>(b) any other imperative reasons of overriding public interest, provided that the competent authority has had regard to the opinion of the [<sup>F19</sup>Scottish Ministers] in satisfying itself that there are such reasons.]

(3) Where a competent authority other than the Secretary of State desire to obtain [<sup>F20</sup>, for the purposes of paragraph (2)(b), the opinion of the Scottish Ministers as to whether reasons are to be considered imperative reasons of overriding public interest, they must submit a written request to the Scottish Ministers]—

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

[<sup>F21</sup>(4) In giving, for the purposes of paragraph (2)(b), their opinion as to whether the reasons are imperative reasons of overriding public interest, the Scottish Ministers must have regard to the national interest, and provide their opinion to the competent authority.]

[<sup>F22</sup>(4A) Before giving, for the purposes of paragraph (2)(b), their opinion as to whether the reasons are imperative reasons of overriding public interest, the Scottish Ministers must consult the following, and have regard to their opinion—

- (a) the Joint Nature Conservation Committee;
- (b) the Secretary of State;
- (c) the Department of Agriculture, Environment and Rural Affairs in Northern Ireland;
- (d) the Welsh Ministers; and
- (e) any other person the Scottish Ministers consider appropriate.]

(5) Where an authority other than the Secretary of State propose to agree to a plan or project under this regulation notwithstanding a negative assessment of the implications for [<sup>F23</sup>the site concerned], they shall notify the Secretary of State.

Having notified the Secretary of State, they shall not agree to the plan or project before the end of the period of 21 days beginning with the day notified to them by the Secretary of State as that on which their notification was received by him, unless the Secretary of State notifies them that they may do so.

(6) In any such case the Secretary of State may give directions to the authority prohibiting them from agreeing to the plan or project, either indefinitely or during such period as may be specified in the direction.

This power is without prejudice to any other power of the Secretary of State in relation to the decision in question.

[<sup>F24</sup>(7) A competent authority shall comply with any direction given to it under paragraph (6).]

- F16** Words in reg. 49(1) inserted (S.) (29.6.2007) by The Conservation (Natural Habitats, &c.) Amendment (No. 2) (Scotland) Regulations 2007 (S.S.I. 2007/349), regs. 1(1), **2(4)(a)**
- F17** Reg. 49(1A) inserted (S.) (29.6.2007) by The Conservation (Natural Habitats, &c.) Amendment (No. 2) (Scotland) Regulations 2007 (S.S.I. 2007/349), regs. 1(1), **2(4)(b)**
- F18** Reg. 49(2)(b) substituted (S.) (15.2.2007) by The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2007 (S.S.I. 2007/80), regs. 2, **19**
- F19** Words in reg. 49(2)(b) substituted (31.12.2020) by The Conservation (Natural Habitats, &c.) (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/113), regs. 1, **21(2)**; 2020 c. 1, Sch. 5 para. 1(1)
- F20** Words in reg. 49(3) substituted (31.12.2020) by The Conservation (Natural Habitats, &c.) (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/113), regs. 1, **21(3)**; 2020 c. 1, Sch. 5 para. 1(1)
- F21** Reg. 49(4) substituted (31.12.2020) by The Conservation (Natural Habitats, &c.) (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/113), regs. 1, **21(4)**; 2020 c. 1, Sch. 5 para. 1(1)
- F22** Reg. 49(4A) inserted (31.12.2020) by The Conservation (Natural Habitats, &c.) (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/113), regs. 1, **21(5)**; 2020 c. 1, Sch. 5 para. 1(1)
- F23** Words in reg. 49(5) substituted (21.8.2007) by The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007 (S.I. 2007/1843), regs. 2(1), **5(24)(b)** (with reg. 9)
- F24** Reg. 49(7) inserted (S.) (29.6.2007) by The Conservation (Natural Habitats, &c.) Amendment (No. 2) (Scotland) Regulations 2007 (S.S.I. 2007/349), regs. 1(1), **2(4)(c)**

#### Commencement Information

- I3** Reg. 49 in force at 30.10.1994, see **reg. 1(2)**

#### Review of existing decisions and consents, &c.

50.—(1) Where before the date on which a site becomes a European site [<sup>F25</sup>or a European offshore marine site] or, if later, the commencement of these Regulations, a competent authority have decided to undertake, or have given any consent, permission or other authorisation for, a plan or project to which regulation 48(1) would apply if it were to be reconsidered as of that date, the authority shall as soon as reasonably practicable, review their decision or, as the case may be, the consent, permission or other authorisation, and shall affirm, modify or revoke it.

(2) They shall 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 48(2) to (4) [<sup>F26</sup>and regulation 48A] shall apply, with the appropriate modifications, in relation to such a review.

(3) Subject to the following provisions of this Part, any review required by this regulation shall be carried out under existing statutory procedures where such procedures exist, and if none exist the Secretary of State may give directions as to the procedure to be followed.

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

- F25** Words in reg. 50(1) inserted (21.8.2007) by The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007 (S.I. 2007/1843), regs. 2(1), **5(25)** (with reg. 9)

**F26** Words in [reg. 50\(2\)](#) inserted (S.) (29.6.2007) by [The Conservation \(Natural Habitats, &c.\) Amendment \(No. 2\) \(Scotland\) Regulations 2007 \(S.S.I. 2007/349\)](#), regs. 1(1), **2(5)**

**Commencement Information**

**I4** Reg. 50 in force at 30.10.1994, see [reg. 1\(2\)](#)

**Consideration on review**

**51.**—(1) The following provisions apply where a decision, or a consent, permission or other authorisation, falls to be reviewed under regulation 50.

(2) Subject as follows, the provisions of regulation 48(5) and (6) and regulation 49 shall 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 authority reviewing it that other action taken or to be taken by them, or by another authority, will secure that the plan or project does not adversely affect the integrity of the site.

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

(4) The Secretary of State may issue guidance to 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;

and the authorities concerned shall have regard to any guidance so issued in discharging their functions under that paragraph.

(5) Any modification or revocation effected in pursuance of this regulation shall be carried out under existing statutory procedures where such procedures exist.

If none exist, the Secretary of State may give directions as to the procedure to be followed.

**Commencement Information**

**I5** Reg. 51 in force at 30.10.1994, see [reg. 1\(2\)](#)

**Co-ordination where more than one competent authority involved**

**52.**—(1) The following provisions apply 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) [<sup>F27</sup>Subject to regulation 48A,] Nothing in regulation 48(1) or 50(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 Secretary of State may issue guidance to authorities for the purposes of regulations 48 to 51 as to the circumstances in which an 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 [<sup>F28</sup>or a European offshore marine site], or
- (b) will adversely affect the integrity of a European site [<sup>F28</sup>or a European offshore marine site];

and the authorities involved shall have regard to any guidance so issued in discharging their functions under those regulations.

(4) In determining whether a plan or project should be agreed to under regulation 49(1) (considerations of overriding public interest) a competent authority other than the Secretary of State shall seek and have regard to the views of the other competent authority or authorities involved.

**F27** Words in reg. 52(2) inserted (S.) (29.6.2007) by [The Conservation \(Natural Habitats, &c.\) Amendment \(No. 2\) \(Scotland\) Regulations 2007 \(S.S.I. 2007/349\)](#), regs. 1(1), **2(6)**

**F28** Words in reg. 52(3)(a)(b) inserted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(26)** (with reg. 9)

#### Commencement Information

**16** Reg. 52 in force at 30.10.1994, see [reg. 1\(2\)](#)

### Compensatory measures

**53.** Where in accordance with regulation 49 (considerations of overriding public interest)—

- (a) a plan or project is agreed to, notwithstanding a negative assessment of the implications for a European site [<sup>F29</sup>or European offshore marine site], or
- (b) a decision, or a consent, permission or other authorisation, is affirmed on review, notwithstanding such an assessment,

the Secretary of State shall secure that any necessary compensatory measures are taken to ensure that the overall coherence of Natura 2000 is protected.

**F29** Words in reg. 53 inserted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(27)** (with reg. 9)

#### Commencement Information

**17** Reg. 53 in force at 30.10.1994, see [reg. 1\(2\)](#)

### [<sup>F30</sup>Control of operations requiring consent

**53A.**—(1) Regulations 48 and 49 (requirement to consider effect on [<sup>F31</sup>European sites in Great Britain and European offshore marine sites]) apply in relation to the granting of any consent under—

- (a) section 13(4) of the 2004 Act to permit a public body to carry out an operation; or
- (b) section 16(3) of the 2004 Act to permit an owner or occupier of land within a site of special scientific interest to carry out an operation requiring consent on the land.

(2) Where in such a case SNH considers that any adverse effects of the plan or project on the integrity of a European site [<sup>F32</sup>or European offshore marine site] would be avoided if the consent were subject to conditions, it may grant consent subject to those conditions.

(3) Where, in any case, whether in pursuance of sections 13(4) or 16(3) of the 2004 Act or otherwise, in light of the conclusions of an appropriate assessment made under regulation 48(1),

SNH has not given consent for an operation, but it considers that there is a risk that the operation may nevertheless be carried out, it shall notify Scottish Ministers.]

- F30** Reg. 53A inserted (S.) (29.11.2004) by [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2004 \(S.S.I. 2004/475\)](#), regs. 1(1), **16(b)** (with regs. 20, 21)
- F31** Words in reg. 53A(1) substituted (S.) (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(28)(a)** (with reg. 9)
- F32** Words in reg. 53A(2) inserted (S.) (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(28)(b)** (with reg. 9)

### *[<sup>F33</sup>Marine licences*

- F33** Reg. 53B and cross-heading inserted (6.12.2019) by [The Conservation \(Natural Habitats, &c.\) Amendment \(No. 2\) \(Scotland\) Regulations 2019 \(S.S.I. 2019/320\)](#), regs. 1(1), **4**

#### **Marine licences: duty to review**

**53B.**—(1) Subject to paragraph (3), regulations 50 (review of existing decisions and consents, &c.) and 51 (consideration on review) do not apply where—

- (a) a licence was granted by the Scottish Ministers; and
- (b) the conditions in paragraph (2) are met in accordance with that licence.

(2) The conditions mentioned in paragraph (1) are—

- (a) if the activity to which the licence relates includes an activity mentioned in items 1 or 2 of section 21(1) of the 2010 Act, that the substance or object has been fully deposited;
- (b) if the activity to which the licence relates includes an activity mentioned in items 3 to 7, 9 or 10 of section 21(1) of the 2010 Act, that the activity to which the licence relates has been completed;
- (c) if the activity to which the licence relates includes an activity mentioned in item 8 of section 21(1) of the 2010 Act, that the explosive substance or article has been fully used, or fully deposited and used.

(3) If a licence was granted by the Scottish Ministers and the activity to which that licence relates includes the construction, alteration or improvement of a generating station, regulations 50 and 51 do not apply to that licence after the date on which that generating station is first operated.

(4) In this regulation—

“the 2010 Act” means the Marine (Scotland) Act 2010;

“activity” means a licensable marine activity and is to be construed in accordance with section 21 of the 2010 Act;

“generating station” has the meaning given by section 64(1) of the Electricity Act 1989;

“licence” means a marine licence granted under Part 4 of the 2010 Act.]

### *Planning*

#### **Grant of planning permission**

**54.**—(1) Regulations 48 and 49 (requirement to consider effect on [<sup>F34</sup>European sites in Great Britain and European offshore marine sites]) apply, in England and Wales, in relation to—

- (a) granting planning permission on an application under Part III of the Town and Country Planning Act 1990<sup>(1)</sup>;
  - (b) 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<sup>(2)</sup> of that Act in respect of such an application;
  - (c) granting planning permission under—
    - (i) section 141(2)(a) of that Act (action by Secretary of State in relation to purchase notice),
    - (ii) section 177(1)(a)<sup>(3)</sup> of that Act (powers of Secretary of State on appeal against enforcement notice), or
    - (iii) section 196(5)<sup>(4)</sup> of that Act as originally enacted (powers of Secretary of State on reference or appeal as to established use certificate);
  - (d) directing under section 90(1), (2) or (2A)<sup>(5)</sup> of that Act (development with government authorisation), or under section 5(1) of the Pipe-lines Act 1962<sup>(6)</sup>, that planning permission shall be deemed to be granted;
  - (e) making—
    - (i) an order under section 102<sup>(7)</sup> of that Act (order requiring discontinuance of use or removal of buildings or works), including an order made under that section by virtue of section 104 (powers of Secretary of State), which grants planning permission, or
    - (ii) an order under paragraph 1 of Schedule 9<sup>(8)</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 (default powers of Secretary of State), which grants planning permission,or confirming any such order under section 103 of that Act;
  - (f) directing under—
    - (i) section 141(3) of that Act (action by Secretary of State in relation to purchase notice), or
    - (ii) section 35(5) of the Planning (Listed Buildings and Conservation Areas) Act 1990<sup>(9)</sup> (action by Secretary of State in relation to listed building purchase notice),that if an application is made for planning permission it shall be granted.
- (2) Regulations 48 and 49 (requirement to consider effect on <sup>F35</sup>European sites in Great Britain and European offshore marine sites) apply, in Scotland, in relation to—
- (a) granting planning permission on an application under Part III of the Town and Country Planning (Scotland) Act 1972<sup>(10)</sup>;

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(1) 1990 c. 8.

(2) Section 78 was amended by section 17(2) of the Planning and Compensation Act 1991 (c. 34).

(3) Section 177(1)(a) was substituted by paragraph 24(1)(a) of Schedule 7 to the Planning and Compensation Act 1991 (c. 34).

(4) Section 196(5) was repealed by paragraph 33(e) of Schedule 7 to the Planning and Compensation Act 1991 (c. 34), but that repeal does not apply to appeals arising out of applications made under section 192(1) (as originally enacted) before 27th July 1992.

(5) Section 90(2A) was inserted by section 16(1) of the Transport and Works Act 1992 (c. 42).

(6) 1962 c. 58.

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

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

(9) 1990 c. 9.

(10) 1972 c. 52.

- (b) granting planning permission, or upholding a decision of the 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 33 (appeals) of that Act in respect of such an application;
- (c) granting planning permission under—
  - (i) section 172(2) of that Act (action by Secretary of State in relation to purchase notice),
  - (ii) section 85(5)(11) of that Act (powers of Secretary of State on appeal against enforcement notice), or
  - (iii) section 91(3)(12) of that Act as originally enacted (powers of Secretary of State on reference or appeal as to established use certificate);
- (d) directing under section 37(1)(13) (development with government authorisation) of that Act, or under <sup>F36</sup>... that planning permission shall be deemed to be granted;
- (e) making an order under section 49(14) of that Act (order requiring discontinuance of use or removal of buildings or works), including an order made under that section by virtue of section 260 (default powers of Secretary of State), which grants planning permission, or confirming any such order;
- (f) directing under—
  - (i) section 172(3) of that Act (powers of Secretary of State in relation to purchase notice), or
  - (ii) paragraph 2(6) of Schedule 17 to that Act (powers of Secretary of State in relation to listed building purchase notice),

that if an application is made for planning permission it shall be granted.

(3) Where regulations 48 and 49 apply, the competent authority may, if they consider that any adverse effects of the plan or project on the integrity of a European site [<sup>F37</sup>or 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.

(4) Where regulations 48 and 49 apply, [<sup>F38</sup>planning permission in principle] shall not be granted unless the competent authority are satisfied (whether by reason of the conditions and limitations to which the [<sup>F38</sup>planning permission in principle] is to be made subject, or otherwise) that no development likely adversely to affect the integrity of a European site [<sup>F39</sup>or European offshore marine site] could be carried out under the permission, whether before or after obtaining [<sup>F40</sup>any approval, consent or agreement required by a condition imposed on the grant of the permission].

[<sup>F41</sup>In this paragraph “planning permission in principle” has the same meaning as in section 59 of the Town and Country Planning (Scotland) Act 1997].

**F34** Words in reg. 54(1) substituted (E.W.) (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(29)(a)** (with reg. 9)

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- (11) Section 85(5) was amended by paragraph 20 of Schedule 13 to, and Part IV of Schedule 19 to the Planning and Compensation Act 1991 (c. 34).
  - (12) Section 91(3) was repealed by paragraph 26(b) of Schedule 13 to the Planning and Compensation Act 1991 (c. 34), but that repeal does not apply to appeals arising out of applications made under section 90(2) (as originally enacted) before 25th September 1992.
  - (13) Section 37(1) was amended by Part I of Schedule 4 to the Local Government and Planning (Scotland) Act 1982 (c. 43).
  - (14) Section 49 was amended by section 172(2) of the Local Government (Scotland) Act 1973 (c. 65), sections 26 and 35 of the Town and Country Planning (Minerals) Act 1981 (c. 36) and paragraph 5 of Schedule 8, and paragraph 16 of Schedule 13, to the Planning and Compensation Act 1991 (c. 34).

- F35** Words in reg. 54(2) substituted (S.) (21.8.2007) by The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007 (S.I. 2007/1843), regs. 2(1), **5(29)(b)** (with reg. 9)
- F36** Words in reg. 54(2)(d) revoked (1.4.2010) by The Conservation of Habitats and Species Regulations 2010 (S.I. 2010/490), regs. 1(2), **133(2)(b)** (with regs. 125, 134)
- F37** Words in reg. 54(3) inserted (21.8.2007) by The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007 (S.I. 2007/1843), regs. 2(1), **5(29)(c)** (with reg. 9)
- F38** Words in reg. 54(4) substituted (S.) (3.8.2009) by The Planning etc. (Scotland) Act 2006 (Development Management and Appeals) (Saving, Transitional and Consequential Provisions) Order 2009 (S.S.I. 2009/222), arts. 1(1), **14(2)(a)**
- F39** Words in reg. 54(4) inserted (21.8.2007) by The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007 (S.I. 2007/1843), regs. 2(1), **5(29)(d)** (with reg. 9)
- F40** Words in reg. 54(4) substituted (S.) (3.8.2009) by The Planning etc. (Scotland) Act 2006 (Development Management and Appeals) (Saving, Transitional and Consequential Provisions) Order 2009 (S.S.I. 2009/222), arts. 1(1), **14(2)(b)**
- F41** Words in reg. 54(4) substituted (S.) (3.8.2009) by The Planning etc. (Scotland) Act 2006 (Development Management and Appeals) (Saving, Transitional and Consequential Provisions) Order 2009 (S.S.I. 2009/222), arts. 1(1), **14(2)(c)**

#### Commencement Information

- I8** Reg. 54 in force at 30.10.1994, see **reg. 1(2)**

#### Planning permission: duty to review

**55.**—(1) Subject to the following provisions of this regulation, regulations 50 and 51 (requirement to review certain decisions and consents, &c.) apply to any planning permission or deemed planning permission, unless—

- (a) the development to which it related has been completed, or
- (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) Regulations 50 and 51 do not apply to planning permission granted or deemed to have been granted—

- (a) by a development order (but see regulations 60 to 64 below);
- (b) by virtue of the adoption of a simplified planning zone scheme or of alterations to such a scheme (but see regulation 65 below);
- (c) by virtue of the taking effect of an order designating an enterprise zone under Schedule 32 to the Local Government, Planning and Land Act 1980(**15**), or by virtue of the approval of a modified enterprise zone scheme (but see regulation 66 below).

(3) Planning permission deemed to be granted by virtue of—

- (a) a direction under section 90(1) of the Town and Country Planning Act 1990 or section 37(1) of the Town and Country Planning (Scotland) Act 1972 in respect of development for which an authorisation has been granted under section 1 or 3 of the Pipe-lines Act 1962(**16**),
- (b) a direction under section 5(1) of the Pipe-lines Act 1962,

(15) 1980 c. 65.

(16) 1962 c. 58.

- (c) a direction under section 90(1) of the Town and Country Planning Act 1990 or section 37(1) of the Town and Country Planning (Scotland) Act 1972 in respect of development for which a consent has been given under section 36 or 37 of the Electricity Act 1989,
- (d) a direction under section 90(2) of the Town and Country Planning Act 1990 or paragraph 7 of Schedule 8 to the Electricity Act 1989, or
- (e) a direction under section 90(2A) of the Town and Country Planning Act 1990 (which relates to development in pursuance of an order under section 1 or 3 of the Transport and Works Act 1992<sup>(17)</sup>),

shall be reviewed in accordance with the following provisions of this Part 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 Town and Country Planning Act 1990 or section 37(1) of the Town and Country Planning (Scotland) Act 1972, the local planning authority shall—

- (a) identify any such permission which they consider falls to be reviewed under regulations 50 and 51, and
- (b) refer the matter to the government department which made the direction;

and the department shall, if it agrees that the planning permission does fall to be so reviewed, thereupon review the direction in accordance with those regulations.

(5) Save as otherwise expressly provided, regulations 50 and 51 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 Secretary of State falls to be reviewed under regulations 50 and 51—

- (a) it shall be reviewed by the local planning authority, and
- (b) the power conferred by section 97 of the Town and Country Planning Act 1990 or section 42 of the Town and Country Planning (Scotland) Act 1972 (revocation or modification of planning permission) shall be exercisable by that authority as in relation to planning permission granted on an application under Part III of that Act.

In a non-metropolitan county in England <sup>F42</sup>... the function of reviewing any such planning permission shall be exercised by the district planning authority unless it relates to a county matter (within the meaning of Schedule 1 to the Town and Country Planning Act 1990) in which case it shall be exercised by the county planning authority.

**F42** Words in [reg. 55\(6\)](#) omitted (E.W.) (1.4.1996) by virtue of [The Local Government Reorganisation \(Wales\) \(Consequential Amendments\) Order 1996 \(S.I. 1996/525\)](#), arts. 1, 3, [Sch. para. 18\(4\)](#)

**Commencement Information**

**I9** Reg. 55 in force at 30.10.1994, see [reg. 1\(2\)](#)

**Planning permission: consideration on review**

**56.**—(1) In reviewing any planning permission or deemed planning permission in pursuance of regulations 50 and 51, the competent authority shall, in England and Wales—

- (a) consider whether any adverse effects could be overcome by planning obligations under section 106<sup>(18)</sup> of the Town and Country Planning Act 1990 being entered into, and

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(17) 1992 c. 42.

(18) Section 106 was substituted by section 12(1) of the Planning and Compensation Act 1991 (c. 34).

- (b) if they consider that those effects could be so overcome, invite those concerned to enter into such obligations;

and so far as the adverse effects are not thus overcome the authority shall make such order under section 97 of that Act (power to revoke or modify planning permission), or under section 102 of or paragraph 1 of Schedule 9 to that Act (order requiring discontinuance of use, &c.), as may be required.

(2) In reviewing any planning permission or deemed planning permission in pursuance of regulations 50 and 51, the competent authority shall, in Scotland—

- (a) consider whether any adverse effects could be overcome by an agreement under section 50 (agreements regulating development or use of land) of the Town and Country Planning (Scotland) Act 1972 being entered into, and
- (b) if they consider that those effects could be so overcome, invite those concerned to enter into such an agreement;

and so far as the adverse effects are not thus overcome, the authority shall make such order under section 42 of that Act<sup>(19)</sup> (power to revoke or modify planning permission), or under section 49 of that Act<sup>(20)</sup> (orders requiring discontinuance of use, &c.) as may be required.

(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 [<sup>F43</sup>or European offshore marine site], they nevertheless need not proceed under regulations 50 and 51 if and so long as they consider that there is no likelihood of the development being carried out or continued.

**F43** Words in [reg. 56\(3\)](#) inserted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), [regs. 2\(1\)](#), **5(30)** (with [reg. 9](#))

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**Commencement Information**

**I10** Reg. 56 in force at 30.10.1994, see [reg. 1\(2\)](#)

**Effect of orders made on review: England and Wales**

<sup>F157</sup>. . . . .

**Effect of orders made on review: Scotland**

**58.**—(1) An order under section 42 of the Town and Country Planning (Scotland) Act 1972 (power to revoke or modify planning permission) made pursuant to regulation 55 shall take effect upon service of the notices required by subsection (3) of that section 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 Secretary of State determines not to confirm such an order, the order shall cease to have effect from the time of that determination, and the permission revoked or modified by the order shall thereafter have effect as if the order had never been made, and—

- (a) 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) above, shall be extended by a period equal to that during which the order had effect; and

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<sup>(19)</sup> Section 42 was amended by section 172(2) of the Local Government (Scotland) Act [1973 \(c. 65\)](#) and sections 26 and 35 of the Town and Country Planning (Minerals) Act [1981 \(c. 36\)](#).

<sup>(20)</sup> Section 49 was amended by section 172(2) of the Local Government (Scotland) Act [1973 \(c. 65\)](#), sections 26 and 35 of the Town and Country Planning (Minerals) Act [1981 \(c. 36\)](#) and paragraph 5 of Schedule 8, and paragraph 16 of Schedule 13 to the Planning and Compensation Act [1991 \(c. 34\)](#).

(b) there shall be substituted for any date specified in the permission as being a date by which any action should be taken, not being a date falling prior to that date upon which the order took effect under paragraph (1) above, such date as post– dates the specified date by a period equal to that during which the order had effect.

(3) An order under section 49 of the Town and Country Planning (Scotland) Act 1972 (order requiring discontinuance of use, &c.) made pursuant to regulation 55 shall, insofar as it requires the discontinuance of a use of land or imposes conditions upon the continuance of a use of land, take effect upon service of the notices required by subsection (5) of that section or, where there is more than one such notice and those notices are served at different times, upon service of the last such notice to be served.

(4) Where the Secretary of State determines not to confirm any such order, the order shall cease to have effect from the time of that determination and the use which by the order was discontinued or upon whose continuance conditions were imposed–

(a) may thereafter be continued as if the order had never been made, and

(b) shall be treated for the purposes of the Town and Country Planning (Scotland) Act 1972 as if it had continued without interruption throughout the period during which the order had effect.

(5) An order under section 42 of that Act (power to modify or revoke planning permission) made in pursuance of regulation 55 shall not affect so much of the development authorised by the permission as was carried out prior to the site becoming a European site or, if later, the commencement of these Regulations.

(6) An order under section 49 of that Act (order requiring discontinuance of use, &c.) made in pursuance of regulation 55 above shall not affect any use made of the land prior to the site becoming a European site [<sup>F44</sup>or European offshore marine site] or, if later, the commencement of these Regulations.

**F44** Words in [reg. 58\(6\)](#) inserted (S.) (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), [regs. 2\(1\), 5\(32\)](#) (with [reg. 9](#))

#### **Commencement Information**

**I11** Reg. 58 in force at 30.10.1994, see [reg. 1\(2\)](#)

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

**59.** –

(1) Where the Secretary of State determines not to confirm–

(a) an order under section 97 of the Town and Country Planning Act 1990 (revocation or modification of planning permission) which has taken effect under regulation 57(1), or

(b) an order under section 42 of the Town and Country Planning (Scotland) Act 1972 (revocation or modification of planning permission) which has taken effect under regulation 58(1),

and claim for compensation under section 107 of the Act of 1990 or section 153 of the Act of 1972 shall be 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 Secretary of State determining not to confirm the order.

(2) Where the Secretary of State determines not to confirm–

(a) an order under section 102 of the Town and Country Planning Act 1990 (order requiring discontinuance of use, &c.) which has taken effect under regulation 57(3) above, or

(b) an order under section 49 of the Town and Country Planning (Scotland) Act 1972 (order requiring discontinuance of use, &c.) which has taken effect under regulation 58(3) above, any claim for compensation under section 115 of the Act of 1990 or section 159 of the Act of 1972 shall be 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 Secretary of State determining not to confirm the order.

(3) Where compensation is payable in respect of—

- (a) an order under section 97 of the Town and Country Planning Act 1990, or
- (b) any order mentioned in section 115(1) of that Act (compensation in respect of orders under s.102, &c.), or to which that section applies by virtue of section 115(5),

and the order has been made pursuant to regulation 50, the question as to the amount of the compensation shall be referred, by the authority liable to pay the compensation, to and be determined by the [<sup>F45</sup>Upper Tribunal] unless and to the extent that in any particular case the Secretary of State has indicated in writing that such a reference and determination may be dispensed with.

(4) Where compensation is payable in respect of—

- (a) an order under section 42 of the Town and Country Planning (Scotland) Act 1972 (revocation or modification of planning permission), or
- (b) any order mentioned in section 153(1) of that Act (compensation in respect of orders under s.49),

and the order has been made pursuant to regulation 50, the question as to the amount of the compensation shall be referred, by the authority liable to pay the compensation, to and be determined by the Lands Tribunal for Scotland unless and to the extent that in any particular case the Secretary of State has indicated in writing that such a reference and determination may be dispensed with.

**F45** Words in [reg. 59\(3\)](#) substituted (1.6.2009) by [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 1, [Sch. 2 para. 47](#) (with [Sch. 5](#))

#### Commencement Information

**I12** Reg. 59 in force at 30.10.1994, see [reg. 1\(2\)](#)

### General development orders

**60.**—(1) It shall be a condition of any planning permission granted by a general development order, whether made before or after the commencement of these Regulations, that development which—

- (a) is likely to have a significant effect on a European site in Great Britain [<sup>F46</sup>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,

shall not be begun until the developer has received written notification of the approval of the local planning authority under regulation 62.

(2) It shall be a condition of any planning permission granted by a general development order made before the commencement of these Regulations that development which—

- (a) is likely to have a significant effect on a European site in Great Britain (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,

and which was begun but not completed before the commencement of these Regulations, shall not be continued until the developer has received written notification of the approval of the local planning authority under regulation 62.

(3) Nothing in this regulation shall affect anything done before the commencement of these Regulations.

**F46** Words in [reg. 60\(1\)\(a\)](#) inserted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), [regs. 2\(1\), 5\(33\)](#) (with [reg. 9](#))

**Modifications etc. (not altering text)**

**C2** [Reg. 60](#) excluded (31.10.2002) by [The Felixstowe Dock and Railway Harbour Revision Order 2002 \(S.I. 2002/2618\)](#), [arts. 1, 17](#)

**C3** [Reg. 60](#) excluded (30.8.2004) by [The Associated British Ports \(Immingham Outer Harbour\) Harbour Revision Order 2004 \(S.I. 2004/2190\)](#), [arts. 1, 18](#) (with [art. 20](#))

**C4** [Reg. 60](#) excluded (12.10.2006) by [The Humber Sea Terminal \(Phase III\) Harbour Revision Order 2006 \(S.I. 2006/2604\)](#), [arts. 1\(1\), 19\(1\)](#) (with [art. 19\(2\)](#))

**C5** [Reg. 60](#) excluded (19.3.2010) by [The Portland Harbour Revision Order 2010 \(S.I. 2010/703\)](#), [arts. 1\(1\), 17\(1\)](#) (with [art. 17\(2\)](#))

**C6** [Reg. 60](#) excluded (19.8.2014) by [The Port of Ardersier Harbour Revision Order 2014 \(S.S.I. 2014/224\)](#), [arts. 1\(1\), 33\(1\)](#) (with [arts. 31, 32, 33\(2\), 34](#))

**Commencement Information**

**I13** [Reg. 60](#) in force at 30.10.1994, see [reg. 1\(2\)](#)

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

**61.—(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 whether the development is likely to have such an effect as is mentioned in regulation 60(1)(a) or (2)(a).

The application shall give details of the development which is intended to be carried out.

(2) On receiving such an application, the appropriate nature conservation body shall consider whether the development is likely to have such an effect.

(3) Where they consider that they have sufficient information to conclude that the development will, or will not, have such an effect, they shall in writing notify the applicant and the local planning authority of their opinion.

(4) If they consider that they have insufficient information to reach either of those conclusions, they shall 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.

(5) The opinion of the appropriate nature conservation body, notified in accordance with paragraph (3), that the development is not likely to have such an effect as is mentioned in regulation 60(1)(a) or (2)(a) shall be conclusive of that question for the purpose of reliance on the planning permission granted by a general development order.

**Commencement Information**

**I14** [Reg. 61](#) in force at 30.10.1994, see [reg. 1\(2\)](#)

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

**62.**—(1) Where it is intended to carry out development in reliance upon the permission granted by a general development order, application may be made in writing to the local planning authority for their approval.

(2) The application shall—

(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 61, and

(ii) any fee required to be paid.

(3) For the purposes of their consideration of the application the local planning authority shall assume that the development is likely to have such an effect as is mentioned in regulation 60(1)(a) or (2)(a).

(4) The authority shall send a copy of the application to the appropriate nature conservation body and shall take account of any representations made by them.

(5) If in their representations the appropriate nature conservation body state their opinion that the development is not likely to have such an effect as is mentioned in regulation 60(1)(a) or (2)(a), the local planning authority shall send a copy of the representations to the applicant; and the sending of that copy shall have the same effect as a notification by the appropriate nature conservation body of its opinion under regulation 61(3).

(6) In any other case [<sup>F47</sup>in which the application has been sent to the appropriate nature conservation body,] the local planning authority shall, 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 [<sup>F48</sup>or European offshore marine site] in view of that site's conservation objectives.

In the light of the conclusions of the assessment the authority shall approve the development only after having ascertained that it will not adversely affect the integrity of the site.

**F47** Words in [reg. 62\(6\)](#) inserted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), [regs. 2\(1\), 5\(34\)\(a\)](#) (with [reg. 9](#))

**F48** Words in [reg. 62\(6\)](#) inserted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), [regs. 2\(1\), 5\(34\)\(b\)](#) (with [reg. 9](#))

#### Commencement Information

**I15** Reg. 62 in force at 30.10.1994, see [reg. 1\(2\)](#)

### General development orders: supplementary

**63.**—(1) The local planning authority for the purposes of regulations 60 to 62 shall be the authority to whom an application for approval under regulation 62 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—

(a) £25 in the case of applications made before 3rd January 1995, and

(b) £30 in the case of applications made on or after that date.

(3) Approval required by regulation 60 shall be treated—

*Changes to legislation: There are currently no known outstanding effects for the The Conservation (Natural Habitats, &c.) Regulations 1994, PART IV. (See end of Document for details)*

- (a) for the purposes of the provisions of the Town and Country Planning Act 1990(21), or the Town and Country Planning (Scotland) Act 1972(22), 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 made, as approval required by a condition attached to a grant of planning permission.

**Commencement Information**

**I16** Reg. 63 in force at 30.10.1994, see [reg. 1\(2\)](#)

**Special development orders**

**64.**—(1) A special development order made after the commencement of these Regulations may not grant planning permission for development which—

- (a) is likely to have a significant effect on a European site in Great Britain (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;

and any such order made before the commencement of these Regulations shall, on and after that date, cease to have effect to grant such permission, whether or not the development authorised by the permission has been begun.

(2) Nothing in [<sup>F49</sup> paragraph (1)] shall affect anything done before the commencement of these Regulations.

[<sup>F50</sup>(3) A special development order made on or after 21st August 2007 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).]

**F49** Words in [reg. 64\(2\)](#) substituted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(35)(a)** (with [reg. 9](#))

**F50** [Reg. 64\(3\)](#) inserted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(35)(b)** (with [reg. 9](#))

**Commencement Information**

**I17** Reg. 64 in force at 30.10.1994, see [reg. 1\(2\)](#)

**Local development orders**

<sup>F1</sup>**64A.** . . . . .

**Simplified planning zones**

**65.** The adoption or approval of a simplified planning zone scheme after the commencement of these Regulations shall not have effect to grant planning permission for development which—

- (a) is likely to have a significant effect on a European site in Great Britain (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;

(21) 1990 c. 8.  
(22) 1972 c. 52.

and every simplified planning zone scheme already in force shall cease to have effect to grant such permission, whether or not the development authorised by the permission has been begun.

**Commencement Information**

**I18** Reg. 65 in force at 30.10.1994, see [reg. 1\(2\)](#)

**[<sup>F51</sup>Simplified planning zones and European offshore marine sites**

**65A.** The adoption or approval of a simplified planning zone scheme on or after 21st August 2007 shall not have effect 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).]

**F51** Reg. 65A inserted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(37)** (with [reg. 9](#))

**Enterprise zones**

**66.** An order designating an enterprise zone, or the approval of a modified scheme, if made or given after the commencement of these Regulations, shall not have effect to grant planning permission for development which—

- (a) is likely to have a significant effect on a European site in Great Britain (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;

and where the order or approval was made or given before that date, the permission granted by virtue of the taking effect of the order or the modifications shall, from that date, cease to have effect to grant planning permission for such development, whether or not the development authorised by the permission has been begun.

**Commencement Information**

**I19** Reg. 66 in force at 30.10.1994, see [reg. 1\(2\)](#)

**[<sup>F52</sup>Enterprise zones and European offshore marine sites**

**66A.** An order designating an enterprise zone, or the approval of a modified scheme, if made or given on or after 21st August 2007, shall not have effect 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).]

**F52** Reg. 66A inserted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(38)** (with [reg. 9](#))

**Simplified planning zones and enterprise zones: supplementary provisions as to compensation**

**67.—(1)** Where in England and Wales—

*Changes to legislation: There are currently no known outstanding effects for the The Conservation (Natural Habitats, &c.) Regulations 1994, PART IV. (See end of Document for details)*

- (a) planning permission is withdrawn by regulation 65 or 66, and
- (b) development authorised by the permission had been begun but not completed before the commencement of these Regulations, and
- (c) on an application made under Part III of the Town and Country Planning Act 1990 before the end of the period of 12 months beginning with the date of commencement of these Regulations, planning permission for the development is refused or is granted subject to conditions other than those imposed by the scheme,

section 107(1)(a) of that Act (compensation in respect of abortive expenditure) shall apply as if the permission granted by the scheme had been granted by the local planning authority under Part III of that Act and had been revoked or modified by an order under section 97 of that Act.

(2) Where in Scotland—

- (a) planning permission is withdrawn by regulation 65 or 66, and
- (b) development authorised by the permission had been begun but not completed before the commencement of these Regulations, and
- (c) on an application made under Part III of the Town and Country Planning (Scotland) Act 1972 before the end of the period of 12 months beginning with the date of commencement of these Regulations, planning permission for the development is refused or is granted subject to conditions other than those imposed by the scheme,

section 153(1)(a) of that Act (compensation in respect of abortive expenditure) shall apply as if the permission granted by the scheme had been granted by the local planning authority under Part III of that Act and had been revoked or modified by an order under section 42 of that Act.

(3) Paragraphs (1) and (2) above do not apply in relation to planning permission for the development of operational land by statutory undertakers.

**Commencement Information**

**I20** Reg. 67 in force at 30.10.1994, see [reg. 1\(2\)](#)

**Grant of development consent**

<sup>F53</sup>**67A.** . . . . .

**F53** Reg. 67A revoked (1.4.2010) by [The Conservation of Habitats and Species Regulations 2010 \(S.I. 2010/490\)](#), regs. 1(2), **133(2)(c)** (with regs. 125, 134)

**Development consent: review**

<sup>F54</sup>**67B.** . . . . .

**F54** Reg. 67B revoked (1.4.2010) by [The Conservation of Habitats and Species Regulations 2010 \(S.I. 2010/490\)](#), regs. 1(2), **133(2)(c)** (with regs. 125, 134)

**[<sup>F55</sup> Interpretation**

**68.**—(1) Regulations 54 to 67 shall be construed—

- (a) in England and Wales, as one with the Town and Country Planning Act 1990; and
- (b) in Scotland, as one with the Town and Country Planning (Scotland) Act 1997.

<sup>F56</sup>(2) .....]

- F55** Reg. 68 substituted (1.10.2009) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) \(No. 2\) Regulations 2009 \(S.I. 2009/2438\)](#), regs. 1(1), **6(2)**
- F56** Reg. 68(2) revoked (1.4.2010) by [The Conservation of Habitats and Species Regulations 2010 \(S.I. 2010/490\)](#), regs. 1(2), **133(2)(c)** (with regs. 125, 134)

**Commencement Information**

- I21** Reg. 68 in force at 30.10.1994, see [reg. 1\(2\)](#)

*Highways and roads*

**Construction or improvement of highways or roads**

**69.**—(1) Regulations 48 and 49 (requirement to consider effect on [<sup>F57</sup>European sites in Great Britain and European offshore marine sites]) apply in relation to any plan or project—

- (a) by the Secretary of State—
- (i) to construct a new highway or to improve, within the meaning of the Highways Act 1980(**23**), an existing highway, or
  - (ii) to construct a new road or to improve, within the meaning of the Roads (Scotland) Act 1984(**24**), an existing road; or
- (b) by a local highway authority or local roads authority, to carry out within the boundaries of a road any works required for the improvement of the road.

(2) Regulations 50 and 51 (requirement to review certain decisions and consents, &c.) apply to any such plan or project as is mentioned in paragraph (1) unless the works have been completed before the site became a European site [<sup>F58</sup>or European offshore marine site] or, if later, the commencement of these Regulations.

- F57** Words in [reg. 69\(1\)](#) substituted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(39)(a)** (with [reg. 9](#))
- F58** Words in [reg. 69\(2\)](#) inserted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(39)(b)** (with [reg. 9](#))

**Commencement Information**

- I22** Reg. 69 in force at 30.10.1994, see [reg. 1\(2\)](#)

**[<sup>F59</sup>Core and other paths**

**69A.**—(1) Regulations 48 and 49 (requirement to consider effect on [<sup>F60</sup>European sites in Great Britain and European offshore marine sites]) apply in relation to a local authority’s proposal—

- (a) to draw up or change a plan for core paths under section 17 of the Land Reform (Scotland) Act 2003 (asp 2);
- (b) to enter a path agreement under section 21 of that Act;
- (c) to create or maintain a path delineated under such an agreement;
- (d) as to how any such path is to be created or maintained;

(23) 1980 c. 66; the expression “improvement” is defined in section 329(1) of the Act.

(24) 1984 c. 54; the expression “improvement” is defined in section 151(1) of the Act.

*Changes to legislation: There are currently no known outstanding effects for the The Conservation (Natural Habitats, &c.) Regulations 1994, PART IV. (See end of Document for details)*

- (e) to make a path order under section 22 of that Act;
- (f) as to how any path delineated under such an order is to be created or maintained.

(2) Regulations 50 and 51 (requirement to review certain decisions) apply to any decision by a local authority in relation to any of the things mentioned in paragraph (1).]

**F59** S. 69A inserted (S.) (9.2.2005) by [Land Reform \(Scotland\) Act 2003 \(asp 2\)](#), s. 100(3), **Sch. 2 para. 16**; S.S.I. 2005/17, **art. 2(b)**

**F60** Words in s. 69A substituted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(40)** (with reg. 9)

**Cycle tracks and other ancillary works**

**70.** As from the commencement of these Regulations, section 3(10) of the Cycle Tracks Act 1984(25) and section 152(4) of the Roads (Scotland) Act 1984 shall cease to have effect to deem planning permission to be granted for development which—

- (a) is likely to have a significant effect on a European site in Great Britain (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.

**Commencement Information**

**I23** Reg. 70 in force at 30.10.1994, see [reg. 1\(2\)](#)

*Electricity*

**Consents under Electricity Act 1989: application of general requirements**

<sup>F61</sup>**71.** . . . . .

**F61** Regs. 71-74 revoked (1.4.2010) by [The Conservation of Habitats and Species Regulations 2010 \(S.I. 2010/490\)](#), regs. 1(2), **133(2)(d)** (with regs. 125, 134)

**Consents under the Electricity Act 1989: procedure on review**

<sup>F61</sup>**72.** . . . . .

**F61** Regs. 71-74 revoked (1.4.2010) by [The Conservation of Habitats and Species Regulations 2010 \(S.I. 2010/490\)](#), regs. 1(2), **133(2)(d)** (with regs. 125, 134)

**Consents under Electricity Act 1989: effect of review**

<sup>F61</sup>**73.** . . . . .

**F61** Regs. 71-74 revoked (1.4.2010) by The Conservation of Habitats and Species Regulations 2010 (S.I. 2010/490), regs. 1(2), **133(2)(d)** (with regs. 125, 134)

**Consents under Electricity Act 1989: compensation for revocation or variation**

**F61**74. ....

**F61** Regs. 71-74 revoked (1.4.2010) by The Conservation of Habitats and Species Regulations 2010 (S.I. 2010/490), regs. 1(2), **133(2)(d)** (with regs. 125, 134)

*Pipe-lines*

**Authorisations under the Pipe-lines Act 1962: application of general requirements**

**F62**75. ....

**F62** Regs. 75-78 revoked (1.4.2010) by The Conservation of Habitats and Species Regulations 2010 (S.I. 2010/490), regs. 1(2), **133(2)(e)** (with regs. 125, 134)

**Authorisations under the Pipe-lines Act 1962: procedure on review**

**F62**76. ....

**F62** Regs. 75-78 revoked (1.4.2010) by The Conservation of Habitats and Species Regulations 2010 (S.I. 2010/490), regs. 1(2), **133(2)(e)** (with regs. 125, 134)

**Authorisations under the Pipe-lines Act 1962: effect of review**

**F62**77. ....

**F62** Regs. 75-78 revoked (1.4.2010) by The Conservation of Habitats and Species Regulations 2010 (S.I. 2010/490), regs. 1(2), **133(2)(e)** (with regs. 125, 134)

**Authorisations under the Pipe-lines Act 1962: compensation for revocation or variation**

**F62**78. ....

**F62** Regs. 75-78 revoked (1.4.2010) by The Conservation of Habitats and Species Regulations 2010 (S.I. 2010/490), regs. 1(2), **133(2)(e)** (with regs. 125, 134)

### *Transport and works*

#### **Orders under the Transport and Works Act 1992: application of general requirements**

**79.**—(1) Regulations 48 and 49 (requirement to consider effect on European site) apply in relation to the making of an order under section 1 or 3 of the Transport and Works Act 1992(26).

(2) Where in such a case the Secretary of State considers that any adverse effects of the plan or project on the integrity of a European site would be avoided by making modifications to the proposals, he may make an order subject to those modifications.

(3) Regulations 50 and 51 (requirement to review existing decisions and consents, &c.) apply to an order under section 1 or 3 of the Transport and Works Act 1992 unless the works to which the order relates have been completed before the site became a European site.

(4) Where on the review of such an order the Secretary of State considers that any adverse effects on the integrity of a European 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 order, he may vary it accordingly.

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

#### **Commencement Information**

**I24** Reg. 79 in force at 30.10.1994, see [reg. 1\(2\)](#)

#### **Orders under the Transport and Works Act 1992: procedure on review**

**80.**—(1) Where the Secretary of State decides in pursuance of regulation 79 to revoke or vary an order the Transport and Works Act 1992, or a direction deeming planning permission to be granted, he shall serve notice on—

- (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 his opinion will be affected by the revocation or variation,

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 him.

(2) The Secretary of State shall 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.

(3) The Secretary of State shall consider whether to proceed with the revocation or variation, and shall have regard to any representations made to him in accordance with paragraph (1) or (2).

(4) If within the specified period a person on whom notice was served under paragraph (1), or the local planning authority, so requires, the Secretary of State shall before deciding whether to proceed with the revocation or variation of the order or direction give—

- (a) to them,
- (b) to any other person on whom notice under paragraph (1) and (2) was required to be served,

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

**Commencement Information**

**I25** Reg. 80 in force at 30.10.1994, see [reg. 1\(2\)](#)

**Order under the Transport and Works Act 1992: effect of review**

**81.**—(1) The revocation or variation pursuant to regulation 79 of an order under the Transport and Works Act 1992, or of a direction deeming planning permission to be granted, shall take effect upon service of the notices required by regulation 80(1) or, where there is more than one such notice and those notices are served at different times, upon the service of the last notice to be served.

(2) Where the Secretary of State decides not to proceed with the revocation or variation, the order or direction shall have effect again from the time of that decision, and shall thereafter have 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 prior to the date mentioned in paragraph (1), 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, not being a date falling prior to that date mentioned in paragraph (1), such date as post-dates the specified date by a period equal to that during which the revocation or variation had effect.

(3) The revocation or variation pursuant to regulation 79 of an order under section 1 or 3 of the Transport and Works Act 1992, or of a direction deeming planning permission to be granted, shall not affect anything done under the order or direction prior to the revocation or variation taking effect.

**Commencement Information**

**I26** Reg. 81 in force at 30.10.1994, see [reg. 1\(2\)](#)

**Orders under the Transport and Works Act 1992: compensation for revocation or variation**

**82.**—(1) Where a direction deeming planning permission to be granted is revoked or varied pursuant to regulation 79, that permission shall be treated for the purposes of Part IV of the Town and Country Planning Act 1990 (compensation) as having been revoked or modified by order under section 97 of that Act.

(2) Where an order under section 1 or 3 of the Transport and Works Act 1992 is revoked or varied pursuant to regulation 79, Part IV of the Town and Country Planning Act 1990 shall apply 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 Secretary of State was the person liable to pay any compensation provided for by that Part.

This paragraph shall not have effect to confer any right to compensation for any expenditure, loss or damage for which compensation is payable by virtue of paragraph (1) above.

(3) Where the Secretary of State decides not to proceed with the revocation or variation of an order under section 1 or 3 of the Transport and Works Act 1992, or a direction deeming planning permission to be granted, any claim for compensation by virtue of this regulation shall be 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 81(1) and the Secretary of State deciding not to proceed with it.

(4) Where compensation is payable by virtue of this regulation, the question as to the amount of the compensation shall be referred to and determined by the [<sup>F63</sup>Upper Tribunal] unless and to the extent that in any particular case the Secretary of State has indicated in writing that such a reference and determination may be dispensed with.

**F63** Words in reg. 82(4) substituted (1.6.2009) by [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 1, **Sch. 2 para. 50** (with Sch. 5)

#### Commencement Information

**I27** Reg. 82 in force at 30.10.1994, see [reg. 1\(2\)](#)

### *Environmental controls*

#### **Authorisations under Part I of the Environmental Protection Act 1990**

[<sup>F64</sup>83.—<sup>F65</sup>(1) .....

<sup>F65</sup>(2) .....

(3) Regulations 50 and 51 (requirement to review existing decisions and consents, &c.) apply to any [<sup>F66</sup>authorisation under Part I of the Environmental Protection Act 1990].

(4) Where on the review of such an authorisation the competent authority consider that any adverse effects on the integrity of a European 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 authorisation, they may vary it, or cause it to be varied, accordingly.

(5) Where any question arises as to <sup>F67</sup>... affirming an authorisation on review, under regulation 49 (considerations of overriding public interest), the competent authority shall refer the matter to the Secretary of State who shall determine the matter in accordance with that regulation and give directions to the authority accordingly.]

**F64** Regs. 83, 84 omitted (E.W.) (6.4.2008) by virtue of [The Environmental Permitting \(England and Wales\) Regulations 2007 \(S.I. 2007/3538\)](#), reg. 1(1)(b), **Sch. 21 para. 35(2)** (with regs. 69-72)

**F65** Reg. 83(1)(2) omitted (21.8.2007) by virtue of [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(44)(a)** (with reg. 9)

**F66** Words in reg. 83(3) substituted (21.8.2007) by [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(44)(b)** (with reg. 9)

**F67** Words in reg. 83(5) omitted (21.8.2007) by virtue of [The Conservation \(Natural Habitats, &c.\) \(Amendment\) Regulations 2007 \(S.I. 2007/1843\)](#), regs. 2(1), **5(44)(c)** (with reg. 9)

#### Commencement Information

**I28** Reg. 83 in force at 30.10.1994, see [reg. 1\(2\)](#)

#### **Licences under Part II of the Environmental Protection Act 1990**

[<sup>F64</sup>84.—(1) Regulations 48 and 49 (requirement to consider effect on [<sup>F68</sup>European sites in Great Britain and European offshore marine sites]) apply in relation to—

- (a) the granting of a waste management licence under Part II of the Environmental Protection Act 1990 [<sup>F69</sup>, and]
- (b) the passing of a resolution under section 54 of that Act (provisions as to land occupied by disposal authorities themselves). <sup>F70</sup> ...

<sup>F71</sup>(c) .....

(2) Where in such a case the competent authority consider that any adverse effects of the plan or project on the integrity of a European site [<sup>F72</sup>or European offshore marine site] would be avoided by making any licence subject to conditions, they may grant a licence, or cause a licence to be granted, or, as the case may be, pass a resolution, subject to those conditions.

(3) Regulations 50 and 51 (requirement to review existing decisions and consents, &c.) apply to any such licence or resolution as is mentioned in paragraph (1).

(4) Where on the review of such a licence or resolution the competent authority consider that any adverse effects on the integrity of a European site [<sup>F73</sup>or 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 licence or resolution, they may vary it, or cause it to be varied, accordingly.]

- F64** Regs. 83, 84 omitted (E.W.) (6.4.2008) by virtue of *The Environmental Permitting (England and Wales) Regulations 2007* (S.I. 2007/3538), reg. 1(1)(b), **Sch. 21 para. 35(2)** (with regs. 69-72)
- F68** Words in reg. 84(1) substituted (21.8.2007) by *The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007* (S.I. 2007/1843), regs. 2(1), **5(45)(a)(i)** (with reg. 9)
- F69** Words in reg. 84(1)(a) inserted (21.8.2007) by *The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007* (S.I. 2007/1843), regs. 2(1), **5(45)(a)(ii)** (with reg. 9)
- F70** Word in reg. 84(1)(b) omitted (21.8.2007) by virtue of *The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007* (S.I. 2007/1843), regs. 2(1), **5(45)(a)(iii)** (with reg. 9)
- F71** Reg. 84(1)(c) omitted (21.8.2007) by virtue of *The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007* (S.I. 2007/1843), regs. 2(1), **5(45)(a)(iv)** (with reg. 9)
- F72** Words in reg. 84(2) inserted (21.8.2007) by *The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007* (S.I. 2007/1843), regs. 2(1), **5(45)(b)** (with reg. 9)
- F73** Words in reg. 84(4) inserted (21.8.2007) by *The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007* (S.I. 2007/1843), regs. 2(1), **5(45)(c)** (with reg. 9)

**Commencement Information**

**I29** Reg. 84 in force at 30.10.1994, see **reg. 1(2)**

**[<sup>F74</sup>Permits under [<sup>F75</sup>the Pollution Prevention and Control (Scotland) Regulations 2012]**

**84A.**—(1) Regulations 48 and 49 (requirement to consider effect on [<sup>F76</sup>European sites in Great Britain and European offshore marine sites]) apply in relation to the granting of a permit under [<sup>F77</sup>the Pollution Prevention and Control (Scotland) Regulations 2012].

(2) Where in such a case the competent authority consider that any adverse effects of the plan or project on the integrity of a European site [<sup>F78</sup>or European offshore marine site] would be avoided if the permit were subject to conditions, they may grant a permit, or cause a permit to be granted, subject to those conditions.

(3) Regulations 50 and 51 (requirement to review existing decisions and consents, &c.) apply to any such permit as is mentioned in paragraph (1).

(4) Where on the review of such a permit the competent authority consider that any adverse effects on the integrity of a European site [<sup>F79</sup>or 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, they may vary it, or cause it to be varied, accordingly.]

(5) Where any question arises as to agreeing to a plan or project, of affirming a permit on review, under regulation 49 (considerations of overriding public interest), the competent authority shall refer the matter to the Scottish Ministers who shall determine the matter in accordance with that regulation and give directions to the authority accordingly.]

- F74** Reg. 84A inserted (S.) (28.9.2000) by The Pollution Prevention and Control (Scotland) Regulations 2000 (S.S.I. 2000/323), reg. 1(1), **sch. 10 para. 12** (with reg. 34)
- F75** Words in reg. 84A heading substituted (7.1.2013) by The Pollution Prevention and Control (Scotland) Regulations 2012 (S.S.I. 2012/360), reg. 1(2), **sch. 11 para. 7(2)** (with reg. 71)
- F76** Words in reg. 84A(1) substituted (21.8.2007) by The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007 (S.I. 2007/1843), regs. 2(1), **5(47)(a)** (with reg. 9)
- F77** Words in reg. 84A(1) substituted (7.1.2013) by The Pollution Prevention and Control (Scotland) Regulations 2012 (S.S.I. 2012/360), reg. 1(2), **sch. 11 para. 7(2)** (with reg. 71)
- F78** Words in reg. 84A(2) inserted (21.8.2007) by The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007 (S.I. 2007/1843), regs. 2(1), **5(47)(b)** (with reg. 9)
- F79** Words in reg. 84A(4) inserted (21.8.2007) by The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007 (S.I. 2007/1843), regs. 2(1), **5(47)(c)** (with reg. 9)

### **[<sup>F80</sup>Abstraction and works authorised under water legislation**

**84B.**—(1) Regulations 48 and 49 apply in relation to—

- (a) the grant of an authorisation under regulation 8 (registration) or 9 (water use licence);
- (b) the variation under regulation 19 (variation of authorisation) in accordance with either regulation 20 (procedure for variation) or regulation 21 (request for variation), as the case may be, or the partial variation under regulation 25(4) (determination of application for surrender) of an authorisation; and
- (c) the determination of an appeal under regulation 47 (determination of appeals) against a decision of the Scottish Environment Protection Agency referred to in regulation 46(a), (b), (c), (d), (e), (ee) or (g),

of the Water Environment (Controlled Activities) (Scotland) Regulations 2005 (“the 2005 Regulations”).

(2) In a case referred to in paragraph (1), where the competent authority considers that any adverse effects of the plan or project on the integrity of a European site [<sup>F81</sup>or European offshore marine site] would be avoided if the grant or variation of the authorisation were subject to conditions or, as the case may be, further conditions, it may grant or vary the authorisation subject to those conditions.

(3) Regulations 50 and 51 apply to authorisations under regulation 8 or 9 of the 2005 Regulations.

(4) Where on the review of an authorisation under regulation 8 or 9 of the 2005 Regulations, the competent authority considers that any adverse effects on the integrity of a European site [<sup>F82</sup>or European offshore marine site] of the carrying out or, as the case may be, the continuation of the activity authorised would be avoided by a variation of the authorisation, it may vary the authorisation, or cause it to be varied, accordingly.]

- F80** Reg. 84B inserted (S.) (15.2.2007) by The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2007 (S.S.I. 2007/80), regs. 2, **20**
- F81** Words in reg. 84B(2) inserted (S.) (21.8.2007) by The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007 (S.I. 2007/1843), regs. 2(1), **5(49)(a)** (with reg. 9)
- F82** Words in reg. 84B(4) inserted (S.) (21.8.2007) by The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007 (S.I. 2007/1843), regs. 2(1), **5(49)(b)** (with reg. 9)

### **Marine works**

**<sup>F1</sup>84C.** . . . . .

**[<sup>F83</sup>Derogations under the Nitrate Pollution Prevention Regulations 2008**

**84D.**—(1) Regulations 48 (assessment of implications for European site) and 49 (considerations of overriding public interest) apply in relation to the granting of a derogation under Part 3A of the Nitrate Pollution Prevention Regulations 2008.

(2) Where regulations 48 and 49 apply, the competent authority may, if they consider any adverse effects of the plan or project on the integrity of a European site or European offshore marine site would be avoided if the derogation were subject to conditions, grant the derogation, subject to those conditions.]

**F83** Reg. 84D inserted (28.12.2009) by [The Nitrate Pollution Prevention \(Amendment\) Regulations 2009 \(S.I. 2009/3160\)](#), regs. 1(b), **11(2)**

**Derogations under the Nitrate Pollution Prevention (Wales) Regulations 2008**

<sup>F1</sup>**84E.** .....

**Discharge consents under water pollution legislation**

**85.**—(1) Regulations 48 and 49 (requirement to consider effect on European site) apply in relation to the giving of consent under—

(a) Chapter II of Part III to the Water Resources Act 1991(**27**) (control of pollution of water resources), <sup>F84</sup>...

<sup>F84</sup>(b) .....

(2) Where in such a case the competent authority consider that any adverse effects of the plan or project on the integrity of a European site would be avoided by making any consent subject to conditions, they may give consent, or cause it to be given, subject to those conditions.

(3) Regulations 50 and 51 (requirement to review existing decisions and consents, &c.) apply to any such consent as is mentioned in paragraph (1).

(4) Where on the review of such a consent the competent authority consider that any adverse effects on the integrity of a European 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 consent, they may vary it, or cause it to be varied, accordingly.]

**F84** Reg. 85(1)(b) and word omitted (S.) (15.2.2007) by virtue of [The Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2007 \(S.S.I. 2007/80\)](#), regs. 2, **21**

**Commencement Information**

**I30** Reg. 85 in force at 30.10.1994, see [reg. 1\(2\)](#)

**Changes to legislation:**

There are currently no known outstanding effects for the The Conservation (Natural Habitats, &c.) Regulations 1994, PART IV.