
STATUTORY INSTRUMENTS

2010 No. 490

The Conservation of Habitats and Species Regulations 2010

PART 6

ASSESSMENT OF PLANS AND PROJECTS

CHAPTER 4

ELECTRICITY

Consents under Electricity Act 1989: application of assessment and review provisions

86.—(1) The assessment provisions apply in relation to the granting of—

- (a) consent under section 36 of the Electricity Act 1989⁽¹⁾ (consent required for construction etc. of generating stations) to construct, extend or operate a generating station in Great Britain; or
- (b) consent under section 37⁽²⁾ of that Act (consent required for overhead lines) to install an electric line above ground.

(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 or a European offshore marine site would be avoided if the consent were subject to conditions, the competent authority may grant consent subject to those conditions.

(3) The review provisions apply to a consent mentioned in paragraph (1) unless—

- (a) the works to which the consent relates—
 - (i) have been completed before the site became a European site or a European offshore marine site (as the case may be), or
 - (ii) were completed before 30th October 1994; or
- (b) the consent was granted—
 - (i) subject to a condition as to the time within which the works to which it relates were to be begun and that time has expired without those works having been begun, or
 - (ii) for a limited period and that period has expired.

(4) Where the consent is for, or includes, the operation of a generating station, the works are to be treated as completed when, in reliance on the consent, the generating station is first operated.

(5) Where on the review of such a consent the competent authority consider that any adverse effects on the integrity of a European site or a European offshore marine site of the carrying out or, as the case may be, the continuation of the plan or project would be avoided by a variation of the consent, the authority may vary the consent accordingly.

(1) 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.

(2) Section 37 was amended by the Planning Act 2008 (c. 29), paragraphs 31 and 33 of Schedule 2.

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

Consents under Electricity Act 1989: procedure on review

87.—(1) Where the competent authority decide in pursuance of regulation 86(3), (5) or (6) to revoke or vary a consent under the Electricity Act 1989 or a direction deeming planning permission to be granted, the authority must serve notice on—

- (a) the person to whom the consent was granted or, as the case may be, in whose favour the direction was made,
- (b) in the case of a consent under section 36 of the Electricity Act 1989, any other person proposing to operate the generating station in question, and
- (c) any other person who in the authority's opinion will be affected by the revocation or variation,

informing them of the decision and specifying a period of not less than 28 days within which any person on whom the notice is served may make representations to the authority.

(2) The competent authority must also serve notice on—

- (a) the relevant planning authority within the meaning of paragraph 2(6) of Schedule 8(3) to the Electricity Act 1989 (consents under sections 36 and 37 of that Act), and
- (b) the appropriate nature conservation body,

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

(3) The competent authority must consider whether to proceed with the revocation or variation, and must have regard to any representations made in accordance with paragraph (1) or (2).

(4) If within the specified period a person on whom notice was served under paragraph (1), or the relevant planning authority, so requires, the competent authority must before deciding whether to proceed with the revocation or variation give—

- (a) to that person or the relevant planning authority (as the case may be), and
- (b) to any other person on whom notice under paragraph (1) or (2) was required to be served,

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

Consents under Electricity Act 1989: effect of review

88.—(1) The revocation or variation pursuant to regulation 86(3), (5) or (6) of a consent under the Electricity Act 1989 or a direction deeming planning permission to be granted takes effect upon the service of the notices required by regulation 87(1) or, where there is more than one such notice and those notices are served at different times, upon the service of the last such notice to be served.

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

- (a) any period specified in the consent or direction for the taking of any action, being a period which had not expired 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 consent or direction as being a date by which any action should be taken (“the specified date”), not being a date falling prior to

(3) Paragraph 2(6) of Schedule 8 was amended by the Planning (Consequential Provisions) Act 1990 (c. 11), paragraph 83(1) of Schedule 2; the Local Government (Wales) Act 1994 (c. 19), paragraph 22 of Schedule 6 and Schedule 18; and the Environment Act 1995 (c. 25), paragraph 30(1), (3) and (6) of Schedule 10 and Schedule 24.

the date mentioned in paragraph (1), such later date as postpones the specified date by a period equal to that during which the revocation or variation had effect.

(3) The revocation or variation of a consent or direction as mentioned in paragraph (1) does not affect anything done under the consent or direction prior to the revocation or variation taking effect.

Consents under Electricity Act 1989: compensation

89.—(1) Where a direction deeming planning permission to be granted is revoked or varied pursuant to regulation 86(6), that permission is to be treated—

- (a) for the purposes of Part 4 of the TCPA 1990 (compensation for effects of certain orders, notices etc.) as having been revoked or modified by order under section 97(4) of that Act (power to revoke or modify planning permission); or
- (b) for the purposes of Part 4 of the Town and Country Planning (Scotland) Act 1997(5) (compensation for effects of certain orders, notices etc.) as having been revoked or modified by order under section 65(6) of that Act (power to revoke or modify planning permission).

(2) Where a consent under the Electricity Act 1989 is revoked or varied pursuant to regulation 86(3) or (5), Part 4 of the TCPA 1990 or Part 4 of the Town and Country Planning (Scotland) Act 1997 (as the case may be) applies as if—

- (a) the consent had been planning permission granted on an application under that Act and had been revoked or modified by order under section 97 of the TCPA 1990 or section 65 of the Town and Country Planning (Scotland) Act 1997; and
- (b) that Part provided that the competent authority was the person liable to pay any compensation provided for by that Part.

(3) Paragraph (2) does not confer any right to compensation for any expenditure, loss or damage for which compensation is payable by virtue of paragraph (1).

(4) Where the competent authority decide not to proceed with the revocation or variation of a consent under the Electricity Act 1989 or a direction deeming planning permission to be granted, any claim for compensation by virtue of this regulation is limited to any loss or damage directly attributable to the consent or direction ceasing to have effect or being varied for the duration of the period between the revocation or variation taking effect under regulation 88(1) and the competent authority's decision not to proceed with it.

(5) Where compensation is payable by virtue of this regulation, the question as to the amount of the compensation must be referred to and determined by the Upper Tribunal, or the Lands Tribunal for Scotland, unless and to the extent that in any particular case the competent authority have indicated in writing that such a reference and determination may be dispensed with.

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

(5) 1997 c. 8.

(6) Section 65 was amended by S.S.I. 2006/243.