
STATUTORY INSTRUMENTS

2010 No. 490

The Conservation of Habitats and Species Regulations 2010

PART 6

ASSESSMENT OF PLANS AND PROJECTS

CHAPTER 6

TRANSPORT AND WORKS

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

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

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

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

(4) Where on the review of such an order the appropriate authority 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 order, the appropriate authority may vary it accordingly.

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

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

Orders under Transport and Works Act 1992: procedure on review

95.—(1) Where the appropriate authority decide in pursuance of regulation 94(3), (4) or (5) to revoke or vary an order under the Transport and Works Act 1992 or a direction deeming planning permission to be granted, the authority must serve notice on—

- (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

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

- (b) 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 appropriate authority.

- (2) The appropriate authority must also serve notice on—
 - (a) the local planning authority, and
 - (b) the appropriate nature conservation body,

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

(3) The appropriate authority must consider whether to proceed with the revocation or variation, and must have regard to any representations made in accordance with paragraph (1) or (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 appropriate authority must before deciding whether to proceed with the revocation or variation of the order or direction give—

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

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

Orders under Transport and Works Act 1992: effect of review

96.—(1) The revocation or variation pursuant to regulation 94(3), (4) or (5) of an order under the Transport and Works Act 1992 or a direction deeming planning permission to be granted takes effect upon the service of the notices required by regulation 95(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 appropriate authority decide not to proceed with the revocation or variation, the order or direction has effect again as from the time of that decision, and thereafter has effect as if—

- (a) any period specified in the order or direction for the taking of any action, being a period which had not expired 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 (“the specified date”), not being a date falling prior to 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 an order or direction as mentioned in paragraph (1) does not affect anything done under the order or direction prior to the revocation or variation taking effect.

Orders under Transport and Works Act 1992: compensation

97.—(1) Where a direction deeming planning permission to be granted is revoked or varied pursuant to regulation 94(5), that permission is to be treated for the purposes of Part 4 of the TCPA 1990 (compensation for effects of certain orders, notices etc.) as having been revoked or modified by order under section 97(2) of that Act (power to revoke or modify planning permission).

(2) Where an order under the Transport and Works Act 1992 is revoked or varied pursuant to regulation 94(3) or (4), Part 4 of the TCPA 1990 applies as if—

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

- (a) the order had been planning permission granted on an application under that Act and had been revoked or modified by order under section 97 of that Act; and
 - (b) that Part provided that the appropriate authority was the person liable to pay any compensation provided for by that Part.
- (3) Paragraph (2) does not confer any right to compensation for any expenditure, loss or damage for which compensation is payable by virtue of paragraph (1).
- (4) Where the appropriate authority decide not to proceed with the revocation or variation of an order under the Transport and Works Act 1992 or a direction deeming planning permission to be granted, any claim for compensation by virtue of this regulation is limited to any loss or damage directly attributable to the order or direction ceasing to have effect or being varied for the duration of the period between the revocation or variation taking effect under regulation 96(1) and the appropriate authority's decision not to proceed with it.
- (5) Where compensation is payable by virtue of this regulation, the question as to the amount of the compensation must be referred to and determined by the Upper Tribunal unless and to the extent that in any particular case the appropriate authority have indicated in writing that such a reference and determination may be dispensed with.