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STATUTORY INSTRUMENTS

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**2010 No. 490**

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

**PART 6**

**ASSESSMENT OF PLANS AND PROJECTS**

**CHAPTER 7**

**ENVIRONMENTAL CONTROLS**

**Environmental permits**

**98.**—(1) The assessment provisions apply in relation to the granting of an environmental permit under the Environmental Permitting (England and Wales) Regulations 2007<sup>(1)</sup>.

(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 permit were subject to conditions, they may grant a permit, or cause a permit to be granted, subject to those conditions.

(3) The review provisions apply to a permit described 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 or a European offshore marine site of the carrying out or, as the case may be, the continuation of activities authorised by it would be avoided by a variation of the permit, they may vary it, or cause it to be varied, accordingly.

(5) Where any question arises as to agreeing to a plan or project, or affirming a permit on review, under regulation 62 (considerations of overriding public interest), the competent authority must refer the matter to the appropriate authority which must determine the matter in accordance with that regulation and give directions to the competent authority accordingly.

**Abstraction and works authorised under water legislation**

**99.**—(1) The assessment provisions apply in relation to the granting of an authorisation by virtue of—

- (a) the granting of a licence under Chapter 2 of Part 2 of the WRA<sup>(2)</sup> (abstraction and impounding);
- (b) the making of an order under section 27A<sup>(3)</sup> of the WRA (variation of small quantity threshold);
- (c) the making of regulations under section 33A<sup>(4)</sup> of the WRA (power to provide for further exemptions), where those regulations relate to—
  - (i) a prescribed geographical area,

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(1) S.I. 2007/3538.

(2) 1991 c. 57.

(3) Section 27A was inserted by the Water Act 2003 (c. 37), section 6(1).

(4) Section 33A was inserted by the Water Act 2003 (c. 37), section 9.

- (ii) a prescribed source of supply (in the case of an exemption from the restriction on abstraction or the other restrictions imposed by section 24(5) of the WRA (restrictions on abstraction)), or
  - (iii) prescribed inland waters (in the case of an exemption from the restriction on impounding works);
  - (d) any consent given under paragraph (2);
  - (e) the making of an order under section 73(6) of the WRA (power to make ordinary and emergency drought orders) which has the effect of authorising—
    - (i) an abstraction or additional abstraction, or
    - (ii) a discharge or additional discharge;
  - (f) the granting of a permit under section 79A(7) of that Act (drought permits);
  - (g) any consent given under section 166 of the WIA(8) (consents for certain discharges under section 165) or section 164(9) of the WRA (consents for certain discharges under section 163); or
  - (h) the making of an order under section 167(10) of the WIA (compulsory works orders) or section 168(11) of the WRA (compulsory works orders).
- (2) An exemption conferred by regulations under section 33A of the WRA, other than regulations referred to in paragraph (1)(c), does not apply in relation to any particular abstraction or impounding works unless the Environment Agency has given consent in writing to the abstraction or impounding works being carried out.
- (3) Where, in relation to any plan or project authorised by any means referred to in sub-paragraphs (a) to (h) of paragraph (1), 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 authorisation were subject to conditions, they may grant the authorisation, or cause it to be granted, subject to those conditions.
- (4) Where, by virtue of paragraph (1)(g), the assessment provisions apply in relation to the granting of an authorisation by virtue of a consent under section 166 of the WIA or section 164 of the WRA, the section in question has effect as if in each case—
- (a) in subsection (3), the words “and, subject to that subsection, where an application for any consent is required to be determined within the period specified in paragraph (a) above and is not so determined, the consent applied for shall be deemed to have been given unconditionally.” were omitted; and
  - (b) in paragraph (a) of that subsection, for the words “the period of seven days” there were substituted the words “the period of fourteen days”.
- (5) The review provisions apply to any authorisation mentioned in paragraph (1)(a), (b), (c), (d) or (h).
- (6) Where on the review of any such authorisation the competent authority consider that any adverse effects on the integrity of a European site or a European offshore marine site of the carrying

(5) Section 24 was amended by [S.I. 1996/593](#), Schedule 2; by the Environment Act [1995 \(c. 25\)](#), paragraph 128 of Schedule 22; and by the Water Act [2003 \(c. 37\)](#), section 60(1).

(6) Section 73 was amended by the Environment Act [1995 \(c. 25\)](#), paragraphs 128 and 139 of Schedule 22.

(7) Section 79A was inserted by the Environment Act [1995 \(c. 25\)](#), paragraph 140 of Schedule 22, and amended by the Water Act [2003 \(c. 37\)](#), section 64(3) and Part 3 of Schedule 9.

(8) [1991 c. 56](#); section 166 was amended by the Environment Act [1995 \(c. 25\)](#), paragraph 118 of Schedule 22.

(9) Section 164 was amended by the Environment Act [1995 \(c. 25\)](#), paragraph 128 of Schedule 22.

(10) Section 167 was amended by the Planning Act [2008 \(c. 29\)](#), paragraph 50 of Schedule 2.

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

out or, as the case may be, the continuation of the activities authorised by it would be avoided by a variation of the authorisation, they may vary it, or cause it to be varied, accordingly.

(7) In this regulation—

- (a) “the WIA” means the Water Industry Act 1991(12); and
- (b) “the WRA” means the Water Resources Act 1991(13).

### **Marine works**

**100.**—(1) The assessment provisions apply in relation to the granting of a licence, consent or other approval for marine works.

(2) Where the assessment provisions apply, the competent authority may, if they consider that any adverse effects of the plan or project on the integrity of a European site or a European offshore marine site would be avoided if the licence, consent or other approval were subject to conditions or requirements, grant the licence, consent or other approval subject to those conditions or requirements.

(3) The review provisions apply to any licence, consent or other approval for marine works.

(4) Where on the review of any such licence, consent or other approval the competent authority 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 activities authorised by it would be avoided by a variation of the licence, consent or other approval, they may vary it accordingly.

(5) This regulation does not apply in relation to any application for a licence mentioned in paragraph (6)(a), or a consent mentioned in paragraph (6)(b), in respect of dredging where—

- (a) the Secretary of State has determined that the dredging would constitute a habitats project under the Environmental Impact Assessment and Natural Habitats (Extraction of Minerals by Marine Dredging) (England and Northern Ireland) Regulations 2007(14); or
- (b) the Welsh Ministers have determined that the dredging would constitute a habitats project under the Environmental Impact Assessment and Natural Habitats (Extraction of Minerals by Marine Dredging) (Wales) Regulations 2007(15).

(6) In this regulation, “marine works” means any activity or proposed activity requiring—

- (a) a licence under Part 2 of the Food and Environment Protection Act 1985(16) (deposits in the sea);
- (b) a consent under section 34 of the Coast Protection Act 1949(17) (restriction of works detrimental to navigation); or
- (c) an approval or consent for works involved in the construction of a harbour or involving the making of modifications to an existing harbour under—
  - (i) a local Act,
  - (ii) such an Act read together with a notice given and published under section 9 of the Harbours Transfer Act 1862(18) (power to Admiralty to retain authority over ports, etc. where dockyards, etc. are situate), or

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(12) 1991 c. 56.

(13) 1991 c. 57.

(14) S.I. 2007/1067.

(15) S.I. 2007/2610.

(16) 1985 c. 48.

(17) 1949 c. 74; section 34 was amended by the Merchant Shipping Act 1988 (c. 12), section 36, and the Statute Law Revision Act 1953 (c. 5).

(18) 1862 c. 69; section 9 was amended by SR & O 1921/1804.

- (iii) an order made under section 14 (powers, on application of harbour authorities, or others, to make orders for securing harbour efficiency etc.) or 16 (powers, on application of intending undertakers, or others, to make orders conferring powers for improvement, construction, etc., of harbours) of the Harbours Act 1964<sup>(19)</sup>.

### **Derogations in relation to nitrate pollution prevention legislation**

**101.**—(1) The assessment provisions apply in relation to the granting of a derogation—

- (a) under Part 3A of the Nitrate Pollution Prevention Regulations 2008<sup>(20)</sup>; or
- (b) under Part 3A of the Nitrate Pollution Prevention (Wales) Regulations 2008<sup>(21)</sup>.

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

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<sup>(19)</sup> 1964 c. 40; sections 14 and 16 were amended by the Transport Act 1981 (c. 56) , paragraphs 3 and 14 of Schedule 6 and Schedule 12; the Criminal Justice Act 1982 (c. 48), sections 37 and 46; the Transport and Works Act 1992 (c. 42), paragraphs 1 and 2 of Schedule 3; S.I. 2006/1177; the Planning Act 2008 (c. 29), paragraphs 8, 9 and 10 of Schedule 2; and S.I. 2009/1941.

<sup>(20)</sup> S.I. 2008/2349; Part 3A was inserted by S.I. 2009/3160.

<sup>(21)</sup> S.I. 2008/3143 (W.278); Part 3A was inserted by S.I. 2010/489 (W.55).