
STATUTORY INSTRUMENTS

2017 No. 1012

The Conservation of Habitats and Species Regulations 2017

PART 6

Assessment of plans and projects

CHAPTER 2

Planning

Planning permission

Grant of planning permission

70.—(1) The assessment provisions apply in relation to—

- (a) granting planning permission on an application under Part 3 of the TCPA 1990 (control over development);
- (b) granting planning permission on an application under section 293A of that Act (urgent Crown development)(**1**);
- (c) granting planning permission, or upholding a decision of the local planning authority to grant planning permission (whether or not subject to the same conditions and limitations as those imposed by the local planning authority), on determining an appeal under section 78 of that Act (right to appeal against planning decisions)(**2**) in respect of such an application;
- (d) granting planning permission under—
 - (i) section 141(2)(a) of that Act (action in relation to purchase notice); or
 - (ii) section 177(1)(a) of that Act (grant or modification of planning permission on appeals against enforcement notices)(**3**);
- (e) directing under the following provisions that planning permission is deemed to be granted—
 - (i) section 90(1), (2) or (2A) of that Act (development with government authorisation);
 - (ii) section 57(2) or (2A) of the Town and Country Planning (Scotland) Act 1997 (development with government authorisation)(**4**); or

(1) Section 293A was inserted by the Planning and Compulsory Purchase Act 2004 (c. 5), section 82(1), and amended by the Planning (Wales) Act 2015 (anaw 4), Schedule 2, paragraphs 8 and 9, and Schedule 4, paragraphs 1 and 17; and the Housing and Planning Act 2016 (c. 22), Schedule 12, paragraph 34.

(2) Section 78 was amended by the Planning and Compensation Act 1991 (c. 34), section 17(2); the Planning and Compulsory Purchase Act 2004, sections 40(2)(e) and 43(2); the Planning Act 2008 (c. 29), Schedule 10, paragraphs 1 and 3 and Schedule 11, paragraphs 1 and 2; the Localism Act 2011 (c. 20), section 123(1) and (3), and Schedule 12, paragraphs 1 and 11; the Growth and Infrastructure Act 2013 (c. 27), Schedule 1, paragraphs 1 and 8; the Infrastructure Act 2015 (c. 7), Schedule 4, Part 2, paragraphs 2 and 12; the Planning (Wales) Act 2015, sections 45 and 47, and Schedule 7, paragraph 7; the Housing and Planning Act 2016, Schedule 12, paragraphs 1 and 21; and by S.I. 2014/2773.

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

(4) 1997 c. 8. Section 57(2) was substituted by the Growth and Infrastructure Act 2013 (c. 27), section 21(5).

- (iii) section 5(1) of the Pipe-lines Act 1962 (provisions with respect to planning permission concerning pipe-lines)(**5**);
- (f) directing under section 90(2ZA)(a) or (b) of the TCPA 1990(**6**) or section 57(2ZA)(a) or (b) of the Town and Country Planning (Scotland) Act 1997(**7**), in respect of a planning permission which is deemed to be granted under section 90(2) or section 57(2) (respectively) on varying a consent under section 36 or 37 of the Electricity Act 1989(**8**), that that permission, or any conditions subject to which it was granted, be varied;
- (g) making—
 - (i) an order under section 102 of the TCPA 1990 (orders requiring discontinuance of use or alteration or removal of buildings or works)(**9**), including an order made under that section by virtue of section 104 of that Act (powers in relation to section 102 orders) which grants planning permission, or confirming any such order under section 103 of that Act (confirmation of section 102 orders); or
 - (ii) an order under paragraph 1 of Schedule 9 to that Act (order requiring discontinuance of mineral working)(**10**), including an order made under that paragraph by virtue of paragraph 11 of that Schedule (powers in relation to orders under Schedule 9) which grants planning permission; or
- (h) directing under the following provisions that, if an application is made for planning permission, it must be granted—
 - (i) section 141(3) of the TCPA 1990 (action in relation to purchase notice); or
 - (ii) section 35(5) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (action in relation to listed building purchase notice)(**11**).

(2) Where the assessment provisions apply, the competent authority may, if it considers that any adverse effects of the plan or project on the integrity of a European site or a European offshore marine site would be avoided if the planning permission were subject to conditions or limitations, grant planning permission, or, as the case may be, take action which results in planning permission being granted or deemed to be granted, subject to those conditions or limitations.

(3) Where the assessment provisions apply, outline planning permission must not be granted unless the competent authority is satisfied (whether by reason of the conditions and limitations to which the outline planning permission is to be made subject, or otherwise) that no development likely adversely to affect the integrity of a European site or a European offshore marine site could be carried out under the permission, whether before or after obtaining approval of any reserved matters.

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

(5) 1962 c. 58. Section 5(1) was amended by S.I. 1999/742.

(6) Section 90(2ZA) was inserted by the Environment Act 1995 (c. 25), Schedule 10.

(7) Section 57(2ZA) was inserted by the Growth and Infrastructure Act 2013 (c. 27), section 21(5).

(8) 1989 c. 29. Section 36 was amended by the Energy Act 2004 (c. 20), section 93; by the Planning Act 2008, Schedule 2, paragraphs 31 and 32; by the Marine Act, section 12(7)(a) and (8); by the Energy Act 2016 (c. 20), section 78; and by S.I. 2006/1054; and is prospectively amended by the Wales Act 2017 (c. 4), section 39(7) to (11), and Schedule 6, Part 3, paragraph 47, from a date to be appointed. Section 36C of the Act, inserted by the Growth and Infrastructure Act 2013 (c. 27), section 20, provides for the variation of consents granted under section 36. Section 37 was amended by the Planning Act 2008, Schedule 2, paragraphs 31 and 33; and is prospectively amended by the Wales Act 2017, section 42 from a date to be appointed.

(9) Section 102 was amended by the Planning and Compensation Act 1991 (c. 34), Schedule 1, paragraph 6, and Schedule 7, paragraph 21; and the Planning (Wales) Act 2015 (anaw 4), section 33(1) and (4).

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

(11) 1990 c. 9.

(12) Section 92 was amended by the Planning (Wales) Act 2015 (anaw 4), section 36(1) to (6), and Schedule 4, paragraphs 1 and 10.

Planning permission: duty to review

71.—(1) Subject to the following provisions of this regulation, the review provisions apply to any planning permission or deemed planning permission, unless—

- (a) the development to which it related has been completed;
- (b) it was granted subject to a condition as to the time within which the development to which it related was to be begun and that time has expired without the development having been begun; or
- (c) it was granted for a limited period and that period has expired.

(2) The review provisions do not apply to planning permission granted or deemed to have been granted—

- (a) by a development order, local development order or neighbourhood development order (but see regulations 75 to 81);
- (b) by virtue of the adoption of a simplified planning zone scheme or of alterations to such a scheme (but see regulation 82); or
- (c) by virtue of the taking effect of an order designating an enterprise zone under paragraph 5 of Schedule 32 to the Local Government, Planning and Land Act 1980 (enterprise zones)⁽¹³⁾, or by virtue of the approval of a modified enterprise zone scheme (but see regulation 83).

(3) Planning permission deemed to be granted by virtue of a direction of a kind specified in paragraph (4) must be reviewed in accordance with Chapter 4, Chapter 5 or Chapter 6 (as the case may be) in conjunction with the review of the underlying authorisation, consent or order.

(4) Directions of a kind referred to in paragraph (3) are—

- (a) a direction under section 90(1) of the TCPA 1990 in respect of development for which an authorisation has been granted under section 1 of the Pipe-lines Act 1962 (pipe-line construction authorisations)⁽¹⁴⁾;
- (b) a direction under section 5(1) of the Pipe-lines Act 1962;
- (c) a direction under section 90(1) of the TCPA 1990 in respect of development for which a consent has been granted under section 36 or 37 of the Electricity Act 1989 (consents required in relation to generating stations and overhead lines);
- (d) a direction under section 90(2) of the TCPA 1990 or section 57(2) of the Town and Country Planning (Scotland) Act 1997 (which relate to development for which a consent has been granted under section 36 or 37 of the Electricity Act 1989);
- (e) a direction under section 90(2ZA)(a) or (b) of the TCPA 1990 or section 57(2ZA)(a) or (b) of the Town and Country Planning (Scotland) Act 1997 (which relate to the variation of a deemed grant of planning permission in relation to development for which a consent has been granted under section 36 or 37 of the Electricity Act 1989 and to the variation of conditions of any such deemed grant of planning permission); or
- (f) a direction under section 90(2A) of the TCPA 1990 (which relates to development in pursuance of an order under section 1 or 3 of the Transport and Works Act 1992 (orders as to railways, tramways or inland waterways)⁽¹⁵⁾).

(5) In the case of planning permission deemed to have been granted in any other case by a direction under section 90(1) of the TCPA 1990, the local planning authority must—

⁽¹³⁾ 1980 c. 65. Paragraph 5 of Schedule 32 was amended by the Planning (Consequential Provisions) Act 1990 (c. 11), Schedule 1, Part 1.

⁽¹⁴⁾ 1962 c. 58. Section 1 was amended by the Criminal Justice Act 1982 (c. 48), sections 37, 38 and 46; by the Planning Act 2008 c. 29, Schedule 2, paragraphs 5 and 6; and by S.I. 1999/742 and 2007/1519.

⁽¹⁵⁾ 1992 c. 42. Sections 1 and 3 were amended by the Planning Act 2008, Schedule 2, paragraphs 51, 52 and 53.

- (a) identify any such permission which it considers falls to be reviewed under the review provisions; and
 - (b) refer the matter to the government department or person which made the direction.
- (6) The department or person to whom a reference is made under paragraph (5)(b) must, if in agreement that the planning permission does fall to be so reviewed, review the direction in accordance with the review provisions.
- (7) Except as otherwise expressly provided, the review provisions do not apply to planning permission granted or deemed to be granted by a public general Act of Parliament.
- (8) Subject to paragraphs (3) to (6), where planning permission granted by the appropriate authority falls to be reviewed under the review provisions—
- (a) it must be reviewed by the local planning authority; and
 - (b) the power conferred by section 97 of the TCPA 1990 (power to revoke or modify planning permission)(16) is exercisable by that local planning authority as in relation to planning permission granted on an application under Part 3 of that Act (control over development).
- (9) In a non-metropolitan county in England the function of reviewing any such planning permission is to be exercised by the district planning authority unless it relates to a county matter (within the meaning of paragraph 1 of Schedule 1 to the TCPA 1990(17)), in which case it is exercisable by the county planning authority.

Planning permission: consideration on review

- 72.—(1) In reviewing any planning permission or deemed planning permission under the review provisions, the competent authority must—
- (a) consider whether any adverse effects could be overcome by planning obligations under section 106 of the TCPA 1990 (planning obligations)(18) being entered into; and
 - (b) if it considers that those effects could be so overcome, invite those concerned to enter into such obligations.
- (2) So far as the adverse effects are not thus overcome, the authority must make such order as may be required under—
- (a) section 97 of the TCPA 1990 Act (power to revoke or modify planning permission); or
 - (b) section 102 of, or paragraph 1 of Schedule 9 to, that Act (orders requiring discontinuance of use etc.).
- (3) Where the authority ascertains that the carrying out or, as the case may be, the continuation of the development would adversely affect the integrity of a European site or a European offshore marine site, it nevertheless need not proceed under the review provisions if and so long as it considers that there is no likelihood of the development being carried out or continued.

Planning permission: effect of orders made on review

- 73.—(1) An order under section 97 of the TCPA 1990 made pursuant to paragraph (2) of regulation 72 (planning permission: consideration on review) takes effect upon the service of the notices required by section 98(2) of that Act (procedure for section 97 orders) or, where there is

(16) Section 97 was amended by the Planning and Compensation Act 1991 (c. 34), Schedule 1, paragraph 4; and by the Housing and Planning Act 2016 (c. 22), Schedule 12, paragraphs 1 and 25.

(17) Paragraph 1 of Schedule 1 was amended by the Planning and Compensation Act 1991, Schedule 1, paragraph 13.

(18) Section 106 was substituted by the Planning and Compensation Act 1991, section 12(1), and amended by the Greater London Authority Act 2007 (c. 24), section 33; the Planning Act 2008 (c. 29), section 174(1) and (2); the Growth and Infrastructure Act 2013 (c. 27), Schedule 2, paragraphs 1 and 3. It is prospectively amended by the Housing and Planning Act 2016, section 158(3), and is prospectively repealed by the Planning and Compulsory Purchase Act 2004 (c. 5), Schedule 6, paragraphs 1 and 5, from a date or dates to be appointed.

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 determines not to confirm such an order—
- (a) the order ceases to have effect as from the time of that determination;
 - (b) the permission revoked or modified by the order thereafter has effect as if the order had never been made;
 - (c) any period specified in the permission for the taking of any action, being a period which had not expired prior to the date upon which the order took effect under paragraph (1), is extended by a period equal to that during which the order had effect; and
 - (d) for any date specified in the permission as being a date by which any action should be taken (“the specified date”), not being a date falling before the date upon which the order took effect under paragraph (1), there is substituted such later date as postpones the specified date by a period equal to that during which the order had effect.

(3) An order under section 102 of, or paragraph 1 of Schedule 9 to, the TCPA 1990 made pursuant to regulation 72(2), in so far as it requires the discontinuance of a use of land or imposes conditions upon the continuance of a use of land, takes effect upon the service of the notices required by section 103(3) of that Act (confirmation of section 102 orders) or, where there is more than one such notice and those notices are served at different times, upon the service of the last such notice to be served.

(4) Where the appropriate authority determines not to confirm any such order, the order ceases to have effect as from the time of that determination, and the use which by the order was discontinued or upon which conditions were imposed—

- (a) may thereafter be continued as if the order had never been made; and
- (b) is to be treated for the purposes of the TCPA 1990 as if it had continued without interruption or modification throughout the period during which the order had effect.

(5) An order under section 97 of that Act made in pursuance of regulation 72(2) does not affect so much of the development authorised by the permission as was carried out before the order took effect.

(6) An order under section 102 of or paragraph 1 of Schedule 9 to that Act made in pursuance of regulation 72(2) does not affect anything done before the site became a European site or European offshore marine site.

Planning permission: compensation

74.—(1) Where the appropriate authority determines not to confirm an order under section 97 of the TCPA 1990 which has taken effect under regulation 73(1), any claim for compensation under section 107 of that Act (compensation where planning permission revoked or modified)⁽¹⁹⁾ is limited to any loss or damage directly attributable to the permission being suspended or temporarily modified for the duration of the period between the order so taking effect and the appropriate authority’s determination not to confirm the order.

(2) Where the appropriate authority determines not to confirm an order under section 102 of the TCPA 1990 (orders requiring discontinuance of use or alteration or removal of buildings or works) which has taken effect under regulation 73(3), any claim for compensation under section 115 of that Act (compensation in respect of orders under section 102) is limited to any loss or damage directly attributable to the effect of the order in suspending or imposing conditions on any right to continue

⁽¹⁹⁾ Section 107 was amended by the Planning and Compensation Act 1991 (c. 34), Schedule 1, paragraph 8 and Schedule 6, paragraph 13; and by the Housing and Planning Act 2016 (c. 22), Schedule 12, paragraphs 1 and 28.

a use of the land for the duration of the period between the order so taking effect and the appropriate authority's determination not to confirm the order.

- (3) Paragraph (4) applies where—
- (a) compensation is payable in respect of—
 - (i) an order under section 97 of the TCPA 1990; or
 - (ii) any order mentioned in section 115(1) of that Act or to which that section applies by virtue of section 115(5); and
 - (b) the order has been made pursuant to regulation 65 (review of existing decisions and consents).
- (4) Where this paragraph applies, the authority liable to pay the compensation must refer the question as to the amount of the compensation to the Upper Tribunal for its determination, unless and to the extent that in any particular case the appropriate authority has indicated in writing that such a reference and determination may be dispensed with.

General development orders

General development orders

75. It is a condition of any planning permission granted by a general development order made on or after 30th November 2017, that development which—

- (a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects), and
- (b) is not directly connected with or necessary to the management of the site,

must not be begun until the developer has received written notification of the approval of the local planning authority under regulation 77 (approval of local planning authority).

General development orders: opinion of appropriate nature conservation body

76.—(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 its opinion as to whether the development is likely to have a relevant effect.

- (2) The application must give details of the development which is intended to be carried out.
- (3) On receiving such an application, the appropriate nature conservation body must consider whether the development is likely to have such an effect.

(4) Where it considers that it has sufficient information to conclude that the development will, or will not, have such an effect, it must notify the applicant and the local planning authority in writing of its opinion.

(5) If the appropriate nature conservation body considers that it has insufficient information to reach either of those conclusions, it must notify the applicant in writing indicating in what respects it considers the information insufficient, and the applicant may supply further information with a view to enabling it to reach a decision on the application.

(6) The opinion of the appropriate nature conservation body, notified in accordance with paragraph (4), that the development is not likely to have a relevant effect is conclusive of that question for the purpose of reliance on the planning permission granted by a general development order.

(7) In this regulation and in regulation 77, “a relevant effect” means an effect of a kind mentioned in regulation 75(a).

General development orders: approval of local planning authority

77.—(1) An application to the local planning authority for approval, as mentioned in regulation 75, must—

- (a) give details of the development which is intended to be carried out; and
- (b) be accompanied by—
 - (i) a copy of any relevant notification by the appropriate nature conservation body under regulation 76; and
 - (ii) any fee required to be paid.

(2) For the purposes of its consideration of the application the local planning authority must assume that the development is likely to have a relevant effect.

(3) The authority must send a copy of the application to the appropriate nature conservation body and must take account of any representations made by it.

(4) If in its representations the appropriate nature conservation body states its opinion that the development is not likely to have a relevant effect, the local planning authority must send a copy of the representations to the applicant.

(5) The sending of the copy of the representations to the applicant under paragraph (4) has the same effect as a notification by the appropriate nature conservation body of its opinion under regulation 76(4).

(6) In any other case in which the application has been sent to the appropriate nature conservation body, the local planning authority must, taking account of any representations made by the appropriate nature conservation body, make an appropriate assessment of the implications of the development for the European site or European offshore marine site in view of that site's conservation objectives.

(7) In the light of the conclusions of the assessment the local planning authority may approve the development only after having ascertained that it will not adversely affect the integrity of the site.

General development orders: supplementary

78.—(1) The local planning authority for the purposes of regulations 75 to 77 is the authority to which an application for approval under regulation 77 would fall to be made if it were an application for planning permission.

- (2) The fee payable in connection with an application for such approval is £30.
- (3) Approval required by regulation 75 is to be treated—
 - (a) for the purposes of the provisions of the TCPA 1990 relating to appeals, as approval required by a condition imposed on a grant of planning permission; and
 - (b) for the purposes of the provisions of any general development order relating to the time within which notice of a decision should be given, as approval required by a condition attached to a grant of planning permission.

Special development orders

Special development orders

79.—(1) A special development order may not grant planning permission for development which—

- (a) is likely to have a significant effect on a European site (either alone or in combination with other plans or projects); and

(b) is not directly connected with or necessary to the management of the site.

(2) A special development order 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).

(3) This regulation does not apply to a special development order made before 30th November 2017.

Local development orders

Local development orders

80. A local development order made on or after 30th November 2017 may not grant planning permission for development which—

- (a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects); and
- (b) is not directly connected with or necessary to the management of the site.

Neighbourhood development orders

Neighbourhood development orders

81.—(1) A neighbourhood development order made on or after 30th November 2017 may not grant planning permission for development which—

- (a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects); and
- (b) is not directly connected with or necessary to the management of the site.

(2) This regulation applies in relation to England only.

Simplified planning zones and enterprise zones

Simplified planning zones

82.—(1) Where a simplified planning zone scheme is adopted or approved, that scheme is not to be taken to grant planning permission for development which (either alone or in combination with other plans or projects) is likely to have a significant effect on a European offshore marine site or (where the development is not directly connected with or necessary to the management of the site) on a European site.

(2) This regulation does not apply to a simplified planning zone scheme adopted or approved (as the case may be) before 30th November 2017.

Enterprise zones

83.—(1) Where an order designating an enterprise zone is made, or where a modified enterprise zone scheme is approved, that order or scheme is not to be taken to grant planning permission for development which (either alone or in combination with other plans or projects) is likely to have a significant effect on a European offshore marine site or (where the development is not directly connected with or necessary to the management of the site) on a European site.

(2) This regulation does not apply to an order designating an enterprise zone made, or to a modified enterprise scheme approved, before 30th November 2017.

Development consent under Planning Act 2008

Grant of development consent

84.—(1) The assessment provisions apply in relation to the making of an order granting development consent under the Planning Act 2008⁽²⁰⁾.

(2) Where those provisions apply, the competent authority may, if it considers that any adverse effects of the plan or project on the integrity of a European site or a European offshore marine site would be avoided if the order granting development consent included requirements under section 120 of the Planning Act 2008 (what may be included in order granting development consent)⁽²¹⁾, make an order subject to those requirements.

Development consent: review

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

- (a) the development to which it related has been completed before the site becomes a European site or a European offshore marine site;
 - (b) it included a requirement as to the time within which the development to which it related was to be begun and that time has expired without the development having been begun; or
 - (c) the development consent was granted for a limited period and that period has expired.
- (2) In any such review of an order granting development consent, the competent authority must—
- (a) consider whether any adverse effects could be overcome by imposing requirements under paragraph 5(4)(c), (d) or (e) of Schedule 6 to the Planning Act 2008 (changes to, and revocation of, orders granting development consent); and
 - (b) if it considers that those effects could be so overcome, impose those requirements by making such an order under paragraph 3(1) of Schedule 6 to that Act⁽²²⁾ as may be required.

Interpretation of Chapter 2

Interpretation of Chapter 2

86.—(1) This Chapter, except regulations 84 and 85, is to be construed as one with the TCPA 1990.

(2) In regulations 84 and 85, the terms “development” and “development consent” have the meanings given by the Planning Act 2008⁽²³⁾.

⁽²⁰⁾ 2008 c. 29.

⁽²¹⁾ Section 120 was amended by the Localism Act 2011 (c. 20), section 140 and Schedule 13, paragraphs 1 and 60.

⁽²²⁾ Paragraph 3(1) of Schedule 6 was amended by the Localism Act 2011, Schedule 13, paragraphs 1 and 72.

⁽²³⁾ See sections 31 and 32 for the definition of “development consent” and “development” respectively.