
STATUTORY INSTRUMENTS

2017 No. 1013

**The Conservation of Offshore Marine
Habitats and Species Regulations 2017**

PART 2

CONSERVATION OF NATURAL HABITATS AND HABITATS OF SPECIES

Plans and projects

Review of existing decisions and consents

33.—(1) Where, before the date on which a site becomes a European offshore marine site, a competent authority has decided to undertake, or has given any consent, permission or other authorisation for, a plan or project to which regulation 28(1) would apply if it were to be considered at that date, the authority must as soon as reasonably practicable after that date review its decision, or as the case may be, consent, permission or other authorisation.

(2) Where, before the date on which a site becomes a European site or, if later, the commencement of these Regulations, a competent authority has decided to undertake, or has given any consent, permission or other authorisation for, a plan or project to which regulation 28(1) would apply if it were to be considered at that date, the authority must as soon as reasonably practicable after that date review its decision, or as the case may be, consent, permission or other authorisation.

(3) A competent authority must for the purpose of reviewing a decision, consent, permission or other authorisation under paragraph (1) or (2) make an appropriate assessment of the implications for the site in view of that site's conservation objectives, and the provisions of regulation 28(3), (4) and (8) apply, with the appropriate modifications, in relation to such a review.

(4) Where a competent authority reviews a decision, consent, permission or other authorisation under this regulation it must affirm, modify or revoke it.

(5) Subject to the following provisions of this Part, any review required by this regulation must be carried out under existing statutory procedures where such procedures exist, and if none exists the competent authority must determine the procedure to be followed, having regard to any guidance issued by the Secretary of State or, in relation to the Scottish offshore region, by the Scottish Ministers, or in relation to the Welsh offshore region, by the Welsh Ministers.

(6) Nothing in this regulation—

^{F1}(a)

^{F2}(b)

(c) requires a review by the Secretary of State of a Petroleum Act approval, Petroleum Act authorisation, Petroleum or Energy Act consent, Petroleum Act licence or Energy Act licence;

- (d) requires a review of any plan or project in relation to which a review has been carried out under regulation 27 of the Offshore Marine Conservation (Natural Habitats, &c. Regulations 2007 ^{M1};
 - (e) affects anything done in pursuance of the decision, or the consent, permission or other authorisation, before the date mentioned in paragraph (1) or (2) (as the case may be).
- (7) The Secretary of State may not issue guidance under paragraph (5) which relates to a function within devolved competence without the consent of the Scottish Ministers or the Welsh Ministers, as the case may be.
- (8) The Scottish Ministers may only issue guidance under paragraph (5)—
- (a) to a competent authority in Scotland; or
 - (b) where guidance is issued to a competent authority other than a competent authority in Scotland, subject to and in accordance with the agreement of the Secretary of State.
- (9) The Welsh Ministers may only issue guidance under paragraph (5)—
- (a) to a competent authority in Wales; or
 - (b) where guidance is issued to a competent authority other than a competent authority in Wales, subject to and in accordance with the agreement of the Secretary of State.
- (10) Regulations 90 and 91 of the 2017 Regulations (consents under Electricity Act 1989 ^{M2}; procedure on review and effect of review) apply in relation to any decision under paragraph (4) revoking or modifying a consent granted under section 36 ^{M3} or 37 ^{M4} of the Electricity Act 1989 as they apply in relation to a decision pursuant to regulation 90 of the 2017 Regulations revoking or varying any such consent, but with the modifications specified in paragraphs (11) and (12).
- (11) The modifications to regulation 90 referred to in paragraph (10) are—
- (a) in paragraph (1)—
 - (i) for “89(3), (5) or (6)” substitute “ 89(3) or (5) ”; and
 - (ii) omit “or a direction deeming planning permission to be granted”;
 - (b) in paragraph (2)—
 - (i) in sub-paragraph (a), omit “or, as the case may be, in whose favour the direction was made”; and
 - (ii) in sub-paragraph (b), omit “in the case of a consent under section 36 of the Electricity Act 1989,”;
 - (c) omit paragraph (3)(a); and
 - (d) in paragraph (5)—
 - (i) omit “, or the relevant planning authority,”; and
 - (ii) in the words before sub-paragraph (a), omit “or the relevant planning authority (as the case may be)”.
- (12) The modifications to regulation 91 referred to in paragraph (10) are—
- (a) in paragraph (1)—
 - (i) for “89(3), (5) or (6)” substitute “ 89(3) or (5) ”; and
 - (ii) omit “or a direction deeming planning permission to be granted”; and
 - (b) in paragraphs (2) and (3), omit “or direction” (in each place where it occurs).

Textual Amendments

- F1** Reg. 33(6)(a) omitted (31.12.2020) by virtue of The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **51**; 2020 c. 1, Sch. 5 para. 1(1)
- F2** Reg. 33(6)(b) omitted (31.12.2020) by virtue of The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/579), regs. 1, **51**; 2020 c. 1, Sch. 5 para. 1(1)

Modifications etc. (not altering text)

- C1** Regs. 30-37 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))

Marginal Citations

- M1** S.I. 2007/1842, amended by S.I. 2009/7, 2010/491 and 2012/1928, and revoked by these Regulations.
- M2** 1989 c. 29.
- M3** 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); the Energy Act 2016, section 78; the Wales Act 2017 (c. 4) section 39; and, in relation to Scotland, by S.I. 2006/1054, **paragraph 1(1)** and (2) of Schedule 1.
- M4** Section 37 was amended by the Planning Act 2008 (c. 29), **paragraphs 31** and 33 of Schedule 2; and the Wales Act 2017 (c. 4), **section 42**.

Changes to legislation:

There are currently no known outstanding effects for the The Conservation of Offshore Marine Habitats and Species Regulations 2017, Section 33.