

# EUROPEAN COMMUNITIES (NATURAL HABITATS) REGULATIONS 1997

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S.I. No. 94 of 1997:

#### EUROPEAN COMMUNITIES (NATURAL HABITATS) REGULATIONS, 1997.

The Minister for Arts, Culture and the Gaeltacht, in exercise of the powers conferred on him by section 3 of the European Communities Act, 1972 (No. 27 of 1972), for the purpose of giving effect to Council Directive No. 92/43/EEC of 21 May 1992(a), hereby makes the following Regulations:

(a) O.J. No. L 206, 22 July 1992. page 7.

## **PART I**

### **PRELIMINARY AND GENERAL**

#### REG 1

##### 1 Citation

1. (1) These Regulations may be cited as the European Communities (Natural Habitats) Regulations, 1997.

(2) The Wildlife Act, 1976, and these Regulations (other than Part IV) shall be construed together as one.

## REG 2

### 2 Interpretation

#### 2. (1) In these Regulations:

"the Birds Directive" means Council Directive No. 79/409/EEC of 2 April 1979 on the conservation of wild birds(b);

(b) O.J. No. L 103, 25 April 1979, page 1.

"authorised officer" means a person appointed as an authorised officer under Regulation 7;

"the Board" means An Bord Pleanála;

"candidate list of European sites" has the meaning assigned by Regulation 3 (1);

"the Commission" means the Commission of the European Communities;

"conservation" means a series of measures required to maintain or restore the natural habitats and the populations of species of wild fauna and flora at a favourable conservation status of a natural habitat and of a species;

"environmental impact assessment" means an assessment carried out in accordance with the provisions of any enactment made in connection with the Council Directive No. 85/337/EEC of 27 June, 1985(c) on the assessment of the effects of certain public and private projects on the environment, and any Directive amending or replacing the first-mentioned Directive and includes an assessment carried out in accordance with section 51 of the Roads Act, 1993 (No. 14 of 1993);

(c) O.J. No. L 175, 5 July 1985, page 40.

"European site" means—

( a ) a special area of conservation;

( b ) a site of Community importance which has been placed on the list referred to in the third subparagraph of Article 4 (2) of the Habitats Directive;

( c ) an area classified pursuant to paragraph (1) or (2) of Article 4 of the Birds Directive;

"functions" includes powers and duties;

"the Habitats Directive" means Council Directive No. 92/43/EEC of 21 May, 1992(a) on the conservation of natural habitats and of wild fauna and flora;

(a) O.J. No, L 206. 22 July 1992, page 7.

"habitat of a species" means an environment defined by specific abiotic and biotic factors, in which the species lives at any stage of its biological cycle;

"hunt" means stalk, pursue, chase, drive, flush, capture, course, attract, follow, search for, lie in wait for, take, trap or shoot by any means whether with or without dogs and, except in sections 28 and 29 of the Principal Act, includes killing in the course of hunting and cognate words shall be construed accordingly;

"land", where the context admits, includes land covered by water and in relation to the acquisition of land also includes any easement, profit à prendre or other right in, to or over land or water including any easement, profit à prendre or other right granted to or held by the Minister;

"local authority" means—

( a ) the council of a county;

( b ) the corporation of a county or other borough, or

( c ) the council of any urban district,  
and includes a sanitary authority for the purposes of the Local Government (Water Pollution) Act, 1977, a planning authority and a road authority;

"the Minister" means the Minister for Arts, Culture and the Gaeltacht;

"NATURA 2000". means the European network of special areas of conservation and special protection areas under the Birds Directive, provided for by paragraph 1 of Article 3 of the Habitats Directive;

"natural habitats" means terrestrial or aquatic areas distinguished by geographic, abiotic and biotic features, whether entirely natural or semi-natural;

"operation or activity" means any use of—

( a ) land (including the foreshore and the seabed out to the exclusive fishery limits of the State), and

( b ) water covering such land,  
other than—

(i) development which is not exempted development within the meaning of the Local Government (Planning and Development) Acts, 1963 to 1993, or

(ii) development by a local authority, or

(iii) an operation or activity which requires consent or other authorisation, pursuant to any enactment set out in Part I or II of the Second Schedule;

"planning authority" means a planning authority for the purposes of the Local Government (Planning and Development) Acts, 1963 to 1993;

"Principal Act" means the Wildlife Act, 1976;

"priority natural habitat types" means natural habitat types in danger of disappearance, which are present on the territory referred to in Article 2 of the Habitats Directive and for the conservation of which the Community has particular responsibility in view of the proportion of their natural range which falls within the territory referred to in the said Article 2 and which are indicated in each case by an asterisk in Annex I to the Habitats Directive;

"priority species" means species referred to in Article 1 (g) (i) of the Habitats Directive for the conservation of which the Community has particular responsibility in view of the proportion of their natural range which falls within the territory referred to in Article 2 of the Habitats Directive and which are indicated in each case by an asterisk in Annex II to the Habitats Directive;

"road authority" means the council of a county, or corporation of a county or other borough, or the council of an urban district;

"site of Community importance" means—

( a ) a site which, in the bio-geographical region or regions to which it belongs, contributes significantly to the maintenance or restoration at a favourable conservation status of a natural habitat type in Annex I to the Habitats Directive or of a species mentioned in Annex II to that Directive and may also contribute significantly to either or both the coherence of Natura 2000 referred to in Article 3 of the Habitats Directive, and the maintenance of biological diversity within the bio-geographic region or regions concerned, and

( b ) in the case of animal species ranging over wide areas, sites of Community importance shall correspond to the places within the natural range of such species which present the physical or

biological factors essential to their life and reproduction;  
"special area of conservation" means a site of Community importance designated by the Member States through a statutory, administrative or contractual act, or any combination thereof, where the necessary conservation measures are applied for the maintenance or restoration, at a favourable conservation status, of either or both the natural habitats and the populations of the species for which the site is designated.

(2) A word or expression that is used in these Regulations and is also used in the Habitats Directive shall, unless the contrary intention is expressed, have in these Regulations the meaning that it has in the Habitats Directive.

(3) In these Regulations—

( a ) a reference to a Part, Regulation or Schedule is to a Part or Regulation of, or Schedule to, these Regulations, unless it is indicated that reference to some other enactment is intended, and

( b ) a reference to a paragraph or subparagraph is to the paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended.

(4) In these Regulations, save where the context otherwise requires, a reference to any enactment shall be construed as a reference to that enactment as amended or adopted by any subsequent enactment including these Regulations.

## **PART II**

### **CONSERVATION OF NATURAL HABITATS AND HABITATS OF SPECIES**

#### **CHAPTER I**

##### **Sites of Community importance**

#### **REG 3**

##### **3 Selection of sites for identification as sites of Community importance**

3. (1) The Minister shall, for the purpose of identifying as sites of Community importance and based on the criteria set out in Annex III (Stage I) to the Habitats Directive and relevant scientific information, prepare a list of sites (in these Regulations referred to as a "candidate list of European sites") indicating in respect of each such site either or both—

( a ) the natural habitat type or types in Annex I to the Habitats Directive which the site hosts, and

( b ) the species in Annex II to the Habitats Directive that are native to the State which the site hosts.

(2) ( a ) For animal species ranging over wide areas, these sites shall correspond to the places within the natural range of such species which present the physical or biological factors essential to their life and reproductions;

( b ) For aquatic species which range over wide areas the Minister shall propose such sites only where there is a clearly identifiable area representing the physical and biological factors essential to their life and reproduction.

(3) Where appropriate, the Minister may propose modification of the

candidate list of European sites having regard to the surveillance carried out pursuant to Regulation 7 (1) or if the Minister receives a request that a site be included in the list.

#### REG 4

##### 4 Notification to persons concerned

4. (1) The Minister shall cause a copy of the candidate list of European sites or a modified list under Regulation 3 (3) to be sent to the Minister for the Environment, the Minister for Agriculture, Food and Forestry, the Minister for the Marine, the Minister for Transport, Energy and Communications, the Commissioners of Public Works in Ireland, the Environmental Protection Agency and to any planning authority within whose functional area the land to which the list relates, or any part of such land, is situated and the Minister shall, where appropriate, consult with all or any of them.

(2) ( a ) The Minister by notice shall notify every owner and occupier of any land mentioned in the candidate list of European sites and any holder of a valid prospecting licence or exploration licence duly issued under any enactment which relates to such land of the proposal to include the land in such a list and to transmit the list to the Commission pursuant to the provisions of the Habitats Directive;

( b ) Where the address of any person to whom subparagraph (a) of this paragraph relates cannot be found after reasonable inquiry, notices and maps showing the site concerned shall be displayed in a conspicuous place—

(i) in one or more Garda Síochána stations, local authority offices, local offices of the Department of Social Welfare, local offices of the Department of Agriculture, Food and Forestry and offices of Teagasc which are located within or contiguous to the site concerned, or

(ii) where in any case there is no such station or office so located, in one or more of each such station or office within the vicinity or closest to such site, and advertisements shall be broadcast on at least one radio station duly broadcasting in the area of the site concerned and be placed in at least one newspaper circulating in that area and every such advertisement shall request any person affected by the candidate list of European sites to contact the Department of Arts, Culture and the Gaeltacht.

( c ) The provisions of section 3 (1) (d) of the Principal Act shall not apply in a case to which subparagraph (b) of this paragraph relates.

(3) The candidate list of European sites sent by the Minister under paragraph (1) and the notification issued by the Minister under paragraph (2) shall, in respect of each site—

( a ) be accompanied by an ordnance map of appropriate scale in the circumstances, upon which is marked the site, so as to identify the land comprising the site to which the notice relates and the boundaries thereof;

( b ) indicate the operation or activity which the Minister considers would be likely to alter, damage, destroy or interfere with the integrity of the site;

( c ) indicate the habitat type, or types, the site hosts or the species the site hosts and for which the site is proposed to be identified as a site of Community importance;

( d ) indicate the procedures by which a person may object.

(4) ( a ) The Minister may, for the purpose of securing compliance with the requirements of the Habitats Directive, at any time amend the notification with respect to any of the matters mentioned in subparagraph (b) of paragraph (3);

( b ) Before amending a notice under subparagraph (a) the Minister shall inform the persons specified in paragraph (1) and notify the persons who were originally notified of the notice under paragraph (2).

## REG 5

### 5 Objections

5. (1) A person on whom a notice is served under Regulation 4 (2) or any other person claiming to have or to be entitled to an interest in or over the land comprising the site, or part thereof, may within a period of three months from the date the notice was served on him or her or given to him or her, object, in the manner specified in the notice, on scientific grounds to the inclusion of a site on the candidate list of European sites.

(2) A Minister of the Government to whom a copy of the candidate list under Regulation 4 (1) has been sent or the Commissioners of Public Works in Ireland, the Environmental Protection Agency or the planning authority in whose functional area the land is situated may, not later than three months from the date the list was sent to them, seek a review or modification of the list.

(3) The Minister shall consider any objections received under paragraph (1) or a request for a review or modification of the list under paragraph (2) and shall inform those mentioned in Regulation 4 (1) and any person on whom notice was served under Regulation 4 (2) in respect of the site concerned of the decision on such objections or request.

(4) The Minister may—

( a ) having considered the objections and requests pursuant to paragraph (3), and

( b ) having regard to the criteria set out in Regulation 3, amend the candidate list of European sites and shall transmit it to the Commission in accordance with Article 4 (1) of the Habitats Directive.

## REG 6

### 6 Consultation initiated by Commission to add sites

6. (1) If consultation is initiated by the Commission in accordance with paragraph (1) of Article 5 of the Habitats Directive with respect to a site hosting a priority natural habitat type or priority species, and—

( a ) the Minister agrees that the site should be added to the list transmitted in accordance with Regulation 5 (4), or

( b ) a decision is made by the Council of the European Communities that a site should be included in the list pursuant to paragraph 3 of Article 5 of the Habitats Directive,

the site shall be treated as added to the list as from the date of that agreement or decision.

(2) Where consultation has been initiated under paragraph (1), the Minister shall—

( a ) carry out the consultation specified in paragraph (1) of Regulation 4 and the notification specified paragraph (2) of that Regulation and the Minister shall, where appropriate, inform all or any of the persons to whom those paragraphs relate of the measures to protect the site pursuant to paragraph 2 of Article 6 of the Habitats Directive.

( b ) consider any objections or requests in accordance with Regulation 5 (3) before making a decision to include the site in the list under Regulation 3 (1)

## REG 7

### 7 Surveillance by authorised officers

7. (1) The Minister and the Minister for the Marine shall, in respect of the fish species specified in Part II of the First Schedule, and to the extent (if any) specified therein, undertake or cause to be undertaken, surveillance of the conservation status of the natural habitats and species referred to in Article 2 of the Habitats Directive with particular regard to priority natural habitat types and priority species and the Minister shall have regard to such surveillance in the adaptation of the list transmitted to the Commission under Regulation 5 (4).

(2) ( a ) For the purposes of undertaking surveillance of the conservation status of the natural habitats and species under paragraph (1), and generally for the purposes of giving effect to the Habitats Directive, the Minister and the Minister for the Marine may, in respect of the fish species specified in Part II of the First Schedule and to the extent (if any) specified therein, each appoint in writing, one or more than one person to be an authorised officer for those purposes;

( b ) Where a person has been appointed to be an authorised officer under this Regulation, the person shall stand appointed until—

(i) the Minister who made the appointment terminates it pursuant to paragraph (c),

(ii) where the person appointed is an officer of the Minister who made the appointment, upon that person ceasing to be such an officer,

(iii) where the appointment is for a fixed period, on the expiry of that period,

(iv) a written resignation signed by the person is received by the Minister who made the appointment;

( c ) The appointment of a person as an authorised officer may at any time be terminated by the Minister or the Minister for the Marine, whichever of them appointed the person, even if the appointment was made for a fixed period.

(3) A certificate of appointment as an authorised officer shall be issued to every person appointed under this section and when exercising any function conferred on the person as an authorised officer shall, if requested by a person affected, produce the certificate to that person.



(4) Nothing in paragraph (2) (b) shall be construed so as to prevent the Minister, or the Minister for the Marine, from reappointing as an authorised officer a person to whom that paragraph relates.

(5) An authorised officer may, for the purposes of these Regulations—

( a ) enter and inspect any lands for the purposes of undertaking surveillance of the conservation status of the natural habitats and species under paragraph (1), and generally for the purposes of giving effect to the Habitats Directive and, without prejudice to the generality of the foregoing, may enter and inspect any lands—

(i) for the purpose of the preparation of a candidate list of European sites or of any proposed modification of any such list by virtue of Regulation 3 (3) or of any proposed addition to any such list by virtue of Regulation 6,

(ii) to which a candidate list of European sites, a modified list under Regulation 3 (3) or a list treated as added to by virtue of Regulation 6 (1) relates,

(iii) to which Regulation 8 or 9 relates,

(iv) upon which a notice is erected by virtue of Regulation 11,

(v) which is the subject of an agreement under Regulation 12,

(vi) to which Regulation 14 relates,

(vii) to which Regulation 18 relates,

(viii) to which Regulation 19 relates,

(ix) for the purpose of establishing whether or not Regulation 23 has been complied with,

(x) to which Regulation 24 relates,

(xi) other than a dwelling, upon which the authorised officer has reasonable cause to suspect that an offence under these Regulations is being or has been committed or evidence of any such offence is to be found;

( b ) request the owner or occupier of such land so entered to give assistance, to carry out such instructions and to give such information as may be reasonably necessary for the purposes of the performance by the authorised officer of his or her functions;

(6) A person who obstructs or interferes with an authorised officer when he or she is exercising a function conferred by this Regulation shall be guilty of an offence.

## CHAPTER II

Designation of special areas of conservation and notification of owners and authorities

### REG 8

#### 8 Notifications from Commission

8. As soon as practicable after the Minister has received notification from the Commission that a site has been—

( a ) adopted by the Commission in accordance with the procedure laid down in paragraph 2 of Article 4 of the Habitats Directive, or

( b ) a decision has been taken by the Council in accordance with paragraph 3 of Article 5 of the Habitats Directive, the Minister shall notify—

(i) every owner or occupier within the site and any holder of a prospecting licence or exploration licence duly issued under any

enactment that the site has been so adopted or a decision so taken,

(ii) each Minister of the Government specified in Regulation 4 (1),

(iii) the Commissioners of Public Works in Ireland,

(iv) every planning authority within whose functional area the site or any part of the site is situated or whose lands adjoin the site,

(v) the Board, and

(vi) the Environmental Protection Agency

that the site has been so adopted or a decision so taken and that the Minister proposes to designate the site as a special area of conservation.

## REG 9

### 9 Designations

9. (1) Not later than 6 years from the date a site is adopted by the Commission in accordance with the procedure laid down in paragraph 2 of Article 4 of the Habitats Directive the Minister shall, designate the site as a special area of conservation and the Minister shall publish, or cause to be published, in the Iris Oifigiúil a copy of every such designation.

(2) Any designation made under this Regulation, and any amendment or revocation thereof, may be registered under the Registration of Title Act, 1964 (No. 16 of 1964), in the appropriate register maintained under that Act as a burden on the land.

(3) ( a ) The Minister may, in agreement with the Commission, amend or revoke a designation made under this Regulation.

( b ) Before amending or revoking a designation under subparagraph (a), the Minister shall carry out the consultation specified in paragraph (1), and the notification specified in paragraph (2), of Regulation 4 prior to obtaining the agreement of the Commission.

## REG 10

### 10 Priorities for designation

10. (1) The Minister shall establish priorities for the designation of sites having regard to—

( a ) the importance of the sites for the maintenance or restoration at a favourable conservation status of—

(i) a natural habitat type or types in Annex I to the Habitats Directive,

(ii) a species in Annex II to the Habitats Directive,

or

( b ) the coherence of Natura 2000, or

( c ) the threats of degradation or destruction to which those sites are exposed.

## REG 11

### 11 Erection of notices

11. (1) The Minister may cause to be erected and maintained at suitable places within, or on the boundary of, or near any land in respect of which a designation under Regulation 9 applies a notice of the existence of the designation and for that purpose any

person, duly authorised by the Minister in that behalf, may enter on such land and on any other land.

(2) Any person who destroys, alters, defaces, disfigures, marks or otherwise interferes with any notice referred to in paragraph (1) shall be guilty of an offence.

## REG 12

### 12 Management agreements

12. (1) The Minister may enter into a management agreement in accordance with section 18 of the Principal Act with any owner, lessee or occupier of land forming part of a European site or land adjacent to such a site for the management, conservation, restoration or protection of the site or of any part of it.

(2) Any agreement previously entered into under section 18 of the Principal Act in relation to land which on or after the coming into force of these Regulations becomes part of a European site or is near such a site shall also have effect as if entered into under this Regulation.

## CHAPTER III

### Operations or activities in European sites

## REG 13

13 Conservation measures to be undertaken by the Minister in order to protect special areas of conservation

13. (1) The Minister shall establish the conservation measures which the Minister considers appropriate, in respect of special areas of conservation designated under Regulation 9 including, if necessary, management plans or either specifically designated for the sites or integrated into appropriate plans.

(2) The Minister shall establish the administrative or contractual measures which correspond to the ecological requirements of the natural habitat types in Annex I to the Habitats Directive and the species in Annex II to that Directive present on the sites.

(3) The Minister shall take the appropriate steps to avoid, in the special areas of conservation designated under Regulation 9, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated insofar as such disturbance could be significant in relation to the objectives of the Habitats Directive.

## REG 14

### 14 Restrictions on carrying out operations or activities

14. (1) A person shall not carry out, cause to be carried out or continue to carry out, on any land included in a special area of conservation or a site placed on a list in accordance with Chapter I of this Part an operation or activity mentioned in a notice issued under Regulation 4 (2) unless the operation or activity is carried out, or caused or permitted to be carried out or continued to be carried out, by the owner, occupier or user of the land and—

( a ) one of them has given the Minister written notice of a proposal to carry out the operation, or activity, specifying its

nature and the land on which it is proposed to carry it out, and  
( b ) one of the conditions specified in paragraph (2) is fulfilled.

(2) The conditions referred to in paragraph (1) are as follows—

( a ) that the operation or activity is carried out with the written consent of the Minister, or

( b ) that the operation or activity is carried out in accordance with the terms of a management agreement provided for under Regulation 12.

(3) A person who, without reasonable excuse, contravenes paragraph (1) shall be guilty of an offence.

(4) The provisions of this Regulation shall not apply to an operation or activity to which Regulation 15 (2) relates.

## REG 15

### 15 Assessment

15. (1) Where it appears to the Minister that an application for consent under paragraph (2) (a) of Regulation 14 relates to an operation or activity which—

( a ) is neither directly connected with nor necessary to the management of the site, but

( b ) is likely to have a significant effect on the site, either alone or in combination with other operations or activities, the Minister shall cause an assessment to be made of the implications for the site in view of that site's conservation objectives.

(2) ( a ) Where immediately before the making of these Regulations there is any subsisting licence, approval, consent or other authorisation granted or issued pursuant to any of the enactments set out in the Second Schedule to these Regulations pursuant to which licence, approval, consent or other authorisation an operation or activity has been undertaken or is proposed to be undertaken and which is considered by the Minister to be having or likely to have a significant adverse effect on the ecological features of the site proposed for designation as a special area of conservation, then the Minister may request the relevant Minister of the Government responsible for granting or issuing the licence, approval, consent or other authorisation or for supervising the person to whom it was granted or issued, to have an assessment made of the implications for that site in view of the site's conservation objectives and having regard to such assessment to affirm, modify or revoke such licence, approval, consent or other authorisation.

( b ) Without prejudice to the generality of subparagraph (a), where the Minister for the Marine is requested by the Minister, pursuant to subparagraph (a), to have an assessment made of the implications for a site proposed for designation as a special area of conservation of an operation or activity authorised by a lease under section 2, or a licence under section 3, of the Foreshore Act, 1933, the Minister for the Marine may, having regard to such assessment and notwithstanding any provision of the Foreshore Acts, 1933 to 1992, affirm, modify or revoke such lease or licence.

16 Decisions

16. (1) Having regard to the conclusions of the assessment under Regulation 15 (1), the Minister may decide to give consent for the operation or activity only after having ascertained that it will not adversely affect the integrity of the site and, if the Minister considers it to be appropriate, having obtained the opinion of the general public.

(2) Where the Minister is satisfied that—

( a ) notwithstanding a negative assessment of the implications for the site of any operation or activity thereon, and

( b ) in the absence of an, alternative solution,

the operation or activity must be carried out for imperative reasons of overriding public interest, which interest may, subject to paragraph (5), be of a social or economic nature, the Minister may decide to give the owner, occupier or user consent to undertake the operation or activity.

(3) The Minister shall give reasons for a decision to refuse to give consent under paragraph (1).

(4) ( a ) The owner, occupier or user of the land—

(i) to which natural habitat types and species specified in the Habitats Directive relate, other than those specified in paragraph (5),

(ii) to which the refusal to give consent relates, may, not later than 30 days after the day on which decision to refuse is given, serve notice of appeal on the Minister against that refusal.

( b ) Where in circumstances to which subparagraph (a) relates the Minister shall appoint a person, who shall be a barrister or a solicitor of not less than 7 years standing, to be an arbitrator for the purposes of hearing and determining the appeal and, where the arbitrator determines that the Minister should give consent under paragraph (4), such consent shall be given.

( c ) An arbitrator appointed under subparagraph (b) shall be paid such remuneration (if any) and allowances for expenses incurred by him or her as the Minister, with the consent of the Minister for Finance, may determine.

(5) Where the site concerned hosts a priority natural habitat type or a priority species, the reasons referred to in paragraph (2) shall be either—

( a ) reasons relating to human health, public safety or beneficial consequences of primary importance to the environment, or

( b ) other reasons which, in the opinion of the European Communities, are imperative reasons of overriding public interest.

(6) Where in accordance with paragraph (2) an operation or activity is agreed to, notwithstanding a negative assessment of the implications for a European site, the Minister shall ensure that the necessary compensatory measures are taken to ensure that the overall coherence of Natura 2000 is protected.

## CHAPTER IV

### Prohibition of works, restoration and compensation

#### REG 17

##### 17 Prohibition of works on certain lands

17. (1) Where the Minister considers that an operation or activity is being carried out or may be carried out on—

( a ) a site placed on a list in accordance with Chapter I of this Part, or

( b ) a site where consultation has been initiated in accordance with Article 5 of the Habitats Directive, or

( c ) a European site,

which is neither directly connected with nor necessary to the management of such sites but likely to have a significant effect thereon either individually or in combination with other operations or activities the Minister shall ensure that an appropriate assessment of the implications for the site in view of the site's conservation objectives is undertaken.

(2) An environmental impact assessment in respect of a proposed operation or activity shall be an appropriate assessment for the purposes of this Regulation.

(3) If the Minister, having regard to the conclusions of the assessment undertaken under paragraph (1), is of the opinion that the operation or activity will adversely affect the integrity of the site concerned, the Minister shall make application to a court of competent jurisdiction to prohibit the continuance of the operation or activity.

(4) An application to a court of competent jurisdiction for a prohibition under this Regulation shall be in a summary manner and the Court when considering the matter may make such interim or interlocutory order (if any) as it considers appropriate having regard to paragraph 4 of Article 6 of the Habitats Directive and to the overall requirement of safeguarding the integrity of the site concerned and ensuring that the overall coherence of NATURA 2000 is protected.

(5) For the purposes of this section "a court of competent jurisdiction" means either a Judge of the Circuit Court within whose Circuit the lands or part of the lands concerned are situated or the High Court.

#### REG 18

##### 18 Prohibition of works on lands outside a European site

18. (1) Where an operation or activity is being carried out, or is proposed to be carried out, on any land that is not within—

( a ) a site placed on a list in accordance with Chapter I of this Part, or

( b ) a site where consultation has been initiated in accordance with Article 5 of the Habitats Directive, or

( c ) a European site,

and is liable to have an adverse effect on the integrity of the site concerned either alone or in combination with other operations or activities the Minister shall ensure that an appropriate assessment of the implications for the site in view of the site's

conservation objectives is undertaken.

(2) Having regard to the conclusions of the assessment undertaken under paragraph (1) the provisions of paragraphs (2) to (5) of Regulation 17 shall apply.

#### REG 19

19 Restoration of land in a European site following damage

19. (1) Where an operation or activity has been carried out on—

(i) a site placed on a list in accordance with Chapter I of this Part, or

(ii) a site where consultation has been initiated in accordance with Article 5 of the Habitats Directive, or

(iii) a European site,

and is in contravention of the conditions of Chapter III of this Part the Minister may, by direction issued in writing, require the owner, occupier or user of the land or the person who carried out the operation or activity to restore the land in accordance with the direction;

( b ) Every direction shall specify the period within which the land concerned is to be restored;

( c ) Any person who fails to comply with a direction under subparagraph (a) shall be guilty of an offence.

(2) If within the period specified in a direction or within such extended period as the Minister may allow, any steps required by the direction to be taken have not been taken, the Minister may take such action as the Minister considers necessary, including authorising a person to enter on the land and take those steps, and may recover as a simple contract debt in any court of competent jurisdiction from the person to whom the direction was made any expenses reasonably incurred by the Minister in that behalf.

(3) Any person who by act or omission impedes or obstructs a person authorised under paragraph (2) from entering on land for the purposes of carrying out any required works under this Regulation shall be guilty of an offence.

#### REG 20

20 Compensation

20. (1) ( a ) Where the Minister refuses consent to an operation or activity under Chapter III of this Part, the Minister shall, save for the reasons set out in paragraphs (5) and (6), pay to the owner or occupier or user as the case may be by way of compensation an amount equal to the loss suffered by the owner, occupier or user by the depreciation of an interest in the land to which he or she is entitled.

( b ) Where a Minister of the Government modifies or revokes a lease, licence, by virtue of Regulation 15 (2), the Minister shall, save for the reasons set out in paragraph (6), pay to the lessee or licensee concerned by way of compensation an amount equal to the loss suffered by the lessee or licensee by the depreciation of any interest in the land to which he or she would, but for the modification or revocation, be entitled.

(2) ( a ) The amount of compensation payable by the Minister under

paragraph (1) shall be determined by reference to the difference between the antecedent and subsequent value of the land or of an interest in the land consequent on the refusal of consent, which amount shall be offset by the value of any amounts which the owner, occupier or user is receiving under the Scheme dated 1st day of June, 1994, and operated by the Minister for Agriculture, Food and Forestry and known as the Rural Environment Protection Scheme. Provided that any amounts which the proposed operation or activity would have attracted by way of grant aid from any Minister of the Government or any body established or regulated by or under a statute, if consent had been given under Chapter II of this Part, shall not be taken into account in assessing the difference between the antecedent and subsequent value of the land.

( b ) The amount of compensation payable by the Minister under paragraph (1) (b) shall be determined by reference to the difference between the antecedent and subsequent value of the interest in the land consequent on the modification or revocation of the licence or lease concerned.

(3) Any claims for payment of compensation under this Regulation shall, in default of agreement, be determined by arbitration under the Acquisition of Land (Assessment of Compensation) Act, 1919, and sections 69 to 83 of the Lands Clauses Consolidation Act, 1845, in all respects as if the claims arose in relation to compulsory acquisition of land.

(4) A claim for compensation under this Regulation shall be made not later than 6 months from the date of issue of the decision by the Minister under Chapter III of this Part or the modification or revocation of the lease or licence to which paragraph (1) (b) relates.

(5) Compensation under this Regulation shall not be payable for any loss arising from a refusal of consent for an operation or activity for as long as—

( a ) the Minister is in negotiation with the owner or occupier, as the case may be, for the purchase by agreement of the land, or

( b ) the Minister is in negotiation with the owner or occupier, as the case may be, to enter into a management agreement under section 18 of the Principal Act, or

( c ) proceedings for the compulsory purchase of the lands are in train.

(6) Save where the refusal of consent or the modification or revocation of a lease or licence results in the discontinuance of the use to which the land has been put by the person concerned in the period of 5 years immediately preceding such refusal, modification, or revocation or in the curtailment of such use of land, compensation will not be payable where the proposed operation or activity would significantly adversely affect—

( a ) one or more specific natural habitat types in Annex I to the Habitats Directive or

( b ) one or more species or the habitats of these species in Annex II to the Habitats Directive, or

( c ) one or more species of bird or their habitat or other habitat specified in Article 4 of the Birds Directive.

(7) ( a ) Where the Minister has refused consent to an operation or activity under Chapter III of this Part, the Minister may make an order declaring that it would not be just and reasonable in the



particular circumstances that payment of compensation should be prevented by the provisions of paragraph (6).

( b ) Where a Minister of the Government modifies or revokes a licence or lease to which Regulation 15 (2) relates the Minister may make an order declaring that it would not be just and reasonable in the particular circumstances that payment of compensation should be prevented by the provisions of paragraph (6).

(8) Any compensation payable under this Regulation may be made by the Minister either by way of a single payment or by way of a payment of an annual sum to a person having, or claiming to be entitled to an interest in or over the land on which the compensation is payable.

### **PART III PROTECTION OF FLORA AND FAUNA**

#### REG 21

21 Application of section 21 (protection of flora) of Principal Act  
21. In the application of section 21 of the Principal Act to species of flora set out in Part II of the First Schedule, paragraph (a) and (b) of subsection (3) shall apply as if there were substituted for those paragraphs the following—

"( a ) cut, pick, collect, uproot or otherwise take, injure, damage, or destroy any specimen to which this section applies or the flowers, roots, seeds, spores or other part of such specimen, ( b ) purchase, sell, keep for sale, transport for sale or exchange, offer for sale or exchange or be in possession of any such specimen whether alive or dead or the flowers, roots, seeds, spores or other part thereof,".

#### REG 22

22 Application of section 45 (sale, purchase and possession of fauna restricted) of Principal Act

22. In the application of section 45 of the Principal Act to species of fauna set out in Part I of the First Schedule, subsection (1) shall apply as if there were substituted for that subsection the following—

"(1) A person who is not a licensed wildlife dealer shall not keep for sale, sell, transport for the purpose of sale or exchange, offer for sale or exchange, purchase for resale or exchange or engage in taxidermy in respect of fauna, at any stage of life, set out in Part I of the First Schedule to the European Communities (Natural Habitats) Regulations, 1997."

#### REG 23

23 Protection of fauna set out in the First Schedule

23. (1) The Minister shall take the requisite measures to establish a system of strict protection for the fauna consisting of the animal species set out in Part I of the First Schedule prohibiting—

( a ) all forms of deliberate capture or killing of specimens of those species in the wild,

( b ) the deliberate disturbance of those species particularly during the period of breeding, rearing, hibernation and migration,  
( c ) where relevant, the deliberate destruction or taking of eggs of those species from the wild,  
( d ) the deterioration or destruction of breeding sites or resting places of those species.

(2) A person who in respect of the species set out in Part I of the First Schedule—

( a ) deliberately captures or kills any specimen of these species in the wild,

( b ) deliberately disturbs these species particularly during the period of breeding, rearing, hibernation and migration,

( c ) deliberately takes or destroys the eggs from the wild, or

( d ) damages or destroys a breeding site or resting place of such an animal, shall be guilty of an offence.

(3) The prohibitions referred to in subparagraph (a) and (b) of paragraph (1) shall apply to all stages of life of fauna to which this Regulation applies.

(4) The Minister shall establish a system to monitor the incidental capture and killing of fauna consisting of the animal species set out in Part I of the First Schedule, and, having regard to the information gathered, the Minister shall take further research or conservation measures as required to ensure that incidental capture and killing does not have a significant negative impact on the species concerned.

(5) This Regulation is in addition to, and not in substitution for, the provisions of section 23 of the Principal Act.

#### REG 24

24 Measures to control the taking in the wild of fauna and flora species set out in Part II of the First Schedule

24. (1) Having regard to the surveillance provided for in Regulation 7 (1)—

( a ) the Minister, in the case of any wild flora or fauna (to the extent, if any, specified therein) set out in Part II of the First Schedule, and

( b ) the Minister for the Marine, in respect of the fish species (to the extent, if any, specified therein) set out in paragraph (3) of that Part,

may each by direction take measures to ensure that the taking in the wild of specimens of species of wild fauna (including those fish species to the extent so specified, if any) and flora set out in that Part as well as their exploitation is compatible with their being maintained at a favourable conservation status.

(2) Without a prejudice to the generality of paragraph (1), the measures to which that paragraph relate may include—

( a ) directions regarding access to certain property,

( b ) directions regarding the temporary or local prohibition of the taking of specimens in the wild and exploitation of certain populations,

( c ) the regulation by direction of either or both the periods and methods of taking of specimens,

( d ) application, when specimens are taken, of any other statutory provision relating 'to either or both hunting and fishing which take

account of the conservation of such populations,  
( e ) establishment of a system of licences for taking specimens or quotas,

( f ) such other directions as the Minister, or the Minister for the Marine in respect of the fish species stipulated in Part II of the First Schedule, consider appropriate.

(3) The Minister, and the Minister for the Marine in respect of the fish species stipulated in Part II of the First Schedule, shall publish or cause to be published in the *Iris Oifigiúil* a copy of every direction under this Regulation.

(4) This Regulation is in addition to, and not in substitution for, the provisions of—

( a ) section 23 of the Wildlife Act, 1976,

( b ) Parts II, VI, VII, VIII, IX, XI, XVII, XVIII and XIX of, and paragraph 2 of the Fifth Schedule to the Fisheries (Consolidation) Act, 1959,

( c ) sections 28 of the Fisheries (Amendment) Act, 1962,

( d ) Parts IV and VI of the Fisheries Act, 1980, and

( e ) the Foyle Fisheries Acts, 1952 to 1983.

(5) ( a ) A person who fails to comply with a direction under this Regulation shall be guilty of an offence,

( b ) In a prosecution for an offence under subparagraph (a), it shall be a good defence for the accused to prove that he or she was not aware of the direction at the relevant time and that he or she could not reasonably be expected to have known of the direction at that time.

## REG 25

### 25 Derogations

25. (1) Where there is no satisfactory alternative and the derogation is not detrimental to the maintenance of the populations of the species to which the Habitats Directive relates at a favourable conservation status in their natural range, the Minister may, in respect of those species, grant a licence to one or more persons permitting a derogation from complying with the requirements of the provisions of section 21 of the Principal Act and Regulations 23 and 24 where it is—

( a ) in the interests of protecting wild fauna and flora and conserving natural habitats, or

( b ) to prevent serious damage, in particular to crops, livestock, forests, fisheries and water and other types of property, or

( c ) in the interests of public health and public safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment, or

( d ) for the purpose of research and education, of repopulating and re-introducing these species and for the breeding operations necessary for these purposes, including the artificial propagation of plants,

( e ) to allow, under strictly supervised conditions, on a selective basis and to a limited extent, the taking or keeping of certain specimens

of the species to the extent (if any) specified therein, which are set out in the First Schedule.

(2) The Minister shall forward to the Commission every two years a report, in accordance with a format established by the Commission, on the derogations to which paragraph (1) relates.

(3) The report referred to in paragraph (2) shall specify—

( a ) the species which are subject to the derogations and the reason for the derogation, including the nature of the risk with, if appropriate, a reference to alternatives rejected and scientific data used;

( b ) the means, devices or methods authorised for the capture or killing of animal species and the reasons for their use;

( c ) the circumstances of when and where such derogations are granted;

( d ) the authority empowered to declare and check that the required conditions obtain and to decide what means, devices or methods may be used, within what limits and by what agencies, and which persons are to carry out the task;

( e ) the supervisory measures used and the results obtained.

## **PART IV PLANNING AND DEVELOPMENT MATTERS**

### REG 26

26 Amendment of Local Government (Planning and Development) Act, 1963

26. The Local Government (Planning and Development) Act, 1963 is hereby amended—

( a ) in Section 2—

(i) by the insertion of the following after the definition of "appointed day":

" 'the Birds Directive' means Council Directive No. 79/409/EEC of 2 April 1979 on the conservation of wild birds,"

(ii) by the insertion of the following after the definition of "environmental impact statement" (inserted by the European Communities (Environmental Impact Assessment) Regulations, 1989 (S.I. No. 349 of 1989)):

" 'European site' means—

( a ) a special area of conservation;

( b ) a site of Community importance which has been placed on the list referred to in the third subparagraph of Article 4 (2) of the Habitats Directive;

( c ) an area classified pursuant to paragraph (1) or (2) of Article 4 of the Birds Directive;"

and

(iii) by the insertion of the following after the interpretation given to "functions":

" 'the Habitats Directive' means Council Directive No. 92/43/EEC of 21 May, 1992, on the conservation of natural habitats and of wild fauna and flora;"

( b ) in subsection (2) of section 19—

(i) by the insertion in paragraph (a) of the following after subparagraph (iv):

"(v) for the conservation and protection of European sites in the area to which the development plan relates;"

(ii) by the insertion in paragraph (b) of the following after

subparagraph (iii):

"(iv) for the conservation and protection of European sites in the area to which the development plan relates.",  
and

( c ) in Part IV of the Third Schedule, by the insertion of the following paragraph after paragraph 8—

"8A. Protection of features of the landscape which are of major importance for wild fauna and flora in accordance with the Habitats Directive."

REG 27

27 Obligations of Local Authorities and an Bord Pleanála in granting planning permission

27. (1) A local authority when duly considering an application for planning permission, or the Board when duly considering an appeal on a application for planning permission, in respect of a proposed development that is not directly connected with, or necessary to the management of, a European site but likely to have a significant effect thereon either individually or in combination with other developments, shall ensure that an appropriate assessment of the implications for the site in view of the site's conservation objectives is undertaken.

(2) An environmental impact assessment in respect of a proposed development prepared in accordance with a requirement of or under the Local Government (Planning and Development) Regulations, 1994 (S.I. No. 86 of 1994), shall be an appropriate assessment for the purposes of paragraph (1).

(3) Notwithstanding section 26 of the Local Government (Planning and Development) Act, 1963, and subject to paragraphs (4), (5) and (6) a local authority or the Board, as the case may be, shall, having regard to the conclusions of the assessment to which paragraph (1) relates, decide to grant permission for the proposed development only after having ascertained that it will not adversely affect the integrity of the European site concerned.

(4) In considering whether a development will adversely affect the integrity of the European site concerned, the local authority or the Board, as the case may be, shall have regard to the manner in which it is proposed to be carried out or to any conditions or restrictions subject to which they propose that the permission should be given.

(5) A local authority or the Board, as the case may be, may, notwithstanding a negative assessment and in the absence of alternative solutions, decide to grant planning permission for a proposed development where such development has to be carried out for imperative reasons of overriding public interest.

(6) ( a ) Subject to subparagraph (b), imperative reasons of overriding public interest shall include reasons of a social or economic nature:

( b ) If the site concerned hosts a priority natural habitat type of or priority species the only considerations of overriding public interest shall be—

(i) those relating to human health or public safety, or

(ii) the beneficial consequences of primary importance for the environment, or

(iii) further to an opinion from the Commission to other imperative reasons of overriding public interest.

(7) Where a local authority or the Board desire to obtain the opinion of the Commission as to whether reasons are to be considered imperative reasons of overriding public interest, they shall refer the matter to the Minister for the Environment and the Minister for the Environment shall communicate with the Commission on behalf of the local authority or the Board and by notice shall convey the Commission's opinion to the local authority or the Board, as the case may be.

(8) A decision shall not be made on the application or the appeal, as the case may be, by the local authority or the Board until the Commission's opinion has been communicated to them.

(9) For the purposes of the Board's objectives under subsection (2) of section 2 of the Local Government (Planning and Development) Act, 1992, to determine the appeal within a period of 4 months or such other period as may be prescribed under paragraph (b) of that subsection, there shall not be included the period beginning on the day the matter is referred by the Board to the Minister for the Environment under that paragraph and ending on the day of receipt by the Board of notice by the Minister for the Environment of an opinion by the Commission on the matter.

(10) Notwithstanding subsection (4) of section 26 of the Local Government (Planning and Development) Act, 1963, the appropriate period referred to in that subsection shall not, in a case in which a request is made to the Minister for the Environment under paragraph (7), include the period beginning on the day the matter is referred by the local authority to the Minister for the Environment under that paragraph and ending on the day of receipt by the local authority concerned of notice by the Minister for the Environment of an opinion by the Commission on the matter.

(11) Where immediately before the making of these Regulations a planning authority or the Board, as the case may be, have granted permission in respect of a development within a European site and such development is considered by the Minister to have a significant adverse effect on the ecological features of the site that Minister may request the local authority or the Board to review the permission in accordance with the provisions of this Regulation and the local authority or the Board shall affirm, modify or revoke such permission depending on the results of the review.

## REG 28

28 Obligations of the Minister for the Environment in relation to local authority development where an environmental impact assessment is required

28. (1) Where a proposed development in respect of which an application for the certification of the Minister for the Environment has been made in accordance with Article 123 of the Local Government (Planning and Development) Regulations, 1994 is neither directly connected with nor necessary to the management of a European site but likely to have a significant effect thereon either individually or in combination with other developments, the Minister for the Environment shall ensure that an appropriate assessment of the implications for the site in view of the site's conservation

objectives is undertaken.

(2) An environmental impact assessment in respect of a proposed development referred to in paragraph (1) shall be an appropriate assessment for the purposes of this Regulation.

(3) The Minister for the Environment shall, having regard to the conclusions of the assessment undertaken under paragraph (1), agree to the proposed development only after having ascertained that it will not adversely affect the integrity of the European site concerned.

(4) In considering whether the proposed development will adversely affect the integrity of the European site concerned, the Minister for the Environment shall have regard to the manner in which the proposed development is being carried out or to any conditions or restrictions subject to which the proposed development is being carried out.

(5) The Minister for the Environment may, notwithstanding a negative assessment and where that Minister is satisfied that there are no alternative solutions, decide to agree to the proposed development where the proposed development has to be carried out for imperative reasons of overriding public interest.

(6) ( a ) Subject to subparagraph (b), imperative reasons of overriding public interest shall include reasons of a social or economic nature;

( b ) If the site concerned hosts a priority natural habitat type or a priority species, the only considerations of overriding public interest shall be—

(i) those relating to human health or public safety, or

(ii) the beneficial consequences of primary importance for the environment, or

(iii) further to an opinion from the Commission to other imperative reasons of overriding public interest.

## REG 29

29 Obligations of local authorities in carrying out developments to which Part X of the Local Government (Planning and Development) Regulations, 1994 apply

29. (1) Subject to paragraphs (3) and (4) where a proposed development to which Part X of the Local Government (Planning and Development) Regulations, 1994, applies is neither directly connected with nor necessary to the management of a European site but likely to have a significant effect thereon, either individually or in combination with other developments, the local authority shall ensure that an appropriate assessment of the implications for the site in view of the site's conservation objectives is undertaken.

(2) The local authority, having regard to the conclusions of the assessment undertaken under paragraph (1), shall undertake the proposed development only after having ascertained that it will not adversely affect the integrity of the European site concerned.

(3) In considering whether the proposed development will adversely affect the integrity of the European site concerned, the local authority, shall have regard to the manner in which it is proposed to carry out the proposed development or to any conditions or restrictions subject to which the proposed development is being carried out.

(4) A local authority may, notwithstanding a negative assessment and where it is satisfied that there are no alternative solutions, decide to undertake the proposed development where such development has to be carried out for imperative reasons of overriding public interest.

(5) ( a ) Subject to subparagraph (b), imperative reasons of overriding public interest shall include reasons of a social or economic nature:

( b ) If the site concerned hosts a priority natural habitat type or a priority species, the only considerations of overriding public interest shall be—

(i) those relating to human health or public safety, or

(ii) beneficial consequences of primary importance for the environment, or

(iii) further to an opinion from the Commission to other imperative reasons of overriding public interest.

(6) Where the local authority decides to seek an opinion from the Commission under paragraph (5) the provisions of paragraphs (7) and (8) of Regulation 27 shall apply.

#### REG 30

30 Obligations of the Minister for the Environment in relation to road development by a road authority

30. (1) Where a proposed road development in respect of which an application for the approval of the Minister for the Environment has been made in accordance with section 51 of the Roads Act, 1993, is neither directly connected with nor necessary to the management of a European site but likely to have a significant effect thereon either individually or in combination with other developments, the Minister for the Environment shall ensure that an appropriate assessment of the implications for the site in view of the site's conservation objectives is undertaken.

(2) An environmental impact assessment as required under subsection (2) of section 51 of the Roads Act, 1993, in respect of a proposed road development referred to in paragraph (1) shall be an appropriate assessment for the purposes of this Regulation.

(3) The Minister for the Environment shall, having regard to the conclusions of the assessment undertaken under paragraph (1), agree to the proposed road development only after having ascertained that it will not adversely affect the integrity of the European site concerned.

(4) In considering whether the proposed road development will adversely affect the integrity of the European site concerned, the Minister for the Environment shall have regard to the manner in which the proposed development is being carried out or to any conditions or restrictions subject to which the approval is given.

(5) The Minister for the Environment may, notwithstanding a negative assessment and where that Minister is satisfied that there are no alternative solutions, decide to agree to the proposed road development where the proposed road development has to be carried out for imperative reasons of overriding public interest.

(6) ( a ) Subject to paragraph (b) imperative reasons of overriding public interest shall include reasons of a social or economic nature;



- ( b ) If the site concerned hosts a priority natural habitat type or a priority species, the only considerations of overriding public interest shall be—
- (i) those relating to human health or public safety,
  - (ii) beneficial consequences of primary importance for the environment, or
  - (iii) further to an opinion from the Commission to other imperative reasons of overriding public interest.

#### REG 31

#### 31 Requirement for discharge by certain Ministers of the Government functions under certain enactments

31. (1) Where an operation or activity to which any of the enactments set out in Part I of the Second Schedule applies is neither directly connected with nor necessary to the management of a European site but likely to have a significant effect thereon, either individually or in combination with other operations or activities, and such operation or activity is to be undertaken by, or requires the concurrence, consent or approval (however expressed in the enactment) of any Minister of the Government, then that Minister shall ensure that an appropriate assessment of the implications for the site in view of the site's conservation objectives is undertaken.

(2) An environmental impact assessment in respect of an operation or activity referred to in paragraph (1) shall be an appropriate assessment for the purposes of this Regulation.

(3) A Minister of the Government in carrying out powers and functions under any of the enactments set out in Part I of the Second Schedule shall undertake, concur, consent or approve of the operation or activity, having regard to the conclusions of the assessment undertaken under paragraph (1), only after having ascertained that the operation or activity will not adversely affect the integrity of the site concerned.

(4) In considering whether an operation or activity will adversely affect the integrity of the site, a Minister of the Government shall have regard to the manner in which it is proposed to be carried out or to any conditions or restrictions subject to which that Minister proposes that the operation or activity is to be carried out.

(5) Notwithstanding a negative assessment of the implications for the site and where a Minister of the Government is satisfied that there are no alternative solutions that Minister may undertake, or so concur, consent or approve of, an operation or activity where such operation or activity has to be carried out for imperative reasons of overriding public interest.

(6) ( a ) Subject to paragraph (b) imperative reasons of overriding public interest shall include reasons of a social or economic nature;

( b ) if the site concerned hosts a priority natural habitat type of a priority species, the only considerations of overriding public interest shall be—

- (i) those relating to human health or public safety,
- (ii) beneficial consequences of primary importance for the environment, or

(iii) further to an opinion from the Commission to other imperative reasons of overriding public interest.

(7) Before exercising any function to which this Regulation relates under any of the enactments set out in Part I of the Second Schedule, the Minister of the Government concerned shall consult the Minister.

## REG 32

32 Obligations of local authorities, An Bord Pleanála or the Environmental Protection Agency in the discharge of their powers and functions under certain enactments

32. (1) Where an operation or activity or an established activity to which an application for a licence or a revised licence or a review of a licence or revised licence, as appropriate, under any of the enactments set out in Part II of the Second Schedule applies is neither directly connected with nor necessary to the management of a European site but likely to have a significant effect thereon either individually or in a combination with other operations or activities or established activities a local authority, the Board or the Environmental Protection Agency shall ensure that an appropriate assessment of the environmental implications for the site in view of the site's conservation objectives is undertaken.

(2) An environmental impact assessment in respect of an operation or activity referred to in paragraph (1) shall be an appropriate assessment for the purposes of paragraph (1).

(3) The local authority, the Board or the Environmental Protection Agency, as the case may be, in carrying out their powers and functions under any of the enactments set out in Part II of the Second Schedule, having regard to the conclusions of the assessment undertaken under paragraph (1), shall grant the licence only after having ascertained that the operation or activity will not adversely affect the integrity of the European site concerned.

(4) In considering whether an operation or activity to be licensed will adversely affect the integrity of the European site concerned, the local authority, the Board, or the Environmental Protection Agency, as the case may be, shall have regard to the manner in which it is proposed to be carried out or to any conditions or restrictions subject to which they propose that the licence should be granted.

(5) A local authority, the Board or the Environmental Protection Agency, as the case may be, may, notwithstanding a negative assessment and where they are satisfied that there are no alternative solutions, decide to grant a licence for an operation or activity where such operation or activity has to be carried out for imperative reasons of overriding public interest.

(6) ( a ) Subject to paragraph (b) imperative reasons of overriding public interest shall include reasons of a social or economic nature:

( b ) If the site concerned hosts a priority natural habitat type or a priority species, the only considerations of overriding public interest shall be—

(i) those relating to human health or public safety,

(ii) beneficial consequences of primary importance for the environment, or

(iii) further to an opinion from the Commission to other imperative reasons of overriding public interest.

(7) Where a local authority or the Environmental Protection Agency decide to seek an opinion from the Commission under paragraph (6), the provisions of paragraphs (7) and (8) of Regulation 27 shall apply as if the reference to the Board were a reference to the Environmental Protection Agency.

(8) Notwithstanding subsection (10) of section 85 of the Environmental Protection Agency Act, 1992, the appropriate period referred to in that subsection shall not, in a case in which a request is made to the Minister for the Environment under paragraph (6), include the period beginning on the day the matter is referred by the Environmental Protection Agency to the Minister for the Environment under that paragraph and ending on the day of receipt by the Environmental Protection Agency of notice by the Minister for the Environment of an opinion by the Commission on the matter.

#### REG 33

##### 33 Compensatory measures (Part IV)

33. Where in accordance with Regulations 27 (5), 28 (5), 29 (4), 30 (5), 31 (5) or 32 (5) an operation or activity is agreed to, notwithstanding a negative assessment of the implications for a European site, the Minister shall ensure that the necessary compensatory measures are taken to ensure that the overall coherence of Natura 2000 is protected.

#### REG 34

##### 34 Application to areas classified pursuant to the Birds Directive

34. The provisions of Regulations 4, 5, 7, 13, 14, 15 and 16 shall, where appropriate, apply with any necessary modifications to areas classified pursuant to paragraph 1 and 2 of Article 4 of the Birds Directive

## **PART V MISCELLANEOUS**

#### REG 35

##### 35 Education and research

35. The Minister, shall—

- ( a ) promote education and general information on the need to protect species of wild flora and fauna and to conserve their habitats and natural habitats,
- ( b ) encourage the necessary research and scientific work for the purpose of meeting the requirements of Article 11 of the Habitats Directive with particular attention to scientific work necessary for the implementation of Articles 4 and 10 of that Directive;
- ( c ) supply information, where appropriate, for the purpose of proper co-ordination of research carried out at Member State and Community level to other Member States and the Commission.

## REG 36

### 36 Introduction of certain species

36. (1) Where the Minister carries out or causes to be carried out an investigation which establishes that the reintroduction, within the State or any specified part thereof, of certain native species specified in Annex IV to the Habitats Directive would contribute effectively to re-establishing those species at a favourable conservation status and thereby contribute to their conservation, the Minister may, after consultation with such other Ministers of the Government, local authorities or other bodies and individuals as the Minister considers appropriate, cause to be carried out the reintroduction of any of the native species so specified.

(2) ( a ) The Minister may, in consultation with the Minister for the Marine where appropriate, by direction prohibit, except under licence granted by the Minister, the introduction into the wild of any non native species so as not to prejudice natural habitats within their natural range or the wild native fauna and flora.

( b ) The Minister shall publish or cause to be published in the Iris Oifigiúil a copy of every direction under this paragraph.

## REG 37

### 37 Reports

37. (1) Every 6 years from the date of expiry of the period laid down in Article 17 of the Habitats Directive the Minister shall prepare a report on the implementation of the measures taken under that Directive.

(2) The report under paragraph (1) shall, in particular, include information concerning the conservation measures referred to in Article 6 (1) of the Habitats Directive as well as evaluation of the impact of those measures on the conservation status of the natural habitat types in Annex I and the species in Annex II to, and the main results of the surveillance referred to in Article 11 of, the Habitats Directive.

## REG 38

### 38 Offences by body corporate

38. Where an offence under these regulations has been committed by a body corporate and it is proved to have been so committed with the consent or connivance of, or, to be attributable to any neglect on the part of any person who, when the offence was committed, was a director, manager, secretary or other officer of the body corporate, or a person purporting to act in any such capacity, that person, as well as the body corporate, shall be guilty of an offence and shall be liable to be proceeded against and punished as if guilty of the first-mentioned offence.

## REG 39

### 39 Penalties

39. A person who is guilty of an offence—  
( a ) under Regulation 11 shall be liable on summary conviction to a fine not exceeding £1,000, or  
( b ) under any other provision of these Regulations shall be liable on summary conviction to a fine not exceeding £1,500 or to 6 months imprisonment or to both.

## **FIRST SCHEDULE**

### FLORA AND FAUNA

#### PART I

Regulations 22, 23

##### 1. MAMMALS

*Lutra lutra* (Otter)

Cetacean Species

Bat Species

##### 2. AMPHIBIANS

*Bufo calamita* (Natterjack toad)

#### PART II

Regulations 7, 24, 25

##### 1. MAMMALS

*Martes martes* (Pine marten)

*Lepus timidus* (Irish hare)

*Halichoerus grypus* (Grey seal)

*Phoca vitulina* (Common seal)

##### 2. AMPHIBIANS

*Rana temporaria* (Frog)

##### 3. FISH

*Lampetra fluviatilis* (Lampern)

*Coregonus autumnalis* spp. (Pollan)

*Alosa alosa* (Allis shads)

*Alosa fallax* (Twaite shad)

*Salmo salar* (Salmon) (only in freshwater)

##### 4. MOLLUSCS

*Helix pomatia* (Edible snail)

*Margaritifera margaritifera* (Freshwater pearl mussel)

##### 5. CRUSTACEANS

*Austropotamobius pallipes* (White-clawed crayfish)

##### 6. LICHENS

*Cladonia* subgenus *Cladina* (Reindeer Moss)

##### 7. MOSSES

*Leucobryum glaucum*

All *Sphagna*

##### 8. FERNS AND RELATIVES

*Lycopodium* spp. (Clubmosses)

## **SECOND SCHEDULE**

#### PART I

ENACTMENTS REFERRED TO IN REGULATION 31

Regulation 31(7)

Number and Year	Short Title	No.	Year	Act
No. 6 of 1965	Air Navigation and Transport			Act, 1965
No. 3 of 1945	Arterial Drainage Act, 1945			No. 14 of
1996	Dumping at Sea Act, 1996			No. 15 of 1959
	Fisheries (Consolidation)			Act, 1959
No. 1 of 1980	Fisheries Act, 1980			No. 12 of 1933
	Foreshore			

Act, 1933No. 17 of 1992Foreshore Act, 1992No. 30 of 1976Gas Act,  
1976No. 9 of 1946Harbours Act, 1946No. 31 of 1940Minerals Development  
Act, 1940No. 12 of 1979Minerals Development Act, 1979No. 15 of  
1995Minerals Development Act, 1995No. 7 of 1960Petroleum and Other  
Minerals Development Act, 1960

## PART II

ENACTMENT REFERRED TO IN REGULATION 32

Regulation 32(7)

Number and YearShort TitleNo. 6 of 1987Air Pollution Act, 1987No. 7  
of 1992Environmental Protection Agency Act, 1992No. 21 of 1990Local  
Government Water Pollution (Amendment) Act, 1990No. 10 of 1996Waste  
Management Act, 1996No. 1 of 1977Water Pollution (Amendment) Act,  
1977

GIVEN under the Official Seal of the Minister, this 26th day of  
February, 1997.

MICHAEL D. HIGGINS,  
Minister for Arts, Culture  
and the Gaeltacht.

## EXPLANATORY NOTE.

These Regulations give effect to Council Directive 92/43/EEC on the  
conservation of natural habitats and of wild fauna and flora  
(Habitats Directive).

The Regulations empower the Minister to designate special areas of  
conservation (endangered species and habitats of endangered species)  
as a contribution to an EU Community network to be known as NATURA  
2000.

The Regulations also place an obligation on the Minister, other  
Ministers of the Government, Local Authorities and other State Bodies  
to have regard to the provisions of the Regulations in carrying out  
their powers and functions under certain Enactments under their  
control.