

**2007 No. 345**

**EUROPEAN COMMUNITIES**

**NATURE CONSERVATION**

**The Conservation (Natural Habitats, etc.) (Amendment)  
Regulations (Northern Ireland) 2007**

*Made* - - - - *24th July 2007*

*Coming into force* - - *21st August 2007*

The Department of the Environment is a department designated(a) for the purpose of section 2(2) of the European Communities Act 1972(b) in relation to measures relating to the conservation of natural habitats and of wild fauna and flora.

These regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972. It appears to the Department that it is expedient for any reference to an Annex to Council Directive 92/43/EEC(c) on the conservation of natural habitats and of wild flora and fauna to be construed as a reference to that Annex as amended from time to time.

In exercise of the powers conferred on it by section 2(2) of, and paragraph 1A(d) of Schedule 2 to, the European Communities Act 1972, the Department makes the following Regulations:

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Conservation (Natural Habitats, etc.) (Amendment) Regulations (Northern Ireland) 2007 and shall come into operation on 21<sup>st</sup> August 2007.

(2) The Interpretation Act (Northern Ireland) 1954(e) shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

**Amendments to the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995**

2. The Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995(f) are amended in accordance with regulations 3 to 36.

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(a) S.I. 1992/2870.

(b) 1972 c.68.

(c) Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora was last amended by Council Directive 2006/105/EC of the 20 November 2006 adapting Directives 79/409/EEC, 92/43/EEC, 97/68/EC, 2001/80/EC and 2001/81/EC in the field of the environment, by reason of the accession of Bulgaria and Romania. (O.J. No. L363, 20.12.2006, pg.368; and see O.J. L80, 21.3.2007, pg.15 for the Corrigendum amending the original title).

(d) Paragraph 1A was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (c.51).

(e) 1954 c.33 (N.I.).

(f) S.R. 1995 No.380 as amended by S.R. 2004 No.435 and S.R. 2003 No.46.

3. In regulation 2 (interpretation and application)—

(a) in paragraph (2)—

(i) in the appropriate places insert the following definitions—

“the EC Treaty” means the Treaty establishing the European Community<sup>(a)</sup>;

“European offshore marine site” means a European offshore marine site within the meaning of regulation 15 (meaning of European offshore marine site) of the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007<sup>(b)</sup>;

(ii) for the definition of “the Habitats Directive” substitute—

“the Habitats Directive” has the meaning given by paragraph (2A);” and

(iii) for the definition of “the Wild Birds Directive”<sup>(c)</sup> substitute—

“the Wild Birds Directive” has the meaning given by paragraph (2A).”

(b) after paragraph (2) insert the following paragraph—

“(2A) In these Regulations—

(a) subject to subparagraph (b)—

(i) “the Habitats Directive” means Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora as last amended by Council Directive 2006/105/EC of 20th November 2006 adapting Directives 79/409/EEC, 92/43/EEC, 97/68/EC, 2001/80/EC and 2001/81/EC in the field of environment, by reason of the accession of Bulgaria and Romania; and

(ii) “the Wild Birds Directive” means Council Directive 79/409/EEC on the conservation of wild birds as last amended by Council Directive 2006/105/EC of 20th November 2006 adapting Directives 79/409/EEC, 92/43/EEC, 97/68/EC, 2001/80/EC and 2001/81/EC in the field of environment, by reason of the accession of Bulgaria and Romania; and

(b) references to any Annex to the Habitats Directive are references to that Annex as amended from time to time.”

4. After regulation 9 (meaning of “European Site” in these Regulations) insert—

**“Surveillance of conservation status of habitats and species**

9A.—(1) The Department shall make arrangements for the surveillance of the conservation status of natural habitats of Community interest and species of Community interest, and in particular priority natural habitat types and priority species.

(2) Where, in the case of any species of wild fauna and flora listed in Annex V to the Habitats Directive, the Department considers that the results of surveillance arranged under paragraph (1), or otherwise arranged for the purpose of Article 11 of the Habitats Directive, makes it necessary to do so, it shall make arrangements for ensuring that the taking in the wild of specimens of such species, and their exploitation, is compatible with their being maintained at a favourable conservation status.

(3) Any arrangements to be made under paragraph (2) shall include arrangements for the continuation of the surveillance under paragraph (1), for the purpose of establishing whether the taking in the wild of specimens of such species, and their exploitation, are compatible with their being maintained at a favourable conservation status.

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(a) A consolidated version can be found at O.J. No. C321E, 29.12.06.

(b) S.I. 2007 No. 1842.

(c) Council Directive 79/409/EEC on the conservation of wild birds was last amended by Council Directive 2006/105/EC of 20 November 2006 adapting Directives 79/409/EEC, 92/43/EEC, 97/68/EC, 2001/80/EC and 2001/81/EC in the field of environment, by reason of the accession of Bulgaria and Romania (O.J. No. L363, 20.12.2006, p. 368; and see O.J. L80, 21.3.2007, p. 15, for the Corrigendum amending the original title).

(4) The Department shall, from time to time, review the arrangements made under paragraphs (1), (2) and (3) and if appropriate, revise those arrangements.

(5) In this regulation in relation to any marine area for the words “the Department” where they occur substitute “the Secretary of State”.

5. For regulation 34 (protection of wild animals) substitute—

**“Protection of wild animals**

**34.—**(1) It is an offence—

- (a) deliberately to capture, injure or kill a wild animal of a European protected species;
- (b) deliberately to disturb such an animal—
  - (i) while it is occupying a structure or place which it uses for shelter or protection;
  - (ii) in such a way as to be likely to—
    - (a) affect the local distribution or abundance of the species to which it belongs, or
    - (b) impair its ability to breed or reproduce, or rear or care for its young;
- (c) deliberately to take or destroy the eggs of such an animal;
- (d) deliberately to obstruct access to a breeding site or resting place of such an animal;  
or
- (e) to damage or destroy a breeding site or resting place of such an animal.

(2) It is an offence for any person—

- (a) to have in his possession or control,
- (b) to transport,
- (c) to sell or exchange, or
- (d) to offer for sale or exchange,

any live or dead animal which is taken from the wild and is of a species listed in Annex IV(a) to the Habitats Directive, or any part of, or anything derived from, such an animal.

(3) The offences in paragraphs (1) and (2) apply to all stages of the life of the animals to which they apply.

(4) Subject to paragraph (5), a person shall not be guilty of an offence under paragraph (2) if he shows that the animal or part of the animal in question, or the animal or part of the animal from which the part or the thing in question is derived, was lawfully taken from the wild.

(5) The defence in paragraph (4) does not apply—

- (a) in respect of the offences in paragraph (2)(a) and (b) if—
  - (i) the animal in question is an animal of a European protected species, or the part or thing in question is derived from such an animal, and
  - (ii) the animal, part or thing in question was in the defendant’s possession, or transported by the defendant, for the purpose of sale or exchange;
- (b) in respect of the offences in paragraph (2)(c) and (d) if the animal is an animal of a European protected species, or the part or thing in question is derived from such an animal.

(6) For the purposes of paragraph (4) an animal, or part of an animal, shall be treated as having been lawfully taken from the wild if—

- (a) it was taken from the wild in the European territory of a member State to which the EC Treaty applies, without contravention of the law of that member State and before the implementation date; or

- (b) it was taken from the wild elsewhere.
- (7) Unless the contrary is shown, in any proceedings—
  - (a) for an offence under paragraph (1), the animal in question shall be presumed to have been a wild animal; and
  - (b) for an offence under paragraph (2)—
    - (i) the animal or part of the animal in question shall be presumed to have been taken from the wild;
    - (ii) the part or thing in question shall be presumed to be from an animal taken from the wild.
- (8) In any proceedings for an offence under paragraph (1), where this paragraph applies the defendant shall not be taken deliberately to have done anything mentioned in subparagraph (a), (b) or (c) of that paragraph merely because—
  - (a) his actions had the result that he did the thing in question; and
  - (b) he intended those actions and knew that they might have that result.
- (9) Paragraph (8) applies where the defendant shows that—
  - (a) the actions in question were for the purpose of, and in the course, of sea fishing;
  - (b) he did not intend those actions to have the result in question; and
  - (c) he had taken any steps that could reasonably be taken to ensure compliance with the requirements or conditions of any relevant Community instrument.
- (10) In paragraph (9), “any relevant Community instrument” means any instrument relating to sea fisheries which—
  - (a) regulates such fishing for the purpose (whether or not the sole purpose) of minimising the extent to which it has a result of the kind referred to in paragraph (8) or the risk that it may have a result of that kind; and
  - (b) is adopted by any Community institution under—
    - (i) Article 37(2) of the EC Treaty; or
    - (ii) Council Regulation (EC) No 2371/2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy<sup>(a)</sup> or under any instrument adopted thereunder.
- (11) A person guilty of an offence under this regulation shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (12) In this regulation—
  - “the implementation date” means—
    - (a) where the relevant State became a member State before 10th June 1994, the 10th June 1994; and
    - (b) in any other case, the date on which the relevant State became a member State;
  - “relevant State” means the State in whose territory the animal, or part of it, was taken from the wild.”

6. For regulation 35 (exceptions from regulation 34) substitute—

**“Exceptions from regulation 34**

**35.—**(1) A person shall not be guilty of an offence under regulation 34(1)(a) or (b) or under regulation 34(2)(a) or (b) if he shows that the contravention in question—

- (a) was in relation to an animal that had been seriously disabled otherwise than by his unlawful act and there was no reasonable chance of its recovering, and

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(a) O.J. No. L358, 31.12.02, p.59.

- (b) was done solely for one or more of the purposes of—
  - (i) ending the animal’s life, or
  - (ii) disposing if it (otherwise than by sale or exchange) as soon as practicable after it was dead.

(2) A person shall not be guilty of an offence under regulation 34(1) of deliberately capturing a wild animal of a European protected species, or an offence under regulation 34(2)(a) or (b), if he shows that the contravention in question—

- (a) was in relation to an animal that had been disabled otherwise than by his unlawful act, and
- (b) was done solely for one or more of the purposes of—
  - (i) tending it and releasing it when no longer disabled, or
  - (ii) releasing it after it had been tended.”

7. For regulation 36 (prohibition of certain methods of taking or killing wild animals) substitute—

**“Prohibition of certain methods of capturing or killing wild animals**

- 36.—**(1) This regulation applies in relation to the capturing or killing of a wild animal—
- (a) of any of the species listed in Schedule 3 to these Regulations (which shows the species listed in Annex V(a) to the Habitats Directive, and to which Article 15 applies, whose natural range includes any area of Northern Ireland), or
  - (b) of a European protected species, where the capturing or killing of such animals is permitted in accordance with these Regulations.
- (2) It is an offence to use for the purpose of capturing or killing any such wild animal—
- (a) any of the means listed in paragraph (3) or (4),
  - (b) any form of capturing or killing from the modes of transport listed in paragraph (5), or
  - (c) any other means of capturing or killing which is indiscriminate and capable of causing the local disappearance of, or serious disturbance to, a population of any species of animal referred to in paragraph (1).
- (3) The prohibited means of capturing or killing of mammals are—
- (a) blind or mutilated animals used as live decoys;
  - (b) tape recorders;
  - (c) electrical and electronic devices capable of killing or stunning;
  - (d) artificial light sources;
  - (e) mirrors and other dazzling devices;
  - (f) devices for illuminating targets;
  - (g) sighting devices for night shooting comprising an electronic image magnifier or image converter;
  - (h) explosives;
  - (i) nets which are non-selective according to their principle or their conditions of use;
  - (j) traps which are non-selective according to their principle or their conditions of use;
  - (k) crossbows;
  - (l) poisons and poisoned or anaesthetic bait;
  - (m) gassing or smoking out; or
  - (n) semi-automatic or automatic weapons with a magazine capable of holding more than two rounds of ammunition.

(4) The prohibited means of capturing or killing fish are—

- (a) poison; or
- (b) explosives.

(5) The prohibited modes of transport are—

- (a) aircraft; or
- (b) moving motor vehicles.

(6) A person guilty of an offence under this regulation shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.”.

8. After regulation 36 (prohibition of certain methods of taking or killing wild animals) insert the following regulation—

**“Monitoring incidental capturing and killing**

**36A.**—(1) The Department shall make arrangements to establish a system for monitoring the incidental capture and incidental killing which takes place in Northern Ireland of animals of the species listed in Annex IV(a) to the Habitats Directive.

(2) In light of the information gathered from monitoring arranged under paragraph (1), or otherwise arranged for the purpose of Article 12(4) of the Habitats Directive, the Department shall make arrangements for the carrying out of further research for, or the taking of conservation measures as are necessary for, ensuring that such incidental capture or incidental killing does not have a significant negative impact on the species in question.

(3) The Department shall review the arrangements made under paragraphs (1) and (2) and if necessary revise those arrangements.

(4) In this regulation in relation to any marine area for the words “the Department” where they occur substitute “the Secretary of State”.

9. For regulation 38 (protection of wild plants) substitute the following regulation—

**“Protection of wild plants**

**38.**—(1) It is an offence deliberately to pick, collect, cut, uproot or destroy a wild plant of a European protected species.

(2) It is an offence for any person—

- (a) to have in his possession or control,
- (b) to transport,
- (c) to sell or exchange, or
- (d) to offer for sale or exchange,

any live or dead plant which is taken in the wild and is of a species listed in Annex II(b) (other than a bryophyte) or Annex IV(b) to the Habitats Directive, or any part of, or anything derived from, such a plant.

(3) The offences in paragraphs (1) and (2) apply to all stages of the biological cycle of the plants to which they apply.

(4) Subject to paragraph (5), a person shall not be guilty of an offence under paragraph (2) if he shows that the plant or part of the plant in question, or the plant or part of the plant from which the part or thing in question is derived, was lawfully taken in the wild.

(5) The defence in paragraph (4) does not apply—

- (a) in respect of the offences in paragraph 2(a) and (b) if—
  - (i) the plant in question is of a European protected species, or the part or thing in question is derived from such a plant; and
  - (ii) the plant, part or thing in question was in the defendant’s possession or control, or transported by the defendant, for the purpose of sale or exchange;

- (b) in respect of the offences in paragraph 2(c) and (d) if the plant in question is of a European protected species, or the part or thing in question is derived from such a plant.

(6) For the purposes of paragraph (4) a plant, or part of a plant, shall be treated as having been lawfully taken in the wild if—

- (a) it was taken in the wild in the European territory of a member State to which the EC Treaty applies, without contravention of the law of that member State and before the implementation date; or
- (b) it was taken in the wild elsewhere.

(7) Unless the contrary is shown, in any proceedings—

- (a) for an offence under paragraph (1), the plant in question shall be presumed to have been a wild plant; and
- (b) for an offence under paragraph (2)—
  - (i) the plant or part of the plant in question shall be presumed to have been taken in the wild;
  - (ii) the part or thing in question shall be presumed to be from a plant taken in the wild.

(8) A person guilty of an offence under this regulation shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(9) In this regulation—

“the implementation date” means—

- (a) where the relevant State became a member State before 10th June 1994, the 10th June 1994; and
  - (b) in any other case, the date on which the relevant State became a member State; and
- “relevant State” means the State in whose territory the plant, or part of it, was taken in the wild.”.

**10.** In regulation 39 (grant of licences for certain purposes) after paragraph (2) insert the following paragraphs—

“(2A) Subject to paragraph (2B), the Department may grant a licence to permit the taking or the possession or control of certain specimens of the species listed in Annex II(b) (other than a bryophyte) or Annex IV to the Habitats Directive notwithstanding that the licence is for a purpose not falling within paragraph (2).

(2B) The Department shall only grant a licence under paragraph (2A) where it is satisfied that the grant of licence would be compatible with the restrictions in Article 16(1)(e) of the Habitats Directive (namely “under strictly supervised conditions, on a selective basis and to a limited extent” and “in limited numbers”).

(2C) Regulations 34, 36 and 38 do not apply to anything done under and in accordance with the terms of a licence granted by the Department under paragraph (2A).”.

**11.** In regulation 40 (licences: supplementary provisions)—

- (a) in paragraph (1) for “A licence” substitute “Subject to the provisions of this regulation, a licence”;
- (b) after paragraph (1) insert the following paragraph—

“(1A) A licence granted under 39(2A) may only be granted to such persons as are named under the licence.”; and
- (c) after paragraph (4) insert the following paragraph—

“(5) A licence granted under regulation 39(2A) shall specify—

  - (a) the species of animal or plant to which the licence relates;

- (b) the maximum number of specimens which any person authorised by the licence may take or have in his possession or under his control, or which particular specimens that person may take or have in his possession or under his control;
- (c) the conditions subject to which the action authorised by the licence may be taken and in particular—
  - (i) the methods, means or arrangements by which specimens may be taken or be in the possession or control of any person authorised by licence,
  - (ii) when or over what period the action authorised by the licence may be taken, and
  - (iii) where the licence authorises any person to take specimens, the area from which they may be taken.”

12. After regulation 41 (false statements made for obtaining licence) insert the following regulation—

**“Offence of breaching licence condition**

41A.—(1) It is an offence for any person authorised by virtue of a licence to which paragraph (4) applies to contravene or fail to comply with any condition which the licence requires him to comply with.

(2) A person shall not be guilty of an offence under paragraph (1) if he shows—

- (a) that he took all reasonable precautions and exercised all due diligence to avoid commission of the offence; or
- (b) that the commission of the offence was otherwise due to matters beyond his control.

(3) A person guilty of an offence under paragraph (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) This paragraph applies to a licence granted under regulation 39 on or after 21<sup>st</sup> August 2007.”.

13. In regulation 42 (application of provisions of this Part)—

- (a) in paragraph (1)(a) after “European sites” insert “in Northern Ireland and European offshore marine sites”; and
- (b) in paragraph (2)(b) after “European site” insert “in Northern Ireland or a European offshore marine site”.

14. For regulation 43 (assessment of implications for European site) substitute—

**“Assessment of implications for European sites in Northern Ireland and European offshore marine sites**

43.—(1) A competent authority, before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project which—

- (a) is likely to have a significant effect on a European site in Northern Ireland 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,

shall make an appropriate assessment of the implications for the site in view of that site’s conservation objectives.

(2) A person applying for such consent, permission or other authorisation shall provide such information as the competent authority may reasonably require—

- (a) to enable the competent authority to determine whether an assessment under paragraph (1) is required; or



(b) for the purposes of an assessment under paragraph (1).

(3) In relation to a European site in Northern Ireland, the competent authority shall for the purposes of—

- (a) determining whether an assessment is required for a plan or project under paragraph (1); or
- (b) the assessment under paragraph (1)

consult the Department and have regard to any representations made by it within such reasonable time as the competent authority may specify.

(4) The competent authority shall, for the purposes of any appropriate assessment relating to a European offshore marine site, consult the Joint Nature Conservation Committee and have regard to any representations made by that committee within such reasonable time as the competent authority may specify.

(5) The competent authority shall, if it considers it appropriate, take such steps as it considers necessary to obtain the opinion of the general public.

(6) In the light of the conclusions of the assessment, and subject to regulation 44, the authority shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site in Northern Ireland or the European offshore marine site (as the case may be).

(7) In considering whether a plan or project will adversely affect the integrity of the site concerned, the authority shall have regard to the manner in which it is proposed to be carried out or to any conditions or restrictions subject to which it proposed that the consent, permission or other authorisation should be given.

(8) This regulation does not apply in relation to a site which is—

- (a) a European site in Northern Ireland by reason only of regulation 9(1)(c) (site protected in accordance with Article 5(4)); or
- (b) a European offshore marine site by reason only of its being a site of the kind mentioned in regulation 15(c) (site protected in accordance with Article 5(4)) of the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007.”.

**15.** In regulation 44 (considerations of overriding public interest)—

(a) in paragraph (1) for “the site” substitute “the site concerned”;

(b) for paragraph (2)(b) substitute—

“(b) any other imperative reasons of overriding public interest, provided that the competent authority has had due regard to the opinion of the European Commission in satisfying themselves that there are such reasons.”; and

(c) in paragraph (5) after “a European site” insert “in Northern Ireland”;

(d) for paragraph (6) substitute the following paragraphs—

“(6) Where an authority, other than the Department, proposes to agree to a plan or project under this regulation notwithstanding a negative assessment of the implications for a European offshore marine site—

- (a) it shall notify the Department and the Secretary of State; and
- (b) it may agree to the plan or project only after having received notification from the Department that the Department and the Secretary of State have agreed that it may do so.

(7) Where the Department proposes to agree to a plan or project under this regulation notwithstanding a negative assessment of the implications for a European offshore marine site—

- (a) it must notify the Secretary of State; and

- (b) it may agree to the plan or project only after having obtained the Secretary of State's agreement, which may be given subject to such conditions or restrictions as the Secretary of State may specify.

(8) In any case within paragraph (5) or (6), the Department may give a direction to the competent authority prohibiting it from agreeing to the plan or project, either indefinitely or during such period as may be specified in the direction.

This power is without prejudice to any other power of the Department in relation to the decision in question.

(9) Any agreement between the Department and the Secretary of State that is the subject of a notification under paragraph (6)(b) may be subject to such conditions or restrictions as may be specified in the notification."

**16.** In regulation 45 (review of existing decisions and consents, etc.)—

- (a) in paragraph (1) after "European site" insert "in Northern Ireland or a European offshore marine site"; and
- (b) in paragraph (2)—
  - (i) for "the site" substitute "the site concerned"; and
  - (ii) for "regulation 43(2) to (4)" substitute "regulation 43(2) to (5)".

**17.** In regulation 46 (consideration on review)—

- (a) in paragraph (2) for "regulation 43(5) and (6)" substitute "regulation 43(6) and (7)"; and
- (b) in paragraph (3) for "the site" substitute "the site concerned".

**18.** In regulation 47 (co-ordination where more than one competent authority involved)—

- (a) in paragraph (3)(a) after "European site" insert "in Northern Ireland or a European offshore marine site"; and
- (b) in paragraph (3)(b) after "European site" insert "in Northern Ireland or a European offshore marine site".

**19.** In regulation 48 (compensatory measures) in subparagraph (a) after "European site" insert "in Northern Ireland or a European offshore marine site".

**20.** In regulation 49 (planning decisions)—

- (a) in paragraph (1)—
  - (i) for "European site" substitute "European sites in Northern Ireland and European offshore marine sites";
  - (ii) at the end of subparagraph (d) delete the word "and"; and
  - (iii) for subparagraph (e) substitute—
    - "(e) stating under Article 95(1)(c)(i) of the 1991 Order (action by the Department following service of purchase notice) that planning permission for any other development might reasonably be expected to be granted; and
    - (f) directing, under paragraph 3 of Schedule 8 to the Electricity (Northern Ireland) Order 1992(a) that planning permission shall be deemed to be granted."
- (b) in paragraph (2) after "European site" insert "in Northern Ireland or a European offshore marine site"; and
- (c) in paragraph (3) after "European site" insert "in Northern Ireland or a European offshore marine site".

**21.** In regulation 51 (planning permission: consideration on review) in paragraph (2) after "European site" insert "in Northern Ireland or a European offshore marine site".

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(a) S.I. 1992/231 (N.I. 1) as amended by S.I. 2006/2955 (N.I. 19).

22. In regulation 53 (effect of discontinuance orders made on review) in paragraph (4) after “European site” insert “in Northern Ireland or a European offshore marine site”.

23. In paragraph (1) of regulation 55 (general development orders)—

- (a) in subparagraph (a) after “European site” insert “in Northern Ireland or a European offshore marine site”; and
- (b) for the word “determination” to the end substitute “notification from the Department under regulation 56 of its approval for the commencement of the development.”

24. For regulation 56 (general development orders: determination by Department) substitute the following regulation—

**“General development orders: approval of the Department**

56.—(1) Where it is intended to carry out development in reliance upon a permission granted by a general development order, application may be made in writing to the Department for its approval for the commencement of the development.

(2) The application shall give details of the development which is intended to be carried out.

(3) The Department may request such further information from the applicant as it considers necessary to determine an application under this regulation.

(4) Where the Department receives an application under paragraph (1) it shall, if a European offshore marine site exists—

- (a) forward that application to the Joint Nature Conservation Committee (“the Committee”); and
- (b) request the opinion of the Committee on whether the development is likely to have a significant effect on a European offshore marine site (whether alone or in combination with other plans or projects).

(5) If, after consultation with the Committee or otherwise, the Department considers that the development is not likely to have such an effect as is mentioned in regulation 55(1)(a) it shall notify the applicant in writing of its approval for the commencement of the development.

(6) If, after consultation with the Committee or otherwise, the Department considers that the development is likely to have such an effect as is mentioned in regulation 55(1)(a) it shall make an appropriate assessment of the implications of the development for the European site in Northern Ireland or, as the case may be, the European offshore marine site, in view of that site’s conservation objectives and, in light of the conclusions of the assessment the Department shall approve the commencement of the development only after having ascertained that it will not adversely affect the integrity of the site.

(7) Where, in response to a request from the Department under paragraph (4)(b) the Committee provides an opinion that the development is likely to have the effect stated in that paragraph, the Department, in making an appropriate assessment under paragraph (6), shall take account of any representations made by the Committee in relation to the development.

(8) The provisions of Articles 32 and 33 of the 1991 Order shall, subject to any necessary modifications, apply to an application under this regulation, and to the determination thereof, as they apply to applications for planning permission under the 1991 Order and to the determination of such applications.”.

25. In regulation 57 (special development orders)—

- (a) in the heading to the regulation after “orders” insert “and European sites in Northern Ireland”; and
- (b) in subparagraph (a) after “European site” insert “in Northern Ireland”.

26. After regulation 57 (special development orders) insert the following regulation—

**“Special development orders and European offshore marine sites**

57A. A special development order made after the 21<sup>st</sup> August 2007 may not grant planning permission for development which is likely to have a significant effect on a European offshore marine sites (either alone or in combination with other plans or projects).”.

27. In regulation 58 (simplified planning zones)—

- (a) in the heading to the regulation after “zones” insert “and European sites in Northern Ireland”; and
- (b) in subparagraph (a) after “European site” insert “in Northern Ireland”.

28. After regulation 58 (simplified planning zones) insert the following regulation—

**“Simplified planning zones and European offshore marine sites**

58A. The adoption of a simplified planning zone scheme after the 21<sup>st</sup> August 2007 shall not have effect to 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).”.

29. In regulation 59 (enterprise zones)—

- (a) in the heading to the regulation after “zones” insert “and European sites in Northern Ireland”; and
- (b) in subparagraph (a) after “European sites” insert “in Northern Ireland”.

30. After regulation 59 (enterprise zones) insert the following regulation—

**“Enterprise zones and European offshore marine sites**

59A. An order designating an enterprise zone, or the adoption of a modified scheme, if made or adopted after the 21<sup>st</sup> August 2007, shall not have effect to 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).”.

31. In regulation 62 (construction of roads)—

- (a) in paragraph (1) for “European site” substitute “European sites in Northern Ireland and European offshore marine sites”; and
- (b) in paragraph (2) after “European site” insert “in Northern Ireland or a European offshore marine site”.

32. In regulation 63 (licences under Part II of the Waste and Contaminated Land (Northern Ireland) Order 1997)—

- (a) in paragraph (1) for “a European site” substitute “European sites in Northern Ireland and European offshore marine sites”;
- (b) in paragraph (2) after “European site” insert “in Northern Ireland or a European offshore marine site”; and
- (c) in paragraph (4) after “European site” insert “in Northern Ireland or a European offshore marine site”.

33. In regulation 63A (permits under the Pollution Prevention and Control Regulations (Northern Ireland) 2003)—

- (a) in paragraph (1) for “European site” substitute “European sites in Northern Ireland and European offshore marine sites”;

- (b) in paragraph (2) after “European site” insert “in Northern Ireland or a European offshore marine site”; and
- (c) in paragraph (4) after “European site” insert “in Northern Ireland or a European offshore marine site”.

**34.** In regulation 64 (discharge consents under water pollution legislation)—

- (a) in paragraph (1) for “European site” substitute “European sites in Northern Ireland and European offshore marine sites”;
- (b) in paragraph (2) after “European site” insert “in Northern Ireland or a European offshore marine site”; and
- (c) in paragraph (4) after “European site” insert “in Northern Ireland or a European offshore marine site”.

**35.** After Part IV (adaptation of planning and other controls) insert a new Part IVA as set out in the Schedule to these Regulations.

**36.** After regulation 72 insert the following regulations—

**“Application of criminal offences to the Crown**

**73.**—(1) No contravention by the Crown of any provision made by these Regulations makes the Crown criminally liable; but the High Court may, on the application of any person appearing to the Court to have an interest, declare unlawful an act or omission of the Crown which constitutes such a contravention.

(2) Notwithstanding paragraph (1), the provisions of these Regulations apply to persons in the public service of the Crown as they apply to any other person.

**Advisory role of the JNCC**

**74.**—(1) The Joint Nature Conservation Committee may provide advice or make representations to any competent authority in relation to—

- (a) any question about whether that authority is obliged to carry out an appropriate assessment in relation to a European offshore marine site under these Regulations;
- (b) any appropriate assessment upon which that authority is obliged to consult it under these Regulations;
- (c) any application made pursuant to paragraph (1) of regulation 56 and sent to the Committee by that authority pursuant to paragraph (4)(a) of that regulation.

(2) The Joint Nature Conservation Committee may undertake, commission or support (whether by financial means or otherwise) such research and other scientific work which it considers is required for the purposes of providing advice or making representations under this regulation.

(3) In this regulation “research” includes inquiries and investigations.”.

**Amendments to the Wildlife (Northern Ireland) Order 1985**

**37.** The Wildlife (Northern Ireland) Order 1985(a) is amended as follows.

**38.** In the list of animals contained in Schedule 5 (animals which are protected at all times)—

- (a) delete the entries relating to “Bats (all species)”, “Cetaceans (all species)” and “Otter, Common”;
- (b) in the column entitled “Common name” after “Marten, Pine” insert “Mussel, Freshwater”;

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(a) S.I. 1985/171 (N.I.2).

(c) in the column entitled “Scientific name” after “Martes Martes” insert “Margaritifera margaritifera”.

39. In the list of animals in Schedule 7 (animals which may not be sold alive or dead at any time) delete the entries relating to “Bats (all species)” and “Otter, Common”.

40. In the list of plants in Schedule 8 (plants which are protected under Article 14(1)(a) and (2)) delete the entries relating to “Fern, Killarney” and “Saxifrage, Yellow Marsh”.

Sealed with the Official Seal of the Department of the Environment on 24th July 2007.



*Wesley Shannon*

A senior official of the Department of the Environment

## SCHEDULE 1

Regulation 35

### “PART IVA

#### APPROPRIATE ASSESSMENTS FOR LAND USE PLANS

##### **Interpretation**

**64A.**—(1) In this Part—

“land use plan” includes an alteration to a land use plan and means—

- (a) the regional development strategy formulated under article 3(1) of the Strategic Planning (Northern Ireland) Order 1999;
- (b) a development plan as provided for in part III of the 1991 Order.

“plan-making authority” means—

- (a) in relation to the regional development strategy, the Department for Regional Development;
- (b) in relation to a development plan, the Department.

“the 1999 Order” means the Strategic Planning (Northern Ireland) Order 1999;

(2) References in this Part to giving effect to a land use plan are to—

- (a) the publication by the Department for Regional Development of a regional development strategy or any alteration to such a strategy under the 1999 Order;
- (b) the adoption by the Department of a development plan or any alteration to such a plan under Article 8 of the 1991 Order.

##### **Assessment of implications for European site**

**64B.**—(1) Where a land use plan—

- (a) is likely to have a significant effect on a European site in Northern Ireland 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,

the plan-making authority for that plan shall, before the plan is given effect, make an appropriate assessment of the implications for the site in view of that site's conservation objectives.

(2) In relation to a European site in Northern Ireland, the plan-making authority, where it is other than the Department, shall for the purposes of—

- (a) determining whether an assessment is required for a land use plan under paragraph (1); or
- (b) the assessment under paragraph (1),

consult the Department and have regard to any representations made by it within such reasonable time as the plan-making authority may specify.

(3) In relation to a European offshore marine site, the plan-making authority shall for the purposes of any appropriate assessment consult the Joint Nature Conservation Committee and have regard to any representations made by that committee within such reasonable time as the plan-making authority may specify.

(4) The plan-making authority shall also, if it considers it appropriate, take the opinion of the general public, and in doing so, shall take such steps for that purpose as it considers appropriate.

(5) In the light of the conclusions of the assessment, and subject to regulation 64C (considerations of overriding public interest), the plan-making authority shall give effect to the land use plan only after having ascertained that it will not adversely affect the integrity of the European site in Northern Ireland or the European offshore marine site (as the case may be).

(6) This regulation does not apply in relation to a site which is—

- (a) a European site in Northern Ireland by reason only of regulation 9(1)(c) (site protected in accordance with Article 5(4)); or
- (b) a European offshore marine site by reason only of its being a site of the kind mentioned in regulation 15(c) (site protected in accordance with Article 5(4)) of the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007.

### **Considerations of overriding public interest**

**64C.**—(1) If the plan-making authority is satisfied that, there being no alternative solutions, the land use plan must be given effect for imperative reasons of overriding public interest (which subject to paragraph (2), may be of a social or economic nature), it may give effect to the land use plan notwithstanding a negative assessment of the implications for the European site in Northern Ireland or the European offshore marine site (as the case may be).

(2) Where the site concerned hosts a priority natural habitat type or a priority species, the reasons referred to in paragraph (1) must be either—

- (a) reasons relating to human health, public safety or beneficial consequences of primary importance to the environment, or
- (b) any other imperative reasons of overriding public interest provided that the plan-making authority has had due regard to the opinion of the European Commission in satisfying themselves that there are such reasons.

(3) Where a plan-making authority proposes to give effect to a land use plan under this regulation notwithstanding a negative assessment of the implications for a European offshore marine site—

- (a) it must notify the Secretary of State; and
- (b) it may give effect to the land use plan only after having obtained the Secretary of State's agreement, which may be given subject to such conditions or restrictions as the Secretary of State may specify.

### **Compensatory measures**

**64D.** Where in accordance with regulation 64C (considerations of overriding public interest) a land use plan is given effect, notwithstanding a negative assessment of the implications for a European site in Northern Ireland or a European offshore marine site, the plan-making authority shall secure that any necessary compensatory measures are taken to ensure that the overall coherence of Natura 2000 is protected.”



## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the Conservation (Natural Habitats etc.) Regulations (Northern Ireland) 1995 (“the 1995 Regulations”) which make provision for implementing Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (“the Habitats Directive”) (O.J. No L206, 22.7.92, p.7).

Regulation 3 amends the definitions of “the Habitats Directive” and “Wild Birds Directive” contained in regulation 2 of the 1995 Regulations. This is to ensure that the definitions cover the recent amendments made to environmental law following the accession of Bulgaria and Romania, and to ensure that references to the annexes of the Habitats Directive are construed as references to those annexes as amended from time to time. Regulation 2 of the 1995 Regulations is also amended to include a definition of “European offshore marine site” following the introduction of the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007. References to such sites are included extensively throughout Part IV of the 1995 Regulations so that due consideration is given to any possible impacts on European offshore marine sites as a result of plans or projects carried out in Northern Ireland.

Regulation 4 inserts new regulation 9A into the 1995 Regulations to impose, amongst other things, a duty on the Department of the Environment to make arrangements for the surveillance of the conservation status of natural habitats and species of Community interest, and to make arrangements to ensure measures are taken to secure the favourable conservation status of species listed on Annex V to the Habitats Directive. In marine areas, this is the responsibility of the Secretary of State.

Regulation 5 replaces regulation 34 of the 1995 Regulations. Amongst other changes, the revised provision includes an offence of injuring a European protected species of animal and modifies the offence of deliberately disturbing such animals. Offences relating to the possession or trade of Annex IV(a) animals have been retained but the defences that apply in such circumstances have been amended, for example, if it can be shown that the relevant animal or part thereof was lawfully taken before the implementation date in the relevant member State, or was taken from outside the European Community. A new defence for the purpose of sea fishing is also included.

Regulation 6 replaces regulation 35 of the 1995 Regulations. It qualifies the conditions relating to mercy killing or tending of injured European protected species. All other defences that were formerly contained in regulation 35 are repealed.

Regulation 7 replaces regulation 36 of the 1995 Regulations. The provision is updated to make it an offence to use any indiscriminate means of capturing or killing which is capable of causing the local disappearance of, or serious disturbance to, a population of the species that are protected by regulation 36.

Regulation 8 inserts new regulation 36A into the 1995 Regulations creating a duty on the Department of the Environment to make arrangements to monitor the incidental capture and incidental killing of the European protected species of animals, and to make arrangements for conservation action to be taken in the light of that monitoring if necessary. In marine areas this is the responsibility of the Secretary of State.

Regulation 9 replaces regulation 38 of the 1995 Regulations. Similar to the provisions in relation to European protected species of animals, the majority of the changes modify the offences and defences relating to the taking, possession or trade of plant species protected by the Habitats Directive.

Regulation 10 inserts a new basis upon which to grant licences under regulation 39 of the 1995 Regulations as provided by Article 16(1)(e) of the Habitats Directive i.e. the taking of wild animals or wild plants under strictly supervised conditions, on a selective basis, in limited

numbers and to a limited extent. Regulation 11 places additional requirements on licences issued under regulation 39 of the 1995 Regulations.

Regulation 12 introduces new regulation 41A which creates a new offence of breaching any condition of a licence granted after 21<sup>st</sup> August 2007.

Regulation 14 replaces regulation 43 of the 1995 Regulations. The revised provision requires a person applying for consent or permission to provide such information as the competent authority may require in order to determine whether or not an appropriate assessment is required, or for the purpose of the assessment. In relation to European offshore marine sites, a new duty on competent authorities to consult with the Joint Nature Conservation Committee is also included.

Regulation 15 amends regulation 44 of the 1995 Regulations to require that the agreement of the Secretary of State is secured for a plan or project which must be carried out for reasons of overriding public interest, despite a negative assessment of implications for a European offshore marine site.

Regulation 20 amends regulation 49 of the 1995 Regulations to apply the terms of regulation 43 and 44 of the 1995 Regulations (requirement to consider effects of European sites) to consents granted under Schedule 8 to the Electricity (Northern Ireland) Order 1992, as amended.

Regulations 23 and 24 amend regulations 55 and 56 of the 1995 Regulations to modify the procedures relating to the determination of impacts from projects carried out under general development orders.

Regulation 35 inserts new Part IVA (Appropriate Assessments for Land Use Plans) into the 1995 Regulations consisting of new regulations 64A to 64D to satisfy the requirements of Article 6(3) and (4) of the Directive for land use plans. In this regard:

Regulation 64A(1) provides that such a plan is a regional development strategy under article 3 of the Strategic Planning (Northern Ireland) Order 1999 or a development plan under Part III of the Planning (Northern Ireland) Order 1991. The plan-making authority preparing such a plan is required to consider whether it is likely to have a significant effect on a designated site either individually or in combination with other plans or projects. If any significant effect is not directly connected with or necessary to the management of the site, an appropriate assessment must be made of the implications for the site in view of that site's conservation objectives (regulation 64B(1)).

The plan-making authority, where it is not the Department of the Environment, is required for the purposes of the assessment to consult the Department and to have regard to any representations made by it (in relation to European offshore marine sites, plan-making authorities must consult the Joint Nature Conservation Committee and have regard to any representation provided). The plan-making authority is also required, if it considers it appropriate, to take the opinion of the general public. Following the assessment and subject to regulation 64C (considerations of overriding public interest), the plan-making authority shall only give effect to the land use plan after it has been ascertained that it will not adversely affect the integrity of the site (regulation 64B(5)).

If, despite a negative assessment, the plan-making authority is satisfied that there are no alternative solutions and that the plan must be given effect for imperative reasons of overriding public interest, the plan may be given effect (regulation 64C(1)). Where the site hosts a priority natural habitat type or a priority species as defined in Article 1 of the Directive, such reasons must either relate to human health, public safety or beneficial consequences of primary importance to the environment or other imperative reasons of over-riding public interest provided the plan-making authority has had due regard to the opinion of the European Commission (regulation 64C(2)). Where the negative assessment relates to a European offshore marine site, the plan-making authority must secure the agreement of the Secretary of State before giving effect to the plan.

Where a plan is given effect notwithstanding a negative assessment, regulation 64D requires the plan-making authority to secure that any necessary compensatory measures are taken to ensure

that the overall coherence of the European wide network of habitats sites established under the Directive is protected.

Regulation 36 contains a new provision which details the application of criminal offences in relation to the Crown. Regulation 36 also contains a new provision which sets out the role of the Joint Nature Conservation Committee.

Regulation 38 amends Schedule 5 of the Wildlife (Northern Ireland) Order 1985 by adding the Freshwater Mussel (*Margaritifera margaritifera*) to the list of animals that are protected at all times. Regulations 38, 39 and 40 also remove references to the European protected species of plants and animals that were contained on various schedules to the Wildlife Order. As such, the provisions of Articles 10, 13 and 14 of the Order no longer apply to those species.