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STATUTORY INSTRUMENTS

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**2002 No. 3153**

**The Environment (Northern Ireland) Order 2002**

**PART IV**

**AREAS OF SPECIAL SCIENTIFIC INTEREST**

*Areas of special scientific interest*

**Declaration of ASSI**

**28.**—(1) Where the Department after consultation with the Council for Nature Conservation and the Countryside (“the Council”), is satisfied—

- (a) that an area of land is of special interest by reason of any of its flora, fauna, or geological, physiographical or other features, and
- (b) that accordingly it needs to be specially protected,

the Department shall make a declaration that the area is an area of special scientific interest.

(2) A declaration under paragraph (1) shall specify—

- (a) the flora, fauna, or geological, physiographical or other features by reason of which the land is of special interest, and
- (b) any operations appearing to the Department to be likely to damage that flora or fauna or those features,

and shall contain a statement of the Department’s views about the management of the land (including any views the Department may have about the conservation and enhancement of that flora or fauna or those features).

(3) Where the Department makes a declaration under paragraph (1) in relation to any land, it shall give notification of that fact—

- (a) to each district council in whose district the land is wholly or partially situated; and
- (b) to every owner and occupier of any of that land.

(4) A notification under paragraph (3) shall—

- (a) set out the terms of the declaration;
- (b) specify the time (not being less than three months from the date of the giving of the notification) within which, and the manner in which, representations or objections with respect to the declaration may be made

(5) The Department shall also publish in at least two newspapers circulating in the area in which the land is situated notice—

- (a) of the making of the declaration; and
- (b) of the places (at least one of which is in that area) at which a copy of the declaration may be inspected at all reasonable hours.

- (6) The Department shall—
- (a) consider any representation or objection duly made within the time specified in the notification;
  - (b) within three months of that time either—
    - (i) confirm the declaration (with or without modifications); or
    - (ii) rescind the declaration; and
  - (c) give notice of its decision to the persons mentioned in paragraph (3).
- (7) The Department’s power under paragraph (6)(b) to confirm a declaration with modifications shall not be exercised so as—
- (a) add to the operations specified in the declaration; or
  - (b) extend the area to which it applies.
- (8) A declaration under paragraph (1) has effect as from the time it is made by the Department.
- (9) If such a declaration is confirmed with modifications under paragraph (6) (b)(i), the declaration has effect in its modified form as from the time it is so confirmed by the Department.
- (10) If such a declaration is rescinded under paragraph (6)(b)(ii), it ceases to have effect as from the time it is rescinded by the Department.
- (11) In this Part “ASSI” means an area of land in relation to which a declaration under paragraph (1) has effect.

**Variation of declaration**

- 29.**—(1) At any time after a declaration has been confirmed (with or without modifications) under Article 28(6), the Department may vary the matters specified or stated in the confirmed declaration (whether by adding to them, changing them, or removing matter from them).
- (2) The area of land cannot be varied under this Article.
- (3) Where the Department varies a declaration in relation to any land under paragraph (1) it shall give notice setting out the variation to—
- (a) each district council in whose district the land is wholly or partially situated; and
  - (b) every owner and occupier of any of the land who in the opinion of the Department may be affected by the variation.
- (4) A notice under paragraph (3) shall specify the time (not being less than three months from the date of the giving of the notice) within which, and the manner in which, representations or objections with respect to it may be made
- (5) The Department shall—
- (a) consider any representation or objection duly made within the time specified in the notice;
  - (b) within three months of that time either—
    - (i) confirm the variation (with or without modifications); or
    - (ii) rescind the variation; and
  - (c) give notice of its decision to the persons mentioned in paragraph (3).
- (6) A variation under paragraph (1) has effect as from the time it is made by the Department.
- (7) If such a variation is confirmed with modifications under paragraph (5)(b)(i), the variation has effect in its modified form as from the time it is so confirmed by the Department.
- (8) If such a variation is rescinded under paragraph (5)(b)(ii), the variation ceases to have effect as from the time it is rescinded by the Department.

### **Declaration of additional land**

**30.**—(1) Where the Department, after consultation with the Council, is satisfied that if land adjacent to an ASSI (“the extra land”) were combined with the ASSI, the combined area of land would be of special interest by reason of any of its flora, fauna, or geological, physiographical or other features, the Department may make a declaration to that effect.

(2) No such declaration may be made until after the declaration of the ASSI has been confirmed (with or without modifications) under Article 28(6).

(3) A declaration under paragraph (1) shall specify—

- (a) the area of land constituting the ASSI;
- (b) what (as at the date of the declaration) is specified or contained in the declaration under Article 28(1) relating to the ASSI by virtue of Article 28(2);
- (c) the reasons why the Department is of the opinion referred to in paragraph (1); and
- (d) which (if any) things among the matters specified by virtue of sub-paragraph (c) are particularly relevant to the extra land.

(4) Where the Department makes a declaration under paragraph (1) in relation to any land, it shall give notification of that fact—

- (a) to each district council in whose district the extra land is wholly or partially situated; and
- (b) to every owner and occupier of any of the extra land.

(5) A notification under paragraph (4) shall—

- (a) set out the terms of the declaration;
- (b) specify the time (not being less than three months from the date of the giving of the notification) within which, and the manner in which, representations or objections with respect to the declaration may be made

(6) The Department shall also publish in at least two newspapers circulating in the area in which the extra land is situated notice—

- (a) of the making of the declaration; and
- (b) of the places (at least one of which is in that area) at which a copy of the declaration may be inspected at all reasonable hours.

(7) The Department shall—

- (a) consider any representation or objection duly made within the time specified in the notification;
- (b) within three months of that time either—
  - (i) confirm the declaration under paragraph (1) (with or without modifications); or
  - (ii) rescind that declaration; and
- (c) give notice of its decision to the persons mentioned in paragraph (4).

(8) The Department’s power under paragraph (7)(b) to confirm a declaration with modifications shall not be exercised so as—

- (a) add to the operations specified in the declaration; or
- (b) extend the area to which it applies.

(9) As from the time a declaration is made by the Department under paragraph (1) in relation to extra land, the declaration of the ASSI under Article 28(1) shall have effect as if it included that declaration.

(10) If a declaration under paragraph (1) is confirmed with modifications under paragraph (7)(b)(i), the declaration of the ASSI under Article 28(1) (as extended by virtue of paragraph (9)) shall have effect in its modified form.

(11) If such a declaration is rescinded under paragraph (7)(b)(ii), it ceases to have effect as from the time it is rescinded by the Department.

### **Denotification**

**31.**—(1) Where the Department, after consultation with the Council, is satisfied that all or part of an ASSI is no longer of special scientific interest by reason of any of the matters mentioned in Article 28(1), it may decide to notify that fact to—

- (a) each district council in whose district the land which the Department no longer considers to be of special scientific interest is wholly or partially situated; and
- (b) every owner and occupier of any of that land.

(2) A notification under paragraph (1) shall specify the time (not being less than three months from the date of the giving of the notification) within which, and the manner in which, representations or objections with respect to it may be made.

(3) The Department shall also publish in at least two newspapers circulating in the area in which the land mentioned in paragraph (1) is situated notice

- (a) of the giving of the notification under paragraph (1); and
- (b) of the places (at least one of which is in that area) at which a copy of the notification may be inspected at all reasonable hours.

(4) The Department shall—

- (a) consider any representation or objection duly made within the time specified in the notification;
- (b) within three months of that time either—
  - (i) confirm the notification (with or without modifications); or
  - (i) rescind the notification; and
- (c) give notice of its decision to the persons mentioned in paragraph (1).

(5) A notification under paragraph (1) has effect in relation to any land as from the time a notice under paragraph (4)(b)(i) is served on its owner or occupier, and from that time a declaration under Article 28(1) in relation to that land shall cease to have effect.

### *Duties of owners and occupiers of land included in ASSI*

#### **Duties of owners and occupiers of land included in ASSI**

**32.**—(1) The owner or occupier of any land included in an ASSI shall not carry out or cause or permit to be carried out, on that land any operation specified in the declaration made under Article 28 in relation to the land unless—

- (a) one of them has given the Department notice of a proposal to carry out the operation specifying its nature and the land on which it is proposed to carry it out; and
- (b) one of the conditions specified in paragraph (3) is fulfilled.

(2) Paragraph (1) does not apply to an owner or occupier being a public body acting in the exercise of its functions.

(3) The conditions are—

- (a) that the operation is carried out with the Department's written consent;
  - (b) that the operation is carried out in accordance with the terms of a management agreement under Article 34;
  - (c) that the operation is carried out in accordance with a management notice under Article 35.
- (4) A consent under paragraph (3)(a) may be given—
- (a) subject to conditions, and
  - (b) for a limited period,

as specified in the consent.

(5) If the Department does not consent, it shall give notice to that effect to the person who gave the notice under paragraph (1).

(6) The Department may, by notice given to every owner and occupier of any of the land included in the ASSI, or the part of the ASSI to which the consent relates

- (a) withdraw the consent; or
- (b) modify it (or further modify it) in any way.

(7) The following—

- (a) a consent under paragraph (3)(a) granting consent subject to conditions or for a limited period, and
- (b) a notice under paragraph (5) or (6),

must include a notice of the Department's reasons for imposing the conditions, for the limitation of the period, for refusing consent, or for withdrawing or modifying the consent, and also a notice of the matters set out in paragraph (8).

(8) The matters referred to in paragraph (7) are—

- (a) the rights of appeal under Article 33;
- (b) the effect of paragraph (9); and
- (c) in the case of a notice under paragraph (6), the effect of Article 37(1).

(9) A withdrawal or modification of a consent does not take effect until—

- (a) the expiry of the period for appealing against it; or
- (b) if an appeal is brought, its withdrawal or final determination.

### **Appeals in connection with consents**

**33.**—(1) The following persons—

- (a) an owner or occupier who has been refused a consent under Article 32(3)(a),
- (b) an owner or occupier who has been granted such a consent but who is aggrieved by conditions attached to it, or by the fact that it is for a limited period, or by the length of that period,
- (c) an owner or occupier who is aggrieved by the modification of a consent;
- (d) an owner or occupier who is aggrieved by the withdrawal of a consent,

may, at any time before the end of the period for appealing, appeal to the planning appeals commission against the relevant decision.

(2) If the Department neither gives consent nor refuses it within the period of three months beginning with the date on which the notice referred to in Article 32(1)(a) was received, the person who gave that notice may for the purposes of paragraph (1) treat the Department as having refused consent (and his appeal is to be determined on that basis).

- (3) The period for appealing is—
- (a) except in a case falling within paragraph (2), the period of two months beginning with the date of the notice giving consent or the notice under Article 32(5) or (6), or
  - (b) in a case falling within paragraph (2), the period of two months beginning immediately after the expiry of the three month period referred to there.
- (4) On determining an appeal against a decision, the planning appeals commission may
- (a) affirm the decision,
  - (b) where the decision was a refusal of consent, direct the Department to give consent,
  - (c) where the decision was as to the terms of a consent (whether the original or a modified one), quash all or any of those terms,
  - (d) where the decision was a withdrawal or modification of consent, quash the decision,
- and where it exercises any of the powers in sub-paragraph (b), (c) or (d) the commission may give directions to the Department as to the terms on which the Department is to give consent.

### **Management agreements**

**34.**—(1) The Department may enter into an agreement (“a management agreement”) with the owner or occupier of any land included in an ASSI for securing that his land is managed as (or as part of) an ASSI.

(2) A management agreement may impose such restrictions as may be expedient on the exercise of rights over the land by persons who can be bound by the agreement.

(3) A management agreement—

- (a) may provide for the management of the land in such manner, the carrying out thereon of such operations, and the doing thereon of such other things as may be expedient for the purposes of the agreement;
- (b) may provide for any of the matters mentioned in sub-paragraph (a) being carried out, or for the cost thereof being defrayed, either by the owner or occupier or by other persons, or by the Department, or partly in one way and partly in another.

(4) Where a person having an estate in any land, by a management agreement grants or agrees to grant any right as respects the land, the grant or agreement shall be binding upon any person deriving title or otherwise claiming under the grantor to the same extent as it is binding upon the grantor notwithstanding that it would not have been binding upon that person apart from this paragraph.

(5) A management agreement may be made irrevocably or subject to such provisions for revocation or variation as may be specified in the agreement.

(6) The Department may waive (either permanently or temporarily) any condition imposed by a management agreement which is inconsistent with any provision of a development plan or development order under the [Planning \(Northern Ireland\) Order 1991 \(NI 11\)](#).

### **Management notices**

**35.**—(1) Where it appears to the Department that—

- (a) an owner or occupier of land included in an ASSI is not giving effect to any provision of a management agreement, and
- (b) as a result any flora, fauna or geological, physiographical or other features by reason of which the land is of special scientific interest are being inadequately conserved or restored

it may if it thinks fit serve a notice on him.

(2) Where the Department is satisfied that—

- (a) any land included in an ASSI in respect of which no management agreement is in force is being managed in such a way that any flora, fauna or geological, physiographical or other features by reason of which the land is of special scientific interest are being inadequately conserved or restored, and
- (b) that it is unable to conclude, on reasonable terms, a management agreement with the owner or occupier,

it may if it thinks fit serve a notice on him.

(3) A notice served under paragraph (1) or (2) is referred to in this Order as a “management notice”.

(4) A management notice is a notice requiring the owner or occupier to—

- (a) carry out such work on the land, and
- (b) do such other things with respect to it,

as are specified in the notice, and to do so before the dates or within the periods so specified.

(5) The work and other things specified in a management notice must appear to the Department to be measures which it is reasonable to require in order to ensure that the land is managed in accordance with the statement mentioned in Article 28(2).

(6) A management notice must explain the effect of paragraphs (8) and (9) and of Article 36.

(7) A copy of the management notice must be served on every other owner and occupier of the land.

(8) If any of the work or other things required by a management notice have not been done within the period or by the date specified in it, the Department may—

- (a) carry out the work or do the other things; and
- (b) recover from the owner or occupier upon whom the notice was served any expenses reasonably incurred by it in carrying out the work or doing the other things.

(9) If an appeal is brought against the management notice, and upon the final determination of the appeal the notice is affirmed (with or without modifications), paragraph (8) applies as if the references there to the management notice were to the notice as affirmed.

### **Appeals against management notices**

**36.**—(1) A person who is served with a management notice may, within the period for appealing, appeal against its requirements to the planning appeals commission; and a management notice does not take effect until—

- (a) the expiry of the period for appealing; or
- (b) if an appeal is brought, its withdrawal or final determination

(2) The period for appealing is the period of two months beginning with the date on which the management notice is served.

(3) On determining the appeal, the commission may quash or affirm the management notice; and if the commission affirms it, it may do so either in its original form or with such modifications as it thinks fit.

### **Payments by Department**

**37.**—(1) Where the Department, under Article 32(6), modifies or withdraws a consent, it shall make a payment to any owner or occupier of the land who suffers loss because of the modification or withdrawal.

(2) The Department may, if it thinks fit, make one or more payments to any owner or occupier of land in relation to which a management agreement has effect.

(3) The amount of a payment under paragraph (1) or (2) is to be determined in accordance with guidance given and published by the Department.

(4) Any dispute as to a person's entitlement to a payment under paragraph (1) or as to its amount shall be referred to and determined by the Lands Tribunal.

*Duties of public bodies in relation to land included in ASSI*

**Public bodies: general duty**

**38.**—(1) A public body shall have the duty set out in paragraph (2) in exercising its functions so far as their exercise is likely to affect the flora, fauna or geological, physiographical or other features by reason of which an ASSI is of special scientific interest.

(2) The duty is to take reasonable steps, consistent with the proper exercise of the body's functions, to further the conservation and enhancement of the flora, fauna or geological, physiographical or other features by reason of which the ASSI is of special scientific interest.

(3) In this Part "public body" means—

- (a) a Northern Ireland department;
- (b) a department of the Government of the United Kingdom;
- (c) a district council;
- (d) a statutory undertaker (within the meaning of the [Planning \(Northern Ireland\) Order 1991 \(NI 11\)](#)); or
- (e) any other body established or constituted under a statutory provision.

**Public bodies: duties in relation to operations**

**39.**—(1) A public body shall give notice to the Department before carrying out, in the exercise of its functions, operations likely to damage any of the flora, fauna or geological, physiographical or other features by reason of which an ASSI is of special scientific interest.

(2) Paragraph (1) applies even if the operations would not take place on land included in an ASSI.

(3) In response to the notice referred to in paragraph (1), the Department may send a notice

- (a) saying that it does not assent to the proposed operations, or
- (b) assenting to them (with or without conditions),

but if the Department does not send a notice under sub-paragraph (b) within the period of 28 days beginning with the date of the notice under paragraph (1) it shall be treated as having declined to assent.

(4) If the Department does not assent, or if the public body proposes to carry out the operations otherwise than in accordance with the terms of the Department's assent, the body—

- (a) shall not carry out the operations unless the condition set out in paragraph (5) is satisfied, and
- (b) shall comply with the requirements set out in paragraph (6) when carrying them out.

(5) The condition is that the body has, after the expiry of the period of 28 days beginning with the date of the notice under paragraph (1), notified the Department of—

- (a) the date on which it proposes to start the operations (which must be after the expiry of the period of 28 days beginning with the date of the notification under this paragraph), and



- (b) how (if at all) it has taken account of any written advice it received from the Department, before the date of the notification under this paragraph, in response to the notice under paragraph (1).
- (6) The requirements are—
  - (a) that the body carry out the operations in such a way as to give rise to as little damage as is reasonably practicable in all the circumstances to the flora, fauna or geological, physiographical or other features by reason of which the ASSI is of special scientific interest (taking account, in particular, of any such advice as is referred to in paragraph (5) (b)); and
  - (b) that the body restore the site to its former condition, so far as is reasonably practicable, if any such damage does occur.
- (7) This Article does not apply in relation to operations carried out by the Department.

### **Public bodies: duties in relation to authorising operations**

**40.**—(1) This Article applies where the permission of a public body is needed before operations may be carried out.

(2) Before permitting the carrying out of operations likely to damage any of the flora, fauna or geological, physiographical or other features by reason of which an ASSI is of special scientific interest, a public body shall give notice of the proposed operations to the Department.

(3) Paragraph (2) applies even if the operations would not take place on land included in an ASSI.

(4) The public body shall wait until the expiry of the period of 28 days beginning with the date of the notice under paragraph (2) before deciding whether to give its permission, unless the Department has notified the body that it need not wait until then

(5) The body shall take any advice received from the Department into account—

- (a) in deciding whether or not to permit the proposed operations, and
- (b) if it does decide to do so, in deciding what (if any) conditions are to be attached to the permission.

(6) If the Department advises against permitting the operations, or advises that certain conditions should be attached, but the public body does not follow that advice, the body—

- (a) shall give notice of the permission, and of its terms, to the Department, the notice to include a statement of how (if at all) the body has taken account of the Department’s advice, and
- (b) shall not grant a permission which would allow the operations to start before the end of the period of 21 days beginning with the date of that notice.

(7) In this Article “permission”, in relation to any operations, includes authorisation, consent, and any other type of permission.

(8) This Article does not apply where the public body whose permission is needed is the Department.

### *Powers of Department*

#### **Powers to acquire land**

**41.**—(1) The Department may in the circumstances set out in paragraph (2) make an order vesting all or any part of land included in an ASSI in the Department.

(2) The circumstances are that the Department is satisfied—

- (a) that—

- (i) it is unable to conclude, on reasonable terms, a management agreement with the owner or occupier of the land; or
  - (ii) that a management agreement entered into by the owner or occupier of the land has been breached in such a way that the land is not being managed satisfactorily; and
  - (b) that it is necessary to acquire the land in order to protect the flora, fauna or geological, physiographical or other features by reason of which the land is of special scientific interest.
- (3) Sections 97(2) and (3) of, and Schedule 6 to, the Local Government Act (Northern Ireland) 1972 (c. 9) shall apply subject to the modifications set out in Schedule 2 to the [Nature Conservation and Amenity Lands \(Northern Ireland\) Order 1985 \(NI 1\)](#) for the purpose of vesting orders under this Article.
- (4) The Department may by agreement acquire the estate of any owner of land included in an ASSI.
- (5) Where the Department acquires an estate in land included in an ASSI under paragraph (1) or (4), it may also acquire under that paragraph land for the purpose of providing a means of access to that ASSI
- (6) Where the Department is of the opinion that any land acquired under this Article would be more expediently or efficiently managed or conserved in the public interest by any other person, the Department may convey (either for value or otherwise) that land to that person.
- (7) Without prejudice to paragraph (6), the Department may dispose of any land acquired under this Article which the Department no longer requires for the purpose for which it was acquired.
- (8) A conveyance under paragraph (6) or disposal under paragraph (7)—
- (a) shall be in accordance with arrangements approved by the Department of Finance and Personnel; and
  - (b) shall be on such terms and conditions as the Department may think fit,
- and the Department may—
- (i) impose such restrictions as the Department may think necessary on the use of the land conveyed or disposed of; and
  - (ii) grant or reserve such rights over the land as the Department may think fit.
- (9) Nothing in section 5 of the Stormont Regulation and Government Property Act (Northern Ireland) 1933 (c. 6) shall affect the disposal by the Department of land acquired under this Article.

#### **Powers to carry out works, etc.**

**42.** The Department may carry out such works and do such other things on land acquired under Article 41 as the Department thinks necessary or expedient for the proper management and use of that land for the purpose for which that land was acquired.

#### **Power to enter into agreements concerning land adjacent to an ASSI**

**43.—(1)** The Department may enter into an agreement with the owner or occupier of any land adjacent to an ASSI for securing that his land is managed in such a way as—

- (a) to conserve or enhance any of the flora, fauna, or geological, physiographical or other features by reason of which the ASSI is of special scientific interest, or
- (b) not to destroy or damage any of those features or not to disturb any of those fauna.

(2) Paragraphs (2) to (6) of Article 34 and paragraphs (2) and (3) of Article 37 apply in relation to an agreement under paragraph (1) of this Article as they apply in relation to a management agreement.

### **Powers of entry**

**44.**—(1) Any person authorised in writing by the Department may, at any reasonable time and (if required to do so) upon producing evidence that he is authorised, enter any land for any of the following purposes—

- (a) to determine whether a declaration should be made in relation to the land under Article 28(1)
- (b) to assess the condition of the flora, fauna, or geological, physiographical or other features by reason of which land in relation to which a declaration has been made under Article 28(1) is of special scientific interest;
- (c) to ascertain whether a condition to which a consent referred to in Article 32(3)(a) was subject has been complied with in relation to the land;
- (d) to determine whether or not to offer to enter into a management agreement in relation to the land;
- (e) to formulate a management agreement for the land or determine whether a management agreement for the land should be modified;
- (f) to ascertain whether the terms of a management agreement in relation to the land have been complied with;
- (g) to prepare a management notice for the land;
- (h) to ascertain whether the requirements of a management notice in relation to the land have been complied with;
- (i) to carry out works or do other things on the land under Article 35(8);
- (j) to determine whether or not to offer to make a payment under Article 37 in relation to the land;
- (k) to determine any question in relation to the acquisition of the land by agreement or compulsorily;
- (l) to ascertain whether an offence under Article 46 is being, or has been, committed on or in relation to the land;
- (m) to carry out operations on the land under Article 47(5).

(2) The power conferred by paragraph (1) to enter land for any purpose includes power to enter for the same purpose any land other than that referred to in paragraph (1).

(3) More than one person may be authorised for the time being under paragraph (1) to enter any land.

(4) A person shall not demand admission as of right to any land which is occupied unless either—

- (a) 24 hours notice of the intended entry has been given to the occupier; or
- (b) the purpose of the entry is to ascertain if an offence under Article 46 is being, or has been, committed on or in relation to that land.

(5) A person acting in the exercise of a power conferred by paragraph (1) may—

- (a) use a vehicle or a boat to enter the land;
- (b) take a constable with him if he reasonably believes he is likely to be obstructed;
- (c) take with him equipment and materials needed for the purpose for which he is exercising the power of entry;

(d) take samples of the land and of anything on it.

(6) If in the exercise of a power conferred by paragraph (1) a person enters land which is unoccupied or from which the occupier is temporarily absent, he must on his departure leave it as effectively secured against unauthorised entry as he found it

(7) It is the duty of the Department to compensate any person who has sustained damage as a result of—

(a) the exercise of a power conferred by paragraph (1) by a person authorised under that paragraph, or

(b) the failure of a person so authorised to perform the duty imposed on him by paragraph (6), except where the damage is attributable to the fault of the person who sustained it.

(8) Any dispute as to a person's entitlement to compensation under paragraph (7) or as to its amount shall be referred to and determined by the Lands Tribunal.

### **Power to make byelaws for ASSI**

**45.**—(1) The Department may make byelaws for the protection of an ASSI.

(2) Byelaws under this Article may in relation to land included in an ASSI—

(a) prohibit or restrict the use of the land, either generally or in a manner specified in the byelaws, by traffic of any description so specified;

(b) prohibit or restrict, either generally or in a manner specified in the byelaws, the use of mechanically-propelled vessels on watercourses in, or whose shores lie within, any such land;

(c) regulate or prohibit the lighting of fires on the land;

(d) regulate or prohibit the taking away of soil, turf, sand or minerals of any description from the land;

(e) make provision for securing that persons resorting to the land will so conduct themselves as to avoid undue interference with the enjoyment of the land by other persons.

(3) Before making any byelaws under this Article the Department shall consult the Council.

(4) Byelaws under this Article shall not interfere with—

(a) the exercise by any person of a right vested in him as owner or occupier of any land;

(b) the exercise of any public right of way in relation to any land; or

(c) the exercise of any statutory functions of any public body in relation to any land.

(5) The Department may authorise persons appointed or employed to enforce byelaws made under this Article to take any action necessary for that purpose.

(6) In particular, any person authorised under paragraph (5) may, after due warning, remove or exclude a person from any land included in an ASSI who contravenes, or whom he reasonably suspects of contravening, the byelaws relating to that ASSI.

### *Offence*

### **Offences**

**46.**—(1) A person who, without reasonable excuse, contravenes Article 32(1) is guilty of an offence and is liable on summary conviction to a fine not exceeding £20,000 or on conviction on indictment to a fine.

(2) A public body which, in the exercise of its functions, carries out an operation which damages any of the flora, fauna or geological, physiographical or other features by reason of which an ASSI is of special scientific interest—

- (a) without first complying with Article 39(1), or
- (b) (if it has complied with Article 39(1)) without first complying with Article 39(4)(a),

is, unless there was a reasonable excuse for carrying out the operation without complying, guilty of an offence and is liable on summary conviction to a fine not exceeding £20,000 or on conviction on indictment to a fine.

(3) A public body acting in the exercise of its functions which, having complied with Article 39(1), fails without reasonable excuse to comply with Article 39(4)(b) is guilty of an offence and is liable on summary conviction to a fine not exceeding £20,000 or on conviction on indictment to a fine.

(4) For the purposes of paragraphs (1), (2) and (3), it is a reasonable excuse in any event for a person to carry out an operation (or to fail to comply with a requirement to send a notice about it) if—

- (a) subject to paragraph (5), the operation in question was authorised by a planning permission granted on an application under Part IV of the [Planning \(Northern Ireland\) Order 1991 \(NI 11\)](#) or permitted by a public body which has acted in accordance with Article 40; or
- (b) the operation in question was an emergency operation particulars of which (including details of the emergency) were notified to the Department as soon as practicable after the commencement of the operation.

(5) If an operation needs both a planning permission and the permission of a public body, paragraph (4)(a) does not provide reasonable excuse unless both have been obtained.

(6) A person (other than a public body acting in the exercise of its functions) who without reasonable excuse—

- (a) intentionally or recklessly destroys or damages any of the flora, fauna, or geological, physiographical or other features by reason of which land is of special scientific interest, or intentionally or recklessly disturbs any of those fauna, and
- (b) knew that what he destroyed, damaged or disturbed was within an ASSI,

is guilty of an offence and is liable on summary conviction to a fine not exceeding £20,000 or on conviction on indictment to a fine.

(7) For the purposes of paragraph (6) it is a reasonable excuse in any event for a person to do what is mentioned in that paragraph if—

- (a) subject to paragraph (8), the destruction, damage or disturbance in question was authorised by a planning permission granted on an application under Part IV of the [Planning \(Northern Ireland\) Order 1991 \(NI 11\)](#) or permitted by a public body which has acted in accordance with Article 40; or

the destruction, damage or disturbance in question was caused by an emergency operation particulars of which (including details of the emergency) were notified to the Department as soon as practicable after the commencement of the operation

(8) If the destruction, damage or disturbance in question needs both a planning permission and the permission of a public body, paragraph (7)(a) does not provide reasonable excuse unless both have been obtained.

(9) A person who without reasonable excuse fails to comply with a requirement of a management notice is guilty of an offence and is liable on summary conviction to a fine not exceeding the statutory maximum or on conviction on indictment to a fine.

(10) A person who intentionally obstructs a person acting in the execution of any power conferred by Article 44(1) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(11) A person who—

- (a) contravenes any byelaw made under Article 45; or
- (b) intentionally obstructs any person authorised under paragraph (5) of that Article,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(12) In determining the amount of any fine to be imposed on a person convicted of an offence under this Article, the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence.

(13) Proceedings for an offence under this Article shall not, without the consent of the Director of Public Prosecutions for Northern Ireland, be taken by a person other than the Department.

#### **Restoration following offences under Article 46**

47.—(1) Where—

- (a) the operation in respect of which a person is convicted of an offence under Article 46(1), (2) or (3) has destroyed or damaged any of the flora, fauna or geological, physiographical or other features by reason of which an ASSI is of special scientific interest, or
- (b) a person is convicted of an offence under Article 46(6),

the court by or before which he is convicted, in addition to dealing with him in any other way, may make an order requiring him to carry out, within such period as may be specified in the order, such operations (whether on land included in the ASSI or not) as may be so specified for the purpose of restoring the ASSI to its former condition.

(2) The period specified in an order made under paragraph (1) shall not begin to run—

- (a) in any case until the expiration of the period for the time being prescribed by law for the giving of notice of appeal against the conviction
- (b) where notice of appeal is given within the period so prescribed, until determination of the appeal.

(3) At any time before an order under paragraph (1) is complied with or fully complied with, the court by which it was made may, on the application of the person against whom it was made, discharge or vary the order if it appears to the court that a change in the circumstances has made compliance or full compliance with the order impracticable or unnecessary.

(4) If, within the period specified in an order under paragraph (1), the person against whom it was made fails, without reasonable excuse, to comply with it, he shall be guilty of an offence and liable on summary conviction—

- (a) to a fine not exceeding level 5 on the standard scale; and
- (b) in the case of a continuing offence, to a further fine not exceeding £100 for each day during which the offence continues after conviction.

(5) If, within the period specified in an order under paragraph (1), any operations specified in the order have not been carried out, the Department may carry out those operations and recover from the person against whom the order was made any expenses reasonably incurred by the Department in doing so.

### *Supplementary*

#### **Matters affecting agriculture, forestry and inland fisheries**

**48.**—(1) It shall be the duty of the Department and the Council and any other body having functions under this Part in the exercise of such functions to have due regard to the needs of agriculture, forestry and fisheries.

(2) In the exercise of its functions under this Part the Department shall have due regard to any representations made to it on behalf of persons engaged in agriculture, forestry or fisheries by the Department of Agriculture and Rural Development or (in the case of inland fisheries) the Department of Culture, Arts and Leisure.

(3) Nothing in this Part shall make unlawful anything done under the [Diseases of Animals \(Northern Ireland\) Order 1981 \(NI 22\)](#).

#### **Application of this Part to the Crown**

**49.**—(1) Subject to the following provisions of this Article, this Part binds the Crown to the full extent authorised or permitted by the constitutional laws of Northern Ireland.

(2) Articles 32 to 37 do not apply to the Crown as owner or occupier of any land.

(3) No contravention by the Crown of any provision of this Part shall make the Crown criminally liable; but the High Court may, on the application of the Department, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(4) If the Secretary of State certifies that it appears to him, as respects any land held or used by or on behalf of the Crown and any power of entry exercisable under Article 44 in relation to it, that it is requisite or expedient that, in the interests of national security, the power should not be exercisable in relation to that land, that power shall not be exercisable in relation to that land .

(5) In this Article any reference to the Crown includes the Crown in right of Her Majesty's Government in the United Kingdom

#### **Statutory charges**

**50.** In Schedule 11 to the Land Registration Act (Northern Ireland) 1970 (c. 18) (matters which are statutory charges)—

- (a) in paragraph 39 for “17 or 24(8)(a)” substitute “or 17”; and
- (b) at the end there shall be added—

“**43.** Any declaration under Article 28(1) of the Environment (Northern Ireland) Order 2002, any management agreement under Article 34 of that Order or any waiver relating thereto and any management notice under Article 35 of that Order.”.

#### **Transitional provisions relating to this Part**

**51.** Schedule 4 (which contains transitional provisions relating to this Part) shall have effect.

#### **Interpretation of this Part**

**52.**—(1) In this Part—

- “ASSI” has the meaning given by Article 28(11);
- “the Council” has the meaning given by Article 28(1);
- “management agreement” has the meaning given by Article 34(1);

“management notice” has the meaning given by Article 35(3);

“notice” and “notification” mean notice or notification in writing;

“operation” includes activity;

“owner”, in relation to any land, means any person who has an estate in the land;

“public body” has the meaning given by Article 38(3).

(2) Where a declaration under Article 28(1) has been—

(a) modified under Article 28(6),

(b) varied under Article 29(1),

(c) varied with modifications under Article 29(5),

(d) extended under Article 30(1), or

(f) extended with modifications under Article 30(7),

a reference in any statutory provision (including this Order) to such a declaration (however expressed) is (unless the context otherwise requires) a reference to the declaration as thus altered.