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STATUTORY RULES OF NORTHERN IRELAND

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**1995 No. 380**

**EUROPEAN COMMUNITIES  
NATURE CONSERVATION**

**The Conservation (Natural Habitats, etc.)  
Regulations (Northern Ireland) 1995**

*Made* - - - - *5th October 1995*  
*Coming into operation* *13th November 1995*

The Department of the Environment being a Department designated(1) for the purposes of section 2(2) of the European Communities Act 1972(2) in relation to matters relating to the conservation of natural habitats and of wild fauna and flora, in exercise of the powers enabling it in that behalf, hereby makes the following Regulations:

**PART I**

**INTRODUCTORY PROVISIONS**

*Citation and commencement*

**1.**—(1) These Regulations may be cited as the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995.

(2) These Regulations shall come into operation on 13th November 1995.

*Interpretation and application*

**2.**—(1) The Interpretation Act (Northern Ireland) 1954(3) shall apply to these Regulations as it applies to a Measure of the Northern Ireland Assembly.

(2) In these Regulations—

“the 1991 Order” means the Planning (Northern Ireland) Order 1991(4);

“competent authority” shall be construed in accordance with regulation 5;

“the Department” means the Department of the Environment;

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(1) S.I.1992/2870

(2) 1972 c. 68

(3) 1954 c. 33 (N.I.)

(4) S.I. 1991/1220 (N.I. 11)

“destroy”, in relation to an egg, includes doing anything to the egg which is calculated to prevent it from hatching;

“enterprise zone order” shall be construed in accordance with Article 19 of the 1991 Order;

“enterprise zone scheme” shall have the same meaning as in Article 2(2) of the 1991 Order;

“European site” has the meaning given by regulation 9 and “European marine site” means a European site which consists of, or so far as it consists of, marine areas;

“general development order and special development order” shall be construed in accordance with Article 13(3) of the 1991 Order;

“functions” includes powers and duties;

“the Habitats Directive” has the meaning given by regulation 3(1);

“livestock” includes any animal which is kept—

- (a) for the provision of food, wool, skins or fur;
- (b) for the purpose of its use in the carrying on of any agricultural activity; or
- (c) for rearing and release into the wild for the provision or improvement of shooting or fishing, or for the purposes of nature conservation;

“management agreement” means an agreement entered into, or having effect as if entered into, under regulation 13;

“marine area” means any land covered (continuously or intermittently) by tidal waters or parts of the sea in or adjacent to Northern Ireland up to the seaward limits of territorial waters;

“Natura 2000” means the European network of special areas of conservation and special protection areas under the Wild Birds Directive, provided for by Article 3(1) of the Habitats Directive;

“occupier”, for the purposes of Part III (protection of species), includes any person having any right of hunting, shooting, fishing or taking game or fish;

“owner”, in relation to any land, means any person (other than a mortgagee not in possession) who is the holder of or who is for the time being entitled to sell or otherwise dispose of the fee simple (including a fee farm grant) of the land or any person entitled to possession of the land by virtue of any estate in the land other than a mere licence;

“the register” means the register of European sites in Northern Ireland provided for by regulation 10;

“relevant authorities” in relation to marine areas and European marine sites, shall be construed in accordance with regulation 4;

“simplified planning zone” and “simplified planning zone scheme” shall be construed in accordance with Article 14 of the 1991 Order;

“statutory undertaker” has the same meaning as in the 1991 Order;

“the Wild Birds Directive” means Council Directive [79/409/EEC\(5\)](#) on the conservation of wild birds.

(3) Expressions used in these Regulations and in the Habitats Directive have the same meaning as in that Directive.

The following expressions, in particular, are defined in Article 1 of that Directive—

“priority natural habitat types” and “priority species”;

“site” and “site of Community importance”;

“special area of conservation”.

(4) For the purposes of these Regulations the territorial waters of the United Kingdom adjacent to Northern Ireland shall be treated as part of Northern Ireland, and reference to Northern Ireland shall be construed as including the adjacent territorial waters.

For the purposes of this paragraph territorial waters include any waters landward of the baselines from which the breadth of the territorial sea is measured.

#### *Implementation of Directive*

**3.**—(1) These Regulations make provision for the purpose of implementing, for Northern Ireland, Council Directive [92/43/EEC](#)(**6**) on the conservation of natural habitats and of wild fauna and flora (referred to in these Regulations as “the Habitats Directive”).

(2) The Department shall exercise its functions under the enactments relating to nature conservation so as to secure compliance with the requirements of the Habitats Directive.

Those enactments include—

Parts V and VI of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985(**7**);

Part II of the Wildlife (Northern Ireland) Order 1985(**8**); and these Regulations.

(3) In relation to marine areas any competent authority having functions relevant to marine conservation shall exercise those functions so as to secure compliance with the requirements of the Habitats Directive.

This applies, in particular, to the functions under the following enactments—

Foyle Fisheries Act (Northern Ireland) 1952(**9**),

Fisheries Act (Northern Ireland) 1966(**10**),

Section 2(2) of the Military Lands Act 1900(**11**) (provisions as to use of sea, tidal water or shore),

Harbours Act (Northern Ireland) 1970(**12**),

Articles 20 and 21 of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985 (marine nature reserves),

Water Act (Northern Ireland) 1972(**13**),

Water and Sewerage Service (Northern Ireland) Order 1973(**14**),

Drainage (Northern Ireland) Order 1973(**15**), and these Regulations.

(4) Without prejudice to the preceding provisions, every competent authority in the exercise of any of its functions shall have regard to the requirements of the Habitats Directive so far as they may be affected by the exercise of those functions.

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(6) O.J. No. L. 206, 22.7.92 p.7

(7) S.I. [1985/170](#) (N.I. 1); relevant amendments were made by the Nature Conservation and Amenity Lands (Amendment) (Northern Ireland) Order 1989 (S.I. [1989/492](#) (N.I. 3))

(8) S.I. [1985/171](#) (N.I. 2)

(9) [1952 c. 5](#) (N.I.)

(10) [1966 c. 17](#) (N.I.)

(11) [1900 c. 56](#); the power conferred by Section 2(2) was extended by Section 7 of the Land Powers (Defence) Act [1958 \(c. 30\)](#)

(12) [1970 c. 1](#) (N.I.)

(13) [1972 c. 5](#) (N.I.)

(14) S.I. [1973/70](#) (N.I. 2)

(15) S.I. [1973/69](#) (N.I. 1)

*Relevant authorities in relation to marine areas and European marine sites*

4. For the purposes of these Regulations the relevant authorities, in relation to a marine area or European marine site, are such of the following as have functions in relation to land or waters within or adjacent to that area or site—

- (a) a district council;
- (b) the Commissioners of Irish Lights;
- (c) a harbour authority as defined by the Harbours Act (Northern Ireland) 1970 (Section 38);
- (d) the Fisheries Conservancy Board for Northern Ireland;
- (e) the Foyle Fisheries Commission; and
- (f) a pilotage authority within the meaning of the Pilotage Act 1983(16).

*Competent authorities generally*

5. For the purposes of these Regulations the expression “competent authority” includes government departments, district councils and statutory undertakers, and any trustees, commissioners, board or other persons who, as a public body and not for their own profit, act under any statutory provision for the improvement of any place or the production or supply of any commodity or service.

## PART II

### CONSERVATION OF NATURAL HABITATS AND HABITATS OF SPECIES

*European sites*

*Selection of sites eligible for identification as of Community importance*

6.—(1) On the basis of the criteria set out in Annex III (Stage 1) to the Habitats Directive, and relevant scientific information, the Department shall propose a list of sites indicating with respect to each site—

- (a) which natural habitat types in Annex I to the Directive the site hosts, and
- (b) which species in Annex II to the Directive that are native to Northern Ireland the site hosts.

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

For aquatic species which range over wide areas, such sites shall be proposed only where there is a clearly identifiable area representing the physical and biological factors essential to their life and reproduction.

(3) Where appropriate the Department may propose modification of the list in the light of the results of the surveillance referred to in Article 11 of the Habitats Directive.

(4) The list shall be transmitted to the European Commission together with information on each site including—

- (a) a map of the site,
- (b) its name, location and extent, and

(c) the data resulting from the application of the criteria specified in Annex III (Stage 1), provided in a format established by the Commission.

*Adoption of list of sites: designation of special areas of conservation*

7.—(1) Once a site of Community importance in Northern Ireland has been adopted in accordance with the procedure laid down in paragraph 2 of Article 4 of the Habitats Directive, the Department shall designate that site as a special area of conservation as soon as possible and within six years at most.

- (2) The Department shall establish priorities for the designation of sites in the light of—
- (a) the importance of the sites for the maintenance or restoration at a favourable conservation status of—
    - (i) a natural habitat type in Annex I to the Habitats Directive, or
    - (ii) a species in Annex II to the Directive,and for the coherence of Natura 2000; and
  - (b) the threats of degradation or destruction to which those sites are exposed.

(3) In this regulation in relation to European marine sites for the words “the Department” where they occur substitute “the Secretary of State”.

*Consultation as to inclusion of site omitted from the list*

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

- (a) the Department agrees that the site should be added to the list transmitted in accordance with regulation 6, or
- (b) the Council, acting on a proposal from the Commission in pursuance of paragraph 2 of Article 5 of the Habitats Directive, so decides,

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

*Meaning of “European site” in these Regulations*

- 9.—(1) In these Regulations a “European site” means—
- (a) a special area of conservation,
  - (b) a site of Community importance which has been placed on the list referred to in the third sub-paragraph of Article 4(2) of the Habitats Directive,
  - (c) a site hosting a priority natural habitat type or priority species in respect of which consultation has been initiated under Article 5(1) of the Habitats Directive, during the consultation period or pending a decision of the Council under Article 5(3), or
  - (d) an area classified pursuant to Article 4(1) or (2) of the Wild Birds Directive.

(2) Sites which are European sites by virtue only of paragraph 1(c) are not within regulations 17 and 43 (which relate to the approval of certain plans and projects); but this is without prejudice to their protection under other provisions of these Regulations.

## ***Register of European sites***

### *Duty to compile and maintain a register of European sites*

**10.**—(1) The Department shall compile and maintain in such form as it thinks fit, a register of European sites in Northern Ireland.

(2) The Department shall include in the register—

- (a) special areas of conservation as soon as they are designated;
- (b) sites of Community importance as soon as they are placed on the list referred to in the third sub-paragraph of Article 4(2) of the Habitats Directive, until they are designated as special areas of conservation;
- (c) any site hosting a priority natural habitat type or priority species in respect of which consultation is initiated under Article 5(1) of the Habitats Directive, during the consultation period or pending a Council decision under Article 5(3); and
- (d) an area classified by the Department pursuant to Article 4(1) or (2) of the Wild Birds Directive, as soon as they are so classified or, if they have been classified before the commencement of these Regulations as soon as practicable after commencement.

(3) The Department may, if appropriate, amend the entry in the register relating to a European site.

(4) The Department shall remove the relevant entry—

- (a) if a special area of conservation is declassified by the European Commission under Article 9 of the Habitats Directive; or
- (b) if a site otherwise ceases to fall within any of the categories listed in paragraph (2).

(5) A copy of the register shall be available for inspection by the public at all reasonable hours and free of charge.

### *Notice to landowners, district councils, etc.*

**11.**—(1) The Department shall as soon as practicable after including a site in the register, amending an entry in the register or removing an entry from the register, give notice of that fact to—

- (a) every owner and occupier of land within the site,
- (b) each district council in whose district the site or any part of it is situated, and
- (c) such other persons or bodies as the Department thinks fit.

(2) Notice of the inclusion of a site in the register, or the amendment of an entry in the register, shall be accompanied by a copy of so much of the relevant register entry as relates to land owned or occupied by or, as the case may be, to land within the area of, the person or district council to whom the notice is given.

### *Entry in Statutory Charges Register*

**12.** An entry in the register relating to a European site in Northern Ireland shall be included among the matters which are required to be registered in the Statutory Charges Register.

## **Management agreements**

### *Management agreements*

**13.**—(1) The Department may enter into an agreement (a “management agreement”) with any person having an estate in any land forming part of a European site, or land adjacent to such a site, for the management, conservation, restoration or protection of the site, or any part of it.

(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 work 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 said owner or other persons, or by the Department, or partly in one way and partly in another;
- (c) may contain such other provisions as to the making of payments by the Department, and, in particular, for the payment by it of compensation for the effect of the restrictions mentioned in paragraph (2), as may be specified in the agreement.

(4) Where a person having an estate in any land, by such 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 order under the 1991 Order.

(7) A management agreement shall be included among the matters which are required to be registered in the Statutory Charges Register.

### *Continuation in force of existing agreements, etc.*

**14.**—(1) Any agreement previously entered into—

- (a) under Article 17 of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985<sup>(17)</sup> (nature reserves), or
- (b) under Article 24(8) of that Order (areas of special scientific interest),

in relation to land which, on or after the commencement of these Regulations becomes land within a European site, or adjacent to such a site, shall have effect as if entered into under regulation 13.

(2) Any other thing done or deemed to have been done under any provision of Part V, Part VI or Part VIII of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985, in respect of any land prior to that land becoming land within a European site or adjacent to such a site, shall continue to have effect as if done under the corresponding provision of these Regulations.

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<sup>(17)</sup> S.I. 1985/170 (N.I. 1); Article 17 was amended by Article 8 of the Nature Conservation and Amenity Lands (Amendment) (Northern Ireland) Order 1989 S.I. 1989/492 (N.I. 3)

(3) Any reference in any outlying enactment to a nature reserve within the meaning of Article 2(2) of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985 shall be construed as including a European site.

For this purpose “outlying enactment” means an enactment not contained in, or in an instrument made under, the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985.

### ***Control of potentially damaging operations***

#### *Declaration of potentially damaging operations*

**15.**—(1) Any declaration in force in relation to a European site under Article 24 of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985 (declaration of areas of special scientific interest) specifying—

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

shall have effect for the purposes of these Regulations.

(2) The Department may, for the purpose of securing compliance with the requirements of the Habitats Directive, at any time amend the declaration with respect to any of the matters mentioned in paragraph 1(a) or (b).

(3) Notice of any amendment shall be given—

- (a) to every owner and occupier of any land within the site who in the opinion of the Department may be affected by the amendment; and
- (b) to each district council in whose district the site is wholly or partially situated;

and the amendment shall come into force in relation to an owner or occupier upon such notice being given to him.

(4) The provisions of Article 33 of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985 (matters to be registered in the Statutory Charges Register) apply with the necessary modifications to an amendment of a declaration under this regulation as in relation to the original declaration.

#### *Restriction on carrying out operations specified in declaration*

**16.**—(1) The owner or occupier of any land within a European site shall not carry out, or cause or permit to be carried out on that land, any operation or activity specified in a declaration in force in relation to the site under regulation 15 unless—

- (a) in the case of any operation or activity which, in the opinion of the Department, would not cause any damage to the scientific interest of the area,—
  - (i) a person has given notice to the Department of a proposal to carry out the operation or activity; and
  - (ii) the operation or activity is carried out with the Department’s written consent; and
  - (iii) the Department has not served on him notice of its intention to acquire the land compulsorily; or
- (b) in the case of any other operation or activity,—

- (i) the owner or occupier has given written notice to the Department of a proposal to carry out the operation or activity, specifying its nature and the land on which it is proposed to carry it out; and
  - (ii) one of the conditions in paragraph (2) is fulfilled; and
  - (iii) the Department has not served on him notice of its intention to acquire the land compulsorily.
- (2) The conditions referred to in paragraph 1(b)(ii) are—
- (a) that the operation or activity is carried out with the Department's written consent; and
  - (b) that the operation or activity is carried out in accordance with the terms of a management agreement.
- (3) A person who, without reasonable excuse, contravenes paragraph (1) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (4) For the purposes of paragraph (3) it shall be a reasonable excuse in any event for a person to carry out an operation if—
- (a) the operation was authorised by a planning permission granted under Part IV of the 1991 Order; or
  - (b) the operation 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) The Department shall have power to enforce the provisions of this regulation.
- (6) Proceedings for an offence under this regulation shall not, without the consent of the Director of Public Prosecutions for Northern Ireland, be taken by a person other than the Department.

*Supplementary provisions as to consents*

17.—(1) Where it appears to the Department that an application for consent under regulation 16(2)(a) relates to an operation which is or forms part of a plan or project which—

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

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

(2) In the light of the conclusions of the assessment, and subject to paragraph (3), the Department may give consent for the operation only after having ascertained that the plan or project will not adversely affect the integrity of the site.

(3) If, in spite of an assessment that a plan or project will adversely affect the integrity of a site, the Department is satisfied that, there being no alternative solutions, the plan or project must be carried out for imperative reasons of overriding public interest (which, subject to paragraph (4), may be of a social or economic nature), it may give consent to the operation.

(4) Where the site concerned hosts a priority natural habitat type or a priority species, the reasons referred to in paragraph (3) must be either—

- (a) reasons relating to human health, public safety, or beneficial consequences of primary importance to the environment, or
- (b) other reasons which in the opinion of the European Commission are imperative reasons of overriding public interest.

(5) Where the Department gives consent under this regulation it shall secure that such compensatory measures are taken as are necessary to ensure that the overall coherence of Natura 2000 is protected.

(6) This regulation does not apply in relation to a site which is a European site by reason only of regulation 9(1)(c) (site protected in accordance with Article 5(4)).

#### *Provision as to existing notices and consents*

**18.**—(1) Any notice previously given under Article 25(1)(a)(i) or (b)(i) of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985 or consent previously given under Article 25(1)(a)(ii) or (2)(a) of that Order in relation to land which on or after the commencement of these Regulations becomes land within a European site shall have effect, subject as follows as if given under regulation 16(1)(a)(i) or (b)(i) (notices), (a)(ii) or (2)(a) (consents).

(2) The Department shall review any such consent as regards its compatibility with the conservation objectives of the site, and may modify or withdraw it.

(3) Notice of any such modification or withdrawal of consent shall be given to every owner and occupier of land within the site who in the opinion of the Department may be affected by it; and the modification or withdrawal shall come into force in relation to an owner or occupier upon such notice being given to him.

(4) The modification or withdrawal of a consent shall not affect anything done in reliance on the consent before the modification or withdrawal takes effect.

(5) Where or to the extent that an operation ceases to be covered by a consent by reason of the consent being modified or withdrawn, regulation 16(1) shall apply from the giving of the notice of the modification or withdrawal under paragraph (3) above.

#### **Compensation**

##### *Compensation: payment*

**19.** Where a declaration is applied by virtue of regulation 15 the Department shall pay compensation to any person having at the time the declaration is so applied an estate in land comprised in an agricultural unit (within the meaning of Article 2(2) of the Planning Blight (Compensation) (Northern Ireland) Order 1981(**18**)) comprising land to which the declaration relates who, on a claim made to the Department within the time and manner prescribed by regulations, shows that the value of his estate in that land is less than it would have been if a declaration had not so applied.

##### *Compensation: amount and assessment*

**20.**—(1) The following provisions have effect in relation to compensation under regulation 19 (compensation).

(2) The amount of compensation shall be the difference between the value of the estate in the land in question and what it would have been had a declaration not applied by virtue of regulation 15.

(3) For this purpose—

- (a) an estate in land shall be valued at the time when the declaration is applied by virtue of regulation 15 to that land; and
- (b) where a person has more than one estate in land to which a declaration is applied by virtue of regulation 15, his various estates may be valued together.

(4) Article 13 of the Land Acquisition and Compensation (Northern Ireland) Order 1973<sup>(19)</sup> (mortgages, trusts for sale and settlements) shall apply in relation to compensation under regulation 19 as it applies to compensation under Part II of that Order.

(5) For the purpose of assessing any compensation payable under regulation 19, the rules set out in Article 6 of the Land Compensation (Northern Ireland) Order 1982<sup>(20)</sup> shall, so far as applicable and subject to any necessary modifications, have effect as they have effect for the purpose of assessing compensation for the compulsory acquisition of land.

(6) Except so far as may be provided by regulations made by the Department, any question of disputed compensation shall be referred to and determined by the Lands Tribunal.

*Compensation: procedural provisions*

**21.**—(1) The power to make regulations under Article 26 of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985<sup>(21)</sup> (compensation) shall be exercisable so as to make provision for the purposes of these Regulations corresponding to those for which provision may be made under that Article.

(2) The references in regulation 19 to matters being prescribed by regulations, and in regulation 20(6) to matters being provided by regulations, are to their being so prescribed and provided.

(3) Any regulations in force under Article 26 of that Order on the commencement of these Regulations shall have effect for the purposes of these Regulations as if made under that Article as applied by this regulation.

*Restoration where person convicted of an offence under regulation 16*

**22.**—(1) Where a person is convicted of an offence under regulation 16, the court by which that person is convicted may, in addition to dealing with him in any other way, make an order requiring him to carry out, within such a period as may be specified in the order, such operations for the purpose of restoring the land to its former condition as may be so specified.

(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 a decision of a court of summary jurisdiction;
- (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, a person authorised in writing by the Department may enter the

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<sup>(19)</sup> S.I. 1973/1896 (N.I. 21)

<sup>(20)</sup> S.I. 1982/712 (N.I. 9)

<sup>(21)</sup> S.I. 1985/170 (N.I. 1)

land and 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.

## **Byelaws**

### *Power to make byelaws*

**23.**—(1) The Department may make byelaws for the protection of a European site under Article 19 of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985 (byelaws for the protection of nature reserves).

(2) Without prejudice to paragraph (1), byelaws under that Article as it applies by virtue of this regulation may make provision of any of the following kinds.

(3) They may—

- (a) provide for prohibiting or restricting the entry into, or movement within, the site of persons, vehicles, boats and animals;
- (b) prohibit or restrict the killing, taking, molesting or disturbance of living creatures of any description in the site, the taking, destruction or disturbance of eggs, larvae or other immature stage of any such creature, the taking of, or interference with, vegetation of any description in the site, or the doing of anything in the site which will interfere with the soil or damage any object in the site;
- (c) regulate or prohibit the taking away of soil, turf, sand or minerals of any description;
- (d) prohibit or restrict, or provide for prohibiting or restricting, the lighting of fires in the site, or the doing of anything likely to cause fire in the site.

(4) They may prohibit or restrict any activity referred to in paragraph (3) within such area surrounding or adjoining the site as appears to the Department requisite for the protection of the site.

(5) They may provide for the issue, on such terms and subject to such conditions as may be specified in the byelaws, of permits authorising—

- (a) entry into the site or any such surrounding or adjoining area as is mentioned in paragraph (4), or
- (b) the doing of anything within the site, or any such surrounding or adjoining area,

where such entry, or doing that thing, would otherwise be unlawful under the byelaws.

(6) They may be made so as to relate to the whole or to any part of the site, or of any such surrounding or adjoining area as is mentioned in paragraph (4), and may make different provisions for different parts thereof.

(7) Before making byelaws under Article 19 of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985 as applied by this regulation the Department shall consult the Council for Nature Conservation and the Countryside.

(8) This regulation does not apply in relation to a European marine site (but see regulation 31).

### *Byelaws: limitation on effect*

**24.** Byelaws under Article 19 of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985 as it applies by virtue of regulation 23 shall not interfere with—

- (a) the exercise by any person of a right vested in him as owner, lessee or occupier of land in a European site, or in any such surrounding or adjoining area as is mentioned in paragraph (4) of that regulation;
- (b) the exercise of a public right of way; or

- (c) the exercise of any statutory functions of any local or public authority.

*Compensation for effect of byelaws*

**25.**—(1) Where the exercise of any right vested in a person by reason of his being entitled to any estate in land is prevented or hindered by the coming into operation of byelaws under Article 19 of the Nature Conservation and Amenity Lands (Northern Ireland) Order as it applies by virtue of regulation 23, he shall be entitled to receive from the Department compensation in respect thereof.

(2) Any dispute, arising on a claim for compensation under paragraph (1) shall, in the absence of agreement be referred to and determined by the Lands Tribunal.

*Continuation in force of existing byelaws*

**26.** Any byelaws previously made under Article 19 of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985 in relation to land which on or after the commencement of these Regulations becomes land within a European site, or adjacent to such a site, shall have effect as if made under the said Article 19 as it applies by virtue of regulation 23 and shall be construed as if originally so made.

***Power of acquisition***

*Power of acquisition*

**27.**—(1) Where the Department is satisfied—

- (a) that it is unable to enter into a management agreement with any person having estate in any land within a European site, on terms appearing to it to be reasonable; and
- (b) that it is expedient for the purposes of conserving land within a European site;

the Department may, in accordance with arrangements approved by the Department of Finance and Personnel, acquire such land, or any land necessary for the purpose of providing a means of access to such land, by agreement (whether by way of purchase, lease or exchange) or otherwise.

(2) Where, for any of the purposes referred to in paragraph (1), the Department desires to acquire otherwise than by agreement any land, the Department may make an order vesting that land in the Department.

(3) Section 97(2) and (3) of, and Schedule 6 to, the Local Government Act (Northern Ireland) 1972<sup>(22)</sup> shall apply subject to the modifications specified in Schedule 1 for the purpose of the making of vesting orders under this regulation.

(4) Where the Department is of the opinion that any land acquired under this regulation would be more expediently or efficiently managed or conserved in the public interest by any person, the Department may, in accordance with arrangements approved by the Department of Finance and Personnel, convey, either for value or otherwise and upon such terms and conditions as the Department may think fit, that land to that person, and may—

- (i) impose such restrictions as the Department may think necessary on the user of the land so conveyed; and
- (ii) grant or reserve such rights over such land as the Department may think fit.

(5) Without prejudice to paragraph (4), the Department may, in accordance with arrangements approved by the Department of Finance and Personnel, dispose of any land acquired under this regulation which the Department no longer requires for any of the purposes referred to in

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(22) 1972 c. 9 (N.I.)

paragraph (1), upon such terms and conditions as the Department may think fit, and may impose restrictions and grant or reserve rights as if the land were conveyed under paragraph (4).

(6) Nothing in section 5 of the Stormont Regulation and Government Property Act (Northern Ireland) 1933<sup>(23)</sup> (which relates to the taking and disposal of land for the public services) shall affect the disposal by the Department of land acquired under this regulation.

### ***Special provisions as to European marine sites***

#### *Marking of site and advice by the Secretary of State*

**28.**—(1) The Secretary of State may install markers indicating the existence and extent of a European marine site.

(2) As soon as possible after a site becomes a European marine site, the Secretary of State shall advise the relevant authorities as to—

- (a) the conservation objectives for that site, and
- (b) any operations which may cause deterioration of natural habitats or the habitats of species, or disturbance of species for which the site has been designated.

#### *Management scheme for European marine site*

**29.**—(1) The Department, the Department of Agriculture and the relevant authorities, or any of them, may establish for a European marine site a management scheme under which their functions (including any power to make byelaws) shall be exercised so as to secure in relation to that site compliance with the requirements of the Habitats Directive.

(2) Only one management scheme may be made for each European marine site.

(3) A management scheme may be amended from time to time.

(4) As soon as a management scheme has been established by the relevant authority or authorities, or is amended, a copy of it shall be sent by the relevant authority or authorities concerned to the Secretary of State.

#### *Direction to establish or amend management scheme*

**30.**—(1) The Secretary of State, or persons authorised on his behalf, may give directions to the relevant authorities, or any of them, as to the establishment of a management scheme for a European marine site.

(2) Directions may, in particular—

- (a) require conservation measures specified in the direction to be included in the scheme;
- (b) appoint one of the relevant authorities to co-ordinate the establishment of the scheme;
- (c) set time limits within which any steps are to be taken;
- (d) provide that the approval of the Secretary of State is required before the scheme is established; and
- (e) require any relevant authority to supply to the Secretary of State such information concerning the establishment of the scheme as may be specified in the direction.

(3) The Secretary of State, or persons authorised on his behalf, may give directions to the relevant authorities, or any of them, as to the amendment of a management scheme for a European marine site, either generally or in any particular respect.

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(23) 1933 c. 6 (N.I.)

(4) Any direction under this regulation shall be in writing and may be varied or revoked by a further direction.

#### *Byelaws for protection of European marine site*

**31.**—(1) The Secretary of State may make byelaws for the protection of a European marine site under Article 21 of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985(24) (byelaws for the protection of marine nature reserves).

(2) The provisions of paragraphs (2) to (7) of that Article apply in relation to byelaws made by virtue of this regulation with the substitution for the references to marine nature reserves of references to European marine sites.

(3) Nothing in the byelaws made by virtue of this regulation shall interfere with the exercise of any functions of a relevant authority, any functions conferred by or under a statutory provision (whenever made) or any right of any person (whenever vested).

#### *Miscellaneous*

#### *Nature conservation policy in planning contexts*

**32.** The Department shall endeavour, where it considers it necessary, in its land use planning and development policies, to encourage the management of features of the landscape which are of major importance for wild fauna and flora.

Such features are those which, by virtue of their linear and continuous structure (such as rivers with their banks or the traditional systems for marking field boundaries) or their function as stepping stones (such as ponds or small woods), are essential for the migration, dispersal and genetic exchange of wild species.

## PART III

### PROTECTION OF SPECIES

#### *Protection of animals*

#### *European protected species of animals*

**33.** The species of animals listed in Annex IV(a) to the Habitats Directive whose natural range includes any area in Northern Ireland are listed in Schedule 2 to these Regulations.

References in these Regulations to a “European protected species” of animal are to any of those species.

#### *Protection of wild animals of European protected species*

**34.**—(1) It is an offence—

- (a) deliberately to take or kill a wild animal of a European protected species;
- (b) deliberately to disturb any such animal;
- (c) deliberately to take or destroy the eggs of such an animal; or

(d) to damage or destroy a breeding site or resting place of such an animal.

(2) It is an offence to keep, transport, sell or exchange, or offer for sale or exchange, any live or dead wild animal of a European protected species, or any part of, or anything derived from, such an animal.

(3) Paragraphs (1) and (2) apply to all stages of the life of the animals to which they apply.

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

- (a) that the animal had not been taken or killed, or had been lawfully taken or killed, or
- (b) that the animal or other thing in question had been lawfully sold (whether to him or any other person).

For this purpose “lawfully” means without any contravention of these Regulations or Part II of the Wildlife (Northern Ireland) Order 1985<sup>(25)</sup>.

(5) In any proceedings for an offence under this regulation, the animal in question shall be presumed to have been a wild animal unless the contrary is shown.

(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.

#### *Exceptions from regulation 34*

**35.**—(1) Nothing in regulation 34 shall make unlawful anything done—

- (a) in pursuance of a requirement by the Department of Agriculture under section 6 of the Agriculture Act (Northern Ireland) 1949<sup>(26)</sup> or under section 2 of the Agriculture (Miscellaneous Provisions) Act (Northern Ireland) 1959<sup>(27)</sup>; or
- (b) under the Drainage (Northern Ireland) Order 1973<sup>(28)</sup>.

(2) Nothing in regulation 34(1)(b) or (d) shall make unlawful anything done within a dwelling house.

(3) Notwithstanding anything in regulation 34, a person shall not be guilty of an offence by reason of—

- (a) the taking of a wild animal of a European protected species if he shows that the animal had been disabled otherwise than by his unlawful act and was taken solely for the purpose of tending it and releasing it when no longer disabled;
- (b) the killing of such an animal if he shows that the animal had been so seriously disabled otherwise than by his unlawful act that there was no reasonable chance of its recovering; or
- (c) any act made unlawful by that regulation if he shows that the act was the incidental result of a lawful operation and could not reasonably have been avoided.

(4) A person shall not be entitled to rely on the defence provided by paragraph (2) or (3)(c) as respects anything done in relation to a bat otherwise than in the living area of a dwelling house unless he had notified the Department of the proposed action or operation and allowed it a reasonable time to advise him as to whether it should be carried out and, if so, the method to be used.

(5) Notwithstanding anything in regulation 34 an authorised person shall not be guilty of an offence by reason of the killing or disturbing of an animal of a European protected species—

- (a) if he shows that his action was necessary for the purpose of preventing serious damage to livestock, foodstuffs for livestock, crops, vegetables, fruit, growing timber, pasture or any other form of property or to fisheries; and

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<sup>(25)</sup> S.I. 1985/171 (N.I. 2)

<sup>(26)</sup> 1949 c. 2 (N.I.)

<sup>(27)</sup> 1959 c. 2 (N.I.)

<sup>(28)</sup> S.I. 1973/69 (N.I. 1)

(b) he notifies the Department immediately after taking such action.

(6) An authorised person may not rely on the defence provided by paragraph (5) as respects any action taken at any time if it had become apparent, before that time, that the action would prove necessary for the purpose mentioned in that paragraph and either—

- (a) a licence under regulation 39 authorising that action had not been applied for as soon as reasonably practicable after that fact had become apparent; or
- (b) an application for such a licence had been determined.

(7) In this regulation “authorised person” means—

- (a) the owner or occupier, or any person authorised by the owner or occupier, of the land on which the action authorised is taken,
- (b) any person authorised by the Department;

so, however, that the authorisation of any person for the purposes of this definition shall not confer any right of entry upon any land.

*Prohibition of certain methods of taking or killing wild animals*

**36.**—(1) This regulation applies in relation to the taking 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 taking or killing of such animals is permitted in accordance with these Regulations.

(2) It is an offence to use for the purpose of taking or killing any such wild animal—

- (a) any of the means listed in paragraph (3) or (4), or
- (b) any form of taking or killing from the modes of transport listed in paragraph (5).

(3) The prohibited means of taking 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 taking 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.

### ***Protection of plants***

#### *European protected species of plants*

**37.** The species of plants listed in Annex IV(b) to the Habitats Directive whose natural range includes any area in Northern Ireland are listed in Schedule 4.

References in these Regulations to a “European protected species” of plant are to any of those species.

#### *Protection of wild plants of European protected species*

**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 to keep, transport, sell or exchange, or offer for sale or exchange, any live or dead wild plant of a European protected species, or any part of, or anything derived from, such a plant.

(3) Paragraphs (1) and (2) apply to all stages of the biological cycle of the plants to which they apply.

(4) A person shall not be guilty of an offence under paragraph (1), by reason of any act made unlawful by that paragraph if he shows that the act was an incidental result of a lawful operation and could not reasonably have been avoided.

(5) A person shall not be guilty of an offence under paragraph (2) if he shows that the plant or other thing in question had been lawfully sold (whether to him or any other person).

For this purpose “lawfully” means without any contravention of these Regulations or Part II of the Wildlife (Northern Ireland) Order 1985.

(6) In any proceedings for an offence under this regulation, the plant in question shall be presumed to have been a wild plant unless the contrary is shown.

(7) 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.

### ***Power to grant licences***

#### *Grant of licences for certain purposes*

**39.—**(1) Regulations 34, 36 and 38 do not apply to anything done for any of the following purposes under and in accordance with the terms of a licence granted by the Department.

(2) The purposes referred to in paragraph (1) are—

- (a) scientific or educational purposes;
- (b) ringing or marking, or examining any ring or mark on, wild animals;

- (c) conserving wild animals or wild plants or introducing them to particular areas;
  - (d) protecting any zoological or botanical collection;
  - (e) preserving public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment;
  - (f) preventing the spread of disease; or
  - (g) preventing serious damage to livestock, foodstuffs for livestock, crops, vegetables, fruit, growing timber, pasture or any other form of property or to fisheries.
- (3) The Department shall not grant a licence under this regulation unless it is satisfied—
- (a) that there is no satisfactory alternative, and
  - (b) that the action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range.

*Licences: supplementary provisions*

**40.**—(1) A licence under regulation 39—

- (a) may be, to any degree, general or specific;
- (b) may be granted either to persons of a class or to a particular person; and
- (c) may be subject to compliance with any specified conditions.

(2) For the purposes of a licence under regulation 39 the definition of a class of persons may be framed by reference to any circumstances whatever including, in particular, their being authorised by any other person.

(3) A licence under regulation 39 may be modified or revoked at any time by the Department; but otherwise shall be valid for the period stated in the licence.

(4) A licence under regulation 39 which authorises any person to kill wild animals—

- (a) shall specify—
  - (i) the species of wild animals which may be killed and the person authorised to kill them; and
  - (ii) the area within which and the methods by which the wild animals may be killed; and
- (b) shall not be granted for a period of more than two years.

*False statements made for obtaining licence*

**41.**—(1) A person who, for the purpose of obtaining, whether for himself or another, the grant of licence under regulation 39—

- (a) makes a statement or representation, or furnishes a document or information, which he knows to be false in a material particular; or
- (b) recklessly makes a statement or representation, or furnishes a document or information, which is false in a material particular, shall be guilty of an offence.

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

## PART IV

### ADAPTATION OF PLANNING AND OTHER CONTROLS

#### ***Introductory***

##### *Application of the provisions of this Part*

**42.**—(1) The requirements of—

- (a) regulations 43 and 44 (requirement to consider effect on European sites), and
- (b) regulations 45 and 46 (requirement to review certain existing decisions and consents),

apply, subject to and in accordance with the following provisions of regulations 49 to 64, in relation to the matters specified in those provisions.

(2) Supplementary provision is made by—

- (a) regulation 47 (co-ordination where more than one competent authority involved), and
- (b) regulation 48 (compensatory measures where a plan or project is agreed to notwithstanding a negative assessment of the implications for a European site).

#### ***General provisions for protection of European sites***

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

**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 (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 any such consent, permission or other authorisation shall provide such information as the competent authority may reasonably require for the purposes of the assessment.

(3) The competent authority shall for the purposes of the assessment consult the Department and have regard to any representations made by it within such reasonable time as the authority may specify.

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

(5) 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.

(6) In considering whether a plan or project will adversely affect the integrity of the site, 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.

(7) This regulation does not apply in relation to a site which is a European site by reason only of regulation 9(1)(c) (site protected in accordance with Article 5(4)).

*Considerations of overriding public interest*

44.—(1) If it is satisfied that, there being no alternative solutions, the plan or project must be carried out for imperative reasons of overriding public interest which, subject to paragraph (2), may be of a social or economic nature, the competent authority may agree to the plan or project notwithstanding a negative assessment of the implications for the site.

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

(3) Where a competent authority other than the Department desires to obtain the opinion of the European Commission as to whether reasons are to be considered imperative reasons of overriding public interest, it shall submit a written request to the Department—

- (a) identifying the matter on which an opinion is sought, and
- (b) accompanied by any documents or information which may be required.

(4) The Department may thereupon, if it thinks fit, seek the opinion of the European Commission and if it does so, it shall upon receiving the Commission's opinion transmit it to the authority.

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

- (a) it shall notify the Department; and
- (b) it shall not agree to the plan or project before the end of the period of 21 days beginning with the day notified to it by the Department as that on which the notification was received by the Department, unless the Department notifies it that it may do so.

(6) In any case to which paragraph (5) applies the Department may give directions to the 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.

*Review of existing decisions and consents, etc.*

45.—(1) Where before the date on which a site becomes a European site or, if later, the commencement of these Regulations, a competent authority has decided to undertake, or to give any consent, permission or other authorisation, for a plan or project to which regulation 43(1) would apply if it were to be reconsidered as of that date, the authority shall, as soon as reasonably practicable, review its decision or, as the case may be, the consent, permission or other authorisation, and shall affirm, modify or revoke it.

(2) The authority shall for that purpose make an appropriate assessment for the site in view of that site's conservation objectives; and the provisions of regulation 43(2) to (4) shall apply, with the appropriate modifications, in relation to such a review.

(3) Subject to the following provisions of this Part, any review required by this regulation shall be carried out under existing statutory procedures where such procedures exist, and if none exist the Department may give directions as to the procedures to be followed.

(4) Nothing in this regulation shall affect anything done in pursuance of the decision, or the consent, permission or other authorisation, before the date mentioned in paragraph (1).

### *Consideration on review*

**46.—**(1) The following provisions apply where a decision, or a consent, permission or other authorisation, falls to be reviewed under regulation 45.

(2) Subject as follows, the provisions in regulations 43(5) and (6) and regulation 44 shall apply, with the appropriate modifications, in relation to the decision on the review.

(3) The decision, or the consent, permission or other authorisation, may be affirmed if it appears to the authority reviewing it that other action taken or to be taken by it, or by another authority, will secure that the plan or project does not adversely affect the integrity of the site.

Where that object may be attained in a number of ways, the authority or authorities concerned shall seek to secure that the action taken is the least onerous to those affected.

(4) The Department may issue guidance to authorities for the purposes of paragraph (3) as to the manner of determining which of different ways should be adopted for securing that the plan or project does not have any such effect, and in particular—

- (a) the order of application of different controls, and
- (b) the extent to which account should be taken of the possible exercise of other powers;

and the authorities concerned shall have regard to any guidance so issued in discharging their functions under that paragraph.

(5) Any modification or revocation effected in pursuance of this regulation shall be carried out under existing statutory procedures where such procedures exist, and if none exist the Department may give directions as to the procedure to be followed.

### *Co-ordination where more than one competent authority involved*

**47.—**(1) The following provisions apply where a plan or project—

- (a) is undertaken by more than one competent authority,
- (b) requires the consent, permission or other authorisation of more than one competent authority, or
- (c) is undertaken by one or more competent authority and requires the consent, permission or other authorisation of one or more other competent authorities.

(2) Nothing in regulation 43(1) or 45(2) requires a competent authority to assess any implications of a plan or project which would be more appropriately assessed under that provision by another competent authority.

(3) The Department may issue guidance to authorities for the purposes of regulations 43 to 46 as to the circumstances in which an authority may or should adopt the reasoning or conclusions of another competent authority as to whether a plan or project—

- (a) is likely to have a significant effect on a European site, or
- (b) will adversely affect the integrity of a European site;

and the authorities involved shall have regard to any guidance so issued in discharging their functions under those regulations.

(4) In determining whether a plan or project should be agreed to under regulation 44(1) (considerations of overriding public interest) a competent authority other than the Department shall seek and have regard to the views of the other competent authority or authorities involved.

### *Compensatory measures*

**48.** Where in accordance with regulation 44 (considerations of overriding public interest)—

- (a) a plan or project is agreed to, notwithstanding a negative assessment of the implications for a European site, or
- (b) a decision, or a consent, permission or other authorisation, is affirmed on review, notwithstanding such an assessment,

the Department shall secure that any necessary compensatory measures are taken to ensure that the overall coherence of Natura 2000 is protected.

## **Planning**

### *Planning decisions*

**49.**—(1) Regulations 43 and 44 (requirement to consider effect on European site) apply in relation to—

- (a) granting planning permission under Part IV of the 1991 Order;
- (b) granting planning permission or upholding a decision of the Department to grant planning permission (whether or not subject to the same conditions and limitations as those imposed by the Department), on determining an appeal under Article 32 (appeals), or 33 (appeal in default of planning decision) of the 1991 Order in respect of an application for planning permission;
- (c) making an order which grants planning permission under Article 39 of the 1991 Order (orders requiring discontinuance of use, etc.) or Article 39 as applied by Article 112 of that Order in respect of the winning and working of minerals;
- (d) granting planning permission under Article 71(1) of the 1991 Order (appeals against enforcement notice—supplementary provisions relating to planning permission); and
- (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.

(2) Where regulations 43 and 44 apply, the Department or, as the case may be, the planning appeals commission may, if it considers that any adverse effects of the plan or project on the integrity of a European site would be avoided if the planning permission were subject to conditions or limitations, grant planning permission or, as the case may be, take action which results in planning permission being granted subject to those conditions or limitations.

(3) Where regulations 43 and 44 apply, outline planning permission shall not be granted unless the Department, or, as the case may be, the planning appeals commission, is satisfied (whether by reason of the conditions and limitations to which the outline planning permission is to be made subject or otherwise) that no development likely to adversely affect the integrity of a European site could be carried out under the permission, whether before or after obtaining approval of any reserved matters.

In this paragraph “outline planning permission” and “reserved matters” have the same meaning as in Article 35(1) of the 1991 Order.

### *Planning permission: duty to review*

**50.**—(1) Subject to the following provisions of this regulation, regulations 45 and 46 (requirement to review certain decisions and consents, etc.) apply to any planning permission or deemed planning permission unless—

- (a) the development to which it related has been completed; or

- (b) it was granted subject to a condition as to the time within which the development to which it related was to be begun and that time has expired without the development having been begun; or
  - (c) it was granted for a limited period and that period has expired.
- (2) Regulations 45 and 46 do not apply to any planning permission granted or deemed to have been granted—
- (a) by a development order (but see regulations 55 to 57);
  - (b) by virtue of the adoption of a simplified planning zone scheme or of alterations to such a scheme (but see regulation 58);
  - (c) by virtue of the taking effect of an order designating an enterprise zone or the adoption of a modified enterprise zone scheme (but see regulation 59).
- (3) Where planning permission falls to be reviewed under regulations 45 and 46—
- (a) it shall be reviewed by the Department; and
  - (b) the powers conferred by Article 38 of the 1991 Order (revocation or modification of planning permission) shall be exercisable for the purpose of reviewing, or giving effect to a review of any planning permission which falls to be reviewed.

*Planning permission: consideration on review*

**51.**—(1) In reviewing any planning permission or deemed planning permission in pursuance of regulations 45 and 46, the Department shall—

- (a) consider whether any adverse effects could be overcome by entering into a planning agreement under Article 40 of the 1991 Order; and
- (b) if it considers that the effects could be so overcome, invite those concerned to enter into such an agreement;

and so far as the adverse effects are not thus overcome by a planning agreement, the Department shall make such order under Article 38 (revocation or modification of planning permission) or 39 (order requiring discontinuance of use, etc.) of the 1991 Order, or Articles 38 or 39 as applied by Article 112 of the said Order in respect of the winning and working of minerals, as may be required.

(2) Where the Department ascertains that the carrying out or, as the case may be, the continuation of the development would adversely affect the integrity of a European site, it nevertheless need not proceed under sections 45 or 46 if and so long as it considers that there is no likelihood of the development being carried out or continued.

*Effect of revocation or modification orders made on review*

**52.**—(1) Where, pursuant to regulation 50, the Department proposes to make an order under Article 38 of the 1991 Order (revocation or modification of planning permission) or Article 38 as applied by Article 112 of the 1991 Order, in respect of the winning and working of minerals, it shall make a provisional order which shall take effect immediately on service of the notice required by Article 38(2) of that Order, and where there is more than one such notice and those notices are served at different times, upon the service of the last such notice to be served.

(2) The Department may—

- (a) after considering any objections and representations received within the period specified in the notice, and where a hearing is held the report of the planning appeals commission; or
- (b) where no objections or representations are received within that period;

confirm the order, with or without modifications, or withdraw it and shall give notice of the confirmation or withdrawal to the persons on whom the notice of the provisional order was served.

(3) Where the Department decides not to confirm a provisional order, the order shall cease to have effect and the permission revoked or modified by it shall thereafter have effect as if the order had never been made, and as if—

- (a) any period specified in the permission for taking any action, being a period which had not expired prior to the date upon which the order took effect under paragraph (1) shall be extended by a period equal to that during which the order had effect; and
- (b) there was substituted for any date specified in the permission as being a date by which any action should be taken, not being a date falling prior to that date upon which the order took effect under paragraph (1), such date as post-dates the specified date by a period equal to that during which the order had effect.

(4) An order under Article 38 of the 1991 Order (revocation or modification of planning permission) or Article 38 as applied by Article 112 of that Order in respect of the winning and working of minerals, made in pursuance of regulation 50, shall not affect so much of the development authorised by the permission as was carried out prior to the order taking effect.

*Effect of discontinuance orders made on review*

**53.**—(1) Where the Department proposes, pursuant to regulation 50, to make an order under Article 39 of the 1991 Order (order requiring the discontinuance of a use, etc.) or Article 39 of that Order as applied to the winning and working of minerals by Article 112 of the said Order, insofar as it requires the discontinuance of a use of land or imposes conditions upon the continuance of a use of land, it shall make a provisional order which shall take effect immediately on service of the notice of making required by Article 39(4) of that Order and, where there is more than one such notice and those notices are served at different times, upon service of the last such notice to be served.

(2) The Department may—

- (a) after considering any objections and representations received within the period specified in the notice and where a hearing is held, the report of the planning appeals commission; or
- (b) where no objections or representations are received within that period;

confirm the order, with or without modifications or withdraw it and shall give notice of the confirmation or withdrawal to the persons on whom the notice of the provisional order was served.

(3) Where the Department decides not to confirm any such order the order shall cease to have effect and the use, which by the Order was discontinued or upon whose continuance conditions were imposed—

- (a) may thereafter be continued as if the order had never been made; and
- (b) shall be treated for the purposes of the 1991 Order as if it had continued without interruption throughout the period during which the order took effect.

(4) An order under Article 39 of the 1991 Order (order requiring discontinuance of use, etc.) or Article 39 as applied by Article 112 of that Order in respect of the winning and working of minerals, made in pursuance of regulation 50, shall not affect anything done prior to the site becoming a European site or, if later, the commencement of these Regulations.

*Planning permission: supplementary provisions as to compensation*

**54.**—(1) Where the Department decides not to confirm an order under Article 38 of the 1991 Order (revocation or modification of planning permission) which has taken effect under regulation 52(1), any claim for compensation under section 26 of the Land Development Values (Compensation) Act (Northern Ireland) 1965<sup>(29)</sup> (compensation where planning permission is revoked or modified) shall be limited to any loss or damage directly attributable to the permission

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(29) 1965 c. 23 (N.I.) as amended by S.I. 1991/1220 (N.I. 11), Art. 133(1) and Sch. 5

being suspended or temporarily modified for the duration of the period between the provisional order taking effect and the Department deciding not to confirm the order.

(2) Where the Department decides not to confirm an order under Article 39 of the 1991 Order (order requiring the discontinuance of a use, etc.) which has taken effect under regulation 53(1), any claim for compensation under Article 65A of the Planning (Northern Ireland) Order 1972<sup>(30)</sup> shall be limited to any loss or damage directly attributable to any right to continue a use of land being, by virtue of the order, suspended or subject to conditions for the duration of the period between the order taking effect and the Department deciding not to confirm the order.

(3) Where compensation is payable in respect of an order under Article 38 or 39 of the 1991 Order which has been made pursuant to regulation 45, any question of disputed compensation shall be determined by the Lands Tribunal.

#### *General development orders*

**55.**—(1) It shall be a condition of any planning permission granted by a general development order, whether made before or after the commencement of these Regulations, that development which—

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

shall not be begun unless the developer has received a written determination from the Department under Regulation 56 that it will not adversely affect the integrity of the site.

(2) It shall be a condition of any planning permission granted by a general development order made before the commencement of these regulations that development which—

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

and which was begun but not completed before the commencement of these Regulations, shall not be continued until the developer has received written determination from the Department under regulation 56 that it will not adversely affect the integrity of the site.

(3) Nothing in this regulation shall affect anything done before the commencement of these Regulations.

#### *General development orders: determination by Department*

**56.**—(1) Where it is intended to carry out development in reliance upon the permission granted by a general development order, application may be made to the Department for a determination as to whether the development is likely to adversely affect the integrity of a European site.

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

(3) 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.

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<sup>(30)</sup> S.I. 1972/1634 (N.I. 17); Art. 65A was inserted by S.I. 1990/1510 (N.I. 14) Art. 21 and amended by S.I. 1991/1220 (N.I. 11); Art. 133(1) and Sch. 5

*Special development orders*

**57.** A special development order made after the commencement of these Regulations may not grant planning permission for development which—

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

*Simplified planning zones*

**58.** The adoption of a simplified planning zone scheme after the commencement of these Regulations shall not have effect to grant planning permission for development which—

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

*Enterprise zones*

**59.** An order designating an enterprise zone, or the adoption of a modified scheme, if made or adopted after the commencement of these Regulations shall not have effect to grant planning permission for development which—

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

and where the designation order was made or the modification adopted before that date, the permission granted by virtue of the taking effect of the order or the modifications shall, from that date, cease to have effect to grant such permission for such development whether or not the development authorised by the permission has been begun.

*Simplified planning zones and enterprise zones: supplementary provisions as to compensation*

**60.—(1)** Where—

- (a) planning permission is withdrawn by regulation 58 or 59; and
- (b) development authorised by the permission had been begun but not completed before the commencement of these Regulations; and
- (c) on an application made under Part IV of the 1991 Order before the end of the period of 12 months beginning with the date of commencement of these Regulations, planning permission for the development is refused or is granted subject to conditions other than those imposed by the scheme;

section 26(1)(a) of the Land Development Values (Compensation) Act (Northern Ireland) 1965 (compensation in respect of abortive expenditure) shall apply as if the permission granted by the scheme had been granted by the Department under Part IV of the 1991 Order and had been revoked or modified by an order under Article 38 of that Order.

(2) Paragraph (1) shall not apply in relation to planning permission for the development of operational land by statutory undertakers.

*Construction as one with planning legislation*

**61.** Regulations 49 to 60 shall be construed as one with the 1991 Order.

## **Roads**

### *Construction of roads*

**62.**—(1) Regulations 43 and 44 (requirement to consider effect on European site) apply in relation to any plan or project by the Department to construct a new road or to improve, within the meaning of the Roads (Northern Ireland) Order 1993(**31**), an existing road.

(2) Regulations 45 and 46 (requirement to review certain decisions, etc.) apply to any such plan or project as is mentioned in paragraph (1) unless the works have been completed before the site became a European site or, if later, the commencement of these Regulations.

### *Environmental controls*

#### *Licences under Part II of the Pollution Control and Local Government (Northern Ireland) Order 1978*

**63.**—(1) Regulations 43 and 44 (requirement to consider effect on European site) apply in relation to—

- (a) the granting of a waste disposal licence under part II of the Pollution Control and Local Government (Northern Ireland) Order 1978(**32**); and
- (b) the passing of a resolution under Article 13 of that Order (provisions as to land occupied by district councils themselves).

(2) Where in such a case the competent authority considers that any adverse effects of the plan or project on the integrity of a European site would be avoided by making any licence subject to conditions, it may grant a licence, or cause a licence to be granted, or as the case may be, pass a resolution, subject to those conditions.

(3) Regulations 45 and 46 (requirement to review existing decisions and consents, etc.) apply to any such licence or resolution as is mentioned in paragraph (1).

(4) Where on the review of such a licence or resolution the competent authority considers that any adverse effects on the integrity of a European site of the carrying out or, as the case may be, the continuation of the activities authorised by it would be avoided by a variation of the licence or resolution, it may vary it, or cause it to be varied, accordingly.

#### *Discharge consents under water pollution legislation*

**64.**—(1) Regulations 43 and 44 (requirement to consider effect on European site) apply in relation to the giving of consent under Part II of the Water Act (Northern Ireland) 1972(**33**).

(2) Where in such a case the Department considers that any adverse effects of the plan or project on the integrity of a European site would be avoided by making any consent subject to conditions, it may give consent, or cause it to be given, subject to those conditions.

(3) Regulations 45 and 46 (requirement to review existing decisions and consents, etc.) apply to any such consent as is mentioned in paragraph (1).

(4) Where on review of such a consent the Department considers that any adverse effects on the integrity of a European site of the carrying out or, as the case may be, the continuation of the activities authorised by it would be avoided by a variation of the consent, it may vary it, or cause it to be varied, accordingly.

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(31) S.I. 1993/3160 (N.I. 15)

(32) S.I. 1978/1049 (N.I. 19)

(33) 1972 c. 5 (N.I.)

## PART V

### SUPPLEMENTARY PROVISIONS

#### *Supplementary provisions as to potentially damaging operations*

##### *Duties of Department of Agriculture with respect to European sites*

**65.**—(1) Where an application for a farm capital grant is made as respects expenditure incurred or to be incurred for the purposes of activities on land within a European site, the Department of Agriculture—

- (a) shall, so far as may be consistent with the purpose of the grant provisions, so exercise its functions thereunder to further the conservation of the flora or fauna or geological or physiographical features by reason of which the land is a European site; and
- (b) where the Department has objected to the making of the grant on the grounds that the activities in question have destroyed or damaged or will destroy or damage that flora or fauna or those features, shall not make the grant except after considering the objection.

(2) Where in consequence of an objection by the Department, an application for grant as respects expenditure to be incurred is refused on the ground that the activities in question will have such an effect as is mentioned in paragraph 1(b), the Department shall, within three months of being advised of the decision of the Department of Agriculture, offer to enter into, in the terms of a draft submitted to the applicant, a management agreement—

- (a) imposing restrictions as respect those activities; and
- (b) providing for the making by it of payments to the applicant.

(3) In this regulation—

“farm capital grant” means—

- (a) a grant under a scheme made under Article 16(1) and (2) of the Agriculture and Fisheries (Financial Assistance) (Northern Ireland) Order 1987<sup>(34)</sup>, or
- (b) a grant under regulations made under section 2(2) of the European Communities Act 1972<sup>(35)</sup> to a person carrying on an agricultural business within the meaning of those regulations in respect of expenditure incurred or to be incurred for the purposes of or in connection with that business, being expenditure of a capital nature or incurred in connection with expenditure of a capital return; and

“grant provisions” means—

- (i) in the case of such a grant as is mentioned in paragraph (a) the scheme under which the grant is made and Article 16(1) and (2) of the Agriculture and Fisheries (Financial Assistance) (Northern Ireland) Order 1987, and
- (ii) in the case of such a grant as mentioned in paragraph (b) the regulations under which the grant is made and the Community instrument in pursuance of which the regulations were made.

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<sup>(34)</sup> S.I. 1987/166 (N.I. 1)

<sup>(35)</sup> 1972 c. 68

### ***Supplementary provisions as to byelaws***

#### *Enforcement of byelaws*

**66.**—(1) The Department or, as the case may be, the Secretary of State may authorise persons appointed or employed to enforce byelaws made under Articles 19 and 21 of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985<sup>(36)</sup>, as they are applied by virtue of regulations 23 and 31, and to take all steps and do all acts and things necessary for that purpose.

(2) In particular, any person authorised under paragraph (1) may, after due warning, remove or exclude a person from any land to which a byelaw made under Articles 19 or 21 of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985, as they are applied by virtue of regulations 23 and 31, applies who commits, or whom he reasonably suspects of committing, an offence against any such byelaw.

(3) A person who—

(a) commits an offence against any byelaw made under Article 19 or 21 of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985, as they are applied by virtue of regulations 23 and 31; or

(b) obstructs any person authorised under paragraph (1);

shall be guilty of an offence under that Order, as it applies by virtue of regulations 23 and 31, and shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale.

### ***Supplementary provisions as to protection of species***

#### *Enforcement*

**67.**—(1) If a constable suspects with reasonable cause that any person is committing or has committed an offence under Part III, the constable may without warrant—

(a) stop and search that person if the constable suspects with reasonable cause that evidence of the commission of the offence is to be found on that person;

(b) search or examine any animal or thing which that person may be using or have in his possession if the constable suspects with reasonable cause that evidence of the commission of the offence is to be found on that animal or thing;

(c) seize and detain for the purposes of proceedings under that Part anything which may be evidence of the offence or may be liable to be forfeited under regulation 69.

(2) If a constable suspects with reasonable cause that any person is committing an offence under Part III, he may, for the purpose of exercising the powers conferred by paragraph (1) or arresting a person in accordance with Article 27 of the Police and Criminal Evidence (Northern Ireland) Order 1989<sup>(37)</sup>, enter any land other than a dwelling house.

(3) If a justice of the peace is satisfied on a sworn complaint in writing that there are reasonable grounds for suspecting that an offence under regulations 34, 36 or 38 has been committed and that evidence of the offence may be found on any premises, he may grant a warrant to any constable (with or without other persons) to enter upon and search those premises for the purpose of obtaining that evidence.

(4) Where, under paragraph (1)(c), a constable seizes and detains any animal, he shall as soon as conveniently may be produce that animal to a magistrates' court and the court may order the animal to be sold, liberated or destroyed.

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<sup>(36)</sup> S.I. 1985/170 (N.I. 1)

<sup>(37)</sup> S.I. 1989/1341 (N.I. 12)

(5) Where in relation to any animal sold under paragraph (4), the person from whom that animal was seized—

- (a) is convicted of an offence under Part III, the proceeds of the sale shall be added to and dealt with in the same manner as any fine imposed in respect of the offence;
- (b) is not so convicted, the proceeds of the sale shall be handed over to him.

(6) A constable who, in pursuance of an order under paragraph (4), sells, liberates or destroys any animal seized under paragraph (1)(c), shall not be liable to legal proceedings for any such sale, liberation or destruction or for any loss caused by such sale, liberation or destruction.

#### *Proceedings for offences: venue, time limits*

**68.**—(1) An offence under Part III shall, for the purposes of conferring jurisdiction, be deemed to have been committed in any place where the offender is found or to which he is first brought after the commission of the offence.

(2) Summary proceedings for—

- (a) any offence under regulation 34(1) involving the taking or killing of any wild animal, and
- (b) any offence under regulation 38(1),

may be brought within a period of six months from the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to his knowledge; but no such proceedings shall be brought by virtue of this paragraph more than two years after the commission of this offence.

(3) For the purpose of paragraph (2) a certificate signed by or on behalf of the prosecutor and stating the date on which such evidence as aforesaid came to his knowledge shall be conclusive evidence of that fact; and a certificate stating that matter and purporting to be so signed shall be deemed to be so signed unless the contrary is proved.

#### *Power of court to order forfeiture*

**69.**—(1) The court by which a person is convicted of an offence under Part III—

- (a) shall order the forfeiture of any animal, plant or other thing in respect of which the offence was committed; and
- (b) may order the forfeiture of any vehicle, animal, weapon or other thing which was used to commit the offence.

(2) In paragraph (1)(b) “vehicle” includes aircraft, hovercraft and boat.

#### *Saving for other protective provisions*

**70.** Nothing in these Regulations shall be construed as excluding the application of the provisions of the Wildlife (Northern Ireland) Order 1985(**38**) in relation to animals or plants also protected under Part III.

#### *General supplementary provisions*

##### *Public inquiries*

**71.**—(1) The Department may cause an inquiry to be held in any case where the Department considers it advisable to do so in connection with any matter arising under these Regulations.

(2) Without prejudice to section 23 of the Interpretation Act (Northern Ireland) 1954<sup>(39)</sup>, the Department may make rules regulating the procedure to be followed in connection with inquiries held by or on behalf of the Department under these Regulations.

(3) Where—

- (a) an inquiry is to be held under these Regulations in connection with any matter; and
- (b) in the case of some other matter required or authorised (whether by these Regulations or by any other statutory provision) to be the subject of an inquiry (“the other inquiry”), it appears to the Department concerned that the matters are so far cognate that they should be considered together,

the Department concerned may direct that the two inquiries be held concurrently or combined as one inquiry.

(4) In paragraph (3) “the Department concerned” means the Department, or where causing the other inquiry to be held is a function of some other Department, the Department and that other Department acting jointly.

#### *Amendments*

**72.** In Schedule 11 to the Land Registration Act (Northern Ireland) 1970<sup>(40)</sup> after paragraph 41 add:

“**42.** Any agreement under regulation 13 of the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 and any entry in the register under regulation 10 of those Regulations.”

Sealed with the Official Seal of the Department of the Environment on 5th October 1995.

*John Crowther*  
Assistant Secretary

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<sup>(39)</sup> 1954 c. 33 (N.I.)

<sup>(40)</sup> 1970 c. 18 (N.I.)

SCHEDULE 1

Regulation 27(3)

**Modifications of Schedule 6 to Local Government Act  
(Northern Ireland) 1972 for the purposes of Regulation 27(3)**

1. References to the Department or to the council shall be construed as references to the Department within the meaning of these Regulations.
2. References to Schedule 6 to the Local Government Act (Northern Ireland) 1972(41) shall be construed as references to that Schedule as modified by this Schedule.
3. Omit paragraph 1.
4. In paragraph 2—
  - (a) for the words from the beginning to “directs” substitute “Where the Department proposes to acquire land otherwise than by agreement, it shall give notice of its intention to do so, and such notice”;
  - (b) in sub-paragraph (c) for the words “as may be prescribed” substitute the words “as the Department considers fit”.
5. In paragraph 3(1)(ii) for the word “refuse” substitute “decide not”.
6. In paragraph 4 omit the words from “and may provide” onwards.
7. In paragraph 5—
  - (a) in sub-paragraph (1)(a) omit the words “in the prescribed form and manner”;
  - (b) in sub-paragraph (1)(b) the two references to the said Act of 1972 shall be construed as references to these Regulations;
  - (c) in sub-paragraph (1)(d) omit the words “in the prescribed form”;
  - (d) in sub-paragraph (2) for the words “as may be prescribed” substitute the words “as the Department considers fit”.
8. In paragraph 6(2) for the words “fund out of which the expenses of the council in acquiring the land are to be defrayed” substitute the words “Consolidated Fund” and for the words “out of the Compensation Fund” there shall be substituted the words “made by the Department”.
9. In paragraph 11(3) omit the words “in the prescribed form”.
10. In paragraph 12—
  - (a) in sub-paragraph (1) omit the words “such” and “as may be prescribed”;
  - (b) in sub-paragraph (2) for the words from “clerk” to “directs” substitute the words “Department as correct, and publish”.
11. In paragraph 14(1) omit the words “in the prescribed form”.
12. In paragraph 15(1) for the words “in the prescribed form” substitute the words “in such form as may be approved by the Department”.
13. Omit paragraph 19.
14. Omit paragraph 20(2).

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(41) 1972 c. 9 (N.I.)

*Status: This is the original version (as it was originally made). Northern Ireland Statutory Rules are not carried in their revised form on this site.*

## SCHEDULE 2

Regulation 33

**European Protected Species of Animals**

<i>Common Name</i>	<i>Scientific Name</i>
Bats, Typical (all species)	Vespertilionidae
Dolphins, porpoises and whales (all species)	Cetacea
Otter, Common	Lutra lutra

Note: The common name or names given in the first column of this Schedule are included by way of guidance only; in the event of any dispute or proceedings, the common name or names shall not be taken into account.

## SCHEDULE 3

Regulation 36(1)(a)

**Animals which may not be taken or killed in certain ways**

<i>Common Name</i>	<i>Scientific Name</i>
Hare, Mountain	Lepus timidus
Lamprey, River	Lampetra fluviatilis
Marten, Pine	Martes martes
Salmon, Atlantic	Salmo salar (only in fresh water)
Seal, Common	Phoca vitulina
Seal, Grey	Halichoerus grypus
Shad, Allis	Alosa alosa
Shad, Twaite	Alosa fallax

Note: The common name or names given in the first column of this Schedule are included by way of guidance only; in the event of any dispute or proceedings, the common name or names shall not be taken into account.

## SCHEDULE 4

Regulation 37

**European Protected Species of Plants**

<i>Common Name</i>	<i>Scientific Name</i>
Fern, Killarney	Trichomanes speciosum
Saxifrage, Yellow Marsh	Saxifraga hirculus

Note: The common name or names given in the first column of this Schedule are included by way of guidance only; in the event of any dispute or proceedings, the common name or names shall not be taken into account.

## EXPLANATORY NOTE

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

These Regulations make provision for implementing Council Directive [92/43/EEC](#) on the conservation of natural habitats and of wild fauna and flora.

Part I contains introductory provisions.

Part II provides for the conservation of natural habitats and habitats of species, and in particular—

- regulations 6 to 12 make provision for the selection, registration and notification of sites to be protected under the Directive (“European sites”);
- regulations 13 and 14 make provision for management agreements for European sites;
- regulations 15 to 18 make provision in respect of European sites for the control of damaging operations;
- regulations 19 to 22 make provision for the payment of compensation in relation to the control of damaging operations on European sites;
- regulations 23 to 26 make provision for the making of byelaws for European sites and for the payment of compensation for the effect of byelaws;
- regulation 27 makes provision for the acquisition of European sites;
- regulations 28 to 31 make special provision for the protection of European marine sites; and
- regulation 32 requires the Department, where it thinks necessary, to encourage the management of features of landscape which are important to wild fauna and flora.

Part III provides for the protection of certain wild animals and plants and in particular—

- regulation 34 makes it an offence, subject to certain exceptions, deliberately to capture, kill or disturb those animals or to trade in them; and
- regulation 38 makes it an offence, subject to certain exceptions, to pick, collect, cut, uproot or destroy those plants or to trade in them.

Part IV makes provision for the adaptation of planning and certain other controls for the protection of European sites; in particular—

- regulations 43, 44 and 49 require the effect on a European site to be considered before a grant of planning permission and, subject to certain exceptions, restrict the grant of planning permission where the integrity of a European site would be adversely affected;
- regulations 45, 46 and 50 to 53 require that planning permissions granted before the date on which the site becomes a European site (or if later, the commencement of these Regulations) shall be reviewed and in certain circumstances revoked, where the integrity of the site would be adversely affected;
- regulation 54 limits claims for compensation under the Land Development Values (Compensation) Act (NI) 1965 where the Department decides not to confirm provisional orders under Article 38 (revocation or modification of planning permission) or Article 39 (discontinuance of a use, etc.) of the Planning (NI) Order 1991. Compensation is limited to loss or damage attributable to the temporary modification, suspension or imposition of conditions; equivalent provision for the requirement to consider the effect on a European site and for the review of consents is made in relation to roads under the Roads (NI) Order 1993 (regulation 62), waste disposal licences etc., under the Pollution Control and Local

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Government (NI) Order 1978 (regulation 63), and discharge consents under the Water Act (NI) 1972 (regulation 64). Regulations 55 to 60 make special provisions as respects general development orders, special development orders, simplified planning zones and enterprise zones.

Part V contains provisions of a supplemental nature.

Copies of Council Directives [79/409/EEC](#) and [92/43/EEC](#) are available from the Commission of the European Communities, Windsor House, 9–15 Bedford Street, Belfast BT2 7EG.