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STATUTORY RULES OF NORTHERN IRELAND

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**1995 No. 380**

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

**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(1) (compensation where planning permission is revoked or modified) shall be limited to any loss or damage directly attributable to the permission 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(2) 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.

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

(2) 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

(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.

#### *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<sup>(3)</sup>, 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<sup>(4)</sup>; 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<sup>(5)</sup>.

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

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

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

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(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.