

**2015 No. 182**

**EUROPEAN COMMUNITIES**

**NATURE CONSERVATION**

**The Conservation (Natural Habitats, etc.) (Amendment)  
Regulations (Northern Ireland) 2015**

*Made* - - - - *25th March 2015*

*Coming into operation* - *1st April 2015*

The Department of the Environment is a department designated(a) for the purpose of making regulations under section 2(2) of the European Communities Act 1972(b) in relation to the environment. The Department makes these Regulations in exercise of the powers conferred by that section.

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Conservation (Natural Habitats, etc.) (Amendment) Regulations (Northern Ireland) 2015 and shall come into operation on 1st April 2015.

(2) In these Regulations “the Principal Regulations” means the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995(c).

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

**Amendments to the Principal Regulations**

2.—(1) The Principal Regulations are amended in accordance with paragraphs (2) to (6).

(2) In regulation 2(2) (Interpretation)—

- (a) for the definition “the 1991 Order” substitute ““the 2011 Act” means the Planning Act (Northern Ireland) 2011(e)”;
- (b) in the definition “enterprise zone order” for “Article 19 of the 1991 Order” substitute “section 39 of the 2011 Act”;
- (c) in the definition of “enterprise zone scheme” for “Article 2(2) of the 1991 Order” substitute “section 250 of the 2011 Act”;

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(a) S.I. 2008/301.  
(b) 1972 c.68.  
(c) S.R. 1995/380  
(d) 1954 c.33 (N.I.).  
(e) 2011 c.25 (N.I.)

- (d) in the definition “general development order and special development order” for “Article 13(3) of the 1991 Order” substitute “section 32 of the 2011 Act”;
  - (e) in the definition “simplified planning zone” for “Article 14 of the 1991 Order” substitute “section 35 of the 2011 Act”;
  - (f) in the definition of “statutory undertaker” for “1991 Order” substitute “2011 Act”.
- (3) In regulation 13(6) for “1991 Order” substitute “2011 Act”.
- (4) In regulation 16(4)(a) for “Part IV of the 1991 Order” substitute “ section “Part 3 of the 2011 Act”.
- (5) For regulations 49 to 61 substitute—

### “Planning decisions

**49.**—(1) Regulations 43 (assessment of implications for European sites in Northern Ireland and European offshore marine sites) and 44 (considerations of overriding public interest) apply in relation to—

- (a) granting planning permission on an application made under Part 3 of the 2011 Act (planning control);
- (b) granting planning permission on an application made under section 213 of the 2011 Act (urgent Crown development);
- (c) granting planning permission or upholding a decision of the council to grant planning permission (whether or not subject to the same conditions and limitations as those imposed by the council), on determining an appeal under section 58 (appeals), or section 60 (appeal against failure to take planning decision) of the 2011 Act in respect of an application for planning permission;
- (d) making an order which grants planning permission under section 73 of the 2011 Act (orders requiring discontinuance of use or alteration or removal of buildings or works) or section 73 as applied by section 230 of that Act in respect of the winning and working of minerals;
- (e) granting planning permission under section 145(1) of the 2011 Act (appeals against enforcement notice—supplementary provisions relating to planning permission);
- (f) stating under section 193(1)(c)(i) of the 2011 Act (action by council following service of purchase notice) that planning permission for any other development might reasonably be expected to be granted, and
- (g) directing, under paragraph 3 of Schedule 8 to the Electricity (Northern Ireland) Order 1992(a) that planning permission shall be deemed to be granted.

(2) Where regulations 43 and 44 apply, the council, 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 or a European offshore marine 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 council, 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 or a European offshore marine site could be carried out under the permission, whether before or after obtaining approval of any reserved matters.

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(a) 1992 No.231 (N.I.1)

In this paragraph “outline planning permission” and “reserved matters” have the same meaning as in section 62(1) of the 2011 Act (duration of outline planning permission).

#### **Planning permission: duty to review**

**50.**—(1) Subject to the following provisions of this regulation, regulations 45 (review of existing decisions and consents, etc.) and 46 (consideration on review) 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 the review provisions—

- (a) it shall be reviewed by the council;
- (b) the power conferred by section 68 of the 2011 Act (revocation or modification of planning permission by a council) is exercisable by the council 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 the review provisions, the council shall—

- (a) consider whether any adverse effects could be overcome by entering into a planning agreement under section 76 of the 2011 Act (planning agreements); 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 the council shall make such order under section 68 or 73 of the 2011 Act, as may be required.

(2) Where the council 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 or a European offshore marine site, it nevertheless need not proceed under the review provisions 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) An order made under section 68 of the 2011 Act, pursuant to regulation 50, takes effect immediately upon the service of the notices required by section 68(4) of the 2011 Act, 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) Where the Department determines not to confirm such an order—

- (a) the order shall cease to have effect as from the time of that determination;

- (b) the permission revoked or modified by it shall thereafter have effect as if the order had never been made;
- (c) 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
- (d) there was substituted for any date specified in the permission as being a date by which any action should be taken, (“the specified date”), not being a date falling prior to the 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.

(3) An order under section 68 of the 2011 Act (revocation or modification of planning permission by council) 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) An order made under section 73 of the 2011 Act pursuant to regulation 50 insofar as it requires the discontinuance of a use of land or imposes conditions upon the continuance of a use of land, takes effect immediately upon the service of the notices required by section 74(3) of the 2011 Act or, 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) Where the Department determines not to confirm such an order—

- (a) the order ceases to have effect as from the time of that determination; and
- (b) the use which by the order was discontinued or upon which conditions were imposed—
  - (i) may thereafter be continued as if the order had never been made; and
  - (ii) shall be treated for the purposes of the 2011 Act as if it had continued without interruption throughout the period during which the order took effect.

(3) An order made under section 73 of the 2011 Act 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 a European offshore marine site.

#### **Planning permission: supplementary provisions as to compensation**

**54.**—(1) Where the Department decides not to confirm an order under section 68 of the 2011 Act 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(a) (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 order taking effect and the Department deciding not to confirm the order.

(2) Where the Department decides not to confirm an order under section 73 of the 2011 Act, which has taken effect under regulation 53(1), any claim for compensation under section 182 of the 2011 Act (compensation in respect of orders under section 73, 75 or 112) shall be limited to any loss or damage directly attributable to any right to continue a use of land being, as modified by 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.

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(a) 1965 c.23

(3) Where compensation is payable in respect of an order under section 68 or section 73 of the 2011 Act, which has been made pursuant to regulation 45 any question of disputed compensation shall be determined by the Lands Tribunal.

### *General development orders*

#### **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 or a European offshore marine site (either alone or in combination with other plans or projects), and
- (b) is not directly connected with or necessary to the management of the site,

shall not be begun unless the developer has received a notification from the council under regulation 56 of its approval for the commencement of the development.

(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 council under regulation 56 that it will not adversely affect the integrity of the site.

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

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

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

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

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

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

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

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

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

(8) The provisions of sections 58 or 60 of the 2011 Act 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 2011 Act and to the determination of such applications.

#### **Special development orders and European sites and European offshore sites**

**57.**—(1) 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.

(2) A special development order may not grant planning permission for development which is likely to have a significant effect on a European offshore marine site (either alone or in combination with other plans or projects).

#### *Simplified planning zones and enterprise zones*

#### **Simplified planning zones and European sites and European offshore sites**

**58.**—(1) The adoption of a simplified planning zone scheme 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.

(2) The adoption of a simplified planning zone scheme shall not have effect to grant planning permission for development which is likely to have a significant effect on a European offshore marine site (either alone or in combination with other plans or projects).

#### **Enterprise zones and European sites and European offshore sites**

**59.**—(1) 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 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

(2) An order designating an enterprise zone, or the adoption of a modified scheme shall not have effect to grant planning permission for development which is likely to have a significant effect on a European offshore marine site (either alone or in combination with other plans or projects).

#### **Construction as one with planning legislation**

**61.** Regulations 49 to 59 shall be construed as one with the 2011 Act.”

(6) For regulation 64A substitute

## **“Interpretation**

### **64A.—(1) In this Part—**

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

- (a) the regional development strategy formulated under Article 3(1) (regional development strategy) of the Strategic Planning (Northern Ireland) Order 1999<sup>(a)</sup>;
- (b) a local development plan as provided for in Part 2 of the 2011 Act;
- (c) a departmental development plan within the meaning of paragraph 1 of the Schedule to the Planning (Local Development Plan) Regulations (Northern Ireland) 2015<sup>(b)</sup>.

“plan-making authority” means—

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

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

### **(2) References in regulations 64B to 64D to giving effect to a land use plan are to—**

- (a) the publication by the Department for Regional Development of a regional development strategy or any alteration to such a strategy under the 1999 Order;
- (b) the adoption by the council of a plan strategy or the adoption of a local policies plan under section 12 (adoption) of the 2011 Act;
- (c) the approval of a plan strategy or the approval of a local policies plan by the Department under section 16(6) (Department’s default powers) of the 2011 Act;
- (d) the adoption of a departmental development plan after the coming into operation of the Planning (Local Development Plan) Regulations (Northern Ireland) 2015.”

## **Transitional provisions**

**3.—(1)** Where by virtue of paragraph 2 of Schedule 2 to the Planning (2011 Act) (Commencement No. 3) and (Transitional Provisions) Order (Northern Ireland) 2015 an application for planning permission is

- (a) treated as if it had been made to the appropriate council under the Planning Act (Northern Ireland) 2011 (“the 2011 Act”),
- (b) treated as if it were an application to which section 26 of the 2011 Act applies, or
- (c) treated as if the Department had given a direction under section 29 of the 2011 Act that an application was to be referred to it

then, where on the day immediately before the day on which these Regulations come into operation, that application was one in respect of which the Department was required to make an appropriate assessment under the Principal Regulations, anything done by, to or in relation to the Department in connection with its functions in that regard shall be treated as if it had been done by, to or in relation to the council or, the Department, as the case may be in connection with its functions as amended by these Regulations.

(2) Anything done by, to or in relation to the Department in connection with its functions under regulations 49 to 56 of the Principal Regulations as they had effect immediately before the coming into operation of these Regulations shall be treated as if it had been done by, to or in relation to the

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(a) 1999 No.660 (N.I.4)

(b) S.R. 2015/62

appropriate council under regulations 49 to 56 of those Regulations as amended by these Regulations.

Sealed with the Official Seal of the Department of the Environment on 25<sup>th</sup> March 2015



*Dave Foster*  
A senior officer of the  
Department of the Environment

## **EXPLANATORY NOTE**

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

These Regulations amend the planning provisions in the Conservation (Natural Habitats, etc) Regulations (NI) 1995 to ensure they will operate fully and effectively when councils assume their new “competent authority” planning role from 1st April 2015.

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