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STATUTORY INSTRUMENTS

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**2002 No. 3153**

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

**PART IV**

**AREAS OF SPECIAL SCIENTIFIC INTEREST**

*Offence*

**Offences**

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

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

(a) without first complying with Article 39(1), or

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

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

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

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

(a) subject to paragraph (5), the operation in question was authorised by a planning permission granted on an application under Part IV of the [Planning \(Northern Ireland\) Order 1991 \(NI 11\)](#) or permitted by a public body which has acted in accordance with Article 40; or

(b) the operation in question was an emergency operation particulars of which (including details of the emergency) were notified to the Department as soon as practicable after the commencement of the operation.

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

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

(a) intentionally or recklessly destroys or damages any of the flora, fauna, or geological, physiographical or other features by reason of which land is of special scientific interest, or intentionally or recklessly disturbs any of those fauna, and

(b) knew that what he destroyed, damaged or disturbed was within an ASSI, is guilty of an offence and is liable on summary conviction to a fine not exceeding £20,000 or on conviction on indictment to a fine.

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

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

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

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

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

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

(11) A person who—

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

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

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

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

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

**47.—**(1) Where—

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

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

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

- (a) in any case until the expiration of the period for the time being prescribed by law for the giving of notice of appeal against the conviction

- (b) where notice of appeal is given within the period so prescribed, until determination of the appeal.
- (3) At any time before an order under paragraph (1) is complied with or fully complied with, the court by which it was made may, on the application of the person against whom it was made, discharge or vary the order if it appears to the court that a change in the circumstances has made compliance or full compliance with the order impracticable or unnecessary.
- (4) If, within the period specified in an order under paragraph (1), the person against whom it was made fails, without reasonable excuse, to comply with it, he shall be guilty of an offence and liable on summary conviction—
  - (a) to a fine not exceeding level 5 on the standard scale; and
  - (b) in the case of a continuing offence, to a further fine not exceeding £100 for each day during which the offence continues after conviction.
- (5) If, within the period specified in an order under paragraph (1), any operations specified in the order have not been carried out, the Department may carry out those operations and recover from the person against whom the order was made any expenses reasonably incurred by the Department in doing so.