
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Conservation (Natural Habitats etc.) Regulations (Northern Ireland) 1995 (“the 1995 Regulations”) which make provision for implementing Council Directive [92/43/EEC](#) on the conservation of natural habitats and of wild fauna and flora (“the Habitats Directive”) (O.J. No L206, 22.7.92, p.7).

Regulation 3 amends the definitions of “the Habitats Directive” and “Wild Birds Directive” contained in regulation 2 of the 1995 Regulations. This is to ensure that the definitions cover the recent amendments made to environmental law following the accession of Bulgaria and Romania, and to ensure that references to the annexes of the Habitats Directive are construed as references to those annexes as amended from time to time. Regulation 2 of the 1995 Regulations is also amended to include a definition of “European offshore marine site” following the introduction of the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007. References to such sites are included extensively throughout Part IV of the 1995 Regulations so that due consideration is given to any possible impacts on European offshore marine sites as a result of plans or projects carried out in Northern Ireland.

Regulation 4 inserts new regulation 9A into the 1995 Regulations to impose, amongst other things, a duty on the Department of the Environment to make arrangements for the surveillance of the conservation status of natural habitats and species of Community interest, and to make arrangements to ensure measures are taken to secure the favourable conservation status of species listed on Annex V to the Habitats Directive. In marine areas, this is the responsibility of the Secretary of State.

Regulation 5 replaces regulation 34 of the 1995 Regulations. Amongst other changes, the revised provision includes an offence of injuring a European protected species of animal and modifies the offence of deliberately disturbing such animals. Offences relating to the possession or trade of Annex IV(a) animals have been retained but the defences that apply in such circumstances have been amended, for example, if it can be shown that the relevant animal or part thereof was lawfully taken before the implementation date in the relevant member State, or was taken from outside the European Community. A new defence for the purpose of sea fishing is also included.

Regulation 6 replaces regulation 35 of the 1995 Regulations. It qualifies the conditions relating to mercy killing or tending of injured European protected species. All other defences that were formerly contained in regulation 35 are repealed.

Regulation 7 replaces regulation 36 of the 1995 Regulations. The provision is updated to make it an offence to use any indiscriminate means of capturing or killing which is capable of causing the local disappearance of, or serious disturbance to, a population of the species that are protected by regulation 36.

Regulation 8 inserts new regulation 36A into the 1995 Regulations creating a duty on the Department of the Environment to make arrangements to monitor the incidental capture and incidental killing of the European protected species of animals, and to make arrangements for conservation action to be taken in the light of that monitoring if necessary. In marine areas this is the responsibility of the Secretary of State.

Regulation 9 replaces regulation 38 of the 1995 Regulations. Similar to the provisions in relation to European protected species of animals, the majority of the changes modify the offences and defences relating to the taking, possession or trade of plant species protected by the Habitats Directive.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Regulation 10 inserts a new basis upon which to grant licences under regulation 39 of the 1995 Regulations as provided by Article 16(1)(e) of the Habitats Directive i.e. the taking of wild animals or wild plants under strictly supervised conditions, on a selective basis, in limited numbers and to a limited extent. Regulation 11 places additional requirements on licences issued under regulation 39 of the 1995 Regulations.

Regulation 12 introduces new regulation 41A which creates a new offence of breaching any condition of a licence granted after 21st August 2007.

Regulation 14 replaces regulation 43 of the 1995 Regulations. The revised provision requires a person applying for consent or permission to provide such information as the competent authority may require in order to determine whether or not an appropriate assessment is required, or for the purpose of the assessment. In relation to European offshore marine sites, a new duty on competent authorities to consult with the Joint Nature Conservation Committee is also included.

Regulation 15 amends regulation 44 of the 1995 Regulations to require that the agreement of the Secretary of State is secured for a plan or project which must be carried out for reasons of over-riding public interest, despite a negative assessment of implications for a European offshore marine site.

Regulation 20 amends regulation 49 of the 1995 Regulations to apply the terms of regulation 43 and 44 of the 1995 Regulations (requirement to consider effects of European sites) to consents granted under Schedule 8 to the Electricity (Northern Ireland) Order 1992, as amended.

Regulations 23 and 24 amend regulations 55 and 56 of the 1995 Regulations to modify the procedures relating to the determination of impacts from projects carried out under general development orders.

Regulation 35 inserts new Part IVA (Appropriate Assessments for Land Use Plans) into the 1995 Regulations consisting of new regulations 64A to 64D to satisfy the requirements of Article 6(3) and (4) of the Directive for land use plans. In this regard:

Regulation 64A(1) provides that such a plan is a regional development strategy under article 3 of the Strategic Planning (Northern Ireland) Order 1999 or a development plan under Part III of the Planning (Northern Ireland) Order 1991. The plan-making authority preparing such a plan is required to consider whether it is likely to have a significant effect on a designated site either individually or in combination with other plans or projects. If any significant effect is not directly connected with or necessary to the management of the site, an appropriate assessment must be made of the implications for the site in view of that site's conservation objectives (regulation 64B(1)).

The plan-making authority, where it is not the Department of the Environment, is required for the purposes of the assessment to consult the Department and to have regard to any representations made by it (in relation to European offshore marine sites, plan-making authorities must consult the Joint Nature Conservation Committee and have regard to any representation provided). The plan-making authority is also required, if it considers it appropriate, to take the opinion of the general public. Following the assessment and subject to regulation 64C (considerations of overriding public interest), the plan-making authority shall only give effect to the land use plan after it has been ascertained that it will not adversely affect the integrity of the site (regulation 64B(5)).

If, despite a negative assessment, the plan-making authority is satisfied that there are no alternative solutions and that the plan must be given effect for imperative reasons of overriding public interest, the plan may be given effect (regulation 64C(1)). Where the site hosts a priority natural habitat type or a priority species as defined in Article 1 of the Directive, such reasons must either relate to human health, public safety or beneficial consequences of primary importance to the environment or other imperative reasons of over-riding public interest provided the plan-making authority has had due regard to the opinion of the European Commission (regulation 64C(2)). Where the negative assessment relates to a European offshore marine site, the plan-making authority must secure the agreement of the Secretary of State before giving effect to the plan.

Where a plan is given effect notwithstanding a negative assessment, regulation 64D requires the plan-making authority to secure that any necessary compensatory measures are taken to ensure that

the overall coherence of the European wide network of habitats sites established under the Directive is protected.

Regulation 36 contains a new provision which details the application of criminal offences in relation to the Crown. Regulation 36 also contains a new provision which sets out the role of the Joint Nature Conservation Committee.

Regulation 38 amends Schedule 5 of the Wildlife (Northern Ireland) Order 1985 by adding the Freshwater Mussel (*Margaritifera margaritifera*) to the list of animals that are protected at all times. Regulations 38, 39 and 40 also remove references to the European protected species of plants and animals that were contained on various schedules to the Wildlife Order. As such, the provisions of Articles 10, 13 and 14 of the Order no longer apply to those species.