
STATUTORY RULES OF NORTHERN IRELAND

1995 No. 380

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

PART IV

ADAPTATION OF PLANNING AND OTHER CONTROLS

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,

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