

2004 No. 435

EUROPEAN COMMUNITIES
NATURE CONSERVATION

**The Conservation (Natural Habitats, etc.) (Amendment)
Regulations (Northern Ireland) 2004**

Made - - - - - 12th October 2004

Coming into operation 22nd November 2004

The Department of the Environment, being a Department designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to measures relating to the conservation of natural habitats and of wild fauna and flora, in exercise of the powers enabling it in that behalf, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Conservation (Natural Habitats, etc.) (Amendment) Regulations (Northern Ireland) 2004, and shall come into operation on 22nd November 2004.

Interpretation

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

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

Amendment of regulation 2 of the principal Regulations

3. In regulation 2(2) of the principal Regulations (Interpretation and application) for the definition of “the Habitats Directive” there shall be substituted the following definition –

“ “the Habitats Directive” means Council Directive 92/43/EEC(e) on the Conservation of Natural Habitats and of wild fauna and flora as amended by the Act of Accession to the European Union of Austria, Finland and Sweden(f) and by Council Directive 97/62/EC(g);”

Amendment of regulation 3 of the principal Regulations

4. In regulation 3 of the principal Regulations (Implementation of Directive) –

(a) S.I. 1992/2870
(b) 1972 c. 68
(c) S.R. 1995 No. 380
(d) 1954 c. 33 (N.I.)
(e) O.J. No. L206, 22.7.92, p. 7
(f) O.J. No. L1, 1.1.95, p. 1
(g) O.J. No. L305, 8.11.97, p. 42

- (a) in paragraph (1) for the words from “Council Directive” to the end there shall be substituted “the Habitats Directive.”;
- (b) in paragraph (2) for:
“Parts V and VI of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985;
Part II of the Wildlife (Northern Ireland) Order 1985; and
these Regulations”
there shall be substituted –
“Part V of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985(a);
Part II of the Wildlife (Northern Ireland) Order 1985(b);
Part IV of the Environment (Northern Ireland) Order 2002(c); and these Regulations.”;
- (c) in paragraph (3) for “the Water Act (Northern Ireland) 1972” there shall be substituted “the Water (Northern Ireland) Order 1999(d),”.

Amendment of regulation 4 of the principal Regulations

- 5.** In regulation 4 of the principal Regulations (Relevant authorities in relation to marine areas and European marine sites) –
- (a) at the end of paragraph (d) for “Northern Ireland;” there shall be substituted “Northern Ireland; and”;
 - (b) in paragraph (e) for “the Foyle Fisheries Commission; and” there shall be substituted “the Loughs Agency.”;
 - (c) paragraph (f) shall be omitted.

Amendment of regulation 9 of the principal Regulations

- 6.** In regulation 9 of the principal Regulations (Meaning of “European site” in these Regulations) –
- (a) in paragraph (1) at the end of sub-paragraph (c) the word “or” shall be omitted;
 - (b) in paragraph (1) at the end of sub-paragraph (d) for “Wild Birds Directive” there shall be substituted “Wild Birds Directive, or”;
 - (c) in paragraph (1) after sub-paragraph (d) there shall be inserted the following sub-paragraph –
“(e) a site in Northern Ireland included in the list of sites which has been proposed by the Department and transmitted to the Commission under regulation 6(4) until such time as –
 - (i) the draft list of sites of Community importance is established under the first sub-paragraph of Article 4(2) of the Habitats Directive where in any case the site is not included in that list, or
 - (ii) the list of sites referred to in the third sub-paragraph of Article 4(2) of the Habitats Directive is adopted by the Commission in accordance with that sub-paragraph.”

Amendment of regulation 10 of the principal Regulations

- 7.** In regulation 10(2) of the principal Regulations (Duty to compile and maintain a register of European sites) –
- (a) at the end of sub-paragraph (c) the word “and” shall be omitted;
 - (b) at the end of sub-paragraph (d) for “commencement” there shall be substituted “commencement; and”;

(a) S.I. 1985/170 (N.I. 1)
(b) S.I. 1985/171 (N.I. 2)
(c) 2002 c. 7 (N.I.)
(d) S.I. 1999/662 (N.I. 6)

- (c) after sub-paragraph (d) there shall be inserted the following sub-paragraph –
- “(e) any site in Northern Ireland included in the list of sites which has been proposed by the Department and transmitted to the Commission under regulation 6(4) until such time as paragraph (i) or paragraph (ii) of regulation 9(1)(e) applies.”.

Amendment of regulation 29 of the principal Regulations

8. In regulation 29(1) of the principal Regulations (Management scheme for European marine site) for “the Department of Agriculture” there shall be substituted “the Department of Agriculture and Rural Development”.

Amendment of regulation 34 of the principal Regulations

9. In regulation 34 of the principal Regulations (Protection of wild animals of European protected species) –

- (a) in the title to the regulation, for “Protection of wild animals of European protected species” there shall be substituted “Protection of wild animals”;
- (b) in paragraph (2) for “wild animal of a European protected species” there shall be substituted “animal which is taken from the wild and is of a species listed in Annex IV(a) to the Habitats Directive,”.

Amendment of regulation 35 of the principal Regulations

10. In regulation 35 of the principal Regulations (Exceptions from regulation 34) –

- (a) in paragraph (1) for “the Department of Agriculture” there shall be substituted “the Department of Agriculture and Rural Development”;
- (b) omit paragraphs (5) to (7).

Amendment of regulation 38 of the principal Regulations

11. In regulation 38 of the principal Regulations (Protection of wild plants of European protected species) –

- (a) in the title to the regulation, for “Protection of wild plants of European protected species” there shall be substituted “Protection of wild plants”;
- (b) in paragraph (2) for “wild plant of a European protected species” there shall be substituted “plant which is taken in the wild and is of a species listed in Annex IV(b) to the Habitats Directive,”.

Amendment of regulation 44 of the principal Regulations

12. In regulation 44(2) of the principal Regulations (Considerations of overriding public interest) in sub-paragraph (b) for “European Commission” there shall be substituted “Department, having considered the opinion of the European Commission,”.

Amendment of regulation 62 of the principal Regulations

13. In regulation 62(1) of the principal Regulations (Construction of roads) for “the Department” there shall be substituted “the Department for Regional Development”.

Amendment of regulation 63 of the principal Regulations

14. In regulation 63 of the principal Regulations (Licences under Part II of the Pollution Control and Local Government (Northern Ireland) Order 1978) –

- (a) in the title to the regulation, for “Licences under Part II of the Pollution Control and Local Government (Northern Ireland) Order 1978”(a) there shall be substituted “Licences under Part II of the Waste and Contaminated Land (Northern Ireland) Order 1997”(b);

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

(b) S.I. 1997/2778 (N.I. 19)

(b) for paragraph (1) there shall be substituted –

“Regulation 43 and 44 (requirement to consider effect on a European site) apply in relation to the granting of a waste management licence under Part II of the Waste and Contaminated Land (Northern Ireland) Order 1997.”

Amendment of regulation 64 of the principal Regulations

15. In regulation 64(1) of the principal Regulations (Discharge consents under water pollution legislation) for “Water Act (Northern Ireland) 1972” there shall be substituted “Water (Northern Ireland) Order 1999”.

Amendment of regulation 65 of the principal Regulations

16. In the title to and paragraphs (1) and (2) of regulation 65 (Duties of Department of Agriculture with respect to European sites) of the principal Regulations for “the Department of Agriculture” there shall be substituted “the Department of Agriculture and Rural Development”.

Amendment of Schedule 2 to the principal Regulations

17. In the list of animals in Schedule 2 (European Protected Species of Animals) –

(a) at the end of the column entitled “Common Name” after “Otter, Common” there shall be inserted “Turtles, Marine”;

(b) at the end of the column entitled “Scientific Name” after “Lutra lutra” there shall be inserted: –

“Caretta caretta

Chelonia mydas

Lepidochelys kempii

Eretmochelys imbricata

Dermochelys coriacea”

Amendment of the Wildlife (Northern Ireland) Order 1985

18. In the definition of “wild bird” in paragraph (2) of Article 2 of the Wildlife (Northern Ireland) Order 1985 –

(a) for “kind” substitute, “species”;

(b) for “Northern Ireland” substitute, “the European territory of any Member State”.

Sealed with the Official Seal of the Department of the Environment on 12th October 2004.

(L.S.)

J. Goldring

A senior officer of the Department of the Environment

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations amend the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (“the principal Regulations”), which make provision for implementing Council Directive 92/43/EEC (the “Habitats Directive”) on the conservation of natural habitats and of wild fauna and flora as amended by the Act of Accession to the European Union of Austria, Finland and Sweden (O.J. No. C241, 29.8.94) and by Council Directive 97/62/EC. The Regulations also amend the definition of a “wild bird” in the Wildlife (Northern Ireland) Order 1985 to implement Article 6 of Council Directive 79/409/EEC (the “Wild Birds Directive”) on the conservation of wild birds.

Regulation 2 of the principal Regulations is amended to provide a new definition of “the Habitats Directive” so as to give effect to amendments made to the Directive by the Act of Accession to the European Union of Austria, Finland and Sweden and by Council Directive 97/62/EC. Council Directive 97/62/EC effectively updates Annexes I and II to the “Habitats Directive” by adding new natural habitat types and species. The only new habitat type or species relevant to Northern Ireland is the habitat type “turloughs”, which were formerly only listed in respect of Ireland.

A further category of sites is added to the meaning of “European site” in regulation 9 of the principal Regulations. This further category of sites comprises those sites in Northern Ireland that are included in the list of candidate sites proposed by the Department and transmitted to the Commission under regulation 6 of the principal Regulations. Consequential amendments are also made to regulation 10 of the principal Regulations.

Regulation 34(2) of the principal Regulations is amended to make it an offence to trade in animals belonging to a protected species that originates in other Member States as well as animals belonging to protected species native to Northern Ireland. A similar amendment is made to regulation 38(2) in relation to the offence of trading in wild plants.

An amendment to the definition of “wild bird” is made to Article 2 of the Wildlife (Northern Ireland) Order 1985. The effect of this amendment will be similar to the amendments made to regulations 34(2) and 38(2) of the principal Regulations i.e. the provisions prohibiting trade in wild birds are now extended to all wild birds of the Member States, as defined by Article 1 of the “Wild Birds Directive”, not just those species native to Northern Ireland.

The Regulations also make other minor and consequential amendments.

Copies of the relevant Directives may be obtained from the Stationery Office Bookshop, 16 Arthur Street, Belfast BT1 4GD.

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