STATUTORY RULES OF NORTHERN IRELAND

2007 No. 345

EUROPEAN COMMUNITIES

NATURE CONSERVATION

The Conservation (Natural Habitats, etc.) (Amendment) Regulations (Northern Ireland) 2007

Made - - - -	*24th July 2007*
Coming into force - -	*21st August 2007*

The Department of the Environment is a department designated(**1**) for the purpose of section 2(2) of the European Communities Act 1972(**2**) in relation to measures relating to the conservation of natural habitats and of wild fauna and flora.

These regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972. It appears to the Department that it is expedient for any reference to an Annex to Council Directive 92/43/EEC(**3**) on the conservation of natural habitats and of wild flora and fauna to be construed as a reference to that Annex as amended from time to time.

In exercise of the powers conferred on it by section 2(2) of, and paragraph 1A(**4**) of Schedule 2 to, the European Communities Act 1972, the Department makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Conservation (Natural Habitats, etc.) (Amendment) Regulations (Northern Ireland) 2007 and shall come into operation on 21st August 2007.

(2) The Interpretation Act (Northern Ireland) 1954(**5**) shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

(**1**) S.I. 1992/2870.
(**2**) 1972 c.68.
(**3**) Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora was last amended by Council Directive 2006/105/EC of the 20 November 2006 adapting Directives 79/409/EEC, 92/43/EEC, 97/68/EC, 2001/80/EC and 2001/81/EC in the field of the environment, by reason of the accession of Bulgaria and Romania. (O.J. No. L363, 20.12.2006, pg.368; and see O.J. L80, 21.3.2007, pg.15 for the Corrigendum amending the original title).
(**4**) Paragraph 1A was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (c.51).
(**5**) 1954 c.33 (N.I.).

Amendments to the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995

2. The Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995(**6**) are amended in accordance with regulations 3 to 36.

3. In regulation 2 (interpretation and application)—

(a) in paragraph (2)—

(i) in the appropriate places insert the following definitions—

""the EC Treaty" means the Treaty establishing the European Community(**7**);

"European offshore marine site" means a European offshore marine site within the meaning of regulation 15 (meaning of European offshore marine site) of the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007(**8**);";

(ii) for the definition of "the Habitats Directive" substitute—

""the Habitats Directive" has the meaning given by paragraph (2A);"; and

(iii) for the definition of "the Wild Birds Directive"(**9**) substitute—

""the Wild Birds Directive" has the meaning given by paragraph (2A).".

(b) after paragraph (2) insert the following paragraph—

"(2A) In these Regulations—

(a) subject to subparagraph (b)—

(i) "the Habitats Directive" means Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora as last amended by Council Directive 2006/105/EC of 20th November 2006 adapting Directives 79/409/EEC, 92/43/EEC, 97/68/EC, 2001/80/EC and 2001/81/EC in the field of environment, by reason of the accession of Bulgaria and Romania; and

(ii) "the Wild Birds Directive" means Council Directive 79/409/EEC on the conservation of wild birds as last amended by Council Directive 2006/105/EC of 20th November 2006 adapting Directives 79/409/EEC, 92/43/EEC, 97/68/EC, 2001/80/EC and 2001/81/EC in the field of environment, by reason of the accession of Bulgaria and Romania; and

(b) references to any Annex to the Habitats Directive are references to that Annex as amended from time to time."

4. After regulation 9 (meaning of "European Site" in these Regulations) insert—

"**Surveillance of conservation status of habitats and species**

9A.—(1) The Department shall make arrangements for the surveillance of the conservation status of natural habitats of Community interest and species of Community interest, and in particular priority natural habitat types and priority species.

(2) Where, in the case of any species of wild fauna and flora listed in Annex V to the Habitats Directive, the Department considers that the results of surveillance arranged under

(**6**) S.R. 1995 No.380 as amended by S.R. 2004 No.435 and S.R. 2003 No.46.
(**7**) A consolidated version can be found at O.J. No. C321E, 29.12.06.
(**8**) S.I. 2007 No. 1842.
(**9**) Council Directive 79/409/EEC on the conservation of wild birds was last amended by Council Directive 2006/105/EC of 20 November 2006 adapting Directives 79/409/EEC, 92/43/EEC, 97/68/EC, 2001/80/EC and 2001/81/EC in the field of environment, by reason of the accession of Bulgaria and Romania (O.J. No. L363, 20.12.2006, p. 368; and see O.J. L80, 21.3.2007, p. 15, for the Corrigendum amending the original title).

paragraph (1), or otherwise arranged for the purpose of Article 11 of the Habitats Directive, makes it necessary to do so, it shall make arrangements for ensuring that the taking in the wild of specimens of such species, and their exploitation, is compatible with their being maintained at a favourable conservation status.

(3) Any arrangements to be made under paragraph (2) shall include arrangements for the continuation of the surveillance under paragraph (1), for the purpose of establishing whether the taking in the wild of specimens of such species, and their exploitation, are compatible with their being maintained at a favourable conservation status.

(4) The Department shall, from time to time, review the arrangements made under paragraphs (1), (2) and (3) and if appropriate, revise those arrangements.

(5) In this regulation in relation to any marine area for the words "the Department" where they occur substitute "the Secretary of State"."

5. For regulation 34 (protection of wild animals) substitute—

"**Protection of wild animals**

34.—(1) It is an offence—

(a) deliberately to capture, injure or kill a wild animal of a European protected species;

(b) deliberately to disturb such an animal—

(i) while it is occupying a structure or place which it uses for shelter or protection;

(ii) in such a way as to be likely to—

(a) affect the local distribution or abundance of the species to which it belongs, or

(b) impair its ability to breed or reproduce, or rear or care for its young;

(c) deliberately to take or destroy the eggs of such an animal;

(d) deliberately to obstruct access to a breeding site or resting place of such an animal; or

(e) to damage or destroy a breeding site or resting place of such an animal.

(2) It is an offence for any person—

(a) to have in his possession or control,

(b) to transport,

(c) to sell or exchange, or

(d) to offer for sale or exchange,

any live or dead animal which is taken from the wild and is of a species listed in Annex IV(a) to the Habitats Directive, or any part of, or anything derived from, such an animal.

(3) The offences in paragraphs (1) and (2) apply to all stages of the life of the animals to which they apply.

(4) Subject to paragraph (5), a person shall not be guilty of an offence under paragraph (2) if he shows that the animal or part of the animal in question, or the animal or part of the animal from which the part or the thing in question is derived, was lawfully taken from the wild.

(5) The defence in paragraph (4) does not apply—

(a) in respect of the offences in paragraph (2)(a) and (b) if—

(i) the animal in question is an animal of a European protected species, or the part or thing in question is derived from such an animal, and

(ii) the animal, part or thing in question was in the defendant's possession, or transported by the defendant, for the purpose of sale or exchange;

(b) in respect of the offences in paragraph (2)(c) and (d) if the animal is an animal of a European protected species, or the part or thing in question is derived from such an animal.

(6) For the purposes of paragraph (4) an animal, or part of an animal, shall be treated as having been lawfully taken from the wild if—

(a) it was taken from the wild in the European territory of a member State to which the EC Treaty applies, without contravention of the law of that member State and before the implementation date; or

(b) it was taken from the wild elsewhere.

(7) Unless the contrary is shown, in any proceedings—

(a) for an offence under paragraph (1), the animal in question shall be presumed to have been a wild animal; and

(b) for an offence under paragraph (2)—

(i) the animal or part of the animal in question shall be presumed to have been taken from the wild;

(ii) the part or thing in question shall be presumed to be from an animal taken from the wild.

(8) In any proceedings for an offence under paragraph (1), where this paragraph applies the defendant shall not be taken deliberately to have done anything mentioned in sub-paragraph (a), (b) or (c) of that paragraph merely because—

(a) his actions had the result that he did the thing in question; and

(b) he intended those actions and knew that they might have that result.

(9) Paragraph (8) applies where the defendant shows that—

(a) the actions in question were for the purpose of, and in the course, of sea fishing;

(b) he did not intend those actions to have the result in question; and

(c) he had taken any steps that could reasonably be taken to ensure compliance with the requirements or conditions of any relevant Community instrument.

(10) In paragraph (9), "any relevant Community instrument" means any instrument relating to sea fisheries which—

(a) regulates such fishing for the purpose (whether or not the sole purpose) of minimising the extent to which it has a result of the kind referred to in paragraph (8) or the risk that it may have a result of that kind; and

(b) is adopted by any Community institution under—

(i) Article 37(2) of the EC Treaty; or

(ii) Council Regulation (EC) No 2371/2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy(**10**) or under any instrument adopted thereunder.

(11) A person guilty of an offence under this regulation shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(**10**) O.J. No. L358, 31.12.02, p.59.

(12) In this regulation—

"the implementation date" means—

(a) where the relevant State became a member State before 10th June 1994, the 10th June 1994; and

(b) in any other case, the date on which the relevant State became a member State;

"relevant State" means the State in whose territory the animal, or part of it, was taken from the wild.".

6. For regulation 35 (exceptions from regulation 34) substitute—

"**Exceptions from regulation 34**

35.—(1) A person shall not be guilty of an offence under regulation 34(1)(a) or (b) or under regulation 34(2)(a) or (b) if he shows that the contravention in question—

(a) was in relation to an animal that had been seriously disabled otherwise than by his unlawful act and there was no reasonable chance of its recovering, and

(b) was done solely for one or more of the purposes of—

(i) ending the animal's life, or

(ii) disposing if it (otherwise than by sale or exchange) as soon as practicable after it was dead.

(2) A person shall not be guilty of an offence under regulation 34(1) of deliberately capturing a wild animal of a European protected species, or an offence under regulation 34(2)(a) or (b), if he shows that the contravention in question—

(a) was in relation to an animal that had been disabled otherwise than by his unlawful act, and

(b) was done solely for one or more of the purposes of—

(i) tending it and releasing it when no longer disabled, or

(ii) releasing it after it had been tended."

7. For regulation 36 (prohibition of certain methods of taking or killing wild animals) substitute—

"**Prohibition of certain methods of capturing or killing wild animals**

36.—(1) This regulation applies in relation to the capturing or killing of a wild animal—

(a) of any of the species listed in Schedule 3 to these Regulations (which shows the species listed in Annex V(a) to the Habitats Directive, and to which Article 15 applies, whose natural range includes any area of Northern Ireland), or

(b) of a European protected species, where the capturing or killing of such animals is permitted in accordance with these Regulations.

(2) It is an offence to use for the purpose of capturing or killing any such wild animal—

(a) any of the means listed in paragraph (3) or (4),

(b) any form of capturing or killing from the modes of transport listed in paragraph (5), or

(c) any other means of capturing or killing which is indiscriminate and capable of causing the local disappearance of, or serious disturbance to, a population of any species of animal referred to in paragraph (1).

(3) The prohibited means of capturing or killing of mammals are—