STATUTORY RULES OF NORTHERN IRELAND

1995 No. 380

EUROPEAN COMMUNITIES
NATURE CONSERVATION

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

Made - - - -	*5th October 1995*
Coming into operation	*13th November 1995*

The Department of the Environment being a Department designated(**1**)for the purposes of section 2(2) of the European Communities Act 1972(**2**) in relation to matters 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:

PART I

INTRODUCTORY PROVISIONS

Citation and commencement

1.—(1) These Regulations may be cited as the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995.

(2) These Regulations shall come into operation on 13th November 1995.

Interpretation and application

2.—(1) The Interpretation Act (Northern Ireland) 1954(**3**) shall apply to these Regulations as it applies to a Measure of the Northern Ireland Assembly.

(2) In these Regulations—

"the 1991 Order" means the Planning (Northern Ireland) Order 1991(**4**);

"competent authority" shall be construed in accordance with regulation 5;

(**1**) S.I. 1992/2870
(**2**) 1972 c. 68
(**3**) 1954 c. 33 (N.I.)
(**4**) S.I. 1991/1220 (N.I. 11)

"the Department" means the Department of the Environment;

"destroy", in relation to an egg, includes doing anything to the egg which is calculated to prevent it from hatching;

"enterprise zone order" shall be construed in accordance with Article 19 of the 1991 Order;

"enterprise zone scheme" shall have the same meaning as in Article 2(2) of the 1991 Order;

"European site" has the meaning given by regulation 9 and "European marine site" means a European site which consists of, or so far as it consists of, marine areas;

"general development order and special development order" shall be construed in accordance with Article 13(3) of the 1991 Order;

"functions" includes powers and duties;

"the Habitats Directive" has the meaning given by regulation 3(1);

"livestock" includes any animal which is kept—

(a) for the provision of food, wool, skins or fur;

(b) for the purpose of its use in the carrying on of any agricultural activity; or

(c) for rearing and release into the wild for the provision or improvement of shooting or fishing, or for the purposes of nature conservation;

"management agreement" means an agreement entered into, or having effect as if entered into, under regulation 13;

"marine area" means any land covered (continuously or intermittently) by tidal waters or parts of the sea in or adjacent to Northern Ireland up to the seaward limits of territorial waters;

"Natura 2000" means the European network of special areas of conservation and special protection areas under the Wild Birds Directive, provided for by Article 3(1) of the Habitats Directive;

"occupier", for the purposes of Part III (protection of species), includes any person having any right of hunting, shooting, fishing or taking game or fish;

"owner", in relation to any land, means any person (other than a mortgagee not in possession) who is the holder of or who is for the time being entitled to sell or otherwise dispose of the fee simple (including a fee farm grant) of the land or any person entitled to possession of the land by virtue of any estate in the land other than a mere licence;

"the register" means the register of European sites in Northern Ireland provided for by regulation 10;

"relevant authorities" in relation to marine areas and European marine sites, shall be construed in accordance with regulation 4;

"simplified planning zone" and "simplified planning zone scheme" shall be construed in accordance with Article 14 of the 1991 Order;

"statutory undertaker" has the same meaning as in the 1991 Order;

"the Wild Birds Directive" means Council Directive 79/409/EEC(**5**) on the conservation of wild birds.

(3) Expressions used in these Regulations and in the Habitats Directive have the same meaning as in that Directive.

The following expressions, in particular, are defined in Article 1 of that Directive—

"priority natural habitat types" and "priority species";

"site" and "site of Community importance"; and

(**5**) O.J. No. L. 103, 25.4.79 p.1

"special area of conservation".

(4) For the purposes of these Regulations the territorial waters of the United Kingdom adjacent to Northern Ireland shall be treated as part of Northern Ireland, and reference to Northern Ireland shall be construed as including the adjacent territorial waters.

For the purposes of this paragraph territorial waters include any waters landward of the baselines from which the breadth of the territorial sea is measured.

Implementation of Directive

3.—(1) These Regulations make provision for the purpose of implementing, for Northern Ireland, Council Directive 92/43/EEC(**6**) on the conservation of natural habitats and of wild fauna and flora (referred to in these Regulations as "the Habitats Directive").

(2) The Department shall exercise its functions under the enactments relating to nature conservation so as to secure compliance with the requirements of the Habitats Directive.

Those enactments include—

Parts V and VI of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985(**7**);

Part II of the Wildlife (Northern Ireland) Order 1985(**8**); and these Regulations.

(3) In relation to marine areas any competent authority having functions relevant to marine conservation shall exercise those functions so as to secure compliance with the requirements of the Habitats Directive.

This applies, in particular, to the functions under the following enactments—

Foyle Fisheries Act (Northern Ireland) 1952(**9**),

Fisheries Act (Northern Ireland) 1966(**10**),

Section 2(2) of the Military Lands Act 1900(**11**) (provisions as to use of sea, tidal water or shore),

Harbours Act (Northern Ireland) 1970(**12**),

Articles 20 and 21 of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985 (marine nature reserves),

Water Act (Northern Ireland) 1972(**13**),

Water and Sewerage Service (Northern Ireland) Order 1973(**14**),

Drainage (Northern Ireland) Order 1973(**15**), and these Regulations.

(4) Without prejudice to the preceding provisions, every competent authority in the exercise of any of its functions shall have regard to the requirements of the Habitats Directive so far as they may be affected by the exercise of those functions.

(**6**) O.J. No. L. 206, 22.7.92 p.7
(**7**) S.I. 1985/170 (N.I. 1); relevant amendments were made by the Nature Conservation and Amenity Lands (Amendment) (Northern Ireland) Order 1989 (S.I. 1989/492 (N.I. 3))
(**8**) S.I. 1985/171 (N.I. 2)
(**9**) 1952 c. 5 (N.I.)
(**10**) 1966 c. 17 (N.I.)
(**11**) 1900 c. 56; the power conferred by Section 2(2) was extended by Section 7 of the Land Powers (Defence) Act 1958 (c. 30)
(**12**) 1970 c. 1 (N.I.)
(**13**) 1972 c. 5 (N.I.)
(**14**) S.I. 1973/70 (N.I. 2)
(**15**) S.I. 1973/69 (N.I. 1)

Relevant authorities in relation to marine areas and European marine sites

4. For the purposes of these Regulations the relevant authorities, in relation to a marine area or European marine site, are such of the following as have functions in relation to land or waters within or adjacent to that area or site—

(a) a district council;

(b) the Commissioners of Irish Lights;

(c) a harbour authority as defined by the Harbours Act (Northern Ireland) 1970 (Section 38);

(d) the Fisheries Conservancy Board for Northern Ireland;

(e) the Foyle Fisheries Commission; and

(f) a pilotage authority within the meaning of the Pilotage Act 1983(**16**).

Competent authorities generally

5. For the purposes of these Regulations the expression "competent authority" includes government departments, district councils and statutory undertakers, and any trustees, commissioners, board or other persons who, as a public body and not for their own profit, act under any statutory provision for the improvement of any place or the production or supply of any commodity or service.

PART II

CONSERVATION OF NATURAL HABITATS AND HABITATS OF SPECIES

European sites

Selection of sites eligible for identification as of Community importance

6.—(1) On the basis of the criteria set out in Annex III (Stage 1) to the Habitats Directive, and relevant scientific information, the Department shall propose a list of sites indicating with respect to each site—

(a) which natural habitat types in Annex I to the Directive the site hosts, and

(b) which species in Annex II to the Directive that are native to Northern Ireland the site hosts.

(2) For animal species ranging over wide areas these sites shall correspond to the places within the natural range of such species which present the physical or biological factors essential to their life and reproduction.

For aquatic species which range over wide areas, such sites shall be proposed only where there is a clearly identifiable area representing the physical and biological factors essential to their life and reproduction.

(3) Where appropriate the Department may propose modification of the list in the light of the results of the surveillance referred to in Article 11 of the Habitats Directive.

(4) The list shall be transmitted to the European Commission together with information on each site including—

(a) a map of the site,

(b) its name, location and extent, and

(**16**) 1983 c. 21

(c) the data resulting from the application of the criteria specified in Annex III (Stage 1), provided in a format established by the Commission.

Adoption of list of sites: designation of special areas of conservation

7.—(1) Once a site of Community importance in Northern Ireland has been adopted in accordance with the procedure laid down in paragraph 2 of Article 4 of the Habitats Directive, the Department shall designate that site as a special area of conservation as soon as possible and within six years at most.

(2) The Department shall establish priorities for the designation of sites in the light of—

(a) the importance of the sites for the maintenance or restoration at a favourable conservation status of—

(i) a natural habitat type in Annex I to the Habitats Directive, or

(ii) a species in Annex II to the Directive,

and for the coherence of Natura 2000; and

(b) the threats of degradation or destruction to which those sites are exposed.

(3) In this regulation in relation to European marine sites for the words "the Department" where they occur substitute "the Secretary of State".

Consultation as to inclusion of site omitted from the list

8. If consultation is initiated by the European Commission in accordance with Article 5(1) of the Habitats Directive with respect to a site in Northern Ireland hosting a priority natural habitat type or priority species and—

(a) the Department agrees that the site should be added to the list transmitted in accordance with regulation 6, or

(b) the Council, acting on a proposal from the Commission in pursuance of paragraph 2 of Article 5 of the Habitats Directive, so decides,

the site shall be treated as added to the list as from the date of that agreement or decision.

Meaning of ***"European site"*** *in these Regulations*

9.—(1) In these Regulations a "European site" means—

(a) a special area of conservation,

(b) a site of Community importance which has been placed on the list referred to in the third sub-paragraph of Article 4(2) of the Habitats Directive,

(c) a site hosting a priority natural habitat type or priority species in respect of which consultation has been initiated under Article 5(1) of the Habitats Directive, during the consultation period or pending a decision of the Council under Article 5(3), or

(d) an area classified pursuant to Article 4(1) or (2) of the Wild Birds Directive.

(2) Sites which are European sites by virtue only of paragraph 1*(c)* are not within regulations 17 and 43 (which relate to the approval of certain plans and projects); but this is without prejudice to their protection under other provisions of these Regulations.