

# THE HABITATS REGULATIONS



## A GUIDE FOR COMPETENT AUTHORITIES



# **HABITATS REGULATIONS GUIDANCE NOTES**

## **For Competent Authorities**

## **Preface**

The Conservation (Natural Habitats, etc) Regulations (Northern Ireland) 1995 (the “Habitats Regulations”) came into operation on 13 November 1995. Their purpose is to implement in Northern Ireland the European Council (EC) Directive on the conservation of natural habitats and of wild fauna and flora (the “Habitats Directive”). One of the main initiatives of the Habitats Directive is the creation of a European network of wildlife sites to be known as “Natura 2000”. This network will be made up of Special Areas of Conservation (SACs) under the Habitats Directive and Special Protection Areas (SPAs) under the related EC Birds Directive and which are collectively known as European sites. European sites play an important role and aim to maintain or restore the extent and quality of rare habitat types and to ensure that rare species can survive and maintain their populations and natural range on a long-term basis. Thus there is a need to ensure that the implications of present activities and future proposals are properly assessed in accordance with the procedures laid down in the Regulations.

Environment and Heritage Service (EHS) has produced this guidance note to help competent authorities and others with an interest in such sites interpret and implement the Habitats Regulations. This guidance is intended to provide a framework for making judgements under the Regulations in order to promote consistency amongst decision-makers but it is not a full or authoritative interpretation of the law.

## **How to use this guide**

These notes begin with a general introduction to the Habitats Directive in Northern Ireland, followed by an examination of the relevant requirements of the Habitats Regulations. All quotes from the Habitats Regulations are in italics at the beginning of each section followed by the explanatory guidance notes. These guidance notes should at all times be read in conjunction with the Habitats Regulations.

Where the Regulations refer to “the Department” this means the Department of the Environment. For practical purposes, communications and consultations connected with the subject matter of these guidance notes should be with Environment and Heritage Service, Natural Heritage Directorate.

Further information on site designation in Northern Ireland can be found on the EHS web site [www.ehsni.gov.uk](http://www.ehsni.gov.uk). This site also offers the facility to download boundaries of the designated sites. Additional information on European sites can be found on the Joint Nature Conservation Committee (JNCC) web site [www.jncc.gov.uk/idt/default.htm](http://www.jncc.gov.uk/idt/default.htm).

# **CONTENTS**

## **Preface**

### **SECTION ONE 1**

#### **The Habitats Directive in Northern Ireland 1**

1.1 Introduction 1

1.2 The Habitats Directive 1

1.3 The Birds Directive 2

1.4 Natura 2000 2

1.5 European Sites 3

### **SECTION TWO 4**

#### **Competent authorities 4**

2.1 Competent authorities 4

### **SECTION THREE 5**

#### **Assessment of implications for a European site 5**

3.1 What is a plan or project? 6

3.2 Likely significant effect 6

3.3 Appropriate assessment 12

### **SECTION FOUR 17**

#### **Considerations of overriding public interest 17**

4.1 What are imperative reasons of overriding public interest? 18

### **SECTION FIVE 20**

#### **Compensatory measures 20**

5.1 What are compensatory measures? 20

### **SECTION SIX 21**

#### **Review of existing decisions and consents, etc 21**

6.1 How to undertake the review of existing decisions and consents 22

6.2 Consideration on review 23

### **SECTION SEVEN 24**

#### **Co-ordination where more than one competent authority is involved 24**

# SECTION 1

## The Habitats Directive in Northern Ireland

### 1.1 Introduction

The Habitats Directive was transposed into Northern Ireland legislation by the Conservation (Natural Habitats, etc) (Northern Ireland) Regulations 1995. These Regulations build on existing domestic law, chiefly the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985 and as amended in 1989, and the Wildlife (Northern Ireland) Order 1985. The Habitats Regulations place a statutory duty on all competent authorities to act in accordance with the Directive. Regulation 3(4) states that “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”.

### 1.2 The Habitats Directive

The European Union adopted the Habitats Directive in May 1992. The main aim of the Directive is to promote the maintenance of biodiversity through the conservation of habitats and species that are important in a European context, taking account of economic, social and cultural requirements and regional and local characteristics.

The Habitats Directive lists 168 natural habitat types, which should be protected through the designation of Special Areas of Conservation (SAC). The Habitats Directive also establishes a list of species (other than birds) whose habitats must be protected to secure their survival. SACs may be designated where the site supports certain rare, endangered or vulnerable species of plants or animals (other than birds) or if the area supports outstanding examples of habitats characteristic of the region.

Certain natural habitat types and species of flora and fauna which are in danger of disappearing, or for which the Community has a particular responsibility, are classified as priority natural habitat types and priority species respectively and are subject to a higher level of protection (see Regulation 44(2)).

The Directive also requires all Member States to set up an effective system to prevent the capture, killing, injuring or damaging disturbance of endangered species.

### **1.3 The Birds Directive**

The United Kingdom adopted the Birds Directive in 1979. Its aim is to protect bird species within the European Union through the conservation of birds and important habitats for birds. The Birds Directive protects all wild birds and sets out the requirements for Member States to classify Special Protection Areas (SPAs) for rare, breeding, over-wintering or migratory bird species.

### **1.4 Natura 2000**

Together SACs and SPAs comprise a network of protected sites throughout Europe known as Natura 2000 which together maintain biodiversity, while taking into consideration economic, social, cultural and regional requirements.

The purpose of the Natura 2000 network is:

- in relation to Habitats Directive Annex I habitats and the habitats of Annex II species, to enable the habitats to be maintained or, where appropriate, restored at a favourable conservation status over their natural range; and
- in relation to Birds Directive Annex I bird species, to conserve the habitat of the species in order to ensure their survival and reproduction in their area of distribution and, in relation to migratory bird species, to secure their need for breeding, mating and wintering areas and their needs for staging posts along their migration routes.

## 1.5 European Sites

Natura 2000 sites may also be referred to as European Sites. Within the context of the Habitats Regulations, European Sites consist of:

- (a) SPAs classified under the Birds Directive;
- (b) SACs designated under the Habitats Directive. SACs will be selected for their importance as natural habitat types and as habitats of certain species; after approval by the European Commission for selection as SACs, and before they are formally designated, such sites will be known as Sites of Community Importance (SCIs) and will also be European Sites;
- (c) sites which host a priority habitat or a priority species and which the European Commission considers should have been proposed by the Member State; such sites will be known as SCIs once the Commission opens consultations.

The Habitats Regulations apply to classified SPAs, and to SACs, only from the time when the Commission and the Government agree the area as an SCI to be designated as a SAC. However, as a matter of policy, the Government wishes development proposals affecting all possible European sites to be considered in the same way, i.e. as if they had already been designated.

These measures aim to maintain or restore the extent and quality of rare habitat types and to ensure that rare species can survive and maintain their populations and natural range on a long-term basis.

## SECTION 2

### Competent authorities

- 5. For the purpose 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.*

#### **2.1 Competent authorities**

Regulation 5 is reasonably self-explanatory identifying government departments and their agencies, district councils and statutory undertakers as competent authorities. Also 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 are considered to be competent authorities for the purposes of the Regulations.

A statutory undertaker is any person authorised by any statutory provision to carry on any railway, road transport, air transport, water transport, inland navigation, dock or harbour undertaking, or any undertaking for the supply of electricity or gas, or other utilities. It should be noted the proviso in respect of no profit does not apply to statutory undertakers.

If you are unsure of your status the Department will advise, on request, as to whether you may be a competent authority. See also Section 8 for advice if more than one competent authority is involved.

## SECTION 3

### Assessment of implications for a 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.*

**43.** — (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.*

**43.** — (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.*

**43.** — (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.*

**43.** — (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.*

**43.** — (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.*

**43.** — (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)). [See page 3 – definition of European sites paragraph (c)]*

### **3.1 What is a plan or project?**

Neither the Directive nor the Regulations define the terms “plan” or “project”.

The European Commission has however, advised that the term “project” should be given a broad interpretation to include both construction works and other interventions in the natural environment. The term “plan” should also be interpreted as having a broad meaning. Plans and projects related to conservation management of the site, either individually or as components of other plans and projects, should generally be excluded from the provisions of Regulation 43. If in doubt please seek advice from the Department.

### **3.2 Likely significant effect**

#### **3.2.1 What is meant by the term “likely to have a significant effect”?**

Likely significant effect is, in this context, any effect that may reasonably be predicted as a consequence of a plan or project that may affect the conservation objectives of the features for which the site was designated, but excluding de minimis or inconsequential effects.

Thus the “test of significance” acts as a coarse filter for all proposed plans and projects which are not directly connected with or necessary to the management of the site (whether or not the effect is likely to be adverse or beneficial).

This initial determination is intended to ensure that all relevant plans and projects likely to have a significant effect on European sites are subject to an appropriate assessment. The notion of what is significant needs to be interpreted objectively. The significance of effects should be determined in relation to the specific features and environmental conditions of the site concerned, taking particular account of the site’s conservation objectives.

In all but the most clear-cut cases, competent authorities are likely to need advice. The Department will advise, on request, as to whether any particular plan or project may be likely to have a significant effect on a European Site. The Department must clearly distinguish its advice on likely significant effect from that given on the effects on site integrity which competent authorities are required to obtain during an appropriate assessment (Regulation 43 (3)).

If the decision as to whether or not the development would have a significant effect on the designated site is found to be likely, on the information available, the competent authority should undertake an appropriate assessment. In doing so they may ask the developer or other parties for more information (Regulation 43 (2)). In line with the precautionary principle, it is unacceptable to fail to undertake an assessment on the basis that significant effects are not certain. The plan or project does not have to be located within the designated area. The effects may be direct or indirect, temporary or permanent, beneficial or harmful to the site, or a combination of these.

Determining whether a plan or project is likely to have a significant effect will have practical and legal consequences. Any decisions made must be capable of standing up to scientific and expert scrutiny. Competent authorities will be held accountable for the advice given and will need to be able to justify decisions both for and against a 'significant effect'.

Proposals that are considered as not likely to have significant effects can be processed without requiring an appropriate assessment. The reasons for reaching such a conclusion should be justified and clearly recorded as a necessary step in the overall audit trail supporting each case.

### **3.2.2 Making judgements of “likely significant effect”**

The following is a list of examples of types of effects that are likely to be significant and therefore need to be considered more fully. It is important to remember that they may result from either on-site or off-site activities and may need to be considered in combination with other plans or projects.

- Causing damage to the coherence of the site or to the Natura 2000 series (for example, presenting a barrier between isolated fragments, or reducing the ability of the site to act as a source of new colonisers);
- Causing reduction in the area of habitat or of the site;
- Causing direct or indirect change to the physical quality of the environment (including the hydrology) or habitat within the site;
- Causing ongoing disturbance to species or habitats for which the site is notified;
- Altering community structure (species composition);

- Causing direct or indirect damage to the size, characteristics or reproductive ability of populations on the site;
- Altering the vulnerability of populations/habitats to other impacts;
- Causing a reduction in the resilience of the feature against external change (for example its ability to respond to extremes of environmental conditions);
- Affecting restoration of a feature.

**This is not an exhaustive list, if in doubt please seek advice from the Department.**

### 3.2.3 What is meant by “alone or in combination”?

The purpose of the tests in the Directive and Regulations is to ensure that a plan or project does not adversely affect the integrity of a European site. When applying the test of likely significance *either alone or in combination with other plans or projects*, “alone or in combination” should be treated as “alone and / or in combination”. Where either: -

- (i) the plan or project by itself (alone) is likely to have a significant effect,
- (ii) the plan or project alone is not likely to have a significant effect but in combination with other plans or projects is likely to have a significant effect or
- (iii) the plan is likely to have a significant effect whether considered by itself (either alone) or in combination with other new or established plans or projects.

If any of these scenarios show that the plan or project is likely to have a significant effect an appropriate assessment will be required. It is important to note that the underlying intention of this combination provision is to take account of cumulative impacts, and these will often only occur over time.

The Regulations limit the scope of the *in combination* test to “other plans or projects”. These should include:

- approved but as yet uncompleted plans or projects,
- permitted ongoing activities such as discharge consents or abstraction licences, and
- plans and projects for which an application has been made and which are currently under consideration but not yet approved by competent authorities

**any of which may have previously been considered not to be likely to have a significant effect on a European site.**

It may also be appropriate to include plans and projects, including policy statements, not yet submitted to a competent authority for consideration, but for which sufficient detail exists on which to make judgements on their impact on the European site.

On grounds of legal certainty, it would seem appropriate to restrict the combination provision to other plans or projects, which have been *actually proposed*. It must also be evident that, in considering a proposed plan or project, “competent authorities” do not create a presumption in favour of other as yet unproposed plans or projects in the future.

For example, if a residential development is considered not to give rise to a significant effect and is therefore approved, the approval should not create a presumption in favour of further residential developments in the future.

The need to determine whether a plan or project is likely to have a significant effect on a European site requires close liaison with the Department at the earliest possible opportunity. Only by doing this can adequate preparation time be given to fulfilling the obligations of a competent authority.

#### **3.2.4 What are conservation objectives?**

Conservation objectives are a statement of measures, required to maintain at or restore to favourable conservation status, the natural habitats and/or the populations of species of wild fauna and flora for which the site has been selected.

The conservation status of a species is defined as favourable when the population, range and natural habitats of the species are stable or increasing, and that of habitats is ‘favourable’ when the range, structure and function, and typical species thereof, are stable or increasing.

#### **3.2.5 Summary of principles in judging significant effect**

- The competent authority must make the test of significant effect (“test of significance”), but exchange of advice between the competent authority and the Department is strongly encouraged.
- The test of significance is a coarse filter intended to identify which proposed plans and projects require further assessment. It is the first stage of the process, and is distinct from the appropriate assessment of ‘adverse effect on integrity’ that follows.
- Consideration of likely significant effect will have practical and legal consequences and must be based on sound judgement and bear scientific or expert scrutiny.

- Judgements of likely significant effect should be made in relation to the features for which the European site was designated and their conservation objectives.
- Judgements should be made either alone or in combination with other plans or projects on a case-by-case basis.
- Proposals having no, or *de minimis*, effects can be progressed without further consideration under the Habitats Regulations, although reasons for reaching this decision must be justified and recorded.
- Some cases require more systematic evaluation of risk, but if a clear judgement cannot be made on the basis of available information, then an appropriate assessment will be required.
- In all cases, the reasons for reaching the judgement must be recorded by the competent authority, and the Department must also record the advice given.

### 3.3. Appropriate assessment

#### 3.3.1 What is appropriate assessment?

Under Regulation 43(1), an appropriate assessment needs to be undertaken in respect of any plan or project which:

- (a) either alone or in combination with other plans or projects would be likely to have a significant effect on a European Site, and
- (b) is not directly connected with the management of the site for nature conservation.

The purpose of an appropriate assessment is to ascertain, in view of the site's conservation objectives, whether the plan or project would have an adverse effect on the integrity of the European site. The assessment should not be influenced by wider planning or other considerations. The information provided and the conclusion reached as a result of the appropriate assessment will determine the way in which the plan or project proceeds.

An appropriate assessment needs to be undertaken in respect of a plan or project described above, before any competent authority:

- (a) decides to undertake the plan or project, in cases where no consent, permission or other authorisation is required (Regulation 43(1));
- (b) decides to give any consent, permission or other authorisation for the plan or project (Regulation 43(1) *et al*);
- (c) reviews the decision to undertake a plan or project or reviews consents, permissions or other authorisations for plans or projects in accordance with Regulation 45(2).

**The competent authority must undertake the appropriate assessment.** The developer or proposers of the plan or project shall provide such information as the competent authority may reasonably require for the purposes of the assessment (Regulation. 43(2)). During the appropriate assessment the competent authority must consult the Department who may advise on the scope and content of the assessment, but it is the duty of the competent authority to undertake the assessment itself (Regulation 43 (3) &(1)). The authority may take such steps as it considers necessary to obtain the opinion of the general public. The competent authority must have regard to the Department's representation and take account of public comment.

An assessment should be recorded and reasoned. If the assessment does not disclose the reasoned basis for the subsequent decision (for example, a simple unreasoned positive or negative view of a plan or project) it does not fulfil its purpose and cannot be considered “appropriate”.

As regards content, an appropriate assessment is more focussed in scope than an assessment under The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 1999 or any other Environmental Impact Assessment Regulations, being confined to the implications for the site in view of the site’s conservation objectives. The differences between an appropriate assessment and an Environmental Impact Assessment (EIA) are outlined below.

- The requirement for an EIA applies only in certain cases, i.e. for projects listed in Schedule 1 of the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 1999; and projects listed at Schedule 2, which “are likely to have significant effects on the environment”.
- In contrast, an appropriate assessment is required for all plans or projects “likely to have a significant effect” on a European site.
- The appropriate assessment applies only to the qualifying interests of the European site.
- In many but not all cases, plans or projects that are the subject of an appropriate assessment will need an EIA. There will also be cases where an EIA is requested or required but not an appropriate assessment because impacts on the European site’s qualifying interests are considered not likely to be significant.
- Unlike an EIA (which is the responsibility of the developer), it is the responsibility of the competent authority to carry out an appropriate assessment. The competent authority may seek additional information from the plan or project proposers to allow an adequate appropriate assessment to be carried out.
- An appropriate assessment does not exempt developers from obligations under the EIA Regulations, and likewise an EIA does not exempt competent authorities from obligations under the Habitat Regulations.

- An appropriate assessment may be very brief, but alternatively could be as complex as any EIA.

**In the case of an EIA, the conclusions, although influential, are not binding on the competent authority in reaching its decision. In the case of an appropriate assessment, a negative assessment of the implications for the European site means that the competent authority cannot agree to the proposal unless the provisions of the Habitats Regulations are fulfilled.**

### **3.3.2 What is meant by the term Integrity of the Site?**

The integrity of the site is defined as “the coherence of its ecological structure and function, across its whole area, which enables it to sustain the habitat, complex of habitats and/or the levels of populations of the species for which it was classified”.

In line with the above definition all the influences of the environment (air, water, soil, territory) which act on the habitats and species present on the site have therefore to be taken into account.

The expression “integrity of the site” demonstrates that the focus is on the specific site. It is not permissible to destroy a site or part of it on the basis that the conservation status of the habitat types and species it hosts will remain favourable within the European territory of the Member State.

The decision as to whether site integrity is adversely affected should focus on and be limited to the site’s conservation objectives. For example, it is possible that a plan or project will adversely affect the site only in a visual sense, or only habitat types or species other than those listed in Annex I or Annex II of the Habitat Directive or Annex 1 of the Birds Directive. In such cases, the effects do not necessarily amount to an adverse effect for the purposes of Regulation 43 (1), provided that the coherence of the network is not affected.

### **3.3.3 What are mitigation measures?**

It is important to distinguish mitigation measures from compensatory measures. Well-implemented mitigation measures could reduce the likelihood of significant effect on the integrity of the site. Mitigation measures are aimed at minimising or even cancelling the negative impact of a plan or project, during or after its completion.

Mitigation measures should be an integral part of the specifications of a plan or project. They may be proposed by the plan or project proponent and/or required by the competent authorities. In practice the applicant should ideally submit information on possible mitigation measures as part of the appropriate assessment. It is important to ensure that any measures proposed to avoid an adverse effect on site integrity are practical, deliverable, legally enforceable, and do not themselves result in adverse effects. If in doubt please seek advice from the Department.

#### **3.3.4 What are meant by alternative solutions?**

The competent authority should, where a plan or project is assessed as having an adverse effect, examine the possibility of resorting to alternative solutions, which better respect the integrity of the site. These could involve changing the location of the plan or project, proposing different scales or designs of development, or alternative processes. Where a viable alternative solution is identified the plan or project should be redrafted and subject to an appropriate assessment.

It rests with the competent authorities to make the necessary comparisons between alternative solutions. Applicants should demonstrate that they have fully considered alternative solutions. It should be stressed that the reference parameters for such comparisons deal with aspects concerning the conservation and the maintenance of the integrity of the site and of its ecological functions. In this phase, therefore, other assessment criteria, such as economic criteria, cannot overrule ecological criteria.

#### **3.3.5 Key steps in an appropriate assessment**

The competent authority must:

1. Consult the Department.  
Consider consulting the general public.
3. Clearly identify and understand the site's conservation objectives having regard to the advice of the Department.
4. Require the applicant to provide such information as may reasonably be required for the purposes of the assessment.
5. Identify the effects of the proposal on the European site features and how those effects are likely to affect the site's conservation objectives.

6. Decide whether the plan or project, as proposed, would adversely affect the integrity of the site in the light of the conservation objectives.
7. Consider the manner in which the plan or project is proposed to be carried out, whether it could be modified, or whether conditions or restrictions could be imposed, so as to avoid adverse effects on the integrity of the site.
8. Conclude whether the plan or project, as modified by conditions or restrictions, would adversely affect the integrity of the site.
9. Record the assessment and notify the Department of the conclusions.
10. Where the plan or project is assessed as having an adverse effect on the integrity of the site alternative solutions should be considered and where appropriate a re-assessment undertaken.

## SECTION 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.*

*44. — (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.*

*44 — (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, proposed 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.*

#### 4.1 What are imperative reasons of overriding public interest?

The Regulations require competent authorities to establish that there are no alternative solutions before a plan or project can be considered for imperative reasons of overriding public interest. It is envisaged there would only be exceptional cases where it is judged that imperative reasons of overriding public interest will allow a plan or project to proceed which will have an adverse effect on the integrity of a European site. This applies equally to new proposals and to plans or projects with valid existing permissions. The judgement will involve an assessment of the importance of the proposal and whether it is sufficient to override the nature conservation importance of that site. Plans or projects must pass the most stringent tests. But where such possibilities have been explored and conflict remains, and where the competent authority believes the plan or project should proceed, the Department (and in certain cases affecting priority habitats or species, the European Commission), may consider whether the overriding public interest considerations should apply (Regulation 44 (3 – 6)).

Each case will be judged on its merits but the Department considers that the following guiding principles will be relevant to deciding whether imperative reasons of overriding public interest are demonstrated:

- a need to address a serious risk to human health and public safety;
- the interests of national security and defence;
- the provision of a clear and demonstrable direct environmental benefit on a national or international scale;
- a vital contribution to strategic economic development or regeneration;
- where failure to proceed would have unacceptable social and/or economic consequences.

When considering cases against these principles, in general, projects of national importance are most likely to be judged as giving rise to imperative reasons of overriding public interest. Important regional projects might also be so judged. Whilst projects of more local significance are not ruled out, it is less likely that their potential benefits will be considered to override the nature conservation value of the sites.

The relative importance of the European site also needs to be considered. Some sites are designated for habitat types and species that are listed as 'priority' under the Habitats Directive. These must be subject to particularly stringent scrutiny. In these cases the Regulations require considerations other than human health, public safety or beneficial consequences of primary importance to the environment to be subject to an opinion from the European Commission.

Where a competent authority wishes to seek the opinion of the European Commission on whether imperative reasons of overriding public interest can be applied, they must submit a request to the Department in writing, accompanied by any supporting documentation or information.

The Department may on receipt of such a case if it thinks fit seek the opinion of the Commission and upon receiving it shall transmit it to the competent authority.

A competent authority proposing to agree to a plan or project having a negative assessment for a European site must notify the Department before doing so. Having notified the Department, the competent authority is not permitted to agree to such a proposal before the end of a period of 21 days following confirmation that the Department has received the notification, unless the Department notifies that they can do so before the end of this period.

The Department may give directions prohibiting the competent authority from agreeing to the plan or project either indefinitely or during any such period specified in the direction.

## SECTION 5

### 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,*

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

#### 5.1 What are compensatory measures?

Where the importance of the development is judged to outweigh the nature conservation importance of the site, compensatory habitat measures must be taken to maintain the coherence of the Natura 2000 network. In cases where the habitat types or species affected are relatively abundant and the Department has designated or is proposing to designate only part of the national resource, it may be possible for an area of similar quality and character to be identified for designation which could, at least in part, replace the loss to the network. This will become increasingly difficult with the rarer habitat types and species, as all suitable sites are already likely to be designated or proposed for designation. In these cases the possibilities for restoration of damaged habitat or creation of replacement habitat will need to be considered. This may be costly and often technically difficult or ecologically untried. In certain cases the habitat affected may be irreplaceable.

The developer, under the ‘polluter pays’ principle, is expected to bear the cost of compensatory measures. If re-creation or restoration were specified as compensatory measures, the Department would expect the area concerned to become, within a clear time-scale, of sufficient quality to ensure that the coherence of the Natura 2000 network is protected. It is important to ensure that any measures proposed as compensatory measures are practical, deliverable, legally enforceable, and do not themselves result in adverse effects.

## SECTION 6

### 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) 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).*

*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.*

### **6.1 How to undertake the review of existing decisions and consents.**

The Regulations require the review of outstanding decisions, permissions, consents and other authorisations which would be likely to have a significant effect on a European Site (either individually or in combination with other plans or projects); and which would not be directly connected with or necessary to the management of the site. Special provisions with respect to planning permission decisions are outlined in Regulation 50 (1).

The Regulations require the review to be undertaken, as soon as reasonably practicable, for all European sites and the purpose is to “affirm, modify or revoke” the original decision. Generally, the competent authority responsible for the consent identifies the consents to be reviewed. The review should begin with the test of significance and then if deemed necessary an appropriate assessment, as previously outlined, should be undertaken. Thus the competent authority should again determine if the consent as issued would adversely affect the integrity of the site bearing in mind the conservation objectives. The review should consider the manner in which the consent is to be carried out and any conditions or other limitations that could be introduced to ensure no adverse impact upon the integrity of the European site.

A competent authority may consult the Department at any stage in the review process. For example, to help assess whether completion of a project would have a significant effect on the European site, or whether conditions or restrictions could overcome any harm to the integrity of a site. However, at the stage where the competent authority undertakes the appropriate assessment it has a duty to consult the Department and to have regard to representations made.

Any review should be carried out under existing statutory procedures where they exist and, if none exist, the Department may give directions as to the procedures to be followed.

## **6.2 Consideration on review**

The competent authority may affirm the consent at this stage only after having ascertained that:

- (a) its completion would not adversely affect the integrity of the European site or
- (b) other action taken, or to be taken, by the competent authority, or by another competent authority, will secure that the completion of the project will not adversely affect the integrity of the European site.

If the completion of the plan or project would adversely affect the integrity of the site, the competent authority may consider whether any other action it, or any other competent authority has taken or will take, may avoid harming the integrity of the site. If conditions or restrictions would overcome the adverse effects, in whole or in part, the competent authority must modify the consent, permission or authorisation. These modifications should be the least onerous on those affected, consistent with safeguarding the integrity of the European site. Such action may be as a result of implementing legislation other than the Habitat Regulations. The Department may issue guidance to competent authorities on appropriate ways of taking such action.

## SECTION 7

### Co-ordination where more than one competent authority is involved

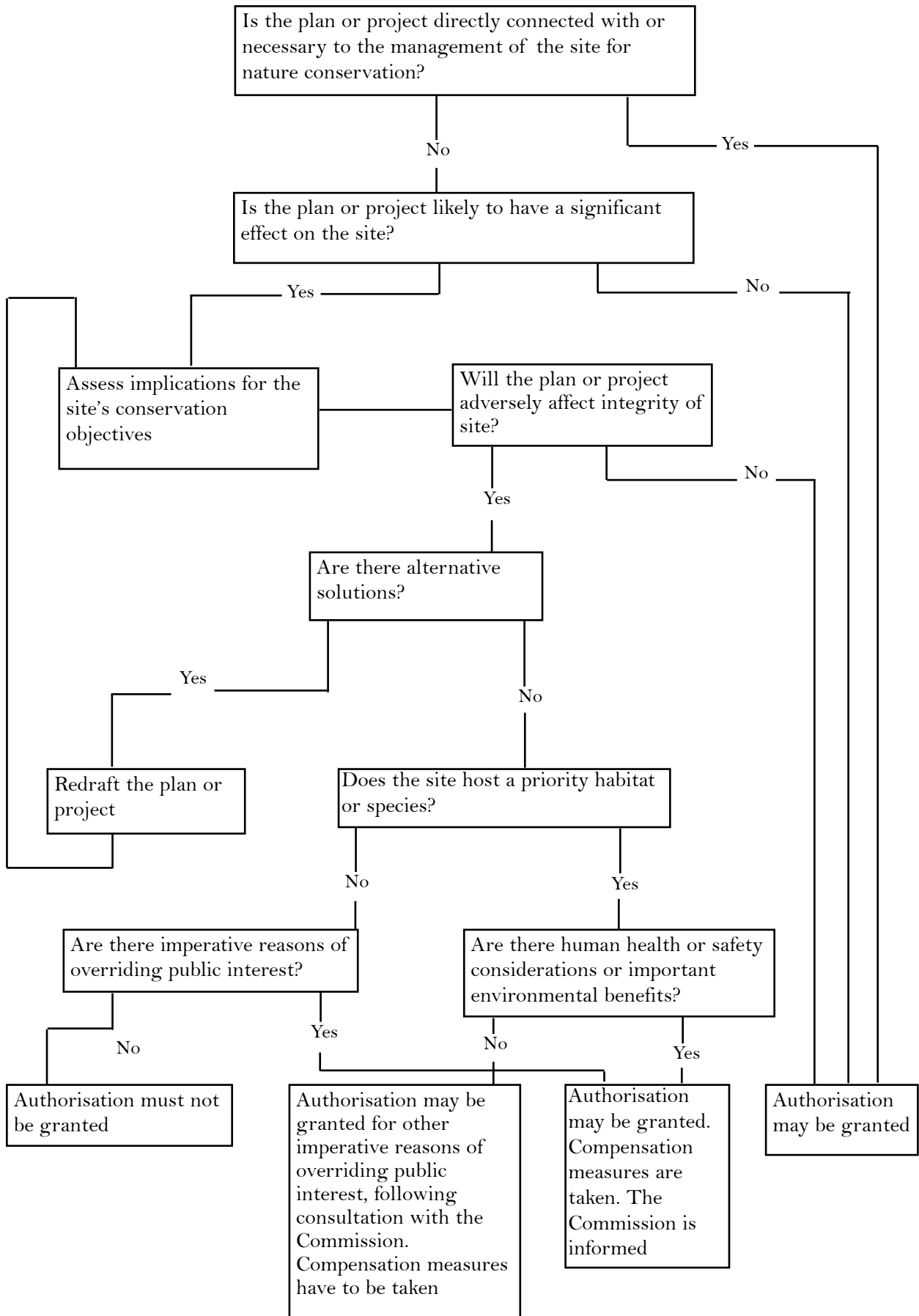
47. — (1) *The following provisions apply where a plan or project —*

- (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.*

If the plan or project relies on consents from more than one competent authority, Regulation 47 provides for the most appropriate authority to undertake the “appropriate assessment” and for the other authority, or authorities, to have regard to the views of the authority that carried out the assessment.

The Department may issue guidance to authorities as to the circumstances in which an authority may or should adopt the conclusions of another authority, and those involved shall have regard to any guidance issued.

# CONSIDERATION OF PLANS AND PROJECTS AFFECTING NATURA 2000 SITES



# APPENDIX 1

## Glossary of terms

Annex I Habitats	A natural habitat listed in Annex I of the Habitats Directive for which Special Areas of Conservation can be selected.
Annex II Species	Species listed in Annex II of the Habitats Directive for which Special Areas of Conservation can be selected.
Appropriate assessment	An assessment, required under the Habitats Regulations, to ascertain, in view of the site's conservation objectives, whether a plan or project would have an adverse effect on the integrity of the European site.
Biodiversity	<p>Article 2 of the Biodiversity Convention states that biodiversity is: "The variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems"</p> <p>"The variety of life". <i>Convention on Biological Diversity 1992</i></p>
Community	Any group of plants growing together under natural conditions and forming a recognisable vegetation type e.g. oak wood, blanket bog.
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.
Conservation objectives	Statements of measures required to maintain at or restore to favourable conservation status the natural habitats and/or the populations of species of wild fauna and flora for which the site has been selected.
Conservation status	An assessment of whether the factors influencing a species or habitat are either stable/increasing or unstable/decreasing.

De minimis	<i>de minimis non curat lex.</i> The law does not take account of trifles.
Environmental Impact	An assessment as defined under the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 1999 or any other Environmental Impact Assessment Regulations
European site	Another term for a Natura 2000 site.
Hydrology	The study of water on the earth's surface.
Integrity of site	The coherence of its ecological structure and function, across its whole area, that enables it to sustain the habitat, complex of habitat and/or the levels of populations of the species for which it was classified.
Management	The term "management" is to be treated as referring to the "conservation" management of a site. The words "not directly connected with or necessary to" ensure that a non-conservation component of a plan or project which includes conservation management amongst its objectives may still require assessment.
Member State	A state or country subscribing to and being a member of the European Community
Mitigation measures	Measures that are meant to reduce the likelihood of a development having a significant effect on the integrity of a site.
Natura 2000 Network	The network of protected sites comprising of SACs and SPAs.
Plan or project	A broad term including both construction works and other interventions in the natural environment.
Polluter-pays principle	The operator should bear the full costs of any measures required to protect the environment as a result of their actions.
Precautionary principle	Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation. (Principle 15 of the <i>Rio Declaration on Environment and Development</i> )

Selection features	The natural habitats and/or the populations of species of wild fauna and flora for which the area has been selected as a European site.
Significant effect Assessment	Any reasonably predictable effect of a plan or project on the conservation objectives of the designated site features but excluding <i>de minimis</i> or inconsequential effects.
SCI	Site of Community Importance
Statutory undertaker	A person authorised by statutory provision to carry on any railway, road-, air- or water transport, inland navigation, dock or harbour undertaking or the supply of electricity or gas or other utilities. Profits can be made.
The Department	For the purpose of these Guidance Notes Department means Department of the Environment, Environment & Heritage Service, Natural Heritage Directorate.



*Our aim is to protect and conserve the natural and built environment and to promote its appreciation for the benefit of present and future generations.*

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