



STATUTORY INSTRUMENTS.

S.I. No. 293 of 2021



EUROPEAN UNION (BIRDS AND NATURAL HABITATS)
(AMENDMENT) REGULATIONS 2021

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S.I. No. 293 of 2021

EUROPEAN UNION (BIRDS AND NATURAL HABITATS)
(AMENDMENT) REGULATIONS 2021

I, DARRAGH O'BRIEN, Minister for Housing, Local Government and Heritage, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving further effect to Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009¹ on the conservation of wild birds and Council Directive 92/43/EEC of 21 May 1992² on the conservation of natural habitats and of wild fauna and flora, hereby make the following regulations:

PART 1

PRELIMINARY AND GENERAL

Citation

1. These Regulations may be cited as the European Union (Birds and Natural Habitats) (Amendment) Regulations 2021.

Definition

2. In these Regulations, “Principal Regulations” means the European Communities (Birds and Natural Habitats) Regulations 2011 (S.I. No. 477 of 2011).

PART 2

AMENDMENTS TO PRINCIPAL REGULATIONS

Amendment to Regulation 2 of Principal Regulations

3. Regulation 2(1) of the Principal Regulations is amended –
- (a) by the insertion of the following definition:

“ ‘Ecological Assessment Unit’ means the unit, which is known by that name, in the Department of State for which the Minister has charge; and
 - (b) in the definition of “NATURA 2000”, by the substitution of “Natura 2000” for “NATURA 2000”.

¹ OJ No. L 20, 26.01.2010, p. 7

² OJ No. L103, 25.04.1979, p. 1

Insertion of Regulation 30A into Principal Regulations

4. The Principal Regulations are amended by the insertion of the following Regulation after Regulation 30:

“Activities, proposed by Minister, to which Regulation 30(1) applies

30A. (1) Where the Minister is proposing an activity to which Regulation 30(1) applies, the Minister may by application in writing to the Ecological Assessment Unit, request its opinion on the carrying out of the activity, specifying its nature and the land on which it is proposed to carry it out.

(2) On receiving an application under paragraph (1), the Ecological Assessment Unit may request such additional information, if any, from the Minister that the unit considers necessary to make an assessment of the impact of the activity as proposed, which may, if that unit so determines, include a Natura Impact Statement.

(3) Subject to paragraph (6), the Ecological Assessment Unit shall –

- (a) having formed the opinion that Regulation 31(1) or 32(1) does not apply to the activity concerned,
- (b) having considered the information submitted with the application under paragraph (1), and any additional information provided in response to a request under paragraph (2) and any other information that the Ecological Assessment Unit considers relevant to its consideration,
- (c) having caused a screening for Appropriate Assessment to be carried out, of which a record shall be kept, and, if necessary, an Appropriate Assessment pursuant to Regulation 42A, and
- (d) formed the opinion as to whether the carrying out of the activity as proposed by the Minister will not, either individually or in combination with other activities, plans and projects, have a significant effect on, or adversely affect the integrity of a European site or cause any of the other effects referred to in Regulation 28(1) or 29(1),

provide an opinion in writing to the Minister that the carrying out of the proposed activity may proceed, or, advise the Minister that the carrying out of the activity should not proceed, but without prejudice, if applicable, to the Minister’s power to give consent under Regulation 43A.

(4) The Minister shall have regard to the opinion of the Ecological Assessment Unit when making a decision on whether to proceed with the proposed activity.

(5) Before giving an opinion under paragraph (3), the Ecological Assessment Unit may, if appropriate, invite opinions of the public under Regulation 21.

(6) Where it appears to the Ecological Assessment Unit that an application for an opinion under paragraph (1) relates to an activity, plan or project for which a licence is required under Regulation 51, 52 or 53, the Ecological Assessment Unit shall so inform the Minister in writing and such a licence shall be obtained by the Minister before an application under paragraph (1) shall be considered by the Ecological Assessment Unit.

(7) In providing its opinion under paragraph (3) the Ecological Assessment Unit may recommend such conditions, limitations and restrictions as it considers necessary to ensure that the activity, individually or in combination with other activities, plans and projects shall not cause any of the effects referred to in Regulation 28(1) or 29(1).

(8) The Ecological Assessment Unit may vary any conditions, limitations and restrictions recommended under paragraph (7), or withdraw any opinion given under paragraph (3), if in its opinion, the conditions attached to such opinion have been breached, or the continuation of the activity would be liable to destroy, or significantly alter, damage or interfere with the species and habitats for which the site may be or has been designated and the Ecological Assessment Unit shall communicate in writing its decision to the Minister.

(9) The Ecological Assessment Unit shall give reasons for—

- (a) its opinion, under paragraph (3), that the proposed activity may proceed,
- (b) its opinion, under paragraph (3), that the proposed activity should not proceed, and
- (c) its decision to -
 - (i) recommend conditions, limitations and restrictions,
 - (ii) vary conditions, limitations and restrictions, or
 - (iii) withdraw an opinion,

under paragraph (7) or (8), as the case may be.

(10) A member of the Ecological Assessment Unit that is involved in the preparation of an application for an opinion pursuant to paragraph (1) shall not have any part in forming the opinion of the Ecological Assessment Unit under this Regulation.

(11) A person who fails to comply with a condition, limitation or restriction imposed following a recommendation under paragraph (7) shall be guilty of an offence.”.

Amendment to Regulation 36 of Principal Regulations

5. Regulation 36 of the Principal Regulations is amended by the substitution of “Where an activity, plan or project (which includes, for the purpose of this Regulation, the exclusions mentioned in paragraphs (a) to (d) in the definition of ‘activity’ or the exclusions referred to in the definitions of ‘plan’ and ‘project’) that has been carried out within or outside a European Site,” for “Where an

activity, plan or project that has been carried out within or outside a European Site.”.

Amendment to Regulation 42 of Principal Regulations

6. Regulation 42 of the Principal Regulations is amended –
 - (a) in paragraph (1), by the substitution of “Subject to Regulation 42A, a screening” for “A screening”, and
 - (b) by the substitution of the following paragraph for paragraph (13):
 - “(13) (a) Where a public authority has determined, pursuant to paragraph (6), that an Appropriate Assessment is required in respect of a proposed plan or project, and before making a determination on the matter pursuant to paragraph (11), the public authority shall carry out a public consultation and publish a notice of the proposed plan or project in a manner to be determined by the public authority.
 - (b) A notice under subparagraph (a) shall state the following:
 - (i) the location, including the townland and county, to which the application relates;
 - (ii) the nature and extent of the proposed plan or project;
 - (iii) the possible decisions and, where there is a draft decision, the draft decision;
 - (iv) that a person may make a submission or observation to the public authority within 30 days from the date of the notice, or whatever longer timeframe appears on the notice;
 - (v) where and when the application and documents may be viewed;
 - (vi) any other details of public participation;
 - (vii) any other information the public authority considers relevant.
 - (c) The public authority shall make available for inspection to the public free of charge, or for purchase at a fee not exceeding the reasonable cost of such making available, and on its website, the application, map of the proposed plan or project, its determination made under paragraph (6), the Natura Impact Statement, if directed under paragraph (3) or required under paragraph (9), and any other information of documentation relevant to the application in the public authority’s possession.

- (d) The public may make submissions or observations in writing concerning the proposed plan or project to the public authority within 30 days from the date of publication of the notice or whatever longer timeframe is set out in the notice and, where additional information is published, at least 30 days from the date of publication of that information.
- (e) The public authority shall have regard to any submissions or observations received during the public consultation under subparagraph (d).”.

Insertion of Regulation 42A into Principal Regulations

7. The Principal Regulations are amended by the insertion of the following Regulation after Regulation 42:

“Screening for Appropriate Assessment and Appropriate Assessment of implications for European Sites where Minister is Public Authority

42A. (1) Where the Minister proposes to undertake or adopt a plan or project which is not directly connected with or necessary to the management of the site as a European Site, the Minister shall request that a screening for Appropriate Assessment be carried out by the Ecological Assessment Unit to assess, in view of best scientific knowledge and in view of the conservation objectives of the site, if that plan or project, individually or in combination with other plans or projects is likely to have a significant effect on the European site.

(2) The Ecological Assessment Unit shall carry out a screening for Appropriate Assessment under paragraph (1) before the Minister makes a decision to undertake or adopt a plan or project is taken.

(3) The Minister shall provide sufficient details of the proposed plan or project in writing to the Ecological Assessment Unit in order for the Ecological Assessment Unit to carry out screening for Appropriate Assessment under paragraph (1).

(4) At any time following a request for screening for Appropriate Assessment under paragraph (1), the Ecological Assessment Unit may give a notice in writing to the Minister, directing the Minister to—

- (a) furnish a Natura Impact Statement and the Minister shall furnish the statement within the period specified in the notice, and
- (b) furnish any additional information that the Ecological Assessment Unit considers necessary for the purposes of this Regulation.

(5) Unless the Ecological Assessment Unit otherwise directs, where the Minister, having been directed in accordance with paragraph (4), fails to furnish a Natura Impact Statement within the period specified in the notice under that paragraph, or any additional period that may be agreed

by the Ecological Assessment Unit, the request to carry out a screening for Appropriate Assessment under this Regulation shall be deemed to be withdrawn.

- (6) (a) A Natura Impact Statement under this Regulation shall, in addition to addressing the issues referred to in the interpretation contained in Regulation 2(1), include such information or data as the Ecological Assessment Unit considers necessary, and specifies in a notice given under paragraph (4), to enable the Ecological Assessment Unit to ascertain if the plan or project will affect the integrity of the site.
- (b) Where appropriate, a Natura Impact Statement under this Regulation shall include, in addition the following:
- (i) the alternative solutions that have been considered and the reasons why they have not been adopted;
 - (ii) the imperative reasons of overriding public interest that are being relied upon to indicate that the plan or project should proceed notwithstanding that it may adversely affect the integrity of a European Site;
 - (iii) the compensatory measures that are being proposed.

(7) The Ecological Assessment Unit shall determine that an Appropriate Assessment of a plan or project is required where the plan or project is not directly connected with or necessary to the management of the site as a European Site and if it cannot be excluded, on the basis of objective scientific information following screening under this Regulation, that the plan or project, individually or in combination with other plans or projects, will have a significant effect on a European Site.

(8) The Ecological Assessment Unit shall determine that an Appropriate Assessment of a plan or project is not required where the plan or project is not directly connected with or necessary to the management of the site as a European Site and if it can be excluded on the basis of objective scientific information following screening under this Regulation, that the plan or project, individually or in combination with other plans or projects, will have a significant effect on a European Site.

- (9) (a) Where, in relation to a plan or project for which the Minister proposes to undertake or adopt, the Ecological Assessment Unit makes a determination that an Appropriate Assessment is required, the Ecological Assessment Unit shall give notice of the determination, including reasons for its determination, to the following:
- (i) the Minister;
 - (ii) if appropriate, any person who made submissions or observations in relation to the application to the public authority.

- (b) Where the Ecological Assessment Unit has determined under this Regulation that an Appropriate Assessment is required in respect of a proposed development it may direct in the notice issued under subparagraph (a) that a Natura Impact Statement is required.

(10) Where the Ecological Assessment Unit is required to conduct an Appropriate Assessment pursuant to paragraph (7) in relation to a plan or project that the Minister proposes to undertake or adopt, the Minister shall—

- (a) prepare a Natura Impact Statement,
- (b) compile any other evidence including, but not limited to, scientific evidence that is required for the purposes of the Appropriate Assessment, and
- (c) submit a Natura Impact Statement together with evidence compiled under subparagraph (b) to the Ecological Assessment Unit not later than 6 weeks before the Minister proposes to undertake or adopt the plan or project to which the Natura Impact Statement and evidence relates.

(11) An Appropriate Assessment carried out under this Regulation shall include a determination by the Ecological Assessment Unit under this Regulation pursuant to Article 6(3) of the Habitats Directive as to whether or not the proposed plan or project would adversely affect the integrity of a European site and the assessment shall be carried out by the Ecological Assessment Unit before the Minister makes a decision to undertake or adopt the proposed plan or project as the case may be.

(12) In carrying out an Appropriate Assessment under paragraph (11), the Ecological Assessment Unit shall take into account all of the following matters:

- (a) a Natura Impact Statement pursuant to paragraph (4) or (10);
- (b) any other plans or projects that may, in combination with the plan or project under consideration, adversely affect the integrity of a European Site;
- (c) any supplemental information furnished in relation to any such report or statement;
- (d) if appropriate, any additional information sought by the Ecological Assessment Unit and furnished by the applicant in relation to a Natura Impact Statement;
- (e) any information or advice obtained by the Ecological Assessment Unit;
- (f) if appropriate, any written submissions or observations made to the Ecological Assessment Unit in relation to the application for consent for proposed plan or project;

- (g) any other relevant information.
- (13) (a) Where the Ecological Assessment Unit has determined, pursuant to paragraph (7), that an Appropriate Assessment is required in respect of a proposed plan or project, and before making a determination on the matter pursuant to paragraph (11), the Ecological Assessment Unit shall carry out a public consultation and publish a notice of the proposed plan or project in a manner to be determined by the Ecological Assessment Unit.
- (b) A notice under subparagraph (a) shall state the following:
- (i) the location, including townland and county, to which the application relates;
 - (ii) the nature and extent of the proposed plan or project;
 - (iii) the possible decisions and, where there is a draft decision, the draft decision;
 - (iv) that a person may make a submission or observation to the public authority within 30 days from the date of the notice or whatever longer timeframe appears on the notice;
 - (v) where and when the application and documents may be viewed;
 - (vi) any other details of public participation;
 - (vii) any other information the public authority considers relevant.
- (c) The Ecological Assessment Unit may make available for inspection to the public free of charge, or for purchase at a fee not exceeding the reasonable cost of such making available, and on the website of the Minister, the application, map of the proposed plan or project, its determination under paragraph (7), the Natura Impact Statement, if directed under paragraph (4) or required under paragraph (10), and any other information or documentation relevant to the application in the Ecological Assessment Unit's possession.
- (d) The public may make submissions or observations in writing concerning the proposed plan or project to the Ecological Assessment Unit within 30 days from the date of publication of the notice or whatever longer timeframe is set out in the notice, and where additional information is published, at least 30 days from the date of publication of that information.
- (e) The Ecological Assessment Unit shall have regard to any submissions or observations received during the public consultation under subparagraph (d).

(14) Where the Minister is required to make a decision to undertake or adopt a plan or project within a time limited by any enactment, that time period shall not, in a case in which a requirement is made by the Ecological Assessment Unit under paragraph (4), include the period beginning on the day the requirement is made and ending 8 weeks after the day of receipt by the Ecological Assessment Unit concerned of the requested further information or evidence.

(15) Notwithstanding any other provision of these Regulations, the Minister shall undertake or adopt a plan or project, only after having received the determination of the Ecological Assessment Unit that the plan or project shall not adversely affect the integrity of a European site.

(16) Subject to any other provision of these Regulations, the Minister—

- (a) may undertake or adopt a plan or project where he or she has made modifications to a plan or project or attached conditions to the decision to undertake or adopt the plan or project where the Ecological Assessment Unit is satisfied to do so having determined that the plan or project would not adversely affect the integrity of the European Site if it is carried out in accordance with the consent and the said modifications or conditions attaching thereto.
 - (b) shall not undertake or adopt a plan or project containing any conditions, restrictions or requirements purporting to—
 - (i) permit the deferral of the collection of information required for a screening for Appropriate Assessment or for an Appropriate Assessment or the completion of a screening for Appropriate Assessment or an Appropriate Assessment until after the determination of the Ecological Assessment Unit pursuant to paragraph (11) has been given,
 - (ii) accept an incomplete Natura Impact Statement, or
 - (iii) permit or facilitate the avoidance of compliance with the conditions set out in Article 6(4) of the Habitats Directive.
- (17) (a) The Ecological Assessment Unit shall make available for inspection, any determination that it makes in relation to a plan or project and provide reasons for that determination, as soon as may be after the making of the determination or giving the notice, as appropriate, by members of the public during office hours of the offices of the Minister and shall also make the determination or notice available in electronic form including by placing the documents on the Minister's website.

- (b) Information that is identified by the Minister as being of a commercially sensitive nature shall, provided and for so long as it could be withheld under Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003³ be exempted by the public authority from the requirements of subparagraph (a).
- (c) Information that if made publicly available could pose a risk to the conservation of protected species or habitats may be exempted from the requirements of subparagraph (a).

(18) Notwithstanding the fact that the making, adoption and consent procedures relating to plans and projects which fall under the Planning and Development Acts 2000 to 2021 do not come within the scope of these Regulations, the Ecological Assessment Unit shall, pursuant to Article 6(3) of the Habitats Directive, take cognisance of such plans and projects in assessing any effects that might arise when such plans or projects are considered in combination with any activities, plans or projects for which the Ecological Assessment Unit is undertaking screening for Appropriate Assessment or Appropriate Assessment.

- (19) (a) Where another public authority referred to in this paragraph as “the first authority”, has carried out a screening for Appropriate Assessment or an Appropriate Assessment in relation to a plan or project, if the Ecological Assessment Unit is required to carry out a screening for Appropriate Assessment or an Appropriate Assessment of the same plan or project, it shall take account of the screening for Appropriate Assessment or Appropriate Assessment of the first authority in relation to that plan or project, and of any information, including a Natura Impact Statement that was prepared for consideration by the first authority in relation to the plan or project.
- (b) In taking account of a screening for Appropriate Assessment or Appropriate Assessment in relation to a plan or project and of a Natura Impact Statement, the Ecological Assessment Unit shall consider the extent to which the scope of that screening for Appropriate Assessment or Appropriate Assessment or the Natura Impact Statement covers the issues that would be required to be addressed by the Ecological Assessment Unit in a screening for Appropriate Assessment or Appropriate Assessment of the plan or project in view of the scope of the consent to be given by it, and shall identify any issues that have not, in that regard, been adequately addressed.
- (c) Subject to subparagraph (b) and without prejudice to its right to request all such information as it considers

³ OJ No. L 41, 14.02.2003, p. 26

necessary to carry out a screening for Appropriate Assessment or Appropriate Assessment, the Ecological Assessment Unit may limit its requirement for information, including a Natura Impact Statement, to those issues that it determines have not been adequately addressed for the purposes of the Ecological Assessment Unit in the process of screening for Appropriate Assessment and Appropriate Assessment by the first authority or by another second authority.

- (d) Where a plan or project requires two or more consents, each of which would require screening for Appropriate Assessment or Appropriate Assessment, the Ecological Assessment Unit and other public authority may carry out, following joint consultation, a joint screening for Appropriate Assessment or a joint Appropriate Assessment.
- (e) Where the Ecological Assessment Unit and the another public authority propose to carry out a joint screening for Appropriate Assessment or a joint Appropriate Assessment pursuant to subparagraph (d), the Ecological Assessment Unit and the public authority concerned shall so inform the Minister of the plan or project and provide him or her with a single contact address for correspondence, and they may agree that either the Ecological Assessment Unit or the other public authority shall, in consultation with the other, lead the process and or co-ordinate correspondence with the proponent.
- (f) This paragraph applies to consents under the Planning and Development Acts 2000 to 2021 and to screening for Appropriate Assessments and Appropriate Assessments carried out thereunder.

(20) A plan or project referred to in this Regulation includes a plan or project that is within, partially within or outside a European Site.

(21) In relation to a plan or project that is likely to affect more than one European Site or an area that is within more than one European Site, the screening for Appropriate Assessment and Appropriate Assessment shall address the impact of the plan or project, individually or in combination with other plans and projects, on each of the sites likely to be affected.

(22) A member of the Ecological Assessment Unit that is involved in the preparation of plan or project for which the Minister requests a screening for Appropriate Assessment pursuant to paragraph (1) shall not have any part in forming the Ecological Assessment Unit's determination on screening for Appropriate Assessment or Appropriate Assessment.”.

Amendment to Regulation 43 of Principal Regulations

8. Regulation 43 of the Principal Regulations is amended –
- (a) in paragraph (1) –
 - (i) by the substitution of “Subject to Regulation 43A, where,” for “Where,” and
 - (ii) by the insertion of “, including those of a social and economic nature,” after “public interest,”
 - (b) in paragraph (7), by the substitution of “paragraph (1)(c)” for “paragraph (1)”,
 - (c) in paragraph (17), by the substitution of “(3)(a) to (3)(c)” for “(4)(a) to (4)(c)”, and
 - (d) in paragraph (19), by the substitution of “paragraph (15), (16) or (17)” for “paragraph (15) or (16)”.

Insertion of Regulations 43A to 43C into Principal Regulations

9. The Principal Regulations are amended by the insertion of the following Regulations after Regulation 43:

“Proposed plans or projects and imperative reasons of overriding public interest where the Minister is Public Authority; general

43A. (1) Where, notwithstanding a determination by the Ecological Assessment Unit, pursuant to Regulation 42A, that a plan or project or part thereof will adversely affect a European Site and, in the absence of alternative solutions, the Minister considers that the plan or project should nevertheless be made for imperative reasons of overriding public interest, including those of a social and economic nature, the Minister shall—

- (a) set out the imperative reasons of overriding public interest, including those of a social and economic nature, that necessitate the carrying out of the plan or project,
- (b) propose the compensatory measures that are necessary to ensure that the overall coherence of the Natura 2000 network is protected,
- (c) prepare a statement of case that imperative reasons of overriding public interest exist and of the compensatory measures that are required, and
- (d) forward the said statement of case together with details of the proposed plan or project, the Natura Impact Statement and, where appropriate, the Commission’s opinion, requested under paragraph (5), to the Ecological Assessment Unit.

(2) A statement of case referred to in paragraph (1)(c) shall specify the following:

- (a) the considerations that led to the assessment by the Ecological Assessment Unit that the plan or project would adversely affect the integrity of a European Site;
- (b) the reasons for the forming of the view by the Minister that there are no alternative solutions (including the option of not proceeding with the plan or project or part thereof);
- (c) the reasons for the forming of the view by the Minister that imperative reasons of overriding public interest, including those of a social and economic nature, apply to the plan or project;
- (d) the compensatory measures that are being proposed as necessary to ensure the overall coherence of the Natura 2000 network is protected, including if appropriate, the provision of compensatory habitat.

(3) In relation to a European Site that hosts a priority natural habitat type or priority species, the only imperative reasons of overriding public interest that may be considered are those relating to—

- (a) human health,
- (b) public safety,
- (c) beneficial consequences of primary importance to the environment, or
- (d) subject to paragraph (5), and having obtained an opinion from the European Commission, other imperative reasons of overriding public interest.

(4) In relation to a European Site that does not host a priority natural habitat type or priority species, the imperative reasons of overriding public interest may also include those of a social and economic nature.

(5) In invoking imperative reasons of overriding public interest under paragraph (3)(d), the Minister shall request an opinion from the European Commission prior to forwarding the information mentioned in paragraph (1)(d) to the Ecological Assessment Unit.

(6) The Minister shall make a statement of case referred to in paragraph (1)(c) available for inspection, as soon as may be after it is prepared and forwarded to the Ecological Assessment Unit, by members of the public during office hours of the offices of the Minister and shall also make the statement available in electronic form including by placing the documents on the Minister's website.

(7) This Regulation and Regulations 43B and 43C shall not apply to a candidate special protection area.

(8) A member of the Ecological Assessment Unit that is involved in the preparation of plan or project for which a statement of case has been forwarded to the Ecological Assessment Unit under this Regulation shall not perform any of the functions of the Ecological Assessment Unit under Regulation 43B or 43C.

Proposed plans or projects and imperative reasons of overriding public interest where the Minister is Public Authority; sites not hosting priority habitats and species

43B. (1) This Regulation shall apply to sites that do not host a priority type or priority species where a statement of case together with details of the proposed plan or project, the Natura Impact Statement and, where appropriate, the Commission's opinion, requested under Regulation 43A(5), are forwarded to the Ecological Assessment Unit under Regulation 43A(1).

(2) (a) Where the Ecological Assessment Unit receives a statement of case under paragraph (1)(c) of Regulation 43A relating to a European Site that does not host a priority habitat type or priority species, it shall, as soon as possible, consider whether –

- (i) imperative reasons of overriding public interest exist,
- (ii) an absence of alternative solutions has been established, and
- (iii) the compensatory measures proposed are sufficient to ensure the overall coherence of the Natura 2000 network is protected.

(b) Where the Ecological Assessment Unit considers it appropriate, it may

- (i) consult with such other Minister of the Government, having regard to the functions of that other Minister, and
- (ii) consider any views of a Minister of the Government consulted pursuant to clause (i) and which are received by the Ecological Assessment Unit before issuing its opinion under paragraph (3) or (4).

(3) Where the Ecological Assessment Unit forms the opinion that imperative reasons of overriding public interest exist, that an absence of alternative solutions has been established, and that the compensatory measures, or revised or modified compensatory measures, as the case may be, are sufficient to ensure that the overall coherence of the Natura 2000 network is protected, the Ecological Assessment Unit shall as soon as possible issue a notice to this effect to the Minister and the Minister may decide to undertake or adopt—

- (a) the plan or project or
- (b) that part of the plan or project that would have an adverse effect on the integrity of a European Site.

(4) Where the Ecological Assessment Unit forms the opinion that imperative reasons of overriding public interest do not exist, or that an absence of alternative solutions has not been established or that the compensatory measures, or revised or modified compensatory measures,

as the case may be, are not sufficient to ensure that the overall coherence of the Natura 2000 is protected, the Ecological Assessment Unit as soon as possible issue a notice to this effect to the Minister and the Minister shall not undertake or adopt —

- (a) the plan or project, or
- (b) that part of the plan or project that would have an adverse effect on the integrity of a European Site.

(5) Where the Minister, having had regard to the opinion of the Ecological Assessment Unit, makes a decision under paragraph (3), he or she shall inform the Commission of the matter, including the compensatory measures proposed.

(6) The Minister shall make available for inspection by members of the public during office hours at the office of the authority, and may also publish on his or her website a notice of —

- (a) a decision made under paragraph (3), or
- (b) the fact that he or she is not proceeding pursuant to paragraph (4),
to undertake or adopt —
 - (i) a plan or project, or
 - (ii) that part of a plan or project that would have an adverse effect on the integrity of a European Site.

Proposed plans or projects and imperative reasons of overriding public interest where the Minister is Public Authority; sites hosting priority habitats and species

43C. (1) This Regulation shall apply to sites that host a priority type or priority species where a statement of case together with details of the proposed plan or project, the Natura Impact Statement and, where appropriate, the Commission's opinion, requested under Regulation 43A(5), are forwarded to the Ecological Assessment Unit under Regulation 43A(1).

- (2) (a) Where a statement of case relating to a European Site that hosts a priority habitat type or priority species together with details of the proposed plan or project, the Natura Impact Statement and, where appropriate, the Commission's opinion, requested under Regulation 43A(5), are forwarded to the Ecological Assessment Unit under Regulation 43A(1), the Ecological Assessment Unit shall, as soon as may be, consider whether—
 - (i) imperative reasons of overriding public interest exist,
 - (ii) an absence of alternative solutions has been established, and

- (iii) the compensatory measures proposed are sufficient to ensure the overall coherence of the Natura 2000 network is protected.
- (b) Where the Ecological Assessment Unit, considers it appropriate, it may—
 - (i) consult with such other Minister of the Government, having regard to the functions of that other Minister, and
 - (ii) consider any views of a Minister of the Government consulted pursuant to clause (i) and which are received by the Ecological Assessment Unit before issuing its opinion under paragraph (3) or (4).

(3) Where Ecological Assessment Unit, forms the opinion that imperative reasons of overriding public interest comprising only a reason or reasons set out in paragraph (3)(a) to (c) of Regulation 43A exist, and having had regard to the opinion issued by the Commission pursuant to the Minister's request under paragraph (5) of Regulation 43A, and that an absence of alternative solutions has been established, and that the compensatory measures, or revised or modified compensatory measures as the case may be, are sufficient to ensure that the overall coherence of the Natura 2000 network is protected, the Ecological Assessment Unit shall issue a notice to this effect to the Minister and the Minister may decide to undertake or adopt —

- (a) the plan or project, or
- (b) that part of the plan or project that would have an adverse effect on the integrity of a European Site.

(4) Where Ecological Assessment Unit, forms the opinion that imperative reasons of overriding public interest comprising only a reason or reasons set out in paragraph (3)(a) to (c) of Regulation 43A do not exist, and having had regard to the opinion issued by the Commission pursuant to the Minister's request under paragraph (5) of Regulation 43A, and that an absence of alternative solutions has been established, and that the compensatory measures, or revised or modified compensatory measures as the case may be, are not sufficient to ensure that the overall coherence of the Natura 2000 network is protected, the Ecological Assessment Unit shall issue a notice to this effect to the Minister and the Minister may not undertake or adopt —

- (a) the plan or project, or
- (b) that part of the plan or project that would have an adverse effect on the integrity of a European Site.

(5) Where the Minister, having had regard to the opinion of the Ecological Assessment Unit, makes a decision under paragraph (3), he or she shall inform the Commission of the matter, including the compensatory measures proposed.

(6) The Minister shall make available for inspection by members of the public during office hours at the office of the authority, and may also publish on his or her website a notice of –

- (a) a decision made under paragraph (3), or
 - (b) the fact that he or she is not proceeding pursuant to paragraph (4),
- to undertake or adopt —
- (i) a plan or project, or
 - (ii) that part of a plan or project that would have an adverse effect on the integrity of a European Site.”.

Amendment to Regulation 44 of Principal Regulations

10. Regulation 44 is amended by the substitution of the following paragraph for paragraph (1):

“(1) The provisions of Regulations 42, 42A, and, if applicable, 43 to 43C, apply before a public authority may give consent for a plan or project under these Regulations.”.

Amendment to Regulation 45 of Principal Regulations

11. The Principal Regulations are amended by the substitution of the following Regulation for Regulation 45:

“45. (1) When a public authority—

- (a) agrees to a plan or project under Regulation 43, or
- (b) affirms or modifies its decision or approval under Regulation 43,

it shall take all necessary steps to ensure that any compensatory measures approved by the Minister under Regulation 43 are taken in a timely manner so as to ensure that the overall coherence of the Natura 2000 network is protected.

(2) When the Minister, decides to undertake or adopt a plan or project under Regulation 43B(3) or 43C(3), he or she shall take all necessary steps to ensure that any compensatory measures are taken in a timely manner so as to ensure that the overall coherence of the Natura 2000 network is protected.”.

Amendment to Regulation 46 of Principal Regulations

12. Regulation 46 of the Principal Regulations is amended –

- (a) by the substitution of the following for paragraph (2):

“(2) (a) The Minister may request a public authority to carry out a review of a plan in accordance with paragraph

(1) and the public authority shall comply with such a request.

(b) The Ecological Assessment Unit may request the Minister to carry out a review of a plan in accordance with paragraph (1) and the Minister shall comply with such a request.”, and

(b) by the substitution of the following for paragraph (4):

“(4) (a) In determining whether to give consent to a proposal that would in the normal course fall to be determined under a plan that is subject to review pursuant to a request under paragraph (1) or pursuant to a requirement under paragraph (2)(a), a public authority shall not take into account that plan in support of that proposal pending the outcome of a review under this Regulation.

(b) Where the Minister is making a decision on whether to undertake or adopt a proposal that would in the normal course fall to be determined under a plan that is subject to review pursuant to a request under paragraph (1) or pursuant to a requirement under paragraph (2)(b), the Minister shall not take into account that plan in support of that proposal pending the outcome of a review under this Regulation.”.

Amendment to Regulation 48 of Principal Regulations

13. The Principal Regulations are amended by the substitution of the following Regulation for Regulation 48:

“48. (1) The Minister may provide advice and guidance to any public authority in relation to any question as to whether that public authority is obliged to carry out screening for Appropriate Assessment or Appropriate Assessment in relation to a particular plan or project.

(2) The Ecological Assessment Unit may provide advice and guidance to the Minister in relation to any question as to whether that Minister is obliged to carry out screening for Appropriate Assessment or Appropriate Assessment in relation to a particular plan or project.”.

Amendment to Regulation 51 of Principal Regulations

14. Regulation 51(2) of the Principal Regulations is amended by the substitution of “Regulation 54 or 54A,” for “Regulation 54,”.

Amendment to Regulation 52 of Principal Regulations

15. Regulation 52(2) of the Principal Regulations is amended by the substitution of “Regulation 54 or 54A,” for “Regulation 54,”.

Amendment to Regulation 53 of Principal Regulations

16. Regulation 53 of the Principal Regulations is amended –
- (a) in paragraph (3), by the substitution of “Regulation 54 or 54A,” for “Regulation 54,”,
 - (b) in paragraph (4)(c) –
 - (i) by the substitution of “granted under Regulation 55 or 55A,” for “issued under Regulation 54,”, and
 - (ii) by the substitution of “the Minister” for “he or she”, and
 - (c) in paragraph (7), by the substitution of “Regulation 54, 54A, 55 or 55A” for “Regulation 54”.

Insertion of Regulation 54A into Principal Regulations

17. The Principal Regulations are amended by the insertion of the following Regulation after Regulation 54:

“Derogations to the Minister — flora, fauna and habitats

54A. (1) Where the Minister is proposing to undertake or adopt an activity, plan or project which requires a derogation licence from complying with the requirements of the provisions of Regulations 51 to 53, he or she may request an opinion from the Ecological Assessment Unit on whether to issue such a licence.

(2) Where there is no satisfactory alternative and the derogation is not detrimental to the maintenance of the populations of the species to which the Habitats Directive relates at a favourable conservation status in their natural range, the Ecological Assessment Unit may provide an opinion to the Minister that he or she may grant such a derogation licence, where it is—

- (a) in the interests of protecting wild fauna and flora and conserving natural habitats,
- (b) to prevent serious damage, in particular to crops, livestock, forests, fisheries and water and other types of property,
- (c) in the interests of public health and public safety, or for other imperative reasons of overriding public interest, including those of a social and economic nature and beneficial consequences of primary importance for the environment,
- (d) for the purpose of research and education, of repopulating and re-introducing these species and for the breeding operations necessary for these purposes, including the artificial propagation of plants, or
- (e) to allow, under strictly supervised conditions, on a selective basis and to a limited extent, the taking or keeping of certain specimens of the species to the extent

specified therein, which are referred to in the First Schedule.

(3) A derogation licence granted under paragraph (2) shall be subject to such conditions, restrictions, limitations or requirements as the Ecological Assessment Unit considers appropriate.

(4) Any conditions, restrictions, limitations or requirements to which a derogation licence under paragraph (2) is subject shall be specified therein.

(5) Without prejudice to any conditions, restrictions, limitations or requirements specified therein, a derogation licence granted under this Regulation is subject to the provisions of subsections (1) to (3) of section 18 of the Animal Welfare Act 2013 (No. 14 of 2013).

(6) The Minister shall forward to the European Commission every two years a report, in accordance with a format established by the European Commission, on the derogation licences to which paragraph (2) relates.

(7) The report referred to in paragraph (6) shall specify the following:

- (a) the species which are subject to the derogation licences and the reason for the derogation, including the nature of the risk with, if appropriate, a reference to alternatives rejected and scientific data used;
- (b) the means, devices or methods authorised for the capture or killing of animal species and the reasons for their use;
- (c) the circumstances of when and where such derogation licences are granted;
- (d) the authority empowered to declare and check that the required conditions apply, and to decide what means, devices or methods may be used, within what limits and by what agencies, and which persons are to carry out the task;
- (e) the supervisory measures used and the results obtained.

(8) A member of the Ecological Assessment Unit that is involved in the application for an opinion pursuant to paragraph (1) shall not have any part in forming the opinion of the Ecological Assessment Unit under this Regulation.”.

Insertion of Regulation 55A into Principal Regulations

18. The Principal Regulations are amended by the insertion of the following Regulation after Regulation 55:

“Derogations to Minister — birds

55A. (1) Where the Minister is proposing to undertake or adopt an activity, plan or project which requires a derogation licence from complying with the requirements of the provisions of Regulation 53, he

or she may request an opinion from the Ecological Assessment Unit on whether to issue such a licence.

(2) Where there is no other satisfactory solution, the Ecological Assessment Unit may, following consultation with any Minister or Ministers of the Government having relevant responsibilities or functions where appropriate, in respect of any species of naturally occurring bird in the wild state referred to in Article 1 of the Birds Directive, provide an opinion to the Minister that he or she may grant a derogation licence, where it is—

- (a) in the interests of public health and safety,
- (b) in the interests of air safety,
- (c) to prevent serious damage to crops, livestock, forests, fisheries or water,
- (d) for the protection of flora or fauna,
- (e) for the purposes of research or teaching, of re-population, of re-introduction or for the breeding necessary for these purposes, or
- (f) to permit, under strictly supervised conditions and on a selective basis, the capture, keeping or other judicious use of certain birds in small numbers.

(3) A derogation licence granted under paragraph (2) shall be subject to such conditions, restrictions, limitations or requirements as the Ecological Assessment Unit considers appropriate.

(4) Any conditions, restrictions, limitations or requirements to which a derogation licence under paragraph (2) is subject shall be specified therein.

(5) Without prejudice to any conditions, restrictions, limitations or requirements specified therein, a derogation licence granted under this Regulation is subject to the provisions of subsections (1) to (3) of section 18 of the Animal Welfare Act 2013 (No. 14 of 2013).

(6) The derogation licence granted under paragraph (2) shall specify the following:

- (a) the species which are subject to the derogation licence;
- (b) the means, arrangements or methods authorized for capture or killing;
- (c) the conditions of risk and the circumstances of time and place under which such derogation licence is granted;
- (d) the authority empowered to declare that the required conditions obtain and to decide what means, arrangements or methods may be used, within what limits and by whom;
- (e) the controls which will be carried out.

(7) The Minister shall forward to the European Commission each year a report on the derogations to which paragraph (2) relates.

(8) A member of the Ecological Assessment Unit that is involved in the preparation of an application for an opinion pursuant to paragraph (1) shall not have any part in forming the opinion of the Ecological Assessment Unit.”.

Amendment to Regulation 67 of Principal Regulations

19. Regulation 67(2) of the Principal Regulation is amended by the substitution of “30(9), 30A(11), 31(10)” for “30(9), 31(10)”.



GIVEN under my Official Seal,
21 June, 2021.

DARRAGH O'BRIEN,
Minister for Housing, Local Government and Heritage.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ó
FOILSEACHÁIN RIALTAIS,
52 FAICHE STIABHNA, BAILE ÁTHA CLIATH 2,
D02 DR67.

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