

THE DRAFT ENVIRONMENT (NORTHERN IRELAND) ORDER 2002

EXPLANATORY MEMORANDUM

INTRODUCTION

1. This Draft Environment (Northern Ireland) Order 2002 (the Order) will be made under paragraph 1(1) of the Schedule to the Northern Ireland Act 2000 after it has been approved by each House of Parliament.

PURPOSE

2. The purpose of the Order is to:
 - (a) provide a statutory framework to enable transposition of the requirements of EC Directives 96/61 on Integrated Pollution Prevention and Control (the IPPC Directive) and 96/62 on Ambient Air Quality Assessment and Management;
 - (b) make additional provision for the prevention and control of environmental pollution; and
 - (c) introduce measures to allow for the better protection and management of Areas of Special Scientific Interest (ASSIs).
3. It will provide in Northern Ireland legislation broadly similar to that already in operation in Great Britain in the Environment Act 1995 (Part IV), the Pollution Prevention and Control Act 1999 and the Countryside and Rights of Way Act 2000.

PART I: INTRODUCTORY

4. The first part of the Order has 2 Articles relating to the Order as a whole. Article 1 provides for the title and commencement provisions. Article 2 deals with interpretation and defines a number of general terms used throughout the Order. It also applies the Interpretation Act (Northern Ireland) 1954 which lays down rules for the construction of legislation in Northern Ireland.

PART II: POLLUTION PREVENTION AND CONTROL

BACKGROUND AND POLICY OBJECTIVES

5. The aim of the IPPC Directive is to provide a regulatory framework for a high level of protection of the environment through the prevention or reduction of emissions to air, water and land as a result of industrial activities.
6. The European Council adopted the IPPC Directive in September 1996. It is derived in large measure from the UK system of integrated pollution control (although there are some important differences) which was introduced in Northern Ireland in the Industrial Pollution Control (Northern Ireland) Order 1997 (the 1997 Order) and the legislation now proposed will, to a large extent, follow the procedures already established by the 1997 Order.

7. Once implemented, the new arrangements will progressively replace the current controls on industrial pollution provided for in the 1997 Order.

Current Position

8. The 1997 Order provides for a 3-tier system for the control of pollution from certain prescribed industrial processes, as follows: -
 - those processes with the greatest potential for pollution (Part A processes) are subject to a system of integrated pollution control. This means that a single authorisation covers releases to air and water as well as addressing waste minimisation and handling of wastes on site. The enforcing authority for Part A processes is a Chief Inspector appointed under the Order by the Department;
 - a range of processes with lesser pollution potential (Part B processes) are subject to a system of air pollution control only. The enforcing authority for this category is also the Chief Inspector;
 - a further range of processes (Part C processes) are also subject to a system of air pollution control only with the relevant district council as the enforcing authority.
9. Authorisations under the 1997 Order must contain conditions based, primarily, on the use of the “best available techniques not entailing excessive cost” for preventing or minimising polluting emissions. Part A processes must also have regard to the “best practical environmental option”.

Key Features

10. The provisions of Part II will share a number of features with the current arrangements under the 1997 Order. In particular, they will retain the regulatory structures of that Order with a Chief Inspector assuming responsibility for regulation as Part A activities of those installations listed in Annex 1 to the IPPC Directive. This means that all such installations will be assessed against their capacity to cause significant pollution to air, water and land.
11. In addition, the provisions of the 1997 Order relating to Part B and Part C processes will be repealed and re-enacted in the new legislation.
12. However, to reflect the specific requirements of the IPPC Directive, Part II will provide for the subordinate legislation to apply a number of new features to Part A installations. These may be summarised as follows:
 - The legislation will require the permitting of installations rather than the authorisation of processes.
 - The range of installations will be much wider than at present. The main additions, above a certain capacity, will be
 - agricultural installations for the intensive rearing of poultry and pigs;
 - landfill sites;
 - slaughterhouses;
 - installations for the treatment and processing of animal raw materials; and
 - installations for the treatment and processing of vegetable raw materials.
 - The range of environmental impacts to be considered by the Chief Inspector when considering the grant of a permit will be much wider and will include issues such as

noise, site restoration, accident prevention, energy efficiency and raw material selection and use.

- There is no provision for any installations to be exempted from control, for example, because of the “triviality” of its emissions.
 - There are no timescales set for the review of permits which are to be reviewed “periodically” to take account of technological or other changes.
 - There will be provision for the use of general binding rules as an alternative to individually tailored permit conditions across sectors where there is a high degree of uniformity.
13. The IPPC Directive’s requirements applied to new installations immediately upon its coming into effect and to parts of existing installations which undergo a “substantial change” immediately such a change occurred. Existing installations in so far as they are not substantially changed, were afforded a period of grace of up to eight years after the Directive was brought into effect, during which they would need to be upgraded to meet the Directive’s requirements. All installations therefore must be permitted by 31 October 2007. Once issued, a permit must be reviewed periodically, and must be updated if there are significant technological or other developments.
14. A phased call-in of installations by sector will be provided for in the subordinate legislation. Special provision will also be made for dealing immediately with those installations which required permitting in the period between the operational date of the Directive and the effective date of the legislation.

CONSULTATION

15. The Department issued an initial consultation paper on its proposals in June 2001. There was also full consultation with the Northern Ireland Assembly’s Environment Committee. Some 500 bodies and individuals representative of the interests of local government, industry, agriculture and small businesses were consulted and 30 responses were received. The majority were in favour of the proposals and only 16 made significant comments. Of these, the Department accepted 8 and rejected 8. Of those rejected, 4 were rejected on policy grounds, 3 on the basis that what was being proposed would be outside the scope of the legislation and 1 on the ground that the proposal would be a breach of the Directive.

OPTIONS CONSIDERED

16. Initially, three options were considered for transposing the requirements of the IPPC Directive in Northern Ireland. The first was a “do nothing” option. However this was discounted on the grounds that transposition of Directives into law by Member States is mandatory.
17. The second option considered was to transpose by regulations made under the European Communities Act 1972. While this would be possible in legislative terms, it would not be possible, without primary legislation, to re-align the whole of the 1997 Order with the new pollution control scheme to implement the requirements of the IPPC Directive. The result would be a new integrated pollution prevention and control scheme running alongside the regime already established under the 1997 Order for those installations not covered by the Directive. This would be confusing for both installation operators and enforcing authorities.

18. The third option considered was to transpose through a combination of primary and subordinate legislation. This would parallel the transposition arrangements in England, Scotland and Wales.
19. In addition to the advantage of a single pollution control regime outlined above, this option had the added advantage of enabling the primary legislation to provide powers for other relevant Directives to be transposed by way of regulations without the need for further primary legislation.
20. In view of these advantages, the Department proceeded by way of the third option.

COMMENTARY ON ARTICLES

PART II: POLLUTION PREVENTION AND CONTROL

Part II contains 6 Articles.

The purpose of Part II, and the subordinate legislation to be made under it, is to provide a statutory framework to enable transposition of the IPPC Directive and make additional provision for the prevention and control of environmental pollution.

Article 3 sets out the general purpose for which regulations may be made under *Article 4* including, in particular, implementing the IPPC Directive. The new system will have to incorporate the concepts and principles used in the Directive (such as Best Available Techniques and the general principles relating to energy efficiency, the control of waste production and site restoration) in so far as the installations covered by the Directive are concerned. The Directive's requirements will, however, be modified or disapplied, where appropriate, for the purposes of applying the new control regime to installations not covered by the Directive.

Article 4 confers on the Department power to make regulations creating a new regime of pollution control, for the purpose set out in *Article 3* and to the extent provided for in *Schedule 1*. The main purpose of *Article 4* is to provide the Department with powers to make regulations to transpose the requirements of the IPPC Directive. In addition, the Department may use these powers to make regulations in connection with other EU Directives and Northern Ireland legislation relating to environmental pollution, as set out in paragraph 20 of *Schedule 1*.

Paragraph (4) lists those bodies or persons which the Department must consult before making regulations. This paragraph looks to the future and will ensure, once the Order has been introduced, that the Department will consult widely before using its powers to make regulations under the Order.

However, *paragraph (5)* provides that consultation undertaken before the coming into operation of *Article 4* will be considered as effective compliance with the requirements of *paragraph (4)*. This provision is intended to have a strictly limited application and its main purpose is to give legitimacy to consultation which is being carried out on a set of draft regulations to be made under Part II of the Order in respect of the IPPC Directive before the Order itself comes into effect. This will enable the Order and draft regulations to be considered in parallel thereby ensuring that all the necessary legislation becomes operative as quickly as possible.

It is intended that the regulation-making powers in *Article 4* will be used by the Department to transpose the requirements of other EU Directives. However, in no circumstances will the

Department use these powers to rely on consultation carried out on any issue before the date of the introduction of the legislation to the Assembly.

The first set of regulations made under the Order will be subject to approval of a draft by a resolution of the Assembly. Any subsequent regulations which contain provisions creating an offence or increasing a penalty or amending or repealing any Northern Ireland legislation, will also be subject to that same procedure. For other regulations, the negative resolution procedure in the Assembly may be used.

Articles 5 and 6 deal with the specific issue of waste management. Certain transitional arrangements and consequential amendments are necessary to facilitate the change over from disposal licences under the Pollution Control and Local Government (Northern Ireland) Order 1978 (the 1978 Order) to site licences under the Waste and Contaminated Land (Northern Ireland) Order 1997 (the Waste Order) and then the further progression to permitting under this Order which will be required for certain large landfill installations falling within the scope of the Directive.

The provisions of the Waste Order have not yet been brought fully into operation. However, Article 47 of that Order is intended to convert subsisting disposal licences into site licences on the date when the waste management licensing regime comes into operation. That provision sets a time limit of three years for the duration of the newly created site licence. In that event, after three years have elapsed the operator of the installation could leave the site without any continuing obligations to address environmental and health safeguards. In order to avoid that result, some amendment of Article 47 is considered necessary. The solution proposed in *Article 5* of this Order is that the newly converted site licence should be of indefinite duration, as is the case with other site licences under Article 6(10) of the Waste Order, and therefore it becomes subject to requirements in relation to revocation or surrender. Equivalent provision is made as regards resolutions of district councils allowing land in their occupation to be used for waste deposit purposes, because those resolutions are similarly converted into waste management licences by Article 47.

Article 6 continues the process of transition from disposal licences to site licences and ultimately to permits under this Order.

It is possible that there are cases where disposal licences issued by district councils under the 1978 Order have been allowed to expire inadvertently although the operator has carried on with operations authorised under the expired licence. The purpose of *Article 6* is to provide that, in these circumstances, such licences are deemed not to have expired and to allow them to be brought within the transitional arrangements provided for by *Article 5* of this Order and Article 47 of the Waste Order. Under these arrangements existing disposal licences under the 1978 Order are deemed to be site licences under the Waste Order as from the date of the introduction of the new waste management licensing regulations (the appointed day).

However, these arrangements are not open-ended but are subject to two strict provisos provided for in *Article 6*.

Firstly, a licence holder will be able to benefit from the new arrangements only if the activities carried on after the expiry date are the same as those authorised under the original licence. This is provided for in *paragraph (1)(b)* and the definition of ‘relevant activities’ in *paragraph (7)*. Any licence holder who continues to carry on operations not authorised by the expired licence will not be able to benefit from the new arrangements and will be open to prosecution for breach of licence conditions in the normal way.

Secondly, through the definition of the terms ‘appointed day’ and ‘relevant day’ in *paragraph (8)*, *Article 6* provides a timescale within which its provisions are to apply. The ‘relevant day’

is defined as the day falling one year before the Order is made. The 'appointed day' is defined as the date on which the regulations introducing the new waste management licensing controls under the Waste Order are brought into operation.

Therefore, any existing disposal licence which expires between these dates but where the operator continues to carry on operations will be deemed not to have expired provided that any activities which are carried on were authorised under the expired licence. Because such licences will be deemed still to exist at the 'appointed day' they will at that date, by virtue of the transitional provisions in the Waste Order, be converted to site licences under that Order and therefore subject to the new waste management licensing controls. The terms and conditions attached to the replaced licence continue to apply to its successor.

Paragraph (4) ensures that activities which were not criminal when they were carried out are not criminalised as a consequence of these provisions. By *paragraph (5)*, however, criminal proceedings which have reached the stage where the accused has been convicted are not affected in any way.

Paragraph (6) imposes on district councils a duty to notify licence holders affected by these provisions.

Article 7 provides the Department with new powers to make grants to bodies involved in activities relating to the recovery or disposal of waste in pursuance of the objectives of the Department's Waste Strategy, or the prevention or control of environmental pollution.

Article 8 defines some of the key words and phrases used in Part II.

FINANCIAL EFFECTS

21. There will be financial and resource implications for enforcing authorities arising from the exercise of functions under Part II. In accordance with the 'polluter pays' principle enforcing authorities will be able to recoup the full costs of their regulatory activities through charging schemes.

REGULATORY IMPACT ASSESSMENT

22. A partial Regulatory Impact Assessment setting out the costs to industry of complying with the new controls was published by the Department as part of its consultation paper on the subordinate legislation (the draft Pollution Prevention and Control Regulations) which was published for consultation on 29 August 2002.

EFFECTS ON EQUAL OPPORTUNITY

23. No evidence of adverse or differential impact in relation to any of the groups mentioned in section 75 of the Northern Ireland Act 1998 has been identified arising from the provisions of Part II.
24. The Department published its Equality of Opportunity Screening Analysis for the provisions of Part II as part of its consultation paper on the subordinate legislation referred to in paragraph 22 above which was published for consultation on 29 August 2002.

EUROPEAN CONVENTION ON HUMAN RIGHTS (ECHR)

25. The provisions of Part II are considered to be compatible with the ECHR.

PART III: AIR QUALITY

BACKGROUND AND POLICY OBJECTIVES

26. Part III of the Order will make provision for implementing Council Directive 96/62 EC on Ambient Air Quality Assessment and Management. It will also satisfy the Northern Ireland Executive's Programme for Government (PfG) commitment to have in place, by May 2003, a policy and legislative framework to deliver Northern Ireland's contribution to the targets in the UK Air Quality Strategy for England, Scotland, Wales and Northern Ireland.
27. Effective transposition of the Directive requires the establishment of a statutory scheme affecting the relevant parties. Part III, therefore, places a range of statutory requirements on relevant authorities (to be prescribed by regulations). These statutory requirements are dictated by the responsibilities within the various agencies' control and what is required to satisfy the Directive.

Key Features

28. The provisions of Part III seek to establish an effective local air quality management system for Northern Ireland. This aim will be achieved by:
- Implementing in Northern Ireland the requirements of the EC Directive (96/62/EC) on ambient air quality assessment and management. This will contribute to our achievement of the targets in the Air Quality Strategy for England, Scotland, Wales and Northern Ireland;
 - Placing a statutory requirement on the Department to draw up an Air Quality Strategy for Northern Ireland (this may be a joint strategy with other Administrations);
 - Placing a duty on District Councils to conduct reviews and assessments of local air quality;
 - Providing a statutory mechanism to deliver air quality management objectives; and
 - Providing powers for the declaration by District Councils of air quality management areas and the establishment of action plans, indicating the measures to be taken where there is a risk of the limit values and/or alert thresholds being exceeded.
29. Subsequent Regulations to be made under Part III will place in statute the objectives and targets contained in the Air Quality Strategy which will reflect established EC limit values (objectives) and targets.
30. The proposals in Part III are mainly based on those contained in Part IV of the Environment Act 1995 which covers England, Scotland and Wales. In addition, Part III provides the Department with the power to fund air quality work and to recoup the cost of carrying out any air quality function on behalf of a District Council. It also ensures the public are kept informed of air quality issues such as the designation of air quality management areas.

CONSULTATION

31. In October 2001 the Department carried out a public consultation on the proposal to provide legislation for the management of air quality in Northern Ireland and in January 2002 officials made a presentation to the Northern Ireland Assembly's Environment Committee setting out the proposals for the legislation.
32. As a result of the consultation exercise a total of 36 responses were received, all of which welcomed the proposals. The majority of the responses have been met by clarification of the proposals without the need for any change to the proposals. Of the remaining 5 issues raised, 4 were rejected on the grounds that they were not a matter for the legislation and one was accepted.

OPTIONS CONSIDERED

33. Initially, three options were considered for transposing the requirements of the ambient air quality assessment and management Directive in Northern Ireland. The first was a "do nothing" option. However this was discounted on the grounds that transposition of Directives into law by Member States is mandatory.
34. The second option considered was to transpose by regulations made under the European Communities Act 1972. While this would be possible solely in respect of transposing the Directive on ambient air quality assessment and management it would not provide a legislative framework to deliver Northern Ireland's contribution to the targets in the Air Quality Strategy for England, Scotland, Wales and Northern Ireland.
35. The third option considered was to transpose through a combination of primary and subordinate legislation.
36. This option had the advantage of providing for a combined transposition of the EC Directive and the creation of a legislative framework to deliver Northern Ireland's contribution to the targets in the Air Quality Strategy for England, Scotland, Wales and Northern Ireland. In addition this option had the advantage of enabling the primary legislation to provide powers for other relevant Directives to be transposed by way of regulations without the need for further primary legislation.
37. In view of these advantages, the Department proceeded with the third option.

COMMENTARY ON ARTICLES

Part III contains 19 Articles.

Article 9 provides that Part III contains provisions for implementing the Council Directive 96/62 EC on ambient air quality assessment and management in Northern Ireland.

Article 10 imposes on the Department the obligation to prepare and publish a statement or strategy document setting out the air quality strategy for Northern Ireland. The strategy should contain policies for the assessment and management of air quality, which have been formulated to prevent or mitigate the effects of pollution. The strategy should also set out the European framework within which the strategy must work and include standards and objectives for specific pollutants and a timetable for their achievements. It should also set out the steps/measures, which the Government is proposing to take. The Strategy may be a joint strategy with other Administrations or a Northern Ireland regional one.

Article 11 places a responsibility on each District Council to carry out a review of the air quality, and the likely future quality of air, within its area. Where a review has been carried out, an assessment should be made, within a specified period, of whether the air quality standards and objectives are being achieved. The District Council will then be required to identify particular parts, within its area, where the standards are not likely to be achieved.

Article 12 provides that where a District Council carries out a review of its air quality, and finds that in a certain part of its area air quality standards and objectives are not being met, or are unlikely to be met within the time period, it must make an order designating that part of its area as an air quality management area. The District Council is required to publish the order. An order may also be varied or revoked by a further order.

Article 13 sets out the steps a District Council must take after it has made a designation order. Within a specified period of making the designation order, it must supplement the information it has on the designated area by carrying out an assessment. The assessment of the air quality should cover the present and likely future air quality standards or objectives and whether they are being or are not likely to be achieved. The District Council will then prepare a report of the findings of the assessment.

Article 14 confers on the Department the power to exercise any of the air quality functions, which should be undertaken by a District Council. It also gives the power to the Department to recoup the costs of any such exercise undertaken on a District Council's behalf. The Department has also a power to give direction to a District Council requiring it to carry out a specific action in relation to air quality. This Article also provides a power for the Department to give direction to a District Council in order to implement aspects of Community Treaties, or any international agreement relating to the quality of air. There is also a requirement placed on the Department to publish any directions given and to make copies available to the public. A District Council must comply with any such direction given to it.

Article 15 provides the Department with the power to make regulations to implement the air quality strategy, and to implement UK obligations under the Community Treaties or other international obligations, or to make more detailed provision for the assessment or management of air quality.

Article 16 provides the power to a relevant authority to make recommendations to a District Council in relation to any of its air quality functions. There is also a power given to the Department to issue guidance to a District Council or a relevant authority concerning a District Council's or a relevant authority's functions under Part III.

Article 17 applies the provisions of *Schedule 2*.

Article 18 provides a power for the Department to make grants or loans to any body or person carrying out work in relation to reviews, assessments, the drawing up of action plans, and the management of air quality. The Department will determine the amounts paid, and the terms and conditions for any payments, or repayments.

Article 19 and *Schedule 3* provide persons authorised by enforcing authorities with powers of entry and inspection for the purpose of carrying out functions under Part III.

Article 20 deals with offences by a person who obstructs an authorised person in the exercise of his duties. It also states that it is an offence for a person without reasonable excuse to fail to comply with any requirement imposed under *Article 19*.

Article 21 sets out the arrangements for disclosing information obtained under the provisions of Part III. It allows for information to be exchanged between the Department and a relevant authority for the purposes of carrying out any of their functions.

It also provides that information shall not be given out if the information relates to a trade secret or is commercially confidential or if the Secretary of State decides that it is against the interests of national security.

Article 22 enables regulations to be made to modify the provisions of Part III to enable the United Kingdom to give effect to any Community obligations or any international agreements.

Article 23 applies, with the omission of certain words, the provisions of section 20(2) of the Interpretation Act (Northern Ireland) 1954 (c.33) relating to offences by a body corporate.

Article 24 states that were a person commits an offence and it is due to the action of another person, that other person may be charged and convicted of an offence regardless of whether proceedings are taken against the first person.

Article 25 sets out the rights and obligations of the Crown including Crown premises, in relation to the provision of Part III.

Article 26 specifies those regulations, made under Part III which are to be subject to affirmative resolution and those which are to be subject to negative resolution by the Assembly. It also outlines the requirements of a direction given by the Department.

Article 27 defines some of the key words and phrases used in Part III.

FINANCIAL EFFECTS

38. A number of financial implications could arise in relation to the implementation of the policy provided for by the provisions of Part III – mainly in the area of smoke control, transportation, and assistance to District Councils in connection with the review and assessment process. Costs cannot be quantified at this time, and are unlikely to be able to be estimated before completion of the review and assessment process being undertaken by the District Councils (scheduled for completion by December 2003).

REGULATORY IMPACT ASSESSMENT

39. A regulatory impact assessment is not required for Part III as the proposed legislation merely puts in place a mechanism for the delivery of air quality management which in itself it does not require specific actions on the part of business. It is envisaged that under normal circumstances the provisions of Part II on the control of industrial pollution will adequately control pollution from that source. A partial Regulatory Impact Assessment has already been prepared and published for that legislation.
40. With regard to District Councils, the Department (in advance of the introduction of the Order) introduced a grants scheme to assist District Councils in reviewing and assessing local air quality to identify likely problem areas and necessary remedial measures. The package offers grants totalling £1M a year to support councils in this important work.

EFFECTS ON EQUAL OPPORTUNITY

41. No evidence of adverse or differential impact in relation to any of the groups mentioned in section 75 of the Northern Ireland Act 1998 has been identified arising from the provisions of Part III.
42. Research undertaken on behalf of the Department has indicated that it is likely that policies to reduce air pollution concentrations in areas where they are highest could impact marginally more beneficially in the more deprived communities. Therefore, it is likely that the outcomes associated with the proposed legislation will result in a marginally positive Targeting Social Need (TSN) effect.

EUROPEAN CONVENTION ON HUMAN RIGHTS (ECHR)

43. The provisions of Part III are considered to be compatible with the ECHR.

PART IV: AREAS OF SPECIAL SCIENTIFIC INTEREST

BACKGROUND AND POLICY OBJECTIVES

44. The purpose of Part IV of the Order is to introduce measures to allow for the better protection and management of Areas of Special Scientific Interest (ASSIs). These sites represent the finest examples of semi-natural habitat and species sites to be found in Northern Ireland due to their fauna, flora or geological/physiographical features. The provisions of this Part will also satisfy the Northern Ireland Executive's Programme for Government (PfG) commitment to have in place, by July 2003, a policy and legislative framework for the protection and management of these sites.
45. The provisions of Part IV will replace the existing provisions pertaining to ASSIs in Part VI of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985. The provisions are also comparable to the legislative provisions introduced to protect ASSI equivalent sites in England and Wales (namely Sites of Special Scientific Interest) as part of the Countryside and Rights of Way Act 2000. They will also help address the requirements of European designated sites by satisfying the requirements of Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna (the Habitats Directive) as transposed by the Conservation (Natural Habitats etc.) Regulations (Northern Ireland) 1995.

Key Features

46. The provisions of Part IV seek to establish provisions that will help to better safeguard, protect and manage ASSIs. This aim will be achieved by the following:
 - Placing a statutory requirement on the Department to provide owners and occupiers with a statement outlining its views on the management of the land for the purposes of conservation.
 - New ASSI declarations to be announced by public notice to invite as widespread representation as possible.
 - Powers of entry for officials to enter land for survey, monitoring and enforcement purposes subject to appropriate safeguards.
 - Powers to amend the existing boundaries or citation of an ASSI in addition to powers to de-notify all or part of an ASSI.

- Powers to refuse consent for activities that would damage the “special interest” of an ASSI. This will be accompanied by an appeal mechanism.
 - Increased fines against owners and occupiers who cause or permit damaging operations without prior consent of the Department.
 - A new offence of intentional or reckless damage or disturbance to the special features of an ASSI.
 - Powers to make byelaws for the protection of an ASSI.
 - Payments to landowners for management of sites in accordance with the terms of a management agreement or in instances where an owner or occupier suffers loss arising from the withdrawal or modification of a consent.
 - Revised powers to allow for the compulsory acquisition of land where an ASSI is under threat from damage.
 - Introduction of Management Notices which will address cases of neglect or inappropriate management which threaten the conservation interest of an ASSI. This will be subject to an appeal mechanism.
 - A statutory duty on public bodies to further the conservation and enhancement of ASSIs.
47. The Department regards as essential the need to continue the partnership approach with owners and occupiers and will continue to foster good relations and co-operation at all times.

CONSULTATION

48. A full public consultation was carried out in two stages. In March 2001 the Department published “Partners in Protection”, a review document setting out 20 key issues pertaining to ASSIs and sought comment to inform the Department’s development of proposals.
49. As a result of this consultation exercise a total of 35 comments were received with strong support for the introduction of measures from the majority of respondents. On the basis of comments received, the Department devised a number of proposals which were subject to a further round of public consultation. The second consultation produced 31 responses with the vast majority in favour of the proposals detailed.
50. Officials made presentations to the Northern Ireland Assembly’s Environment Committee to assist its deliberations on the proposals throughout both consultation periods.

OPTIONS CONSIDERED

51. Three options were considered. The first was a “do nothing” option but this was discounted. The existing legislation is deficient in a number of key areas such as measures to avoid damage or deterioration to ASSIs from activities undertaken by landowners or the problems arising from third parties. Fines are also considered inadequate and an ineffective deterrent to protecting the integrity of sites. There could be an adverse impact on biodiversity and the Department’s ability to meet its European and International commitments.

52. The second option was a fundamental overhaul of existing legislation to include other nature conservation issues such as wildlife protection and marine conservation. This would be an extremely long and time consuming process leaving sites vulnerable until such time as the new legislation would come into effect. In addition, the Department must ensure compliance as expeditiously as possible with its legislative requirements on European designated sites by improving Northern Ireland legislation on ASSIs and subsequently amending the Regulations that transpose the EC Habitats Directive.
53. The third option was to introduce measures designed solely to ensure more effective protection and management ASSIs. The provisions of Part IV which were finalised following the extensive consultation process will secure that aim in addition to maximising the value of habitats and related species, assisting the delivery of biodiversity targets for Northern Ireland and helping fulfil EC and international obligations.

COMMENTARY ON ARTICLES

Part IV contains 25 Articles

Article 28 enables the Department to declare an Area of Special Scientific Interest. It also requires the Department to notify an ASSI declaration and allow for representations or objections to it. Subject to this, the Department shall confirm (with or without modifications) the declaration or rescind it.

Article 29 enables the Department to vary the matters specified in the declaration, other than the area of land concerned, at any time after confirmation. In doing so the Department must inform the district council in whose district the ASSI is located and relevant owners or occupiers and allow them the opportunity to make representations or objections prior to confirming the variation (with or without modifications) or rescinding it.

Article 30 enables the Department to increase the area of the ASSI. This will be subject to requirements similar to those outlined for declaration.

Article 31 provides a power for the Department to denotify all or any part of an ASSI that is no longer of special interest. This will be subject to requirements similar to Declaration (*Article 28*) and Declaration of Additional Land (*Article 30*).

Article 32 provides that the owner or occupier of an ASSI shall not carry out any operations specified in the declaration under *Article 28* as likely to damage the site unless notice is given to the Department of a proposal to carry out the operations and the Department gives its consent; or the works are carried out under the terms of an agreement with the Department; or under a management notice. The consent may be conditional and time limited. The Department may also, by notice given to the owner or occupier, withdraw or modify the consent in any way. The Department will be required to explain any refusal, modification or withdrawal of consent to the owner or occupier and refer to the right of appeal under *Article 33*.

Article 33 enables a person to appeal where he has been refused consent to carry out operations on an ASSI (this includes a deemed refusal where, after three months, the Department has neither granted nor refused consent). He can also appeal where he has been granted consent subject to conditions or where he is aggrieved by the modification or withdrawal of a consent. The appeal to the Planning Appeals Commission must be made within two months of the decision, or failure by the Department to decide.

Article 34 deals with management agreements between the Department and owners or occupiers of land within ASSIs.

Article 35 enables the Department to serve a management notice on the owner or occupier where it considers that the features, which make the site an ASSI, are being inadequately conserved or restored.

Article 36 enables any person who has been served with a management notice, to appeal against it to the Planning Appeals Commission. Notices may be quashed, varied or confirmed.

Article 37 provides that if the Department withdraws or modifies an existing consent to carry out operations, it must offer a payment to an owner or occupier if he suffers loss as a result. The amount of the payment is to be determined by the Department in accordance with guidance given and published by the Department. Any disagreement between the Department and an owner or occupier as to the amount of payment will be referred to and determined by the Lands Tribunal. The Article also provides that the Department may make payments in respect of management agreements.

Article 38 imposes a duty on “public bodies”, in exercising their functions, to take reasonable steps, consistent with the proper exercise of those functions, to further the conservation and enhancement of the special features of an ASSI. “Public bodies” are defined in *paragraph (3)* to include Northern Ireland and UK Government Departments district councils, statutory undertakers and other public bodies.

Article 39 requires a public body to notify the Department when it propose to carry out operations in the exercise of its functions, which are likely to damage the features of any special interest of an ASSI. This applies equally to works outside an ASSI, which may affect that ASSI. The Department may refuse its assent, or assent to the operation (with or without conditions). Where assent is refused, or the conditions are not acceptable, the public body may proceed with the works provided that they give the Department not less than 28 days notice of the start of the operation. The notice must state how the body has taken into account any advice which the Department has given. It is a requirement that any such operations are carried out so as to cause as little damage as is reasonably practicable, and that the body restore the site to its former condition again, so far as is reasonably practicable if damage does occur.

Article 40 applies where a public body has power to grant permissions, including authorisations or consents, for other parties to carry out operations (whether on or outside an ASSI) which are likely to damage the special features of an ASSI. Before granting any such permission they must give the Department not less than 28 days notice. Before making any decision the body must take into account the advice of the Department, which may include advice on conditions to be attached to the permission by virtue of *paragraph (5)(b)*. If the body intends to grant permission against the advice of the Department, it must notify the Department and the permission must allow 21 days before the operations may commence. This would, for example, give the Department an opportunity to contact the applicant to discuss ways of mitigating any effects, or to offer a management agreement.

Article 41 gives the Department a compulsory purchase power in relation to land which is an ASSI. This power may only be exercised where the Department cannot secure an agreement for the management of an ASSI or where the terms of such an agreement have been breached in such a way that the land is not being managed satisfactorily and it is necessary therefore for the protection of the special features of the ASSI. Where the Department has acquired the land it may also acquire land for the purpose of a means of access to that ASSI. The Department may then either manage the land or dispose of it to ensure its future management.

The Department may also dispose of the land acquired if it no longer requires the land for the purpose it was acquired.

Article 42 states that the Department may carry out works and do such other things on land acquired under *Article 41* if it considers such works etc necessary for the proper management of the land in accordance with the purposes for which the land was acquired.

Article 43 enables the Department to enter into agreement with any owner or occupier of land outside an ASSI in order to protect or enhance or prevent damage to or destruction of the special features inside the ASSI.

Article 44 provides the Department with the power to enter onto land for a range of specified purposes. These include assessing whether land should be declared as an ASSI; formulating a scheme for the management of an ASSI in order to conserve its special features; assessing the condition of the features on the site, and ascertaining whether an offence under *Article 46* has been committed. It allows for entry to the land by vehicle or boat, and the person entering the land may take equipment or materials with him. The Department's approach will normally be to seek access by agreement with the owner or occupier. The person entering the land must leave it as effectively secured as he found it and the Department will be liable to pay compensation for any damage caused by the exercise of the power of entry.

Article 45 gives a power to the Department to make byelaws on any ASSI. Before making any byelaws the Department shall consult the Council for Nature Conservation and the Countryside.

Article 46 provides for the creation of offences and penalties in connection with the contravention of the provisions of Part IV.

Article 47 enables a court, before which a person has been found guilty of an offence under *Article 46* (which relates to the conservation of areas of special scientific interest), to require an offender to make good as far as is practicable the damage he has caused by his activities.

Article 48 places a duty on the Department and the Council for Nature Conservation and the Countryside and any other body with functions under Part IV to have due regard to the needs of agriculture, forestry and fisheries.

Article 49 sets out the rights and obligations of the Crown in relation to the provisions of Part IV.

Article 50 lists the following items which are to be registered in the Statutory Charges Register; any declaration under *Article 28(1)*, any management agreement under *Article 34* or any related waiver and any management notice under *Article 35*.

Article 51 provides for the application of the transitional provisions set out in *Schedule 4*.

Article 52 defines some of the key words and phrases used in Part IV.

FINANCIAL EFFECTS

54. The Department considers that it has sufficient resources in place to implement most aspects of the current legislation governing ASSIs. These resources are also considered sufficient to enable the Department to commence a programme of introducing the provisions detailed in the Bill. The Department recognises that it

would have some discretion towards the deployment of the provisions detailed in Part IV and that there are no new forms of regulation being proposed.

55. It can be anticipated that the Department would be urged to make use of the new measures detailed in Part IV as time progresses, particularly where it needs to act decisively in order to protect sites of European and international importance from the threat of damage.
56. Part IV also contains provisions for appeals in respect of the refusal of consent to carry out notifiable operations in addition to management notices dealing with neglect or inappropriate management. Costs in respect of these cannot be quantified, as the Department cannot reliably estimate the number of appeals that may arise.
57. For the above reasons the Department will seek to bid for modest additional resources so that it would be in a position to implement the provisions of Part IV at the earliest opportunity.

REGULATORY IMPACT ASSESSMENT

58. The provisions of Part IV have been subject to a full Regulatory Impact Assessment. In summary, they may, in a small number of cases, impact on owners or occupiers in terms of ceasing activities that may damage the important features of an ASSI. It is expected that this will be offset (as per the provisions of Article 37) by payments to landowners who enter into management agreements or payments in instances where an owner or occupier suffers loss arising from the withdrawal or modification of a consent.
59. The appeals procedure may entail costs to owners or occupiers should they seek legal representation.
60. However, for the vast majority of owners and occupiers, the proposals will have little impact. The provisions should help clarify the responsibilities of the Department on the one hand and owners and occupiers on the other. They balance greater regulation of owners and occupiers with assistance for better management and represents the most equitable outcome for those who own or manage ASSI land and for the taxpayer. They will also help deliver the Department's aims of improving the protection of ASSIs, meet its obligations under the Habitats Directive, provide improvements in terms of value for money, strengthened partnerships and better enforcement and monitoring. In this way they can help attain the key PfG target to ensure improved protection of ASSIs and in a manner conducive to continuing good relations between government and ASSI landowners and occupiers.

EFFECTS ON EQUAL OPPORTUNITY

61. No evidence of adverse or differential impact in relation to any of the groups mentioned in section 75 of the Northern Ireland Act 1998 has been identified.
62. A full screening exercise has been undertaken and there is no evidence that the provisions of Part IV will have any impact on equality issues. The declaration of ASSIs (and their subsequent management and protection) is based solely on scientific criteria with regard to the nature conservation quality of the land. The Department does not consider a full Equality Impact Assessment to be necessary.

EUROPEAN CONVENTION ON HUMAN RIGHTS (ECHR)

63. The provisions of Part IV are considered to be compatible with the ECHR

PART V: SUPPLEMENTARY

Article 53 provides for the amendment and repeal of a number of statutory provisions consequent on the introduction of the provisions of the Order.

SCHEDULES

Schedule 1 relates to the provisions of Part II of the Order. **Part I** lists the specific purposes for which the power in Article may be used and **Part II** provides supplementary provisions.

Schedule 2 relates to the provisions of Part III and sets out detailed procedural instructions relating to consultation requirements, exchange of information, joint exercise of district council functions, public access to information and fixed penalty offences.

Schedule 3 relates to the provisions on powers of entry in Part III and sets out detailed procedural instructions for the issue of warrants, obtaining information which may be admissible evidence, securing premises and compensation.

Schedule 4 provides a number of transitional provisions in connection with the ASSI provisions of Part IV of the Order.

Schedule 5 provides for a number of minor and consequential amendments consequent on the introduction of the Order.

Schedule 6 provides for a number of repeals consequent on the introduction of the Order.