

Guidance explaining The Conservation (Natural Habitats, etc.) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019

**Last updated: December 2020
(Version 1)**

Sustainability at the heart of a living, working, active landscape valued by everyone.

Summary

To ensure the [Conservation \(Natural Habitats, etc.\) Regulations \(Northern Ireland\) 1995](#) (as amended) were operable after the end of the EU transition period, changes were made by the [Conservation \(Natural Habitats, etc.\) \(Amendment\) \(Northern Ireland\) \(EU Exit\) Regulations 2019](#). In this document we call these the 1995 and the 2019 Regulations.

Background

The 1995 Regulations are one of the pieces of domestic law that transposed the land and marine aspects of the Habitats Directive (Council Directive 92/43/EEC) and certain elements of the Wild Birds Directive (Directive 2009/147/EC) (known as the Nature Directives).

This document applies to Northern Ireland, including its inshore waters up to 12 nautical miles (nm) and explains the:

- Changes made to the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (as amended) to make them operable from 1 January 2021; and
- Functions transferred to the Department of Agriculture, Environment and Rural Affairs (DAERA) from the European Commission.

Some matters relating to United Kingdom (UK) coordination have been transferred to the Secretary of State (SoS).

This Guidance document does not cover offshore waters beyond 12nm but similar processes apply - see Department of Environment, Food, and Rural Affairs (DEFRA) guidance for further information (link to be provided early January 2021).

All other processes or terms in the 1995 Regulations remain unchanged and existing guidance is still relevant.

The obligations of a competent authority in the 1995 Regulations for the protection of sites or species have not changed. The expression ‘competent authority’ as defined in the 1995 Regulations, includes government departments, district councils and statutory undertakers, and any trustees, commissioners, board or other persons who, as a public body and not for their own profit, act under any statutory provision for the improvement of any place or the production or supply of any commodity or service.

Scotland, England and Wales made similar changes to their legislation.

Summary of the main changes

The main changes to the 1995 Regulations are:

- The creation of a national site network within the UK territory, comprising the protected sites already designated under the Nature Directives, and any further sites designated under these Regulations;
- The establishment of management objectives for the national site network (the ‘network objectives’);
- A duty for DAERA to manage and where necessary adapt the national site network to achieve the network objectives;
- A new process for the designation of Special Areas of Conservation (SACs), in which the European Commission no longer has a role. (The process for Special Protection Area (SPAs) designation remains unchanged);
- New arrangements for reporting on the implementation of the Regulations, given that the UK no longer provides reports to the European Commission;
- New arrangements replacing the European Commission functions with regard to the public interest test where a plan or project affects a priority habitat or species; and
- New arrangements for amending the Schedules to the Regulations and the Annexes to the Nature Directives, that apply in the UK.

Creating a national site network

SACs and SPAs in the UK no longer form part of the EU Natura 2000 ecological network. The 2019 Regulations have created a national site network on land and at sea, including both the inshore and offshore marine areas in the UK. The national site network includes:

- Existing SACs and SPAs; and
- New SACs and SPAs designated under these Regulations.

Any references to Natura 2000 in the 1995 Regulations and in guidance now refers to the new national site network.

Maintaining a coherent network of protected sites with overarching conservation objectives is still required in order to:

- Fulfil the commitment made by government to maintain environmental protections; and
- Continue to meet international legal obligations, such as the Bern Convention, the Oslo and Paris Conventions (OSPAR), Bonn and Ramsar Conventions, and Convention on Biological Diversity (CBD).

UK Government Ministers have confirmed that former UK Natura 2000 sites in the national site network will continue to be the UK contribution to the Emerald Network, as part of the UK's commitment to the Bern Convention.

This national site network continues to operate in parallel with other site designations - Areas of Special Scientific Interest (ASSIs), Marine Conservation Zones and Ramsar sites - and contributes towards the Northern Ireland international commitments for protected areas.

Setting network objectives

The 2019 Regulations establish management objectives for the national site network. These are called the network objectives.

The UK Government and devolved administrations (Wales, Northern Ireland and Scotland) will cooperate to manage, and where necessary, adapt the network to contribute towards meeting the network objectives.

Any references in the 1995 Regulations to meeting the ‘requirements of the Directives’ includes achieving the network objectives.

The UK Joint Nature Conservation Committee (JNCC) will continue to have a key role in maintaining consistent standards across the UK.

The network objectives are to:

- Maintain or, where appropriate, restore habitats and species listed in Annexes I and II of the Habitats Directive to a favourable conservation status (FCS); and
- Contribute to ensuring, in their area of distribution, the survival and reproduction of wild birds and securing compliance with the overarching aims of the Wild Birds Directive.

DAERA must have regard to the:

- Importance of protected sites;
- Coherence of the national site network; and
- Threats of degradation or destruction (including deterioration and disturbance of protected features) on SPAs and SACs.

The network objectives contribute to the conservation of UK [habitats](#)¹ and [species](#)² that are also of pan-European importance, and to the achievement of their FCS within the UK.

¹ <https://jncc.gov.uk/our-work/ukbi-c3a-european-habitats/>

² <https://jncc.gov.uk/our-work/ukbi-c3b-european-species/>

Adapting the network

DAERA must adapt the network where necessary, given that the abundance and distribution of habitats and species within the network might evolve over time. DAERA may need to designate new SACs or SPAs to achieve the network objectives.

DAERA may also need to amend existing SACs or SPAs. For example:

- If the protected features have changed over time, including re-introduced species or a new or increasing population of birds on an existing site has reached internationally important numbers;
- If the site boundary needs to be moved in response to storm events or natural processes; or
- To include an area which compensates for the loss of other areas within the network as a result of a plan or project proceeding for imperative reasons of overriding public interest (IROPI).

Designating Special Areas of Conservation

The European Commission no longer has a role in designating SACs in the UK. The 2019 Regulations establish a designation process, where DAERA is the decision maker. DAERA should have regard to the advice of the relevant SNCB and JNCC. The selection and designation of SACs continues to be based on criteria set out in Annex III of the Habitats Directive. Annex III has been amended in relation to its applicability in the UK.

New SACs may be identified in both the terrestrial and marine environment.

For wide-ranging aquatic species, designated sites should be an identifiable area that is distinct in providing the physical and biological factors essential to their life and reproduction. This includes marine mammals (seals, bottlenose dolphins and harbour porpoises). This is to emphasise the need for areas designated for wide-ranging aquatic species to be those areas which are of ecological importance to the species.

Core areas where populations of these species regularly and frequently congregate at certain sensitive times are important. For example, specific sites identified where species breed, give birth and feed their young should be selected as SACs, rather than the whole geographic area where they have been recorded or found.

DAERA will carry out a public consultation on any new SAC proposals. On designation, the SAC will become part of the national site network. The site will be entered into the Register of European sites maintained under Regulation 10 of the 1995 Regulations. Interested parties will then be notified of the designation. The protections afforded to a proposed SAC (pSAC), the pre-requisite stage for SAC designation are unchanged.

Designating Special Protection Areas (SPAs)

There is no change to the process for classification of SPAs.

Declassifying SACs and SPAs

In exceptional circumstances, DAERA can declassify all or part of a SAC or SPA in order to adapt the national site network in response to natural developments. The process for de-classification is the same as the process for designating a site.

DAERA will assess:

- If the site continues to meet the criteria for designation; and
- If the site's contribution to the achievement of the conservation of natural habitats and species has been irretrievably lost.

De-classification may be appropriate where, for example, conservation measures based on best scientific and technical knowledge have been implemented but have not been successful.

De-classification cannot be based on a failure to comply with the obligations set out in the 1995 Regulations, as provided in case law such as the *Tre Pini* case³. De-classification is unlikely to result from a failure to adopt appropriate conservation measures to conserve, restore or avoid deterioration of the site, or a disturbance of the species for which the site is designated.

If DAERA decides to declassify a site or part of a site, it must make sure the:

- Coherence of the national site network is maintained; and
- Network objectives are achieved in other ways, such as designating new SACs or SPAs.

DAERA will also consider the JNCC SAC selection guidelines⁴.

Reporting obligations

DAERA retains regular reporting obligations similar to that required under the Habitats and Wild Birds Directives. DAERA must publish:

- A report every six years on implementation; and
- Biennial derogation reports - reports on the licensed activities that are exceptions to the legislation.

This ensures transparency and opportunity for public scrutiny of environmental performance in respect of the retained EU legislation.

The 2019 Regulations also place a duty on the Secretary of State to publish a composite report drawn from the 6-yearly reports of all the devolved administrations within 2 years of their publication.

³C – 301/12 *Cascina Tre Pini Ss v Ministero dell’Ambiente e della Tutela del Territorio e del Mare and Others*

⁴ <https://jncc.gov.uk/our-work/special-areas-of-conservation-overview/#sac-selection>

Imperative Reasons of Overriding Public Interest (IROPI)

If a competent authority determines that a plan or project affecting priority habitats or species constitutes IROPI, it shall seek the opinion of DAERA as the appropriate authority.

DAERA must consult with the devolved administrations, JNCC and any other person that DAERA considers appropriate in developing its opinion. DAERA authority will also take account of the broader national interest in developing their IROPI opinion.

Regulatory and Natural Resources Policy Division (RNRPD) on behalf of DAERA will publish the IROPI opinion they give to the competent authority. For further guidance please contact RNRPD at biodiversity.policy@daera-ni.gov.uk

Amending Schedules and Annexes

If any technical and scientific progress is made, DAERA may amend the Schedules to the 1995 Regulations, and the list of those habitats and species in the Annexes to the EU Directives, which apply to the UK.

The prohibited methods of capturing and killing wild animals, which are listed in the main body of the 1995 Regulations, are transferred into a new Schedule (3A) to allow for future amendments.

It is anticipated that changes will be rare but could, for example, include additions of new species in response to climate change or their successful reintroduction into Northern Ireland.

Any proposed changes will be subject to public consultation and will be made using statutory instruments.

Changes to Annex IV of the Habitats Directive and Schedules 2 (list of European Protected Species of Animal) or 4 (list of European Protected Species of Plant) of the 1995 Regulations will require an affirmative statutory instrument and be debated by the Northern Ireland Assembly. This will ensure appropriate scrutiny of the changes and replicates procedures formerly undertaken by the European Commission.

DAERA and JNCC will provide technical or scientific advice to the DAERA Minister on any proposed amendment. The Council for Nature Conservation and the Countryside (CNCC), as statutory advisors to DAERA on nature conservation issues, will also be approached as necessary.

Ministers in each nation of the UK will have similar powers to amend the Schedules and Annexes as they apply to their own jurisdiction. Arrangements have been agreed for how we will work together across the UK, where it is desirable to achieve consistency in approach.

For further information please contact: OperationalChangeUnit@daera-ni.gov.uk

Acronym markdown

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| DAERA: | Department of Agriculture, Environment, and Rural Affairs |
| SoS: | Secretary of State |
| DEFRA: | Department of Environment, Food, and Rural Affairs |
| SACs: | Special Areas of Conservation |
| SPA: | Special Protection Areas |
| OSPAR: | Oslo and Paris Conventions |
| CBD: | Convention on Biological Diversity |
| ASSIs: | Areas of Special Scientific Interest |
| JNCC: | Joint Nature Conservation Committee |
| FCS: | favourable conservation status |
| IROPI: | Imperative reasons of overriding public interest |
| SCI: | Site of Community Importance |
| RNRPD: | Regulatory and Natural Resources Policy Division |
| CNCC: | Council for Nature Conservation and the Countryside |