

# Northern Ireland's experience with Appropriate Assessment

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An Agency within the Department of the

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# **UK Background Regarding Appropriate Assessment of Plans**

## **European Court of Justice Case C-6/04 Commission v UK**

On October 2005 the ECJ ruled that the UK had failed to adequately transpose Article 6(3) and (4) of the Habitats Directive 92/43/EEC as regards land use plans.

# Conservation (Natural Habitats etc.) Regulations (Northern Ireland) 1995 (as amended)

## General provisions for the protection of European Sites Article 43: Assessment of implications for European Sites

- For plans that are likely to have a significant effect on a European Site the Competent Authority is to make an appropriate assessment, prior to agreeing the plan, of the implications for the site in view of the sites conservation objectives (43(1)).
- The Competent Authority shall for the purposes of the assessment consult the Department and have regard to any representations made by it (43(3)).

# Consult us the Department!!!

When are we, the Department, to be consulted???

What representations are we, the Department, meant to make???

Many questions.....we need guidance.

But can we find any???

## THE HABITATS REGULATIONS



## A GUIDE FOR COMPETENT AUTHORITIES



## Advice the Department can provide:

### Screening

- What is a plan or Project (3.1).
- Whether the plan is likely to have a significant effect on a European Site (3.2.1 -3.2.5).

### Appropriate Assessment

- Scope and content of the assessment (3.3.1).
- Identification and understanding of the sites conservation objectives (3.3.5).
- Mitigation measures (3.3.3).

### **Other communication with Department:**

- Notify the Department of the conclusions of the Appropriate Assessment (3.3.5).



European Commission

## Assessment of plans and projects significantly affecting Natura 2000 sites

Methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC



M. O'Brien

## Advice the Department (relevant Nature Conservation Agency) can provide:

### Screening

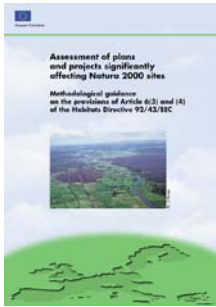
- Characteristics of Natura 2000 Sites (3.14).
- Whether the plan is likely to have a significant effect on a European Site (3.15).

### Appropriate assessment

- Further information about Natura 2000 Sites (3.2.2).
- Mitigation Measures (3.2.5).

### **Other communication with the Department:**

- Make available a finding of no significant effects report (3.1.6). Do the Department agree with finding? (3.6)
- **Send Appropriate Assessment Report for consultation (3.2.6).**



# Habitats Directive Article 6(3) and (4) Assessment Review Package

The package can be applied by competent authorities and the appropriate nature conservation agencies to ‘ensure that all the relevant material for the assessment has been provided and the assessment, and the conclusions drawn from them, have been carried out as transparently and objectively as possible’ (3.6.3).

# Habitats Directive Article 6(3) and (4) Assessment Review Package

The review allows for proportional judgements to be made as to whether or not the information, evidence and assessment are acceptable in the context of the particular plan and Natura 2000 site (3.6.2).

The review applies a review grading system to a number of criteria within sections associated with the Appropriate Assessment.

## Sections of the Review Package

1. Features of the plan.
2. Cumulative Effects
3. Description of the Natura 2000 site
4. Screening
5. Appropriate Assessment
6. Mitigation
7. Alternative Solutions
8. IROPP
9. Compensatory Measures

## The review grades

- A. The information provided is complete with no significant omissions, and the conclusions drawn can be reasonably and objectively accepted.
- B. The information provided is not complete, but in the circumstances of the particular case, the conclusions drawn can be reasonably and objectively accepted.
- C. The information provided is not complete, there are significant omissions, and it will be necessary to seek clarification on certain issues before the conclusions drawn can be reasonably and objectively accepted.
- D. The information provided is wholly inadequate and there can be no confidence in the conclusions drawn from the evidence.

# NIEA observations arising from the review of received Appropriate Assessments

## 1. Features of the Plan

- A good description of the purpose of the plan, its location and potential physical changes arising from the plan is usually provided. If the description is poor the rest of the review is difficult as the context of the plan and its assessment is unclear.
- Due to the strategic nature of many plans it is difficult to provide detailed information in relation to issues such as resource requirements, timescales of activities and waste arisings resulting from the plan. However generic information is usually provided which is proportional and which is considered throughout the assessment process.

# NIEA observations arising from the review of received Appropriate Assessments

## 2. Cumulative effects

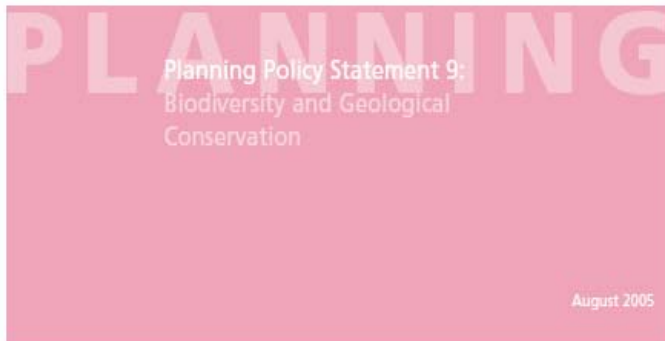
- Appropriate plans and projects are usually identified.
- There is usually good linkage with the SEA Environmental Report.
- Consideration of other plans and projects in the UK and Ireland is usually included.
- Appropriate potential cumulative pathways are usually identified.
- Timescales: there is sometimes difficulty regarding how to consider cumulative effects of other strategic plans or draft plans that do not have firm approved commitments.

# NIEA observations arising from the review of received Appropriate Assessments

## 3. Description of Natura 2000 Sites

- Appropriate sites to consider are usually identified, including sites in the UK and Ireland.
- The source of Natura 2000 information is not always referenced.
- Methods to initially group sites or features when dealing with a large number of Natura 2000 sites are often utilised.
- Proportionate information is usually provided about the value of the site and baseline conditions. Different levels of information are often provided for sites that were screened in compared to those screened out.
- Different approaches have been used to set out and utilise the conservation objectives within the assessment.
- Questions has arisen regarding: At what stage of Natura 2000 site designation should sites be included in the Appropriate Assessment?

Planning shapes the places where people live and work and the country we live in. It plays a key role in supporting the Government's wider economic, social and environmental objectives and for sustainable communities.



The Habitats Regulations do not provide statutory protection for potential Special Protection Areas (pSPAs) or to candidate Special Areas of Conservation (cSACs) before they have been agreed with the European Commission. For the purposes of considering development proposals affecting them, as a matter of policy, the Government wishes pSPAs and cSACs included in a list sent to the European Commission, to be considered in the same way as if they had already been classified or designated (Paragraph 6).

Listed Ramsar sites, also as a matter of policy, should receive the same protection as designated SPAs and SACs.

# NIEA observations arising from the review of received Appropriate Assessments

## 4. Screening

- Several screening stages are often used: Identification of sites to screen and then screening for likely significant impacts on these sites.
- Screening methodology is sometimes not provided.
- Sometimes there is little evidence that cumulative impacts have been considered at the screening stage.
- The conclusions drawn and the outcome of the screening is often not clearly set out or explained.
- The use of mitigation measures to screen out sites from further assessment is an issue that has arisen.

# NIEA observations arising from the review of received Appropriate Assessments

## 5. Appropriate Assessment

- The assessment methodology is usually explained.
- The impacts of the plan on Natura 2000 sites are usually assessed and explained in full (but reference to conservation objectives could sometimes be stronger).
- There is usually a very good use of scientific literature to predict impacts and to justify explanations.
- Sometimes a clear conclusion has not been reached that the plan will, or will not, adversely affect the integrity of Natura 2000 sites

# NIEA observations arising from the review of received Appropriate Assessments

## 6. Mitigation Measures

- On occasion appropriate plan specific mitigation measures have been identified and their impacts assessed. In such cases the use of the mitigation hierarchy has been evident.
- There is often heavy reliance on mitigation measures that will be imposed through subsequent permitting mechanisms.
- Attempts have been made to use the requirement for Appropriate Assessments at project level as a mitigation measure to address uncertainties regarding the impact of the plan. How valid is such an approach?

# NIEA observations arising from the review of received Appropriate Assessments

## Other observations

- To date we have not had to consider Alternative Solutions, Imperative reasons of overriding public interest, or Compensatory Measures.
- The amount of information necessary to complete each stage of the assessment and to draw objective conclusions for different plans and for different types of habitat will vary.
- The approach to the application of the review package must be proportional to type of plan, its potential impacts on the Natura 2000 sites in question and the associated level of information required.
- It is necessary to apply the precautionary principle in all cases.
- The use of the review package has helped to produce robust Appropriate Assessments and plans that will not adversely impact on Natura 2000 sites.

## **Even when we think we have all the bases covered new questions will arise:**

- **When do we start the Assessment process?**
- **Do we have to publish a draft Appropriate Assessment to accompany our draft Plan?**
- **And the list goes on.....**

**There's always scope for more guidance!!!**

**However guidance documents are sometimes well used and on other occasions misused. Be careful with your reading and interpretation.**

# Recommended Reading



## HABITATS REGULATIONS APPRAISAL OF PLANS

### GUIDANCE FOR PLAN-MAKING BODIES IN SCOTLAND


VERSION 1.0  
AUGUST 2010

PREPARED BY  
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Doc. Ref. 1739

 **DAVID TYLDESLEY AND ASSOCIATES**  
PLANNING, LANDSCAPE AND ENVIRONMENTAL CONSULTANTS

**The guidance helps plan making bodies to undertake the appraisal of plans in order to comply with the Habitats Directive.**

**Provides background context for appraisal.**

**Includes discussion of procedural requirements and methodology.**

**Discusses how to carry out the appraisal in parallel with Strategic Environmental Assessment procedures.**

## Resources:

- **Conservation (Natural Habitats etc.) Regulations (Northern Ireland) 1995**

<http://www.legislation.gov.uk/nisr/1995/380/contents/made>

- **Environment and Heritage Service (2002) The Habitat Regulations: A guide for Competent Authorities.**

[http://www.doeni.gov.uk/niea/habitat\\_regs\\_guidance\\_notes.pdf](http://www.doeni.gov.uk/niea/habitat_regs_guidance_notes.pdf)

- **European Commission, Environment DG (2001/2002) Assessment of plans and projects significantly affecting Natura 2000 sites: Methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC.**

[http://ec.europa.eu/environment/nature/natura2000/management/docs/art6/natura\\_2000\\_asses\\_en.pdf](http://ec.europa.eu/environment/nature/natura2000/management/docs/art6/natura_2000_asses_en.pdf)

- **Office of the Deputy Prime Minister (2005) Planning Policy Statement 9: Biodiversity and Geological Conservation**

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/147408.pdf>

- **Scottish Natural Heritage / David Tyldesley and Associates (2010) Habitats Regulations of Plans: Guidance for Plan-Making Bodies in Scotland.**

<http://www.snh.gov.uk/docs/B698695.pdf>

Our aim is to protect, conserve and promote the natural environment and built heritage for the benefit of present and future generations.

