

Appendix 2 – Consultation Response on The Conservation of Habitats and Species Regulations (Northern Ireland) 2015

Belfast City Council (the Council) welcomes this opportunity to comment on **The Conservation of Habitats and Species Regulations (Northern Ireland) 2015 (the Regulations)**. Protection of the natural heritage is in line with the Council's Corporate Plan key theme – *Better Care for Belfast's Environment*. The Council considers that the proposed updates and consolidated 'Habitats Regulations' are required given Local Government Reform and in particular the changes in the Planning system.

Implications for Belfast City Council

The Council is already deemed a Competent Authority within the existing Habitats Regulations and is therefore required to consider the effect on a European site before granting a consent or authorisation for any plan or project.

However, under Local Government Reform responsibility for certain planning decisions will be assumed by councils and the principle implication of this revised legislation is that these assessment provisions apply in relation to those planning decisions which will now fall to councils, including the review of any existing consents that may affect identified sites.

Key Issues

The Department of the Environment (the Department) has a major role to ensure that this legislation is implemented in an appropriate and legally sound manner. The Department designates sites, identifies the conservation priorities based on relevant scientific data, undertakes condition assessment and monitoring of sites. The Department has an important role in the control and assessment of potentially damaging operations and in the management of sites and species as well as operating an oversight type role in the new planning system in relation to planning decisions taken by councils.

The Northern Ireland Environment Agency (NIEA) also holds information on the condition of European sites and threats to these sites. In addition, it has a crucial role to play within the assessment process required under this legislation to offer advice on the specific environmental issues which may arise in each case to ensure the most up-to-date and accurate information is being used.

The Council also notes that the Department is under a duty to respond to certain consultations as per the draft Planning (General Development Procedure) Order (NI) 2015, which was published in the Department's public consultation on subordinate legislation in May 2014. Those consultations include developments where the proposal is likely to affect priority habitats or species and designated areas (See Schedule 3 Part 1). The Department is under a duty to provide a substantive response within 21 days or such period as may be agreed. Therefore the Council would seek an assurance that the Department will have sufficient resources so as to provide those substantive responses, particularly when other Competent Authorities will be reliant upon the expertise and knowledge of the Department as set out above. It is the Council's understanding that the proposed shared service will only cover Habitat Regulation Assessments and not the range of environmental responsibilities which councils will have to assess as a Planning Authority.

The Council believe that it is important that the Department continues to act as an independent advisor, providing expertise and maintaining information resources on the natural environment to support decision-making bodies, including Councils and other Competent Authorities. The NIEA has a crucial role to play in assessing what the impacts are likely to be and it is critical that they are sufficiently resourced to ensure that they have the intellectual capital and experience to undertake this role.

All decision-makers need a clear view of the environmental value of sites where development, or plans and projects, are proposed. They will also require expert analysis of the potential impact of any such development so as to ensure compliance with the Regulations. Consideration needs to be given to capacity building in all Competent Authorities including councils around implementation and compliance with these Regulations.

Regulations 53-59 require an assessment of the effects of a plan or project in-combination with other plans and projects on European sites in Northern Ireland or offshore marine sites. Consideration of these possible in-combination effects is part of the assessment process. Projects and plans may affect European sites outside the Council's boundary and the Council will be required to assess any impact on any European site. The NIEA should provide guidance on the plans or projects that need to be considered as part of the in-combination test.

In undertaking assessments it will be necessary to work with neighbouring councils and may require working with other Competent Authorities NI wide, depending on the nature of the plan or project. Consequently the Council would welcome the Departments guidance on how relevant data will be shared including information on Local Development Plans, Community Plans, Spatial Plans, planning applications (including consented but not completed), other consents such as discharge consents and mineral consents.

There is also a need to ensure that ecological information is available to all Competent Authorities and kept up-to-date. It is important to discuss any monitoring needs with the NIEA at an early stage and identify what information is needed and how it can be most effectively obtained to confirm that European sites are not being adversely affected by development.

The need for a robust assessment process is demonstrated through recent legal cases in the Republic of Ireland such as Kelly v An Bord Pleanala (25 July 2014) IEHC 400 which have resulted in legal challenges and the over ruling of planning decisions due to the Board not having conducted an appropriate assessment and failing to give adequate reasons for its determination that the proposed development would not adversely affect the integrity of European Sites.

Comments on specific regulations

Regulation 6

Regulation 6(1) as drafted appears to suggest that the duty to comply with the Directives only applies to competent authorities in the context of the marine area. The Council would presume this is not what is intended when one considers the rest of Regulation 6 and would seek clarification on this.

Regulation 55

This relates to considerations of overriding public interest where a plan or project has a negative assessment of the implications for a European site. Pursuant to Regulation 55(3), where a competent authority other than the Department wishes to obtain the opinion of the European Commission as to whether those reasons are sufficient it must first make a written application to the Department.

Regulation 55(4) provides that the Department, 'if it thinks fit', may seek the opinion of the Commission. The Council believes it is imperative that the Department should be obliged to provide written reasons for the decision not to seek the Commission's opinion, as any subsequent decision as to whether to grant or refuse the application will be made by the other Competent Authority, and it will be that authority which will be liable to legal challenge. It is therefore important, from a procedural fairness perspective, that the Department must provide written reasons for such a decision.