

S.I. No. 293/2010 — European Communities (Birds and Natural Habitats) (Control of Recreational Activities) Regulations 2010.

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S.I. No. 293 of 2010

EUROPEAN COMMUNITIES (BIRDS AND NATURAL HABITATS) (CONTROL OF RECREATIONAL ACTIVITIES) REGULATIONS 2010

Notice of the making of this Statutory Instrument was published in

“Iris Oifigiúil” of 25th June, 2010.

WHEREAS, I, JOHN GORMLEY, Minister for the Environment, Heritage and Local Government, having regard to section 3(3) of the European Communities Act 1972 (as inserted by section 2 of the European Communities Act 2007 and as amended by section 4 of the European Union Act 2009) (hereinafter referred to as the Act of 1972), consider it necessary for the purpose of giving further effect to Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 (which codifies Council Directive 79/409/EEC of 2 April 1979 (as amended)) and Council Directive 92/43/EEC of 21 May 1992 (as amended by Council Directive 97/62/EC of 27 October 1997, Regulation (EC) No. 1882/2003 of the European Parliament and of the Council of 29 September 2003, Council Directive 2006/105/EC of 20 November 2006 and as amended by Act of Accession of Austria, Sweden and Finland (adapted by Council Decision 95/1/EC, Euratom, ECSC), Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded and as amended by the Corrigendum to that Directive) to make provision for offences under the following Regulations to be prosecuted on indictment:

AND WHEREAS, I consider that it is necessary, having further regard to section 3(3) of the Act of 1972, and for the purpose of ensuring that penalties in respect of an offence prosecuted in that manner under the following Regulations are effective, proportionate and have a deterrent effect, having regard to the acts or omissions of which the offence consists, to make such provision in the following Regulations:

NOW THEREFORE, I, JOHN GORMLEY, Minister for the Environment, Heritage and Local Government, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) as amended by the European Communities Act 2007 (No. 18 of 2007) and the European Union Act 2009 (No. 33 of 2009) and for the purpose of giving effect to Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 (which codifies Council Directive 79/409/EEC of 2 April 1979 (as amended)) and Council Directive 92/43/EEC of 21 May 1992 (as amended by Council Directive 97/62/EC of 27 October 1997, Regulation (EC) No. 1882/2003 of the European Parliament and of the Council of 29 September 2003, Council Directive

2006/105/EC of 20 November 2006 and as amended by Act of Accession of Austria, Sweden and Finland (adapted by Council Decision 95/1/EC, Euratom, ECSC), Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which, the European Union is founded and as amended by the Corrigendum to that Directive) hereby make the following Regulations:

Citation

1. (1) These Regulations may be cited as the European Communities (Birds and Natural Habitats) (Control of Recreational Activities) Regulations 2010.

(2) The Wildlife Act, 1976 (No. 39 of 1976), the Wildlife (Amendment) Act 2000 (No. 38 of 2000), the European Communities (Natural Habitats) Regulations 1997 to 2005 and these Regulations shall be construed together as one.

(3) These Regulations shall come into operation on the 18 June 2010.

Interpretation

2. (1) In these Regulations, save where the context otherwise requires:

“the Birds Directive” means Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 (which codifies Council Directive 79/409/EEC of 2 April 1979 (as amended));

“authorised officer” means a person appointed as an authorised officer under Regulation 3;

“conservation” means a series of measures required to maintain or restore the natural habitats and the populations of species of wild fauna and flora at a favourable conservation status of a natural habitat and a favourable conservation status of a species;

“conservation status of a natural habitat” means the sum of the influences acting on a natural habitat and its typical species that may affect its long-term natural distribution, structure and functions as well as the long-term survival of its typical species;

“conservation status of a species” means the sum of the influences acting on the species concerned that may affect the long-term distribution and abundance of its populations;

“the Council” means the Council of the European Union;

“European Site” means—

(a) a candidate site of Community importance,

(b) a site of Community importance,

(c) a special area of conservation,

(d) a candidate special protection area, or

(e) a special protection area;

“favourable conservation status of a natural habitat” means the conservation status of a natural habitat which is taken as favourable when:

(a) its natural range and areas it covers within that range are stable or increasing, and

(b) the specific structure and functions which are necessary for its long-term maintenance exist and are likely to continue to exist for the foreseeable future, and

(c) the conservation status of its typical species is favourable;

“favourable conservation status of a species” means the conservation status of a species which is taken as favourable when:

(a) population dynamics data on the species concerned indicate that it is maintaining itself on a long-term basis as a viable component of its natural habitats, and

(b) the natural range of the species is neither being reduced nor is likely to be reduced for the foreseeable future, and

(c) there is, and will probably continue to be, a sufficiently large habitat to maintain its populations on a long-term basis;

“foreshore” has the meaning assigned to it by the Foreshore Acts 1933 to 2009;

"functions" include powers and duties;

“the Habitats Directive” means Council Directive 92/43/EEC of 21 May 1992 (as amended by Council Directive 97/62/EC of 27 October 1997, Regulation (EC) No. 1882/2003 of the European Parliament and of the Council of 29 September 2003, Council Directive 2006/105/EC of 20 November 2006 and as amended by Act of Accession of Austria, Sweden and Finland (adapted by Council Decision 95/1/EC, Euratom, ECSC), Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded and as amended by the Corrigendum to that Directive);

“habitat of a species” means an environment defined by specific abiotic and biotic factors in which the species lives at any stage of its biological cycle;

“inland waters” means any waters comprised in the internal or inland waters of the State;

“land” where the context admits, includes

(a) any land,

(b) land covered by water including inland waters,

(c) inland waters,

(d) the foreshore,

(e) the territorial seas of the State, and the seabed and subsoil beneath those seas,

(f) the exclusive economic zone of the State, including the waters above its seabed and the seabed and ocean floor and subsoil beneath those waters,

(g) the seabed and ocean floor and subsoil situated in any area designated under section 2 of the Continental Shelf Act 1968 ,

and in relation to the acquisition of land also includes any easement, *profit prendre* or other right in, to or over land or water including any easement, *profit prendre* or other right granted to or held by the Minister;

“local authority” means a county council, a city council, a borough council or a town council within the meaning of the Local Government Act 2001 (No. 37 of 2001) and includes a sanitary authority, a water services authority, a planning authority and a road authority;

“management agreement” means an agreement entered into with a public authority for the purposes of the Habitats Directive or the Birds Directive and may include, but is not limited to, an agreement entered into under section 18 of the Principal Act or an agri-environmental scheme;

“the Minister” means the Minister for the Environment, Heritage and Local Government;

“NATURA 2000” means the European network of special areas of conservation and special protection areas under the Birds Directive, provided for by paragraph 1 of Article 3 of the Habitats Directive;

“natural habitats” means terrestrial or aquatic areas distinguished by geographic, abiotic and biotic features, whether entirely natural or semi-natural;

“off-road vehicle” means:

(a) a mechanically propelled vehicle within the meaning of section 3 of the Road Traffic Act 1961 (No. 24 of 1961) or

(b) a mechanically propelled vehicle that—

(i) has been designed and constructed for off-road use,

(ii) is intended or adapted for propulsion by a mechanical means, or by an electrical means or by a partly mechanical and a partly electrical means, and

(iii) is capable of achieving vehicle propulsion, including a bicycle, tricycle or quadricycle propelled by an engine or motor or with an attachment for propelling it by mechanical power, whether or not the attachment is being used

and, without limiting the generality of the foregoing paragraphs (a) and (b), includes, when designed or adapted or used for off-road use,

(I) a motorised quadbike,

- (II) a motorised trike,
- (III) a scrambler, pit-bike, dirt-bike, trail-bike, motorcycle or related two-wheel vehicle,
- (IV) an all terrain vehicle,
- (V) a four-wheel drive vehicle,
- (VI) a low pressure tyre vehicle, or
- (VII) an off-road go-cart or an off-road buggy,

but does not include,

- (VIII) a tramcar or other vehicle running on permanent rails,
- (IX) a vehicle including a cycle with an attachment for propelling it by mechanical power not exceeding 400 kilogrammes in weight unladen adapted and used for invalids,
- (X) a lawn tractor, lawn truck or lawn mower,
- (XI) a motorised golf car, or
- (XII) a state owned vehicle or a vehicle operated by An Garda Síochána, the Emergency Services or the Defence Forces,

“operation or activity” includes any operation or activity requiring to be prohibited, restricted, regulated or assessed under the Habitats Directive or the Birds Directive;

“owner” in respect of an off-road vehicle means—

(a) in relation to an off-road vehicle (other than an off-road vehicle specified in paragraph (b)), the person by whom the off-road vehicle is kept,

(b) in relation to an off-road vehicle which is the subject of a hire-purchase agreement or a lease, the person in possession of the off-road vehicle under the agreement or lease;

“person” has the meaning assigned to it by the Interpretation Act 2005 and for the avoidance of doubt includes any public authority;

“planning authority” has the meaning assigned by the Planning and Development Act 2000 (No. 30 of 2000);

“Principal Act” means the Wildlife Act 1976 (No. 39 of 1976);

“premises” includes lands and structures

“public authority ” means:

- (a) a Minister of the Government;

- (b) a local authority;
- (c) An Bord Pleanála;
- (d) the Environmental Protection Agency;
- (e) the Commissioners of Public Works in Ireland;
- (f) a harbour authority within the meaning of the Harbours Acts 1946 to 2005;
- (g) a harbour company under the Harbours Acts 1996 to 2009;
- (h) the Health Service Executive;
- (i) a regional authority;
- (j) a regional fisheries board;
- (k) The Central Fisheries Board;
- (l) The Geological Survey of Ireland;
- (m) Teagasc;
- (n) The National Roads Authority;
- (o) The Radiological Protection Institute of Ireland;
- (p) The Electricity Supply Board;
- (q) The Commission for Energy Regulation;
- (r) Port and Harbour Authorities including Port companies established under the Harbours Act 1996 ;
- (s) The Dublin Docklands Development Authority;
- (t) Waterways Ireland;
- (u) Bord Na Móna;
- (v) Coillte;
- (w) The Health and Safety Authority;
- (x) a Board or other Body (but not including a company under the Companies Acts) established by or under statute;
- (y) a company under the Companies Acts, in which all the shares are held—
 - (i) by or on behalf of or jointly with a Minister of the Government,
 - (ii) by directors appointed by a Minister of the Government, or
 - (iii) by a board, company or other body referred to in paragraph (g) or subparagraph

(i) or (ii);

“recreational watercraft” means any boat of any type intended for sports and leisure purposes and includes a hovercraft or any vessel which uses an internal combustion engine having a water jet pump as its primary source of propulsion and designed to be operated by a person or persons sitting, standing or kneeling, rather than within the confines of a hull, but not including any watercraft being used for rescue or emergency purposes or for law enforcement purposes;

“statutory declaration” means a statutory declaration within the meaning of the Statutory Declarations Act 1938 ;

“works” includes any intervention in the physical environment.

(2) A word or expression that is used in these Regulations and is also used in the Habitats Directive shall, unless the contrary intention is expressed, have in these Regulations the meaning that it has in the Habitats Directive.

(3) In these Regulations—

(a) a reference to a Regulation of these Regulations, unless it is indicated that reference to some other Regulation is intended, and

(b) a reference to a paragraph or subparagraph is to the paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended.

(4) In these Regulations, save where the context otherwise requires, a reference to any enactment shall be construed as a reference to that enactment as amended or adopted by any subsequent enactment including these Regulations.

Appointment of Authorised Officers

3. (1) Any person who for the time being stands appointed as an authorised officer pursuant to Regulation 7 of the European Communities (Natural Habitats) Regulations 1997 (S.I. No. 94 of 1997) shall be an authorised officer for the purposes of these Regulations.

(2) Whenever a person is exercising any function conferred on him or her as an authorised officer such person shall, if requested by a person affected, produce his or her certificate of appointment or other evidence of his or her appointment as an authorised officer to the person so requesting.

(3) For the avoidance of doubt, these Regulations shall not affect the validity of the appointment of an authorised officer pursuant to Regulation 7 of the European Communities (Natural Habitats) Regulations 1997 (S.I. No. 94 of 1997) who was appointed prior to the commencement of these Regulations.

Functions of Authorised Officers

4. (1) An authorised officer may for any purpose connected with these Regulations—

at any time if he or she has reasonable grounds for suspecting there may be a risk to:

(a) the conservation status of the natural habitats and species referred to in Article 2 of the Habitats Directive, or

(b) the conservation status of the natural habitats and species referred to in Article 4 of the Birds Directive,

or that an offence under these Regulations has been, is being or is about to be committed involving the use of any vehicle,

(i) halt that vehicle (or the vehicle by which that vehicle is transported),

(ii) board that vehicle (or the vehicle by which that vehicle is transported),

and require the driver of the vehicle (or the vehicle by which that vehicle is transported) to take the vehicle or vehicles to a place designated by the authorised officer, and such vehicle or vehicles may be detained at that place by the authorised officer for such period as he or she may consider necessary.

(2) For the purposes of this Regulation an authorised officer may, subject to paragraph (3) enter any premises.

(3) An authorised officer shall not enter into a private dwelling under this Regulation unless one of the following conditions applies—

(a) the entry is effected with the consent of the occupier, or

(b) the entry is authorised by a warrant issued under Regulation 5.

(4) Whenever an authorised officer enters any premises or boards any vehicle, under this Regulation, he or she may do all things reasonably necessary for the purpose for which the entry is made and, in particular—

(a) carry out an inspection,

(b) carry out surveillance and examinations of the relevant natural habitats and species,

(c) take photographs and carry out inspections, record information on data loggers, make tape, electrical, digital, video or other recordings,

(d) carry out tests and make copies of documents (including records kept in electronic form) found therein and take samples,

(e) monitor any effluent, including trade effluent or other matter, which is contained in or discharged from a premises,

(f) carry out surveys, take levels, and carry out examinations of depth and nature of soil, subsoil or waters,

(g) examine any plant, machinery, equipment, installation or matter on the premises,

(h) examine preventive or remedial works being carried out on the premises,

(i) require that the premises or vehicle or any part of the premises or anything in the premises or vehicle shall be left undisturbed for a specified period,

(j) require information from an occupier of the premises, of any occupant of the vehicle or any person employed on the premises or any other person on the premises,

(k) require the production of, or inspect, documents or records (including documents or records held in electronic form), or take copies of or extracts from any documents or records,

(l) remove and retain documents and records (including documents and records held in electronic form) for such period as may be reasonable for further examination, which the authorised officer, having regard to all the circumstances, considers necessary for the purposes of exercising any of his or her functions under these Regulations,

(m) remove and retain any specimen or any item for such period as may be reasonable for further examination or for use in proceedings, or both, which the authorised officer, having regard to all the circumstances, considers necessary for the purposes of exercising any of his or her functions under these Regulations.

(5) A person shall not—

(a) refuse to allow an authorised officer to enter any premises or board any vehicle or to bring any person or equipment with him or her in the exercise of his or her functions,

(b) obstruct or impede an authorised officer in the exercise of any of his or her functions,

(c) give to an authorised officer information which is to his or her knowledge, false or misleading in a material respect, or

(d) without reasonable excuse, fail or refuse to comply with any direction or requirement of an authorised officer.

(6) A person who fails to comply with paragraph (5) shall be guilty of an offence.

(7) An authorised officer may, in the exercise of any function conferred on him or her by these Regulations involving the bringing of any vehicle to any place, or where he or she anticipates any obstruction in the exercise of any other function conferred on him or her by these Regulations, request a member of An Garda Síochána to assist him or her in the exercise of such a function and any member of An Garda Síochána to whom he or she makes such a request shall comply with this request.

(8) In this Regulation—

“ship” includes every description of vessel used in navigation whether on or under the surface of the water, howsoever propelled, and also includes a seaplane while it is in contact with the water;

“vehicle” means any conveyance in or by which any person or thing, or both, is transported which is designed for use on land, or in water or in the air, or in more than one of those ways, and includes—

- (a) part of a vehicle,
- (b) an article designed as a vehicle but not capable of functioning as a vehicle,
- (c) a skip or other container designed for use or used for carriage on a vehicle, or
- (d) a trailer designed for use or used with a vehicle.

Search Warrant

5. (1) Where an authorised officer in the exercise of his or her functions under Regulation 4 is prevented from entering any premises, or if the authorised officer has reason to believe that evidence related to a suspected offence under these Regulations may be present in any premises and that the evidence may be removed therefrom or destroyed, or if the authorised officer has reason to believe that there is a significant immediate risk to—

- (a) the conservation status of the natural habitats and species referred to in Article 2 of the Habitats Directive, or
- (b) the conservation status of the natural habitats and species referred to in Article 4 of the Birds Directive,

the authorised officer or the person by whom he or she was appointed may apply to the District Court for a warrant under this Regulation authorising the entry by the authorised officer onto or into the premises.

(2) If, on application being made to the District Court under this Regulation, the District Court is satisfied on the sworn information of the authorised officer, that he or she has been prevented from entering a premises, the Court may issue a warrant authorising that person, accompanied, if the Court deems it appropriate by another authorised officer or a member of An Garda Síochána as may be specified in the warrant, at any time or times within one month from the date of the issue of the warrant, on production if so requested of the warrant, to enter, if need be by force, the premises concerned and exercise the functions referred to in Regulation 4.

Functions relating to the Prohibition of Off-Road Vehicles and Recreational Watercraft

6. (1) For the purposes of this Regulation the “delegate officer” is a member of An Garda Síochána not below the rank of Superintendent authorised in writing to perform functions under this Regulation otherwise performed by the Garda Commissioner of An Garda Síochána.

(2) Where a member of An Garda Síochána or an authorised officer appointed under Regulation 3 has reason to believe that a person is committing or has committed an offence under Regulation 8(10) relating to the operation or use of any off-road vehicle or recreational watercraft, the member or authorised officer—

(a) may demand of the person his or her name and address,

(b) may direct the person to leave the land (or water) concerned,

(c) remove from the land (or water) any off-road vehicle or recreational watercraft that belongs to the person or that is under his or her control, and

(d) shall inform the person of the nature of the offence in respect of which it is suspected that person has been involved and the statutory consequences of failing to comply with a demand or direction under this paragraph.

(3) Where a person refuses or fails to give his or her name and address to a member of An Garda Síochána or authorised officer when demanded under Regulation 6(2), or gives to the member a name or address that is false or misleading or fails to comply with a direction under that Regulation, he or she shall be guilty of an offence.

(4) A member of An Garda Síochána may arrest without a warrant a person—

(a) who fails or refuses to give his or her name and address when demanded under Regulation 6(2) or gives a name or address which the member has reasonable grounds for believing is false or misleading,

(b) who fails to comply with direction given under Regulation 6(2), or,

(c) whom the member finds committing an offence under Regulation 8(10) relating to the operation or use of any off-road vehicle or recreational watercraft, Regulation 6(2) or 6(3).

(5) (a) Where a person fails to comply with a direction under Regulation 6(2), a member of An Garda Síochána may remove or cause to be removed any off-road vehicle or recreational watercraft which the member has reason to believe was brought onto or placed on the land (or brought onto or placed in or on water) in contravention of Regulation 8(10) and may store or cause to be stored such off-road vehicle or recreational watercraft so removed,

(b) Any person who obstructs, impedes or assists a person to obstruct or impede a member of An Garda Síochána or an authorised officer in the execution of his or her duty under this Regulation shall be guilty of an offence,

(c) Where an off-road vehicle or recreational watercraft has been removed under this Regulation without the presence or knowledge of any person claiming to own, occupy, control or otherwise retain it, the Garda Commissioner or delegate officer shall serve or cause to be served upon each such person whose name and address can be ascertained by reasonable enquiry, a notice informing the person where the off-road vehicle or recreational watercraft may be claimed and recovered, requiring the person to claim and recover it within one month of the date of service of the notice and informing him or her of the statutory consequences of his or her failure to do so,

(d) An off-road vehicle or recreational watercraft removed and stored under this Regulation shall be given to a person claiming possession of the off-road vehicle or

recreational watercraft if, but only if, he or she makes a declaration in writing that he or she is the owner of the off-road vehicle or recreational watercraft or is authorised by its owner to claim it or is, for a specified reason otherwise entitled to possession of it and, at the discretion of the Garda Commissioner or the delegate officer, the person pays the amount of any expenditure reasonably incurred in removing and storing the off-road vehicle or recreational watercraft,

(e) Any person who makes a declaration under subparagraph (d) knowing or believing that declaration to be false shall be guilty of an offence,

(f) The Garda Commissioner or delegate officer may dispose of, or cause to be disposed of, an off-road vehicle or recreational watercraft removed and stored under this Regulation if—

(i) the owner of the off-road vehicle or recreational watercraft fails to claim it and remove it from the place where it is stored within one month of the date on which a notice under subparagraph (c) was served on him or her, or

(ii) the name and address of the owner of the off-road vehicle or recreational watercraft cannot be ascertained by reasonable enquiry,

(g) Where the Garda Commissioner or delegate officer becomes entitled to dispose of or cause to be disposed, an off-road vehicle or recreational watercraft under paragraph (f) and the off-road vehicle or recreational watercraft is, in his or her opinion, capable of being sold, the Garda Commissioner or delegate officer shall be entitled to sell or cause to be sold the off-road vehicle or recreational watercraft for the best price reasonably obtainable and upon doing so shall pay or cause to be paid to the person who was the owner of the off-road vehicle or recreational watercraft at the time of its removal, where the name and address of the owner can be ascertained by reasonable enquiry, a sum equal to the proceeds of such sale after deducting therefrom any expenditure reasonably incurred in its removal, storage and sale,

(h) Where the identity of the owner has not been ascertained after reasonable enquiry and the off-road vehicle or recreational watercraft is sold pursuant to subparagraph (g) the Commissioner or the delegate officer, having deducted the sum of any expenditure reasonably incurred in the removal of the off-road vehicle or recreational watercraft its storage and sale, may retain the deducted sum and the remainder shall be forfeited to the State.

Erection of Notices

7. (1) The Minister may cause to be erected and maintained at suitable places within, or on the boundary of, or near any European Site or other specified land referred to in Regulation 8(1) or any other suitable place as the Minister deems appropriate for the purposes of the Habitats Directive, the Birds Directive or these Regulations a notice of:

(a) the status of the site as a European Site or other specified land referred to in Regulation 8(1),

(b) the boundaries of the site,

(c) any one or more of the restricted or prohibited operations or activities, plans or projects on the site pursuant to Regulation 8,

(d) such other information and guidance as the Minister deems appropriate for the purposes of the Habitats Directive, the Birds Directive or these Regulations,

and for that purpose any person, duly authorised by the Minister in that behalf, may enter on such land and on any other land.

(2) Where appropriate, such notices may be in the format of Community notices pursuant to Article 17(3) of the Habitats Directive.

(3) Any person who without lawful authority removes, damages, destroys, alters, defaces, disfigures, marks or otherwise interferes with any notice referred to in paragraph (1), shall be guilty of an offence.

(4) Without prejudice to the generality of paragraph (3), any person who has been authorised by the Minister to remove and dispose of a notice shall be deemed to have lawful authority for the purposes of this Regulation.

Ministerial Directions Prohibiting Specified Recreational Activities in Specified Places

8. (1) Where the Minister has reason to believe:

(a) that any recreational activity, either individually or in combination with other operations or activities, plans or projects—

(i) has had, is having, or is likely to have an adverse effect on the integrity of a European Site; or

(ii) has caused, is causing, or is likely to cause the deterioration of natural habitats or the habitats of species or the disturbance of the species for which the European Site may be or has been designated pursuant to the Habitats Directive or has been classified pursuant to the Birds Directive, in so far as such disturbance could be significant in relation to the objectives of the Habitats Directive, or

(iii) has caused, is causing or is likely to cause pollution or deterioration of habitats within the meaning of the second sentence of Article 4.4 of the Birds Directive, or

(iv) has had, is having, or is likely to have an adverse effect on the conservation status of—

(I) animal species listed in Annex IV(a) to the Habitats Directive in their natural range pursuant to Article 12 of the Habitats Directive,

(II) plant species listed in Annex IV(b) to the Habitats Directive pursuant to Article 13 of the Habitats Directive,

(III) specimens of wild fauna and flora listed in Annex V to the Habitats Directive

pursuant to Article 14 of the Habitats Directive,

(b) that an area, which is not a special protection area, is an area that should be classified as a special protection area or requires to be considered for classification as a special protection area pursuant to Article 4 of the Birds Directive, and that any recreational activity, either individually or in combination with other operations or activities, plans or projects—

(i) has had, is having, or is likely to have an adverse effect on the integrity of that area, or

(ii) has caused, is causing, or is likely to cause pollution or deterioration of habitats or any disturbances affecting the birds for which that area should be classified as a special protection area or requires to be considered for classification as a special protection area, in so far as these would be significant in relation to the objectives of Article 4 of the Birds Directive, or

the Minister shall, subject to paragraph (2), as appropriate, by notice direct that the recreational activity shall not be carried out, caused or permitted to be carried out or continue to be carried out by any person in the European Site or part thereof or at any other specified land or may by notice restrict or regulate the recreational activity in the European Site or part thereof or at any other specified land.

(2) If the owner, occupier or user of the land has given the Minister written notice of a proposal to carry out the recreational activity, specifying its nature and the land on which it is proposed to carry it out, and the Minister has determined that the recreational activity as proposed will not cause any of the effects referred to in paragraph (1), the Minister may give consent in writing to the carrying out of the proposed recreational activity.

(3) In giving a consent under paragraph (2) the Minister may impose such conditions as he or she considers necessary to ensure that the recreational activity, individually or in combination with other operations or activities, plans or projects shall not cause any of the effects referred to in paragraph (1).

(4) For the avoidance of doubt, the prohibited, restricted or regulated recreational activity may include the operation or use of any off-road or other vehicle or recreational watercraft, or the carrying out of any other recreational activity, including activities involving trampling or walking on damaged, sensitive or rehabilitating habitats but without prejudice to Regulation 14 of the European Communities (Natural Habitats) Regulations 1997, shall not apply to the use of any vehicle or machinery or watercraft being used in the course of agriculture or any other occupational land use activity by the owner or occupier of the land or his or her servants or agents or co-workers.

(5) Notwithstanding paragraph (1), a person may carry out a recreational activity to which a direction given under this Regulation relates under the following conditions-

(a) that the recreational activity is carried out with and in compliance with the written consent of the Minister under paragraph (2), or in compliance with a licence granted by the Minister under any other statute, or

(b) that the recreational activity is carried out in accordance with the express terms of a management agreement provided for by Regulation 12 of the European Communities (Natural Habitats) Regulations 1997

(6) Subject to paragraph (5), a person who contravenes a direction given pursuant to paragraph (1) shall be guilty of an offence.

(7) A person who fails to comply with a condition referred to in paragraph (3) shall be guilty of an offence.

(8) Subject to paragraph (9), it shall be a defence to a charge of committing an offence under paragraph (7) to prove that the accused took all reasonable steps and exercised all due diligence to avoid committing the offence.

(9) Where the defence provided by paragraph (8) involves an allegation that the commission of the offence was due to the act or default of another person, the person charged shall not, without leave of the Court, be entitled to rely on the defence unless, within a period ending seven clear days before the hearing, he or she has served on the prosecutor a notice giving such information identifying or assisting in the identification of the other person as was then in his or her possession.

(10) Where a person fails or refuses to comply with a direction given pursuant to paragraph (1), the Minister may apply to a Court of competent jurisdiction for an order requiring the person to comply with the direction.

(11) For the purposes of paragraph (10) “a Court of competent jurisdiction” means either the Circuit Court for the circuit in which the relevant lands or part of the relevant lands concerned are situated or the High Court.

(12) An application to the Circuit Court or the High Court for an order under paragraph (10) shall be by motion and the Court when considering the matter may make such interim or interlocutory order (if any) as it considers appropriate having regard to the requirements of the Habitats Directive and the Birds Directive including the overall requirement of safeguarding the integrity of sites and ensuring that the overall coherence of Natura 2000 is protected.

(13) These Regulations shall not affect the validity of a notice issued prior to the commencement of these Regulations under Regulation 4(2) of the European Communities (Natural Habitats) Regulations 1997 (S.I. No. 94 of 1997).

(14) The Minister may provide notification of the making by him or her of a direction under this Regulation to such persons or organisations as he or she considers appropriate.

Public Notice of Prohibited Recreational Activities

9. (1) The Minister shall cause to be published in a national newspaper and in such other publications, or broadcast media, as he or she considers appropriate, a notice of

(a) those places in each county within which specified recreational activities are prohibited, other than under consent, pursuant to a direction of the Minister under

Regulation 8,

(b) in relation to each of those places, the recreational activities that are prohibited and, if applicable, the time of year during which such prohibition applies,

(2) A notice under this Regulation shall give information on how further details, including maps showing the boundaries of the places referred to in the notice, can be obtained.

(3) Not later than the date of publication of a notice under this Regulation, the Minister shall cause to be made available for inspection at offices of his or her Department and on the internet, maps showing the boundaries of those places where recreational activities are prohibited and for each such place the activities that are prohibited and, if applicable, the time of the year during which such prohibition applies.

(4) Any direction made under these Regulations will become effective from the date of the publication of a notice pursuant to paragraph (1).

Objections relating to Restrictions on Carrying Out Recreational Activities in a European Site or at Specified Land

10. (1) Any person having or being entitled to an interest in or over the land comprising the site or specified land, or part thereof, or any other person having or being entitled to an interest in or over land outside the site or specified land whose interest may potentially be affected by a direction given pursuant to Regulation 8(1) may within a period of three months from the publication date of the notice under Regulation 9, object, in the manner specified in the notice, to the direction given pursuant to Regulation 8(1).

(2) An objection within the meaning of paragraph (1) shall be accompanied by a statutory declaration made by the person objecting which shall state that the person—

(a) has or is entitled to an interest in or over the land comprising the site or specified land, or part thereof, or

(b) has or is entitled to an interest in or over land outside the site or specified land whose interest may potentially be affected by the direction given pursuant to Regulation 8(1), or both,

and which shall state the nature of the interest.

(3) A public authority may, not later than three months from the date of the notice, seek a review or modification of the direction given pursuant to Regulation 8(1).

(4) The Minister shall, after consultation with such other persons as the Minister considers ought to be consulted, consider any objections received under paragraph (1) or a request for a review or modification of the direction under paragraph (3) and shall notify in writing any person making an objection within the meaning of paragraph (1) in respect of the site or specified land concerned of the decision on such objections or request.

(5) The Minister shall give reason for the decision made pursuant to paragraph (4).

(6) The Minister may, having considered the objections and requests pursuant to paragraph

(4), amend the direction given pursuant to Regulation 8(1).

Damage to European Site

11. (1) For the purposes of this Regulation the “delegate officer” is a member of An Garda Síochána not below the rank of Superintendent authorised in writing to perform functions under this Regulation otherwise performed by the Garda Commissioner of An Garda Síochána.

(2)(a) A person shall not enter and occupy any European Site, or bring onto or place on any European Site, for the purpose of carrying out or organising a recreational activity, any object or carry out any activity, where such entry or occupation or bringing onto or placing on site of such object or carrying out of such activity is likely to damage the site,

(b) A person who contravenes subparagraph (a) shall be guilty of an offence,

(c) Subject to subparagraph (d), it shall be a defence to a charge of committing an offence under this paragraph to prove that the accused had the duly given consent of the owner of the relevant European Site,

(d) Where the defence provided by subparagraph (c) involves an allegation that the commission of the offence was due to the act or default of another person, the person charged shall not, without leave of the Court, be entitled to rely on the defence unless, within a period ending seven clear days before the hearing, he or she has served on the prosecutor a notice giving such information identifying or assisting in the identification of the other person as was then in his or her possession,

(e) Where a member of An Garda Síochána or an authorised officer appointed under Regulation 3 has reason to believe that a person is committing or has committed an offence under subparagraph (a) the member or authorised officer-

(i) may demand of the person his or her name and address,

(ii) may direct the person to desist from carrying out any activity on the land,

(iii) may direct the person to leave the land concerned and to remove from the land any object that belongs to the person or that is under his or her control, and

(iv) shall inform the person of the nature of the offence in respect of which it is suspected that person has been involved and the statutory consequences of failing to comply with a demand or direction under this subparagraph.

(3) Where a person refuses or fails to give his or her name and address to a member of An Garda Síochána or an authorised officer when demanded under Regulation 11(2), or gives to the member a name or address that is false or misleading, or fails to comply with a direction under that Regulation, he or she shall be guilty of an offence.

(4) A member of An Garda Síochána may arrest without a warrant a person

(a) who fails or refuses to give his or her name and address when demanded under Regulation 11(2) or gives a name or address which the member has reasonable grounds

for believing is false or misleading,

(b) who fails to comply with a direction given under Regulation 11(2), or

(c) whom the member finds committing an offence under Regulation 11(3).

(5) (a) Where a person fails to comply with a direction under Regulation 11(2)(e), a member of An Garda Síochána may remove or cause to be removed any object which the member has reason to believe was brought onto or placed on the land in contravention of Regulation 11(2) and may store or cause to be stored such object so removed,

(b) Any person who obstructs or impedes or assists a person to obstruct or impede a member of An Garda Síochána or an authorised officer in the execution of his or her duty under this Regulation shall be guilty of an offence,

(c) Where an object has been removed under this Regulation without the presence or knowledge of any person claiming to own, occupy, control or otherwise retain it, the Garda Commissioner or delegate officer shall serve or cause to be served upon each such person whose name and address can be ascertained by reasonable enquiry, a notice informing the person where the object may be claimed and recovered, requiring the person to claim and recover it within one month of the date of service of the notice and informing him or her of the statutory consequences of his or her failure to do so,

(d) An object removed and stored under this Regulation shall be given to a person claiming possession of the object if, but only if, he or she makes a declaration in writing that he or she is the owner of the object or is authorised by its owner to claim it or is, for a specified reason otherwise entitled to possession of it and, at the discretion of the Garda Commissioner or the delegate officer, the person pays the amount of any expenditure reasonably incurred in removing and storing the object,

(e) Any person who makes a declaration under subparagraph (d) knowing or believing that declaration to be false shall be guilty of an offence,

(f) The Garda Commissioner or delegate officer may dispose of, or cause to be disposed of, an object removed and stored under this Regulation if-

(i) the owner of the object fails to claim it and remove it from the place where it is stored within one month of the date on which a notice under subparagraph (c) was served on him or her, or

(ii) the name and address of the owner of the object cannot be ascertained by reasonable enquiry,

(g) Where the Garda Commissioner or delegate officer becomes entitled to dispose of or cause to be disposed an object under subparagraph (f) and the object is, in his or her opinion, capable of being sold, the Garda Commissioner or delegate officer shall be entitled to sell or cause to be sold the object for the best price reasonably obtainable and upon doing so shall pay or cause to be paid to the person who was the owner of the object at the time of its removal, where the name and address of the owner can be ascertained by reasonable enquiry, a sum equal to the proceeds of such sale after deducting therefrom

any expenditure reasonably incurred in its removal, storage and sale,

(h) Where the identity of the owner has not been ascertained after reasonable enquiry and the object is sold pursuant to subparagraph (g) the Commissioner or the delegate officer, having deducted the sum of any expenditure reasonably incurred in the removal, storage and sale of the object, may retain the deducted sum and the remainder shall be forfeited to the State.

Injunctions

12. (1) Where the Minister has reason to believe that any recreational activity, either individually or in combination with other operations or activities, plans or projects—

(a) has had, is having, or is likely to have an adverse effect on the integrity of a European Site, or

(b) has caused, is causing, or is likely to cause the deterioration of natural habitats or the habitats of species or the disturbance of the species for which the European Site may be or has been designated pursuant to the Habitats Directive or has been classified pursuant to the Birds Directive, in so far as such disturbance could be significant in relation to the objectives of the Habitats Directive, or

(c) has caused, is causing or is likely to cause pollution or deterioration of habitats within the meaning of the second sentence of Article 4.4 of the Birds Directive, or

(d) has had, is having, or is likely to have an adverse effect on the conservation status of—

(i) animal species listed in Annex IV(a) to the Habitats Directive in their natural range pursuant to Article 12 of the Habitats Directive,

(ii) plant species listed in Annex IV(b) to the Habitats Directive pursuant to Article 13 of the Habitats Directive,

(iii) specimens of wild fauna and flora listed in Annex V to the Habitats Directive pursuant to Article 14 of the Habitats Directive,

the Minister may make an application under this Regulation to a Court of competent jurisdiction for an order to require the taking of action or the refraining from taking action as the Court considers necessary, for the purposes of ensuring compliance with the Habitats Directive and the Birds Directive, to cease, avoid, reverse, reduce or eliminate the adverse effect, pollution, deterioration or disturbance.

(2) Where the Minister has reason to believe:

(a) that an area, which is not a special protection area, is an area that should be classified as a special protection area or requires to be considered for classification as a special protection area pursuant to Article 4 of the Birds Directive, and

(b) that any recreational activity, either individually or in combination with other operations or activities, plans or projects—

(i) has had, is having, or is likely to have an adverse effect on the integrity of that area, or

(ii) has caused, is causing, or is likely to cause pollution or deterioration of habitats or any disturbances affecting the birds for which that area should be classified as a special protection area or requires to be considered for classification as a special protection area in so far as these would be significant in relation to the objectives of Article 4 of the Birds Directive,

the Minister may make an application under this Regulation to a Court of competent jurisdiction for an order to require the taking of action or the refraining from taking action as the Court considers necessary, for the purposes of ensuring compliance with the Birds Directive, to avoid, reverse, reduce or eliminate the adverse effect, pollution, deterioration or disturbance.

(3) Where the Minister has reason to believe that any recreational activity, either individually or in combination with other operations or activities, plans or projects has caused, is causing or is likely to cause pollution or deterioration of habitats within the meaning of the second sentence of Article 4.4 of the Birds Directive, the Minister may make an application under this Regulation to a Court of competent jurisdiction for an order to require the taking of action or the refraining from taking action as the Court considers necessary, for the purposes of ensuring compliance with the Birds Directive, to cease, avoid, reverse, reduce or eliminate the pollution or deterioration.

(4) For the purposes of this Regulation “a Court of Competent Jurisdiction” means either the Circuit Court for the circuit in which the relevant lands or part of the relevant lands concerned are situated or the High Court.

(5) An application to the Circuit Court or the High Court for an order under this Regulation shall be by motion and the Court, when considering the matter, may make such interim or interlocutory order (if any) as it considers appropriate having regard to the requirements of the Habitats Directive and the Birds Directive, including the overall requirement of safeguarding the integrity of sites and ensuring that the overall coherence of Natura 2000 is protected.

Threat Response Plans

13. (1) Where the Minister has reason to believe that any threat or hazard, either individually or in combination with other threats or hazards—

(a) has had, is having, or is likely to have an adverse effect on the integrity of a European Site, or

(b) has caused, is causing, or is likely to cause the deterioration of natural habitats or the habitats of species or the disturbance of the species for which the European Site may be or has been designated pursuant to the Habitats Directive or has been classified pursuant to the Birds Directive, in so far as such disturbance could be significant in relation to the objectives of the Habitats Directive, or

(c) has caused, is causing or is likely to cause pollution or deterioration of habitats within the meaning of the second sentence of Article 4.4 of the Birds Directive, or

(d) has had, is having, or is likely to have an adverse effect on the conservation status of

(i) animal species listed in Annex IV(a) to the Habitats Directive in their natural range pursuant to Article 12 of the Habitats Directive,

(ii) plant species listed in Annex IV(b) to the Habitats Directive pursuant to Article 13 of the Habitats Directive,

(iii) specimens of wild fauna and flora listed in Annex V to the Habitats Directive pursuant to Article 14 of the Habitats Directive,

the Minister shall, where he considers it necessary or appropriate for the purposes of meeting the objectives of the Habitats Directive or the Birds Directive, develop an appropriate Threat Response Plan to cease, avoid, reverse, reduce or eliminate the adverse effect, pollution, deterioration or disturbance.

(2) Where the Minister has reason to believe:

(a) that an area, which is not a special protection area, is an area that should be classified as a special protection area or requires to be considered for classification as a special protection area pursuant to Article 4 of the Birds Directive, and

(b) that any threat or hazard, either individually or in combination with other threats or hazards—

(i) has had, is having, or is likely to have an adverse effect on the integrity of that area, or

(ii) has caused, is causing, or is likely to cause pollution or deterioration of habitats or any disturbances affecting the birds for which that area should be classified as a special protection area or requires to be considered for classification as a special protection area in so far as these would be significant in relation to the objectives of Article 4 of the Birds Directive,

the Minister shall, where he or she considers it necessary or appropriate for the purposes of meeting the objectives of the Birds Directive, develop an appropriate Threat Response Plan to avoid, reverse, reduce or eliminate the adverse effect, pollution, deterioration or disturbance.

(3) Where the Minister has reason to believe that any threat or hazard, either individually or in combination with other threats or hazards has caused, is causing or is likely to cause pollution or deterioration of habitats within the meaning of the second sentence of Article 4.4 of the Birds Directive, the Minister shall, where he or she considers it necessary or appropriate for the purposes of meeting the objectives of the Birds Directive, develop an appropriate Threat Response Plan to cease, avoid, reverse, reduce or eliminate the pollution or deterioration.

(4) Public authorities shall, at the Minister's request:

(a) engage in consultations regarding the development and implementation of a Threat Response Plan,

(b) provide such information as is relevant to the development and implementation of the Threat Response Plan,

(c) exercise their functions relating to the development and implementation of the Threat Response Plan insofar as the requirements of the Habitats Directive and Birds Directive apply to those functions,

(d) co-ordinate their functions referred to in paragraph (c) with other public authorities.

(5) A Threat Response Plan under this Regulation shall be periodically reviewed.

(6) For the purposes of this Regulation, a Threat Response Plan shall:

(a) be published by the Minister,

(b) identify the actions required of public authorities for its implementation,

(c) specify timelines for the achievement of its objectives, and

(d) specify a date for the publication of a review of the Plan.

(7) Notwithstanding Section 40 of the Wildlife Act 1976 (as amended), the Minister may, as part of a Threat Response Plan, authorise the destruction of vegetation on uncultivated land at any time and Section 40 (1) shall not apply in relation to any destruction of vegetation on uncultivated land so authorised.

Offence of Aiding or Abetting

14. A person who aids or abets the commission of an offence contrary to these Regulations shall be guilty of an offence.

Offences by Body Corporate

15. Where an offence under these Regulations has been committed by a Body Corporate and it is proved to have been so committed with the consent or connivance of, or to be attributable to any neglect on the part of any person who, when the offence was committed, was a director, manager, secretary or other officer of the Body Corporate, or a person purporting to act in any such capacity, that person, as well as the Body Corporate, shall be guilty of an offence and shall be liable to be proceeded against and punished as if guilty of the first-mentioned offence.

Offences and Penalties

16. (1) A person who commits an offence under Regulations 7, 8(7) or 11(2) is liable on summary conviction to a fine not exceeding €5,000.

(2) A person who commits an offence under Regulations 4, 6, 11(3), 11(5) or 14 is liable on

summary conviction to a fine not exceeding €5,000, or imprisonment for a term not exceeding 3 months, or both.

(3) A person who commits an offence under Regulations 8(6) or 15 is liable—

(a) on summary conviction, to a fine not exceeding €5,000, or imprisonment for a term not exceeding 3 months, or both, or

(b) on conviction on indictment, to a fine not exceeding €500,000, or imprisonment for a term not exceeding 3 years, or both.

(4) In imposing any penalty under paragraph (1), (2) or (3), the Court shall, in particular, have regard to the risk or extent of injury to the environment arising from the act or omission constituting the offence, and to the polluter pays principle.

(5) Subject to paragraph (6), a Court of competent jurisdiction may order up to the limit of its jurisdiction that a person guilty of an offence under these Regulations, in addition to any penalty imposed by the Court in accordance with this Regulation, shall carry out all necessary remedial works directed by the Court to be necessary towards making good any damage caused by the offence.

(6) If the person who brought the prosecution is willing to undertake some or all of the necessary remedial work, and indicates this to the Court, the Court may order that the person may do that work, or arrange for it to be carried out on behalf of or jointly with that person, in lieu of the convicted party, and that the cost of the work, undertaken by the person who brought the prosecution, and agreed by the Court to have been necessary work towards making good the damage caused by the offence, shall be payable by the convicted party.

Prosecution of Offences

17. Summary proceedings for an offence under these Regulations may be brought by the Minister or by a member of An Garda Síochána, or by a person who is neither the Minister nor a member of An Garda Síochána with the consent of the Minister or an officer of the Minister nominated by the Minister for that purpose.

Cost of Prosecutions

18. (1) Where a person is convicted of an offence under these Regulations, the Court shall, unless it is satisfied that there are special and substantial reasons for not doing so, order the person to pay to—

(a) the Minister, or

(b) another person,

the costs and expenses, measured by the Court, incurred by the Minister or other person in relation to the investigation, detection or prosecution of the offence.

(2) Costs and expenses referred to in paragraph (1) may include costs and expenses incurred in relation to any one or more of the following:

- (a) the taking of samples,
- (b) the carrying out of tests,
- (c) examinations and analyses and,
- (d) the remuneration and other expenses of authorised officers, consultants and advisers.

Payment of Fines to Prosecuting Authorities

19. (1) Where a Court imposes a fine or affirms or varies a fine imposed by another Court for an offence under these Regulations, it shall, on the application of the Minister or other person who brought the prosecution, provide by order for the payment of the amount of the fine to the Minister or other person.

(2) Payment to be paid under paragraph (1) may be enforced by the Minister or other person referred to in paragraph (1) as if it were due on foot of a decree or order made by the Court in civil proceedings.

Guidelines and Codes of Practice

20. The Minister may for the purposes of the Birds Directive and the Habitats Directive, issue Guidelines or Codes of Practice in relation to the carrying out of outdoor recreational activities.

Guidelines and Codes of Practice in Criminal and Civil Proceedings

21. (1) Subject to paragraph (2), failure on the part of any person to observe any provision of a Guideline or a Code of Practice issued under Regulation 20 shall not of itself render that person liable to any civil or criminal proceedings.

(2) Where in any criminal proceedings a party is alleged to have committed an offence under these Regulations, being a provision for which there was a Guideline or a Code of Practice at the time of the alleged contravention, paragraph (3) shall have effect with respect to that Guideline or Code of Practice in relation to those proceedings.

(3) Any provision of a Guideline or Code of Practice which appears to the Court to give practical guidance as to the observance of the requirement or prohibition alleged to have been contravened shall be admissible in evidence, and if it is proved that any act or omission of the defendant alleged to constitute the contravention is a failure to observe such provision of the Guideline or Code of Practice, or if it is proved that any act or omission of the defendant is in compliance with such provision of the Guideline or Code of Practice, then such failure or compliance shall be admissible in evidence.

L.S.

GIVEN under my Official Seal,

18 June 2010.

JOHN GORMLEY, T.D.,

Minister for the Environment, Heritage and Local Government.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation)

These regulations address the European Court of Justice ruling in Case C-418/04 that Ireland had failed adequately to transpose the Habitats Directive in relation to damage being caused to European nature sites by inappropriate recreational activities. They provide that carrying out recreational activities likely to damage a European nature site is an offence and empower the Minister to take measures to address the threats posed to sites and species by such activities and to prohibit or regulate, as appropriate, any recreational activities, including but not limited to the use of quads, scramblers and jet skis in areas where their use is likely to damage sites or species protected under the Birds and Habitats Directives.

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