

Q&A for The Conservation (Natural Habitats, etc.) (Amendment) (NI) EU Exit Regulations 2019

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(Version 1)**

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

This document covers queries relating to the changes made by the [Conservation \(Natural Habitats, etc.\) \(Amendment\) \(Northern Ireland\) \(EU Exit\) Regulations 2019](#). These changes were made to ensure the [Conservation \(Natural Habitats, etc.\) Regulations \(Northern Ireland\) 1995](#) (as amended) were operable after the end of the EU transition period.

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Designations

1. What will happen to the Natura 2000 network and the SAC and SPA sites after the end of the transition period?

Special Protection Areas (SPAs) and Special Areas of Conservation (SACs) continue to be designated sites. There is no practical difference to the requirements of those that manage them, as a result of the UK leaving the EU and the transition period ending. They will continue to be referred to as European sites.

However, SACs and SPAs in the UK no longer form part of the EU Natura 2000 (N2K) 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.

2. What is the national site network?

The national site network includes existing SACs and SPAs; and new SACs and SPAs designated under the NI 1995 Conservation Regulations (as Amended) and equivalent Regulations in England, Scotland and Wales. This national site network will ensure that these protected sites in the UK will:

- Keep their protected status and name;
- Contribute to the network's management objectives that make sure they meet the same aims as they did under the EU Directives;
- Continue to contribute to domestic and international biodiversity objectives; and
- Co-exist with other designated sites such as Areas of Special Scientific Interest, Marine Conservation Zones and Ramsar sites (wetland habitats).

Some governmental and local authority policy documentation refer to SACs and SPAs as being International designations and ASSIs, Nature Reserves/National Nature Reserves and Marine Conservation Zones as being National designations. The term 'national site network' should only be used in reference to SAC and SPA designations.

3. What is the Emerald Network?

The Emerald Network is an ecological network made up of Areas of Special Conservation Interest under the Bern Convention. EU Natura 2000 sites are the EUs contribution to the Emerald Network. UK sites that were formerly part of the EU Natura 2000 network will continue to help fulfil international obligations to conventions such as Bern and OSPAR. In the case of the Bern Convention our national site network will now contribute directly as the UK contribution to the Emerald Network (as Emerald Sites) and as such we will have to report on the status of these sites to the Secretariat of the Bern Convention.

4. Will citations designating SACs and SPAs issued under the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 and the Conservation of Offshore Marine Habitats and Species Regulations 2017 before EU exit remain valid after EU exit?

The citations will remain valid and the sites are still subject to the existing protection regime.

5. Can new SACs and SPAs be designated?

DAERA can designate new SACs or SPAs to achieve the national site network objectives. The 2019 Regulations establish a designation process where DAERA is the decision maker, not the European Commission. DAERA will consider the criteria in the first stage of Annex III of the Habitats Directive. JNCC will provide advice to DAERA on how a proposed SAC meets the criteria in the second stage of Annex III. DAERA request ministerial approval to consult on the proposal and advise the AERA Committee of consultation. Post consultation and if designation is deemed appropriate, DAERA seek approval to designate from the Minister, and in relation to Marine designations, refer to the Secretary of State.

6. Can amendments be made to existing SACs and SPAs?

DAERA can adapt the network where necessary, reflective that the abundance and distribution of habitats and species within the network may evolve over time and provided there is deemed to be sufficient scientific and technical evidence. 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 IROPI reasons.

7. Will the term Site of National Interest lead to confusion with ASSIs and Marine Conservation Zones?

The term is clearly defined in the legislation and is a short transition phase before full designation as Special Areas of Conservation. It only applies to sites meeting Annex III criteria. This should not be confused with ASSIs or Marine Conservation Zones.

Protection, Habitats Regulations Assessments and licensing requirements

8. What will be the impact on the ground of these operability changes?

There are no changes to any existing processes including assessments for protected sites or species or licensing requirements.

Planning authorities and competent authorities will still need to observe the same obligations and undertake the same functions as before.

Developers and land managers and users need to continue to meet the same requirements and obligations as they did in regards to protected sites and species before EU exit.

9. How will designated sites continue to be maintained and protected?

DAERA has a duty to have regard to the requirement to maintain conservation measures so that:

- The habitats within the national site network sites do not deteriorate;
- Conservation objectives for each European site are met; and
- The species for which these sites have been designated are not significantly disturbed.

All stakeholders, such as competent authorities are advised that the duties they held prior to the 1 January 2021 with regards to SPAs and SACs have not changed.

Competent authorities, landowners, land managers, farmers and developers continue to have the responsibilities they held prior to the 1 of January 2021 with regards to the management of SPAs and SACs.

10. Will habitats and species be provided with the same level of protection as they previously received?

The level of protection to our habitats and species in the wider countryside and in our protected areas remains unchanged. The Conservation (Natural Habitats, etc.) (Amendment) (NI) (EU Exit) Regulations 2019 limits changes, only to those needed, to ensure our legislation continues to operate effectively from 1 January 2021. Special Protection Areas (SPAs) and Special Areas of Conservation (SACs) will become part of the UK national site network. There is no practical difference to these designated sites, and the requirements of those that manage them or make decisions related to them, remains the same. They will continue to be referred to as European sites.

There are no changes to existing processes for the protection and management of protected sites such as seeking permission to undertake certain activities or licencing requirements, whether these responsibilities or duties are under The Conservation (Natural Habitats, etc) Regulations (Northern Ireland) 1995 (as amended) or other legislation such as the [The Environment \(Northern Ireland\) Order 2002 \(legislation.gov.uk\)](#)

11. Do Habitats Regulations Assessments (HRAs) still need to be completed?

Yes. Competent authorities will continue to have to undertake HRAs before deciding to undertake, or give any consent, permission or other authorisation for plans, projects or activities that may affect a European site.

12. Will wildlife license requirements still be required?

Yes. Wildlife licensing requirements continue. You must check if you need a wildlife license for activities that may affect a European Protected Species and its habitat in Northern Ireland.

Licensing bodies must provide reports on certain wildlife licenses once every 2 years from the date the UK leaves the EU. In Northern Ireland, DAERA is the relevant licensing body.

License applications made in regards to the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 before EU exit, will remain valid post exit.

There will be no change in the licensing, management agreement, management scheme and byelaw regime following EU exit and existing documentation will remain valid.

Reporting and Accountability

13. Will Northern Ireland continue to report on the conservation status of European habitats and European protected species?

DAERA retains regular reporting obligations similar to that required under the Habitats and Wild Birds Directives. There is also reporting requirements in accordance with international agreements such as the Bern Convention.

Reports on the Conservation (Natural Habitats, etc.) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 are required from each country in the UK within 6 years after leaving the EU, and every subsequent 6-year period. These reports will be publicly available. The Secretary of State must publish a joint report for public viewing based on these reports within 2 years of receiving them. Biennial reporting on the use of exemptions/derogations from protections is maintained.

14. Can amendments be made to the existing Annexes and Schedules?

DAERA may amend the schedules to the Regulations, and the list of those habitats and species in the Annexes to the EU Directives, which apply to the UK, provided there is deemed to be sufficient scientific and technical evidence. There are no plans to amend these annexes at present.

All 4 countries of the UK can make a change to the annexes or schedules.

Imperative Reasons of Overriding Public Interest (IROPI)

15. How will decisions on Imperative Reasons of Overriding Public Interest (IROPI) be managed after EU exit?

The Habitats Regulations have been amended to reflect the new role that DAERA has in giving opinion on IROPI cases. DAERA must fulfil this role as the Appropriate Authority. To ensure transparency to the process the Regulatory and Natural Resources Policy Division in DAERA will take on this role. The European Commission will no longer give opinion in IROPI cases.

Additional legislative changes

16. Why has the Wildlife (Northern Ireland) Order 1985 been amended?

The definition of 'wild bird' is amended to maintain protections by adding the UK to the definition alongside 'Member States'. This will enable DAERA to continue to protect any birds not otherwise present in the UK that may enter the UK territory from Member States such as those visiting or offered for sale. This will ensure our commitment to maintain protections for all bird species which applied before EU exit.

A licence can no longer be issued to kill a seal for the purpose of preventing serious damage to fisheries. This change has been made to comply with the United States Marine Mammal Protection Act and ensure continued trade of UK fish and fish products with the United States. Equivalent changes have been made to legislation in the other UK administrations.

Guidance

17. Will guidance assisting stakeholders to meet the requirements of the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 still be valid after EU exit?

Existing guidance will still be valid upon EU exit. In the longer term, post EU exit changes may be required where, for example, current references are made to the European Commission in the guidance.

The SI provides for DAERA to issue guidance which interprets the requirements of the Directives. To do so it must first consult such bodies or persons it considers appropriate.

Planners and operators can expect continuity and certainty in existing arrangements for the protection of habitats and species.

DAERA consider the publication of the guidance and operational documents explaining the changes that the Conservation (Natural Habitats, etc.) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019, as well as these Q&A should provide sufficient guidance to practitioners.

Further information can be found at:

<https://www.daerani.gov.uk/articles/biodiversity-and-eu-exit> including the following documents:

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

- Terminology interpretation for The Conservation (Natural Habitats, etc.) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019

Working across the UK and Ireland

18. Are the Devolved Administrations making similar changes to their Regulations?

All UK administrations made similar changes to their domestic regulations. In England and Wales, amendments to the Conservation of Habitats and Species Regulations 2017 are contained in The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 <https://www.legislation.gov.uk/uksi/2019/579/contents/made>. In Scotland, The Conservation (Natural Habitats, &c.) Regulations 1994 are amended by the Conservation (Natural Habitats, &c.) (EU Exit) (Scotland) (Amendment) Regulations 2019 <https://www.legislation.gov.uk/ssi/2019/113/contents/made>.

19. How will the four administrations co-operate across the UK in future?

The four administrations agree that continuing cooperation will be achieved by using and refreshing the existing UK biodiversity governance framework. This is underpinned (in the legislation making the transposing regulations operable) by a duty on the Secretary of State and Devolved Ministers jointly to maintain, manage and adapt the terrestrial element of the UK network of protected sites to ensure its coherence and sufficiency. A similar duty exists for the marine environment under existing domestic legislation.

20. How will Northern Ireland co-operate with Ireland in the future in regards to the safeguard of internationally important sites.

There will be no change in cooperation between Northern Ireland and Ireland post EU Exit. NIEA and NPWS (National Parks and Wildlife Service) maintain their close working relationship on sites of international importance in the border region.

21. What impact do the Regulations have on Reserved Matters?

The Regulations maintain and uphold the current protections for UK-wide strategic interests including reserved matters such as defence and national security.

Role of the EU

22. Will decisions made in European courts prior to EU exit with regard to the Regulations remain valid once the UK leaves the EU?

UK courts will take into account rulings from the European Court of Justice made up to the point of the UK's exit from the EU.

Under the European Union Withdrawal Act a court or tribunal may have regard to anything done on or after exit day by the European Court, another EU entity or the EU so far as it is relevant to any matter before the court or tribunal.

The European Commission can bring infraction cases for infringements to 31 December 2020, up to 4 years after the end of the transition period.

International commitments

23. How will we continue to meet UK international obligations?

The Government is committed to meeting international commitments post EU exit. This includes the Convention on the Conservation of European Wildlife and Natural Habitats, also known as the Bern Convention and The Oslo and Paris (OSPAR) Convention for the Protection of the Marine Environment of the North-East Atlantic.

All four countries have worked together successfully for many years under the UK Biodiversity Framework and we expect this to continue to be the case. The

devolution settlements contain provisions that help to ensure the UK complies with its international commitments.

24. How do we currently meet international commitments in the marine environment?

Marine Natura 2000 sites contribute to the Emerald Network. The UK is also a Contracting Party of The Oslo and Paris (OSPAR) Convention for the Protection of the Marine Environment of the North-East Atlantic.

OSPAR Contracting Parties have committed to establishing a well-managed, ecologically coherent network of MPAs throughout the five OSPAR regions of the North East Atlantic.

Under UK legislation, there is a legal obligation to establish a network of Marine Protected Areas (MPAs). All MPAs, whether UK-designated European marine sites or national sites designated under the Marine and Coastal Access Act (MCAA) for England and Wales, or similar legislation in Scotland and Northern Ireland, comprise the UK contribution to the OSPAR network of MPAs.

Future Funding

25. Will funding programmes similar to the INTERREG VA be available for developing management plans and for practical restoration works when we leave the EU?

Irrespective of the terms of leaving the EU, the UK government has given a commitment to maintain the level of funding to honour existing EU approved projects to a conclusion. Under the Withdrawal Agreement the UK government also committed funding for the new EU Peace Plus Programme from 2021. The Peace Plus programme is currently being developed and includes draft proposals to support cross-border nature recovery and resilience projects. Ongoing access to other EU funding and arrangements for domestic replacement funding is also being developed.