



Waste Water Discharge Licensing

Appropriate Assessment

(Version 2.2)

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**Note on Appropriate Assessments for the purposes of the
Waste Water Discharge (Authorisation) Regulations, 2007
(S.I. No. 684 of 2007), as amended.**

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The purpose of this note is to assist Local Authorities in the Appropriate Assessment (AA) process in relation to waste water authorisations pursuant to the Waste Water Discharge (Authorisation) Regulations, 2007 (S.I. No. 684 of 2007), as amended. It focuses mainly on Stages 1 (screening) and 2 (AA) with a view to avoiding the more complex and expensive Stages 3 (alternatives) and 4 (Imperative Reasons of Overriding Public Interest – IROPI).

This note is not a legal interpretation of the Habitats Directive (92/43/EEC) and it is the responsibility of each Local Authority to ensure that the AA process is carried out in accordance with the Habitats Directive and relevant national legislation. This note should be read in conjunction with the following:

- Managing Natura 2000 Sites: the provisions of Article 6 of the ‘Habitats’ Directive 92/43/EEC (EC, 2000)
- 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 (EC, 2001)
- Guidance document on Article 6(4) of the ‘Habitats Directive’ 92/43/EEC. Clarification of the concepts of: Alternative solutions, imperative reasons of overriding public interest, compensatory measures, overall coherence, opinion of the Commission (2007)
- Appropriate Assessment of Plans and Projects in Ireland - Guidance for Planning Authorities. (DEHLG, 2009, rev. 2010).
- Habitats Directive (92/43/EEC)
- Birds Directive (79/409/EEC)
- Waste Water Discharge (Authorisation) Regulations, 2007 (S.I. No. 684 of 2007)
- Waste Water Discharge (Authorisation) (Amendment) Regulations 2010 (S.I. No. 231 of 2010)
- European Communities (Birds and Natural Habitats Regulations 2011 (S.I. No. 477 of 2011)

Introduction

An appropriate assessment is an assessment of the potential adverse or negative effects of a plan or project, in combination with other plans or projects, on a European Site. A European Site¹ is defined in Regulation 2(1) of the European Communities (Birds and Natural Habitats) Regulations 2011. These sites comprise Special Areas of Conservation (SACs) and Special Protection Areas (SPAs), at all stages for designation commencing with the Minister's notice of intention to designate, and provide for the protection and long-term survival of Europe's most valuable and threatened species and habitats.

The requirement for an appropriate assessment is outlined in Article 6(3) and 6(4) of the Habitats Directive.

Article 6(3) of the Habitats Directive requires that:-

“Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.”

And Article 6(4) of the Habitats Directive requires that:-

“If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted.”

An appropriate assessment should be based on best scientific knowledge and Local Authorities should ensure that, for Stage 2 (Appropriate Assessment) in particular, ecological and hydrological expertise is utilised.

¹ Ramsar sites classified under the Ramsar Convention 1971, Natural Heritage Areas, Nature Reserves, National Parks, Refuges for Fauna or Flora, Wildfowl Sanctuaries, Flora Protection Orders and Management Agreements are not included in the definition of European Sites in Regulation 2(1) of the European Communities (Birds and Natural Habitats) Regulations 2011 (S.I. No. 477 of 2011).

There are four main stages to an appropriate assessment:

Stage 1 – Screening

- Step 1 – Management of the Site
- Step 2 – Description of Plan or Project
- Step 3 – Characteristics of Site
- Step 4 – Assessment of Significance.

Stage 2 – Appropriate Assessment

- Step 1 – Information Required
- Step 2 – Impact Prediction
- Step 3 – Conservation Objectives
- Step 4 – Mitigation Measures.

Stage 3 – Assessment of Alternative Solutions

This stage examines alternative ways of achieving the objectives of the plan or project that avoid adverse impacts on the integrity of the European Site.

Stage 4 - Assessment where no alternative solutions exist

- Are there imperative reasons of overriding public interest (IROPI)?
- Are there human health or safety considerations or important environmental benefits?

Stage 1 - Screening

The first stage of the appropriate assessment process is screening. This stage identifies the likely impacts on European Sites of a plan or project either alone or in combination and considers whether these effects are likely to be significant.

Step 1: Management of the site

Is the plan or project directly connected with or necessary to the management of the site for nature conservation? (The answer is always *No* for waste water discharges).

Step 2: Description of the project or plan

Identify all the elements of the project or plan alone or in combination with other plans or projects that have the potential for having significant effects on the site. The geographical scope of the plan or project as well as the European Sites that may be affected must be identified. The European Site or Sites that could be affected should be described.

A single plan or project may not in itself have a significant effect on a European Site, however, in combination with other plans or projects (existing and planned) it may result in a significant effect on a European Site. As this note only relates to Local Authority waste water discharges and they will only have an impact on the aquatic environment it can be inferred that the ‘in combination’ effect need only apply to other plans and projects that have an impact on the aquatic environment. Quantifiable boundaries can also be defined at this point.

Step 3: Characteristics of the site

This step requires identification of the impacts of the project or plan on a European Site(s) by characterising the site as a whole or those areas where impacts are most likely to occur. In addition to consideration of the cumulative effects on a European Site(s), consideration must also be given to direct, indirect, short and long-term, isolated and interactive effects.

Step 4: Assessment of significance

The assessment of the likelihood of significant effects of a proposed or existing plan or project on a European Site(s) can be completed by referring to Circular L8/08 'Water Services Investment and Rural Water Programmes – Protection of Natural Heritage and National Monuments' issued by the Department of Environment, Heritage and Local Government. In particular, the flow diagram in Appendix 1 should be completed and the results of each section recorded.

If no significant effects are likely then no further assessment is required prior to the authorisation of the plan or project. There must be no reasonable scientific doubt that the plan or project does not have an effect on a European Site². This decision should be reasoned and recorded. If significant effects are likely then an appropriate assessment must be carried out. In addition, if the likelihood of significant effects is in doubt then the *precautionary principle* applies and an appropriate assessment must be carried out.

Stage 2 – Appropriate Assessment

Where Stage 1 screening has shown that the risk of significant effects on a European Site(s) cannot be ruled out then a Stage 2 Appropriate Assessment is required to be undertaken, the report of which should be submitted to the Agency as a Natura Impact Statement (NIS). The assessment should include a full examination of the potential risks to the European Site(s) from the discharge(s) and any mitigation measures proposed to avoid or reduce the impacts.

Step 1 – Information Required

The information required at this stage is a more detailed follow-on from the screening stage. In Stage 2, the impact of the project or plan on the integrity³ of a European Site is considered with respect to the conservation objectives of the site. This involves acquiring adequate information on the plan or project, predicting the likely effects (direct, indirect, short- and long-term, isolated, interactive and cumulative) and their impacts on the conservation objectives and status of the European Site. Finally, mitigation measures need to be identified and assessed against the adverse effects the plan or project is likely to cause.

Step 2 & 3 – Impact Prediction & Conservation Objectives

² See ECJ (2004) Case C-127/02.

³ Managing Natura 2000 sites: the provisions of Article 6 of the 'Habitats' Directive 92/43/EEC (EC, 2000) defines integrity as '*the coherence of the site's ecological structure and function, across its whole area, or the habitats, complex of habitats and/or populations of species for which the site is or will be classified*' .

It is necessary to carry out Steps 2 and 3 together as it is not possible to accurately predict the impacts on the integrity of a European Site without considering the conservation objectives of that site. European Commission Guidance⁴ states that ‘*The decision as to whether it (the European Site) is adversely affected should focus on and be limited to the sites conservation objectives*’. So the key to successful completion of these stages is to identify the reasons why the European Site was designated. The reasons for designation are called the ‘qualifying interests’. The qualifying interests for each European Site can be found in the site synopsis for that site. This information is available on the National Parks and Wildlife Service (NPWS) website (www.npws.ie).

Once the qualifying interests have been identified it is necessary to determine the conservation objectives for the site. The conservation objectives for a number of sites have been determined by the NPWS in conservation management plans published on their website. The formulation and publication of conservation management plans is ongoing so in some cases it may be necessary to determine the conservation objectives of a European Site. It is reasonable to determine that the conservation objectives of a European Site will be met if its habitats and species are maintained at a favourable conservation status. Article 1 of the Habitats Directive defines what is considered favourable conservation status.

Finally, the direct, indirect, short- and long-term, isolated, interactive and cumulative impacts of a waste water discharge must be determined in light of a site’s conservation objectives.

Step 4 – Mitigation Measures

Mitigation measures need to be assessed against the impacts identified in Steps 2 & 3 above and take into account the mitigation hierarchy below.

Approach to mitigation	Preference
Avoid impacts at source	Highest
Reduce impacts at source	↑
Abate impacts on site	↑
Abate impacts at receptor	Lowest

To assess mitigation measures European Commission Guidance⁵ suggests that the following tasks are completed:

- list each of the measures to be introduced
- explain how the measures will avoid the adverse impacts on the site
- explain how the measures will reduce the adverse impacts on the site.

Then, for each of the listed mitigation measures:

- provide evidence of how they will be secured and implemented and by whom

⁴ Managing Natura 2000 sites: the provisions of Article 6 of the ‘Habitats’ Directive 92/43/EEC (EC, 2000)

⁵ 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 (EC, 2001)

- provide evidence of the degree of confidence in their likely success
- provide a timescale, relative to the project or plan, when they will be implemented
- provide evidence of how the measures will be monitored and, should mitigation failure be identified, how that failure will be rectified.

If, despite the application of mitigation measures, residual adverse effects remain then a Stage 3 assessment must be completed.

Stage 3 – Alternatives

This stage examines alternative ways of implementing the plan or project that avoid any significant impacts on the European Site. There are two steps to this stage;

1. identifying alternative solutions &
2. assessing alternative solutions.

If alternative solutions have been identified it will be necessary to assess their potential impact by revisiting Stage 1 or Stage 2 of the assessment procedure as appropriate (Return to Stage 1 to screen alternative solutions which are new projects or plans or to Stage 2 if the alternative solutions are amendments to the current project or plan). If no alternative solutions are identified then Stage 4 of the assessment methodology must be implemented.

Stage 4 – IROPI (Imperative Reasons of Overriding Public Interest)

This stage requires an affirmative answer to both of the questions below in order for a plan or project to go ahead in the absence of alternative solutions.

- Are there imperative reasons of overriding public interest?
- Are there human health or safety considerations or important environmental benefits?