EXPLANATORY MEMORANDUM TO

THE EUROPEAN COMMUNITIES ACT 1972

THE CONSERVATION (NATURAL HABITATS, ETC) (AMENDMENT) REGULATIONS (NI) 2012 (2012 No 368)

MADE BY THE DEPARTMENT OF THE ENVIRONMENT ON 26th SEPTEMBER 2012

2012 No. 368

1. Introduction

1.1. This Explanatory Memorandum has been prepared by the Department of the Environment to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.

1.2. The Statutory Rule is made under section 2(2) of the European Communities Act 1972 and is subject to the negative resolution procedure.

2. Purpose

2.1. These Regulations amend the Conservation (Natural Habitats,etc.) Regulations (Northern Ireland) 1995 ("the principal Regulations").

2.2. The amendments in these Regulations transpose certain obligations contained in Articles 2, 3, 4 and 10 of the EC 'Wild Birds' Directive (Directive 2009/147/EC) and Article 18 of the EC 'Habitats' Directive (Directive 92/43/EEC) and generally place duties on public bodies to take measures to preserve, maintain and re-establish habitat for wild birds.

3. Background

3.1. The principal Regulations are the means by which the Habitats Directive on the conservation of natural habitats and of wild fauna and flora, and certain elements of the Wild Birds Directive on the conservation of wild birds and their habitats are transposed for Northern Ireland .

3.2. The Wild Birds Directive provides a mechanism for protecting all wild bird species naturally occurring in the European Union. It was adopted as a response to increasing concern about the decline in Europe's wild bird populations resulting from pollution, loss of habitats as well as their unsustainable exploitation. The Directive recognises that habitat loss and degradation are serious threats to the conservation of wild birds. It sets broad objectives designed to protect wild birds.

3.3. Article 2 of the Wild Birds Directive requires Member States to take requisite measures to maintain wild bird populations at a level which corresponds in particular to ecological, scientific and cultural requirements, while taking account of economic and recreational requirements, or to adapt the population of these species to that level.

3.4. Articles 3 and 4(4) (second sentence) of the Directive are designed to ensure Member States preserve, maintain or re-establish a sufficient

diversity and area of habitats for wild birds and to ensure that outside those areas which are specifically designated as important bird habitats, efforts are taken to avoid pollution or deterioration of habitats.

3.5. These Regulations are intended to ensure clearer transposition of these provisions by giving specific duties to relevant bodies.

3.6. In particular, the Regulations:

- place a general duty on public bodies to have regard to the Wild Birds Directive in exercising their functions;

-place a duty on Northern Ireland Departments and, in relation to a marine area, any relevant competent authority, to ensure steps are taken to protect and create bird habitat;

- place a duty on District Councils to take steps to contribute to the protection and creation of bird habitat;

- place a duty on competent authorities to avoid pollution or deterioration of bird habitat;

- place a duty on the Department of the Environment to review the implementation of the duties described above;

- place a duty on the Department of the Environment to provide guidance to any other relevant body to assist them in meeting these new duties and to take steps to facilitate and co-ordinate actions to ensure other bodies fulfill these duties; and

- place a duty on the Department of the Environment to take such steps as are considered necessary to encourage research and scientific work in furtherance of the objectives of the Wild Birds and Habitats Directives.

4. Consultation

4.1. These proposals have not been subject to public consultation as the measures to ensure clearer transposition of the Wild Birds Directive are an urgent response to correspondence instigated by the European Commission. Both these measures and the additional measures not related directly to this formal correspondence will not have any significant impact on any person or body and will impose no significant additional burdens on business or any other stakeholder.

5. Equality Impact

5.1. There are no equality impact implications arising from the Regulations.

6. Regulatory Impact

6.1. The impacts of these Regulations are technical updates to achieve greater legal clarity to existing obligations and are not expected to have any direct additional burdents on businesses, charities, voluntary bodies or the public sector.

7. Financial Implications

7.1. There are no anticipated financial implications, other than limited resource required to produce guidance to relevant bodies.

8. Section 24 of the Northern Ireland Act 1998

8.1. These Regulations do not contravene Section 24 of the Northern Ireland Act 1998.

9. EU Implications

9.1. These Regulations mainly transpose aspects of the Wild Birds Directive. A Transposition Note can be found in the Annex to this document.

10. Parity or Replicatory Measure

10.1. Similar legislation has been introduced by the other UK administrations to allow for a common approach to meet the relevant obligations of the Wild Birds Directive.

11. Additional Information

11.1. Not applicable.

Annex to Explanatory Memorandum

Transposition Note

Transposition Note relating to Directive 2009/147/EC on the Conservation of Wild Birds ("the Wild Birds Directive")

The Conservation (Natural Habitats, etc.) (Amendment) Regulations (Northern Ireland) 2012

The Wild Birds Directive provides a framework for the conservation of wild birds and management of their habitats.

In Northern Ireland, the Directive is transposed by the Wildlife (Northern Ireland) Order 1985 and the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 ("the principal Regulations").

The Conservation (Natural Habitats, etc.) (Amendment) Regulations (Northern Ireland) 2012 amend the principal Regulations in order to meet the requirements of Articles 2, 3, 4 and 10 of the Wild Birds Directive.

The other UK administrations have made similar amendments.

These Regulations do not go beyond what is necessary to implement the Directive.

Directive 2009/147/EC on the Conservation Of Wild Birds and their Habitats			
Article	Objective	Implementation	Responsibility
2	Requires Member States to take the requisite measures to maintain wild bird populations at a level which corresponds in particular to ecological, scientific and cultural requirements, while taking account of economic and recreational requirements.	Regulation 4 amends Regulation 3 of the principal Regulations to place a duty on Northern Ireland Departments and in relation to the marine area, a competent authority, to exercise their nature conservation functions, including marine conservation, to secure compliance with the requirements of the Wild Birds Directive. Regulation 3(3) of the principal Regulations imposes a duty on other competent authorities to have regard to the Wild Birds Directives, when exercising their functions.	Northern Ireland Departments and competent authorities.
3(1)	Requires Member States to take measures to preserve, maintain or re-establish a sufficient diversity and area of habitats for all wild birds.	Regulation 4 inserts new regulation 3A into the principal Regulations which: - places a duty on Northern Ireland Departments and in relation to the marine environment, a competent authority, to ensure steps are taken to protect and create bird habitat (regulation 3A(1)); - places a duty on district councils to take	Northern Ireland Departments, competent authorities, and the Department of the Environment.
3(2)	The preservation, maintenance and re-		

	establishment of wild bird habitat must include measures to: • create protected areas; • upkeep and manage habitats inside and outside the protected zones; • re-establish destroyed biotopes; create biotopes.	steps to contribute to the protection and creation of bird habitat (regulation 3A(3)); and - places a duty on the Department of the Environment to take steps to facilitate and co-ordinate actions to ensure other bodies meet these duties (regulation 3A(7)). Regulation 4 inserts new regulation 3B into the principal Regulations which places a duty on the Department of the Environment to review the implementation of the duties described above. It also places a duty on the Department of the Environment to provide guidance to a competent authority to assist them in meeting these new duties. Regulation 6 amends regulation 29 of the principal Regulations to enable management schemes to be established for European Marine sites to secure compliance with the Birds Directive.	
4(4) second sentence	Outside special protection areas for habitats, Member States must strive to avoid pollution or deterioration of habitats.	Regulation 4 inserts new regulation 3A(6) into the principal Regulations which places a duty on a competent authority to take appropriate steps to avoid any pollution or deterioration of wild bird habitat.	Competent authorities
10	Member States are required to encourage research and any work required as a basis for the protection, management and exploitation of wild birds. Member States must send relevant information to the Commission.	Regulation 16 inserts new regulation 74A into the principal Regulations which places a duty on the Department of the Environment to take steps to encourage research and scientific work as they consider necessary for the purposes of the protection, management and use of any population of wild birds; and to supply such information as considered appropriate to the European Commission to further the proper co-ordination of research	Department of the Environment