

## Planning Checklist: Natura 2000 Sites (SPAs, SACs and SCIs)

	Issue	Source	Yes	No
1	Is the plan/project/activity in or near a Natura 2000 site (SPA, SAC or SCI), or could it in any other way impact on a Natura 2000 site?	Use the 'Biodiversity maps' link at <a href="http://www.biodiversityireland.ie/">http://www.biodiversityireland.ie/</a> to check locations of Natura 2000 sites (tick 'SPAs' and 'SACs')	<b><u>Go to 2</u></b>	Natura 2000 regime not relevant
2	Is the plan/project/activity subject to a licensing regime (e.g. planning permission)?	Confirm with local authority or relevant government department/public body	<b><u>Go to 4 (or 3*)</u></b>	<b><u>Go to 3</u></b>
3	National authorities must "take appropriate steps to avoid, in [Natura 2000 sites], the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of the [Habitats] Directive."	Article 6(2) of the Habitats Directive (92/43/EEC) - a catch-all provision. *If license has already been granted and no prospect of re-licensing, you may need to rely on this row rather than row 4 (was original licence granted in accordance with rows 4 to 6?). Art. 6(2) is transposed into Irish law by reg. 13(3) of S.I. 94/1997. This places the Art. 6(2) obligation on the Minister for the Environment.	In <b><u>ALL</u></b> cases involving Natura 2000 sites, contact NPWS as well as local authority. Keep European Commission informed from an early stage - e-mail Liam Cashman <a href="mailto:liam-joseph.cashman@ec.europa.eu">liam-joseph.cashman@ec.europa.eu</a> , cc to <a href="mailto:micheal.o'briain@ec.europa.eu">micheal.o'briain@ec.europa.eu</a> <a href="mailto:patrick.wegerdt@ec.europa.eu">patrick.wegerdt@ec.europa.eu</a>	
4	Can it be <b><u>excluded</u></b> (i.e. totally ruled out), on the basis of objective information, that the plan/project will have a significant effect on the Natura 2000 site(s) in question, either individually or in combination with other plans or projects?	Article 6(3) of the Habitats Directive, as interpreted by the European Court of Justice ( <b>ECJ</b> ) in case C-127/02. Art. 6(3) is transposed into Irish law by various provisions. In planning permission context, the relevant provision is reg. 27 of S.I. 94/1997.	No need for an "appropriate assessment" (special impact assessment) under the Habitats Directive.	"Appropriate assessment" (special impact assessment) <b><u>must</u></b> be carried out pursuant to Habitats Directive.  <b><u>Go to 5</u></b>
5	In light of the appropriate assessment, does <b><u>reasonable scientific doubt</u></b> remain as to the absence of adverse effects on the integrity of the Natura 2000 site(s) in question?	Article 6(3) of the Habitats Directive, as interpreted by the ECJ in case C-127/02. Art. 6(3) is transposed into Irish law by various provisions. In planning permission context, the relevant provision is reg. 27 of S.I. 94/1997.	<b><u>Go to 6</u></b>	Plan/project can proceed - authorities have made certain that there will be no adverse effects on site integrity.
6	Plan/project can only legally proceed if three tightly-defined conditions are met: <ul style="list-style-type: none"> <li>• There must be an "absence of alternative solutions";</li> <li>• There must be "imperative reasons of overriding public interest" for carrying out the plan/project (which are limited in the case of "priority habitats"); and</li> <li>• "All compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected" must be taken</li> </ul>	Article 6(4) of the Habitats Directive. In planning permission context, relevant Irish provisions are regs. 27(5) and 33 of S.I. 94/1997.  Onus is on developer/national authorities to demonstrate absence of alternative solutions (ECJ in C-239/04). Compensatory measures: European Commission typically looks for like-for-like replacement habitat at ratio of >1:1. For guidance, see <a href="http://ec.europa.eu/environment/nature/natura2000/management/docs/art6/guidance_art6_4_en.pdf">http://ec.europa.eu/environment/nature/natura2000/management/docs/art6/guidance_art6_4_en.pdf</a>	If plan/project meets <b><u>all three</u></b> tests, it can proceed. This will occur only in exceptional cases; central government and the European Commission will almost certainly be involved in such cases.	If the plan/project fails <b><u>any</u></b> of the three tests it <b><u>cannot legally proceed</u></b> .  Again, always keep the European Commission well informed of situations involving Natura 2000 sites.