

# Guidance on Appropriate Assessment

- EU Guidance
  - European Commission 2007a. *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*
- NPWS Guidance for Local Authorities
  - [www.NPWS.ie](http://www.NPWS.ie)

# Appropriate Assessment and Planning

- Exempted Developments under Planning legislation are NOT EXEMPTED from Appropriate Assessment

# Appropriate Assessment

- Answers must be descriptive and give an explanation, particularly if No to a question
- It must address all the relevant ecological questions
- Must consider build, operation, maintenance and extreme events
- Must be in writing

# AA Conclusions

If NO significant ecological impact:

- The conclusions should be beyond reasonable scientific doubt\*

\*EU Case Law - Judgement on Waddenzee (NL)  
cockle fishery

# Imperative Reasons of Over-riding Public Interest (IROPI)

## Article 6 (4)

- If there is significant ecological impact on an Natura 2000 site the development may only go ahead for socio-economic reasons
- A case will have to be made to the Commission

# Imperative Reasons of Over-riding Public Interest (IROPI)

If the site hosts a Priority Habitat:

- A development may only go ahead for reasons of public health and safety.
- The Commission will have to be informed.

# IROPI

- Compensatory habitat will have to be provided
- A complex procedure which may take a considerable length of time
- Not a decision to be taken lightly

# Other Considerations

## **Annex IV Species**

- These species (e.g. otters, cetaceans) require strict protection at all times
- The impact of a plan or project will also have to assess the impact on these species



# Ignoring the Legal Requirements

Not worth the risk because:

- An NGO or third party complaint to the EU can lead to:
  - Infringement proceeding for Ireland
  - Likely to bring project to a sand still for some time
  - A huge amount of time and effort

# Other legislation

- Wildlife Act
  - Protected Flora and Fauna
- OSPAR Convention
  - MPAs (all Natura 2000 sites) for habitats and species threatened or declining.

# Summary

- Carry out SEA and Appropriate Assessments for Natura 2000 sites
- Document ecological impacts on Natura 2000 sites
- Consider impacts on Annex IV species
- Consider impacts on species and habitats listed under Wildlife Act and for MPAs under OSPAR Convention

# Issues for Consideration

- Pre consultation for major development
- What are the data requirements
  - Determine the importance of the area for:-
    - Birds
    - Cetaceans

This is likely to require data over an annual cycle i.e. one years data.

- Are there designated sites onshore through which cables will pass.