

Circular Letter NPWS 2/07

16 May, 2007

**Guidance on Compliance with Regulation 23  
of the Habitats Regulations 1997  
– strict protection of certain species/ applications for derogation licences.**

A chara,

I am directed by the Minister for the Environment, Heritage and Local Government to refer to the EU Habitats Directive, to the Habitats Regulations 1997-2005 which transpose that directive into Irish law,<sup>1</sup> and to Ireland's obligations under that Directive.

The Directive, and the implementing Regulations, require that certain species listed in Annex IV of the Habitats Directive are strictly protected. A list of these species is appended.

These species are not necessarily associated with areas subject to a specific nature designation: in the case of bat species and otters they may be found anywhere throughout the country.

Under Regulation 23 of the Habitats Regulations 1997, any person who, in regard to the animal species listed in Annex IV of the Habitats Directive-

- (a) deliberately captures or kills any specimen of these species in the wild,*
- (b) deliberately disturbs these species particularly during the period of breeding, rearing, hibernation and migration,*
- (c) deliberately takes or destroys the eggs from the wild, or*
- (d) damages or destroys a breeding site or resting place of such an animal,*

*shall be guilty of an offence."*

<sup>1</sup> Council Directive 92/43/EEC of 21 May 1992, on the conservation of natural habitats and of wild flora and fauna, the European Communities (Natural Habitats) Regulations, 1997 (S.I. No. 94 of 1997), the European Communities (Natural Habitats) (Amendment) Regulations, 1998, (S.I. No. 233 of 1998), and the European Communities (Natural Habitats) (Amendment) Regulations, 2005, (S.I. No. 378 of 2005),



Regulation 21 provides corresponding protection for Annex IV plant species.

The carrying out of any work that has the potential to disturb these species, and for which a derogation licence has not been granted, may constitute an offence under Regulation 21 or 23 of the Habitats Regulations.

It should be noted that in the case of Regulation 23 (d), it is not necessary that the action should be deliberate for an offence to occur. This places an onus of due diligence on anyone proposing to carry out an action or project that might result in such damage or destruction.

A particular concern arises regarding works carried out by or on behalf of local authorities themselves, including works of maintenance or repair.

Examples of cases that are likely to require assessment are the removal of trees and other habitat during the construction of roads or other infrastructure, the modification of the courses of rivers, drainage and discharge of water, and even the re-pointing or replacement of masonry in bridges, walls and other structures where bats are likely to roost, etc.

#### Procedure to be followed

Local authorities must ensure that they, their staff and their agents comply fully with the requirements of the Directive and the Regulations as follows:

1. In advance of any works, an appropriate initial assessment should be carried out by a person competent to identify where a risk of damage or disturbance to an Annex IV species may exist (e.g. by an appropriately qualified ecologist). The fact that such an assessment has been carried out should be recorded and kept with the papers associated with the project.
2. Projects where a risk is identified should be subject to an appropriate scientific assessment. It will be necessary to identify alternatives or modifications that will avoid that risk.
3. Where it is not possible to identify a means of avoiding the risk completely, the question of seeking a derogation licence from the Minister under Regulation 23 of the Habitats Regulations should be considered if it is desired, notwithstanding, to proceed with the action or project.
4. The Minister is empowered, within strict parameters, to grant a license for derogation from complying with the requirements of the provisions of section 21 of the Wildlife Act 1976 and Regulations 23 and 24 of the Habitats Regulations. The scope of the Minister's powers to grant derogation licences is set out in Regulation 23, as follows:

*Where there is no satisfactory alternative and the derogation is not detrimental to the maintenance of the populations of the species to which the Habitats Directive relates at a favourable conservation status in their natural range, the Minister may, in respect of those species, grant a licence to one or more persons permitting a*

derogation from complying with the requirements of the provisions of section 21 of the Principal Act and Regulations 23 and 24 where it is—

*( a ) in the interests of protecting wild fauna and flora and conserving natural habitats, or*

*( b ) to prevent serious damage, in particular to crops, livestock, forests, fisheries and water and other types of property, or*

*( c ) in the interests of public health and public safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment, or*

*( d ) for the purpose of research and education, of repopulating and re-introducing these species and for the breeding operations necessary for these purposes, including the artificial propagation of plants,*

*( e ) to allow, under strictly supervised conditions, on a selective basis and to a limited extent, the taking or keeping of certain specimens of the species to the extent (if any) specified therein, which are set out in the First Schedule.*

6. Any application for a derogation licence (to be submitted to Mr Jamie Mulleady of this Department at: Species and Regulations Unit, National Parks and Wildlife Service, 7 Ely Place, Dublin 2 email: [Jamie.mulleady@environ.ie](mailto:Jamie.mulleady@environ.ie)) should address the criteria referred to in the above paragraph as well as proposed scientifically-based mitigation measures to address any potential impact on the identified Annex IV species. A decision on an application will be made on the basis of the information and proposals submitted and best scientific knowledge.

7. An application for such a derogation licence should be made in advance of seeking approval under Part 8 or 10 of the Planning and Development Regulations, 2001, as amended, or seeking planning permission for works. This will ensure that full consideration can be given to the impacts of the proposed project on the species and to avoid the possibility of delay to the proposed project or of a refusal of a derogation licence which would prevent the works being carried out as planned.

8. The obligation to obtain a derogation licence is additional to the requirement to notify the Minister of a proposed development which may have an impact on nature conservation to the Minister under article 82(3)(n) and others of the Planning and Development Regulations, 2001 (as amended). Local authorities should notify the Minister (Development Applications Unit) in any case where it appears that a proposed development may pose a risk to Annex IV species.

9. Should a problem be identified regarding Annex IV species in the course of works, this should be reported immediately to the National Parks and Wildlife Service. No further work that might impact on such species should take place unless a derogation licence has been obtained.

Applications for planning permission

Issues concerning damage or disturbance to Annex IV species also arise in the context of applications for planning permission for proposed development, e.g. proposals to renovate older houses. The responsibility of avoiding disturbance or damage to Annex IV species, or of obtaining an appropriate derogation licence, rests with the developer.

However, planning authorities should note that in any case where it appears that a proposal may pose a risk to Annex IV species, the planning application should be referred to the Minister under article 27(1)(n) of the Planning and Development Regulations 2001 (as amended). This referral should be done in the appropriate manner for applications having impacts on nature conservation sites. Planning authorities could also take the opportunity afforded by any pre-application discussions to alert prospective applicants to the requirements in relation to Annex IV species.

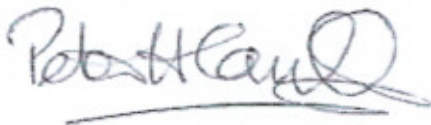
Further information

Species Action Plans, which set out specific measures for the monitoring and protection of these species, have been or are being prepared. They are published on [www.npsw.ie](http://www.npsw.ie) or can be obtained from Species Unit (Tel: 01 888 3212). Guidelines in regard to bats are available at [www.npsw.ie](http://www.npsw.ie).

General questions in relation to the protection of Annex IV species or require any further information on an application for a derogation licence should be referred to Species Unit (01 8883214). Specific queries regarding a proposed project, location or species should be referred to the appropriate National Parks and Wildlife Service Divisional Ecologist or to the Regional Manager (contact details <http://www.npws.ie/media/Media.4976.en.pdf>).

If you have any questions in relation to the referral of a planning application, please contact Development Applications Unit (Tel: 01 8883181)

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Peter Carvill,  
Assistant Principal Officer.

To: all County and City Managers, Directors of Services for Planning, Town Clerks

## Appendix

Species listed in Annex IV found in Ireland:

- All bat species
- The Otter
- All Cetaceans
- The Leatherback Turtle
- The Natterjack Toad
- The Kerry Slug
- The Killarney Fern
- The Slender Naiad
- The Yellow Marsh Saxifrage