



Consultation on derogations for controlling wild birds in Ireland

**Submission on behalf of FACE to the National Parks and Wildlife Service (Ireland)
via e-mail: WildBirdDeclarations@chg.gov.ie**

FACE:

FACE is the European Federation for Hunting and Conservation. It represents the interests of Europe's 7 million hunters as an international non-profit-making non-governmental organisation. FACE is made up of its Members: national hunters' associations from 36 European countries including the EU-27. This makes FACE the largest democratically representative body for hunters in the world and probably one of the largest European civil society organisations. FACE has 7 Associate Members and has its headquarters in Brussels with 15 staff. FACE upholds the principle of sustainable use and has been a member of the International Union for Conservation of Nature (IUCN) since 1987.

Context:

FACE has been requested by FACE Ireland and the National Association of Regional Game Councils (NARGC), which is the largest shooting and conservation organisation in Ireland, to make a submission to the consultation on the current declarations¹ made by the Minister for Culture, Heritage and the Gaeltacht allowing for the control of certain wild bird species due to expire on 30 April 2021.

In principle, the derogation system in Ireland sets out to transpose the provisions of the EU Birds Directive, which has its own EC guidance document with advice on how to apply derogations for 'pest' birds². The provisions of Article 9 of the Birds Directive have also been subject to rulings by the Court of Justice of the EU. The provisions of Article 9 are set out in Annex I of this submission.

The NARGC has already provided a submission to this consultation outlining the importance of the need to control certain wild birds due to their impacts on crops, livestock, disease, public and animal health and fauna/wider nature conservation efforts in Ireland. The FACE submission will not go into such detail, but instead attempts to clarify the application of key provisions of the Birds Directive in the Irish derogation system.

Derogations in Ireland for wild birds – An understandable system:

The derogations for wild birds in Ireland attempt to provide a system that is simple and unambiguous in how they should be applied by individuals undertaking pest bird control. The following sections take account of how Ireland transposes the key provisions of the EU Birds Directive with respect to derogations for 'pest' birds.

The test of "no other satisfactory solution":

The EC Guidance document suggests an analytical approach to establishing the test of 'no satisfactory alternative'. The approach stems from a ruling from the European Court of Justice (ECJ) (case C-10/96)

¹ <https://www.npws.ie/sites/default/files/general/art-9-declaration-may-2020-apr-2021-state-wide.pdf>

² https://ec.europa.eu/environment/nature/conservation/wildbirds/hunting/docs/hunting_guide_en.pdf

concerning the derogation procedure under Article 9 of the Birds Directive. The following questions must be considered:

- I. What is the problem or specific situation that needs to be addressed?
- II. Are there other solutions? If so, will these resolve the problem or specific situation for which the derogation is sought?

As regards the use of general derogations to deal with such situations, sections 3.6.10 to 12 of the EC Guidance document are pertinent (pg. 68-69). A question which often arises is whether, in relation to pest control derogations under Article 9(1)(a), it is possible to satisfy the formal conditions of Article 9(2) by way of general authorisations, i.e. authorisations not given to specific individuals but rather to a general category of authorised person such as landowners and their agents.

Case C-247/85, *Commission v. Belgium* suggests that the reasons justifying the granting of derogations to a wide category of person should be compelling and clearly specified in the derogation, which is the case in the Irish derogations. Hence, when approaching derogations from a general perspective, the range of possible alternative courses of action should be considered by the licensing authority.

In summary, for the test of 'no satisfactory alternative' to be passed, the NPWS, as the licensing authority must be satisfied that no other option presented or possible can meet the identified and proven 'need' for which a licence/derogation is sought. However, the individual end user should not be required to provide proof of the causality between shooting and damage prevention in each case.

It must be highlighted that when preventing serious damage, lethal management of wild birds is typically the most effective method to solve the problem in question e.g. to prevent serious damage to crops. At the same time, the evidence generally demonstrates that the range of alternatives considered are not considered to be 'satisfactory'. It is the opinion of FACE that this evidence exists in Ireland as it does elsewhere in Europe i.e. demonstrating that the alternatives are neither effective nor practicable to killing or taking pest bird species.

It is ultimately the responsibility of the licensing authority (i.e. the NPWS in this case) to assess whether or not there is a satisfactory alternative to solve the identified problem or address the need for which a derogation (general or not) is sought. The current system of control provides derogations for a number of instances in Ireland. The most relevant derogations for the NARGC include:

Damage to crops:

The current system provides for control of:

- Jackdaw and Rook (year-round, but not in January)
- Woodpigeon (year-round)

Damage to livestock:

The current system provides for year-round control of:

- Magpie
- Hooded Crow

Damage to livestock feedlots:

The current system provides for the control of:

- Jackdaw
- Rook
- Timing: between November and May

Protection of flora and fauna:

The current system provides for the protection of fauna, notably the nests and young of game birds for:

- Magpie
- Hooded Crow
- Timing: between February and September

Threat to public health and vector in the spread of animal diseases:

The current system provides for the year-round control of:

- Magpie
- Hooded Crow

With regard to lethal removal of birds to prevent serious damage, the EC Guidance document (pg. 50) states:

- *It is also generally accepted that, in order to safeguard these interests, there may sometimes be no satisfactory solution other than destruction of birds. In this context, it would seem reasonable that the use of hunting is a legitimate means of safeguarding the interests mentioned in Article 9(1)(a) Birds Directive. Of course, in this instance, hunting serves a non-recreational objective (i.e. damage prevention).*
- *The species for which Article 9(1)(a) Birds Directive are invoked are sometimes referred to as 'pest species'. The justifications for their control include 'to prevent serious damage to crops, livestock, forests, fisheries and water' as well as 'for the protection of flora and fauna'. The first justification in particular relates to a wide range of species, including members of the Corvidae, Columbidae, Sturnidae, Laridae and Anseridae. Several of the species concerned are widespread and relatively abundant and are considered to have a favourable conservation status (pg. 50).*

In terms of the alternatives to killing, the following common challenges are faced by many licensing authorities is the following in Europe:

- Alternatives to killing or taking bird species do not reduce the overall level of damage at a landscape scale, but simply redistribute that damage. Therefore, the alternatives are neither effective nor practicable to killing or taking bird species.
- For control measures to be effective in the long-term they need to represent an actual, rather than perceived threat. Without any actual threat to the birds, they will quickly habituate and resume causing damage.
- Lethal control, through shooting, is an essential part of an overall control strategy and helps to reinforce the effectiveness of non-lethal methods by providing a degree of threat to the birds.
- For a number of situations, there is simply no effective alternative to lethal control. For example, visual, auditory and chemical deterrents could not be used to prevent corvid predation on threatened bird species as the deterrents are as likely to scare away the protected bird as they are to scare the corvids.
- In the scientific literature on bird deterrents, lethal shooting is often described as effective, but expensive.
 - However, in Ireland, this cost is invariably borne, in most cases, by the individual Gun Club member, not by the farmer or society. This cost is borne willingly on the understanding that this is a service provided by Gun Clubs to farmers in return for providing access to land for hunting.
 - For species in favourable conservation status such as woodpigeon and corvids, lethal control, as has been practiced in Ireland for generations, and is a cost-effective

effective method that does not compromise the conservation status of the species being controlled.

- The derogations allow farmers and landowners to target control where the issue is greatest in compliance with the Birds Directive provisions including that there be “no other satisfactory solution” as shooting is required to supplement the effectiveness of non-lethal solutions and prevent birds’ habituation.

Territorial scope:

Ireland applies a state-wide system for most derogations. The EU’s Guidance [document](#) supports the use of derogations that are generalised in their territorial scope. For example, section 3.5.15 (pg. 57) acknowledges that:

- *...widespread species that can cause damage over large areas, such as the Wood Pigeon (Columba palumbus), may justify derogations that are more generalised in their territorial scope.*

FACE surveyed its Membership on one species in question (i.e. the Wood Pigeon). Many European countries apply derogation system as well as an open hunting/shooting season for this species, including Belgium (Flanders), Cyprus, Denmark, Estonia, Germany, Malta, Netherlands, Portugal and Sweden and several countries allow Wood Pigeon to be managed to prevent crop damages (including in conjunction with derogation shooting). A number of countries including Sweden, the Netherlands and the UK apply a similar general approach to the derogations in Ireland.

Preventing damage:

It should be pointed out that the derogations are intended to prevent damage. The EC Guidance document makes it clear that it is not a response to already have proven damage, but of the strong likelihood that this will take place in the absence of action.

Impacts on bird populations:

The Birds Directive requires that derogations under Article 9 should not compromise the favourable conservation status of the species affected. However, relevant case law under the EU Habitats Directive highlights that even if species are not in favourable status, the use of derogations is still acceptable. More specifically, in case C-342/05, having established that the conservation status of the wolf in Finland was not favourable, the Court has considered that the granting of a derogation for wolf hunting remains possible by way of exception “*where it is duly established that they are not such as to worsen the unfavourable conservation status of those populations or to prevent their restoration at a favourable conservation status*”. FACE takes note of the fact that the main species covered by derogations are in Ireland are not a conservation priority.

Further, Article 1 of the Birds Directive refers to “*protection, management and control*”, while pursuant to Article 2 measures shall be taken to maintain populations or to adapt populations to a level “*which corresponds in particular to ecological, scientific and cultural requirements, while taking account of economic and recreational requirements*”. The latter may indeed mean that the control is not only focused on “*balances between species*” but can also be aimed at the protection of economic interests (e.g. damage prevention) through shooting.

Laws must be practical and understood by users:

The European Charter on Hunting and Biodiversity³, which was adopted by the Bern Convention³ in 2007 lists some important principles with regard to regulations of this nature. The Charter lists 12 principles, of which Principle 2 ‘Ensure that regulations are understandable and respected’ advises governments and stakeholder to:

³ <https://rm.coe.int/168074649f>

- a) Formulate simple, flexible, and logical regulations which address biological principles, (inter)national policy, the socio-economic context, as well as reasonable stakeholder concerns and expectations;*
- b) Impose only those restrictions on methods and means which can be justified from the standpoint of conservation and that will be easily understood by stakeholders.*

With respect to any potential changes, the NPWS should carefully consider the following points with respect to:

Proportionality:

- Regulators should only intervene when necessary. Remedies should be appropriate to the risk posed, and costs identified and minimised.

Accountability:

- Regulators must be able to justify decisions, and be subject to public scrutiny.

Consistency:

- Government rules and standards must be joined up and implemented fairly.

Transparency:

- Regulators should be open, and keep regulations simple and user-friendly.

Targeting:

- Regulation should be focused on the problem, and minimise side-effects.

In view of the points made in this submission, FACE calls on the NPWS to continue to apply its practical and understandable approach to derogations in Ireland, which is in line with the provisions of the Birds Directive.

Annex I: Provisions of Article 9 of the Birds Directive

1. Member States may derogate from the provisions of Articles 5 to 8, where there is no other satisfactory solution, for the following reasons:
 - (a) — *in the interests of public health and safety,*
— *in the interests of air safety,*
— *to prevent serious damage to crops, livestock, forests, fisheries and water,*
— *for the protection of flora and fauna;*
 - (b) for the purposes of research and teaching, of re-population, of re-introduction and for the breeding necessary for these purposes
 - (c) to permit, under strictly supervised conditions and on a selective basis, the capture, keeping or other judicious use of certain birds in small numbers.
2. The derogations referred to in paragraph 1 must specify:
 - (a) the species which are subject to the derogations;
 - (b) the means, arrangements or methods authorised for capture or killing;
 - (c) the conditions of risk and the circumstances of time and place under which such derogations may be granted;
 - (d) the authority empowered to declare that the required conditions obtain and to decide what means, arrangements or methods may be used, within what limits and by whom;
 - (e) the controls which will be carried out.
3. Each year the Member States are required to send a report to the Commission on the implementation of paragraphs 1 and 2.
4. On the basis of the information available to it, and in particular the information communicated to it pursuant to paragraph 3, the Commission shall at all times ensure that the consequences of the derogations referred to in paragraph 1 are not incompatible with this Directive. It shall take appropriate steps to this end.